



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: May 15, 2008
To: Interested Person
From: Rachael Hoy, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-120867 AD

GENERAL INFORMATION

Applicant: Steven A Dixson
3300 SE Deswell
Milwaukie, OR 97267

Representative: Nancy Silver,
Boundary Locators
8124 SE Taylor Ct
Portland, OR 97215

Site Address: 7934 NE FREMONT ST
Legal Description: BLOCK 8 LOT 3, GREGORY HTS
Tax Account No.: R344103320 **State ID No.:** 1N2E29AA 04300
Quarter Section: 2738
Neighborhood: Roseway, contact Tyler Whitmire at 503-256-1234.
Business District: Portland International District Business Association, contact Tyler Whitmire at 503-256-1234.
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.
Plan District: None
Zoning: R5h - Residential 5,000 with an 'h' overlay for Aircraft Landing zone which provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation

Case Type: AD - Adjustment
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant is in the process of a property line adjustment (08-110847 PR), which will result in a developable lot to the west of the existing house. Previously the applicant consolidated historic lots 1 and 2, Block 8 Gregory Heights into one parcel (07-152640 LC). The lot consolidation was in preparation for the property line adjustment. As a result the front lot line of proposed lot 1 is now along NE Fremont. Because the front setback regulations in the R5 zone require a 10 foot front setback, the applicant requests an adjustment to reduce the required 10 foot front setback to 8.4 feet for the existing house.

Relevant Approval Criteria:

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria have been met.

ANALYSIS

Site and Vicinity: The site is located on the corner of NE Fremont Street and NE 80th Avenue. The existing single family home on the site will remain. The detached garage will be removed because it will be on the new lot, with the approval of the property line adjustment. The surrounding homes in this R5 zoned neighborhood are primarily detached, one to two story, single family homes. The property sits one block west of the CG zone and a number of commercial establishments.

Zoning: R5h: The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The Aircraft Landing ("h") overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. In the future, if new development occurs on the site the following height information and requirements will apply. The allowed height limit for buildings and vegetation on the site per the "h" overlay is 250 feet above the lowest base point at Portland International Airport. The airport low base point is at an elevation of 18.3 feet. Therefore, the topographical elevation of the site PLUS the proposed building cannot exceed 268.3 feet. The highest ground elevation on the site is approximately 240 feet. Therefore, buildings and vegetation on the site cannot exceed 28.3 feet in height. On this site the maximum limit of the base zone (R5) is 30 feet, but would only be allowable with a letter of approval from the FAA granting permission to exceed the height limits allowed by the h-overlay. An application for FAA approval may be obtained from the Aviation Department of the Port of Portland.

Land Use History: City records indicate that prior land use reviews include the following:

07-152640 LC – This lot consolidation has been approved. The applicant consolidated historic lots 1 & 2, Block 8, Gregory Heights, into one parcel. The lot consolidation was done in preparation for a property line adjustment with the abutting Lot 3 under the same ownership.

08-110847 PR – This property line adjustment will turn an existing property line that runs east-west to a north south line, separating the existing house from a newly created lot to the west. By turning the property line, the existing house has a new front lot line along NE Fremont Street.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **April 18, 2008**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Transportation Engineering
- Bureau of Parks-Forestry Division
- Life Safety

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 18, 2008. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

Title 33.805.10 Purpose of Adjustments

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the code's regulations would preclude all use of the site. Adjustment reviews provide flexibility for unusual situations and to allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.40 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below are met.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The applicant proposes one adjustment to reduce the front building setback from 10 feet to 8.4 feet for the existing house. There is no new development associated with this adjustment request. The adjustment is needed because the front lot line for the existing house will change with the approval of a property line adjustment. The front building setback is measured from the front lot line, which will be on NE Fremont Street, where as previously the front lot line was on NE 80th Avenue. Because the front setback standard in the R5 zone requires a 10 foot front setback, measured from the front lot line, the applicant request an adjustment to reduce the required 10 foot front building setback to 8.4 feet. The purpose of the setback regulation is listed below:

The setback regulations for buildings serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the city's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity.*

The existing house is located 8.4 feet from NE Fremont Street. As mentioned above, no new development is being requested, the need for the adjustment is due to the change in the front lot line for the existing house from NE 80th to NE Fremont Street. Previously, the existing house was meeting the front building setback of 10 feet along NE 80th Avenue. The change in the front lot line will not have any impact on the location of the existing house or its proximity to the residence across the street on NE Fremont Street; nothing is changing. It will not negatively impact light, air or privacy for adjacent properties. There will be adequate access for fire fighting and meets fire protection requirements of the Building Code. The existing house has sufficient outdoor area along the side of the house facing NE 80th Avenue and a private backyard with approximately 27 feet from the building wall to the rear property line. Based on this information, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be

consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The change in front lot line for the existing house will not detract from the livability or appearance of the residential area. As mentioned above, no new development is being proposed at this time. The existing house has its front door facing NE Fremont Street and will continue to use this as its main entrance. Many houses on the block and on adjacent blocks along NE Fremont Street face this major transit street. Again, there are no physical changes or additions to the existing house, so existing privacy and other livability-related values will not change. Based on this information, this criterion is met.

E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: There are no noticeable impacts from this adjustment since no changes are requested to the existing house through this adjustment. This adjustment identifies the change in front lot line for the existing house from NE 80th Avenue to NE Fremont Street. This in turn requires that the existing house meet front building setback standards along NE Fremont instead of NE 80th Avenue. As mentioned above, no privacy or livability-related values are impacted, nor has there been any physical relationship change between residences. Based on this information, no mitigation is necessary. This criterion is met.

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone.

D. City designated scenic resources and historic resources are preserved; and

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resources and resource value as is practical.

Findings: Only one adjustment is requested, the site does not contain any identified scenic or historic resources and the site is not located in an environmental zone; therefore, these criterion are not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant proposes one adjustment to reduce the front building setback from 10 feet to 8.4 feet. As noted in this report, no new development is requested through this adjustment. The front lot line for the existing house will change with the approval of a property line adjustment (08-110847 PR).

ADMINISTRATIVE DECISION

Approval of an Adjustment to 33.110.220.B to reduce the required minimum front setback from 10 feet to 8.4 feet, per the approved site plan, Exhibits C-1, signed and dated May 12, 2008.

Decision rendered by:  **on May 12, 2008**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 15, 2008

Staff Planner: Rachael Hoy

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on April 8, 2008, and was determined to be complete on April 16, 2008.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on April 8, 2008.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 29, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a

digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **May 30, 2008 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and

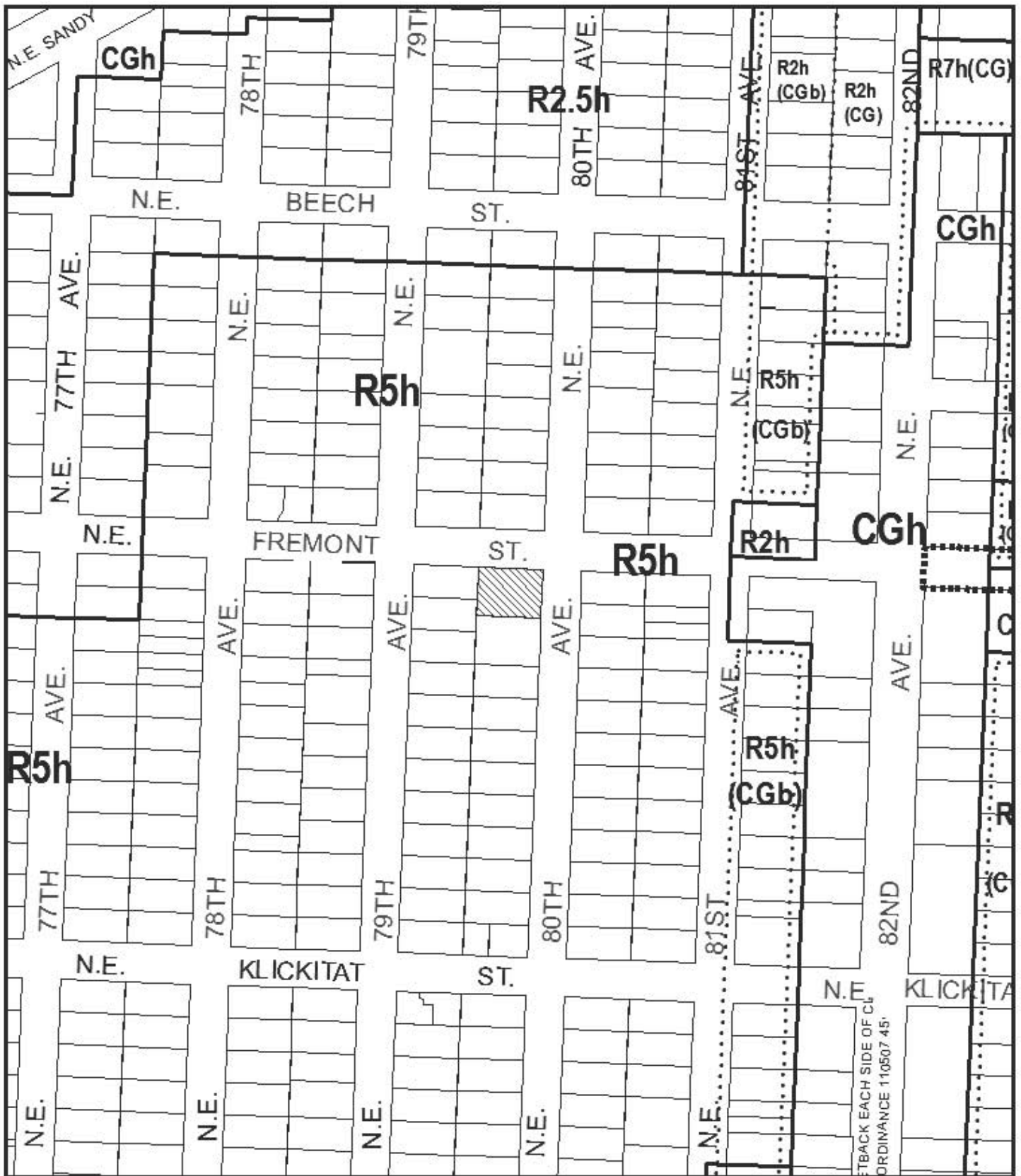
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Summary sheet of Bureau responses
 - 2. Life Safety Section of BDS
- F. Correspondence: None
- G. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING

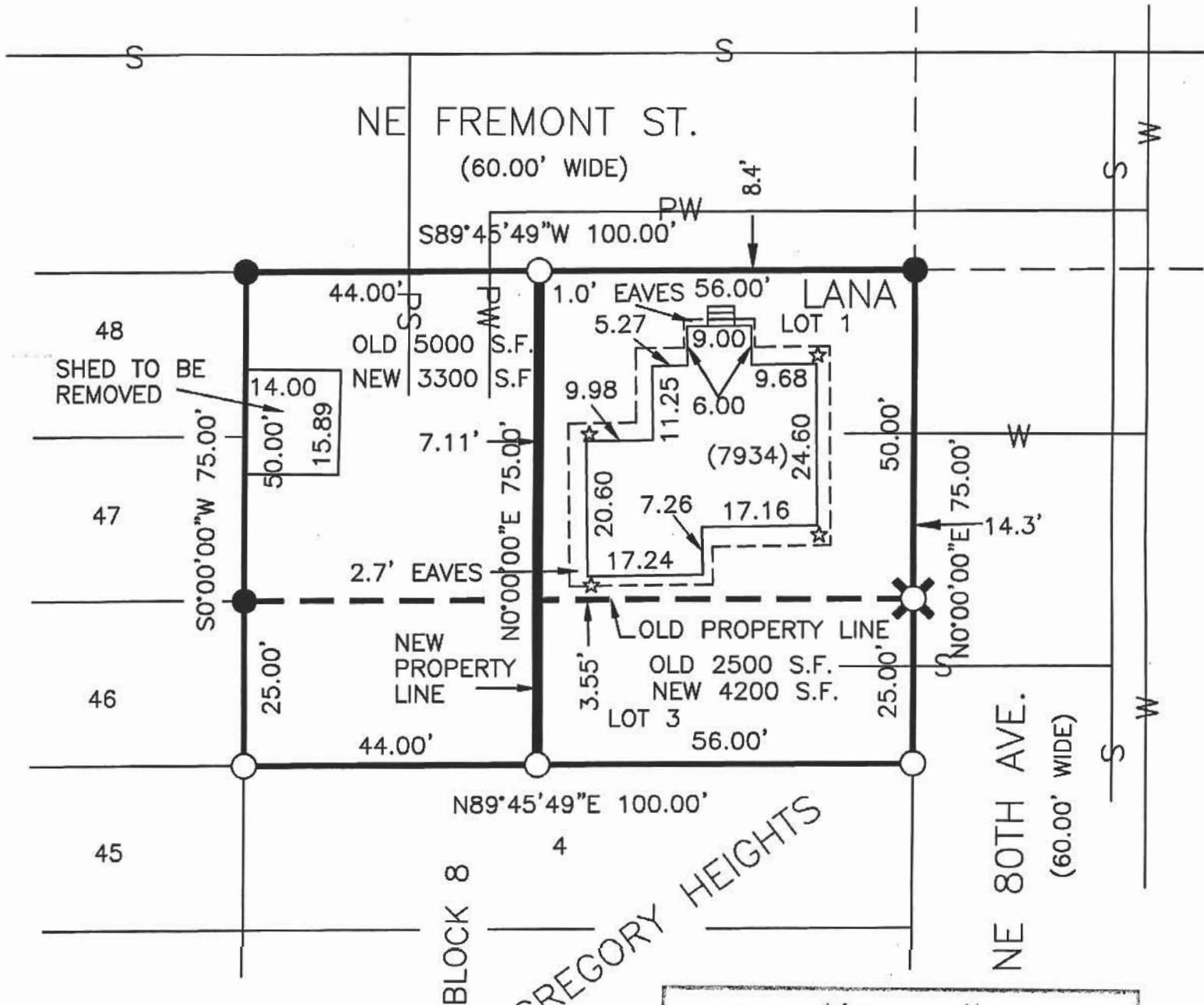
 Site



NORTH

File No. LU 08-120867 AD
 1/4 Section 2738
 Scale 1 inch = 200 feet
 State_Id 1N2E29AA 4300
 Exhibit B (Apr 15, 2008)

IMPROVEMENT DETAILS



☆ = DOWNSPOUTS

Approved
City of Portland
 Bureau of Development Services
 Planner Richard Hoy
 Date 5/12/08

* This approval applies only to the reviews requested and is subject to all conditions of approval.
 Additional zoning requirements may apply.

LU08-120867 AD

CASE NO. 08-120867AD
 EXHIBIT C.1