



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

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Portland, Oregon 97201  
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[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** June 16, 2008  
**To:** Interested Person  
**From:** Nan Stark, Land Use Services  
503-823-7828 / [nstark@ci.portland.or.us](mailto:nstark@ci.portland.or.us)

## **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 08-118201 AD**

#### **GENERAL INFORMATION**

**Applicant:** Saul Zaik  
Zaik Associates, Architects/Planners  
2340 NW Thurman St, Ste 201, Portland OR 97210

**Property Owner:** Clark Bingham  
3939 NW St Helens Rd, Portland, OR 97210-1442

**Site Address:** SW Vista Avenue

**Legal Description:** TL 12700 BLOCK 51, CARTERS ADD TO P; LOT 5-7, VISTA HTS  
**Tax Account No.:** R140402460, R868500130  
**State ID No.:** 1S1E04BA 12700, 1S1E04BA 12000  
**Quarter Section:** 3127

**Neighborhood:** Southwest Hills Residential League, contact Nancy Seton at 503-224-3840. Goose Hollow, contact Jerry Powell at 503-222-7173.  
**Business District:** Goose Hollow Business Association, contact Angela Crawford at 503-223-6376.  
**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592. Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.

**Zoning:** R7, Single-dwelling Residential 7,000; and R1 (northwest corner of site), Multi-dwelling Residential 1,000

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

**Proposal:**

The owner is proposing to construct a four-story house and detached garage on this 13,532 square-foot steeply-sloping site. The proposed house has a footprint of 2,457 square feet, and the garage is 922 square feet in area. The site is in two zones, with the majority in the R7, single-dwelling zone, and the northwestern triangular portion in the R1, multi-dwelling zone.

The site is steeply sloping at a 69% slope. The house is proposed to be built along the grade as it slopes down from the street. From the front, the house is 23 feet above average street grade, which is the allowed height for houses on steeply-sloping lots. The Zoning Code gives some exceptions to the development standards defined for the Single-Dwelling zones on lots with a slope of 20% or more. The project meets all of the applicable standards except the front setback standard.

The required front setback for the R7 zone is 15 feet; on steeply sloping lots the setback can be reduced to 10 feet if the height is reduced one foot for every foot of reduced setback (the proposal meets this exception). A 17' by 5' by 12' by 4' trapezoidal portion of the dwelling unit is proposed to extend 5 feet into this 10-foot setback (see attached site plan and elevation drawings for a graphical depiction). Therefore, the applicant is requesting an Adjustment to zoning code section 33.110.220, Setbacks, to reduce that portion of the front of the house from the required 10 feet to 5 feet from the front property line for the building wall, with eaves projecting an additional 18 inches from the wall.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the relevant approval criteria of 33.805.040 A.-F., Adjustments.

**ANALYSIS**

**Site and Vicinity:** The site consists of two platted lots comprising an area of 13,532 square-feet, with 77 feet of frontage on Vista Avenue. It slopes steeply down from the street, and the front property line is a few feet below the grade of the roadway. Several mature trees are on the property near the east and north property lines. The nearest development is a condominium building on the abutting lot to the north. A public stairway originates on the south side of the site from Vista Avenue and runs through the property below where it ends on Mill Street Terrace.

**Zoning:** The site is primarily in the R7, medium-density single-dwelling zone. New lots in this zone are allowed at a density of one lot per 7,000 square-feet of site area. The northwest corner of the property is in the R1, multi-dwelling zone, which allows a density of up to one unit per 1,000 square-feet of site area. Development standards in the two zones differ for height, setbacks, and building coverage.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **May 13, 2008**. The following Bureaus have responded with no issues or concerns:

- Water Bureau
- Bureau of Parks-Forestry
- Bureau of Transportation-Engineering
- Fire Bureau

The Bureau of Environmental Services and the Site Development Section of BDS both responded that without information about how sanitary service will be provided, and how stormwater will be managed for this development, neither office can recommend approval of the adjustment. While these issues will have to be addressed during building permit review, both Site Development and BES are concerned with the site constraints which will require either pumping or an easement for sanitary service. Stormwater management, including possible off-site stormwater discharge, may affect the configuration of the site. Additional information was

also provided from both bureaus about documents that will be required for building permit application and review.

Staff conveyed these concerns, and the applicant responded with a letter requesting to proceed with the adjustment review, with the understanding that the location of the building footprint may change when the sanitary and stormwater management plan is designed, resulting in the possibility of additional adjustments.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on May 13, 2008. In response to the notice, staff received three letters: two from neighboring property owners, and one from the Goose Hollow Foothills League. The Goose Hollow Foothills League and one of the neighbors expressed concern about the stairway that abuts the property to the south, and the garage proposed at 5 feet from the property line next to the stairway. The concern was about safety for those using the stairway with a structure so close to it, which will potentially create a dangerous situation due to less visibility and light on the stairs, and opportunity for undesirable activities as a result. It was suggested that the owner provide lighting for the stairway and consider fully enclosing the garage structure. It was also suggested that a condition require preservation of some of the trees near the downhill neighbors' properties to maintain a privacy buffer.

A third letter was received by the owner of a unit in the neighboring condominium building, who expressed several concerns about safety related to construction: there is not adequate space to park construction vehicles on the street or on the steep lot; vehicles parked on Vista in front of the site will block visibility for drivers, due to the blind curve to the south; public safety will be affected—how does the City address this? Also, the issue was raised that construction on the subject lot could cause structural damage to the nearest building to the north.

All of the respondents indicated that they do not oppose the setback Adjustment.

Staff appreciates the concerns expressed. The proposed garage location complies with the required minimum five-foot setback on the south side of the site, adjacent to the public stairway. Because it is in compliance, staff cannot place a condition of approval related to the garage based on the front setback adjustment that is requested. More discussion of this will be in the findings, below. Nonetheless, this public review process offers the opportunity for the neighbors and Neighborhood Association to open up a dialogue with the applicant and owner about the neighborhood's concerns regarding the public stairway.

Regarding the traffic, parking, and construction related concerns, a construction management plan is not required for this review or for building permit review. The Bureau of Transportation reviews proposals for new curb cuts and driveways, but does not require plans for construction vehicle management. Neighbors are advised to report issues related to public safety in the right-of-way if they arise during construction to the Bureau of Transportation.

With regard to the possibility of structural damage to the nearest property, staff consulted with a BDS buildings plans examiner, who responded that during the building permit review, the applicant will be required to submit drawings and plans from a geotechnical engineer to address this issue and that of landslide hazards. The submitted permit application information will be available to the public for review.

## **ZONING CODE APPROVAL CRITERIA**

### **33.805.010 Purpose (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 zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and

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.

### **33.805.040 Approval Criteria**

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

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

**Findings:** *Purpose:* The building setback regulations are intended to:

- Maintain light, air, separation for fire protection, and access for fire fighting;
- Reflect the general building scale and placement of houses in the City's neighborhoods;
- Promote a reasonable physical relationship between residences, and options for privacy for neighboring properties;
- Require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards; and
- 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 applicant has requested a reduction to the front setback for a distance of five feet closer to the street property line than what the zoning code allows on steeply-sloping lots. The reduction will have no effect on light, air or fire protection issues. Generally, the houses in this steeply-sloping area are often close to the street property line because of the topography, allowing the structures to follow the grade. As a result, most of the houses are situated such that they do not have prominent front yards with large front setbacks.

The closer proximity to the street property line will not have an effect on the privacy of the nearest neighbors. In fact, by bringing it closer to the street, the house will be further from those on the downhill slope to the rear of the property, which are on Market Street and Mill Street Terrace.

The setback reduction will affect only a portion of the trapezoidal wall that will be closest to the property line. The house's dome-shaped design results in multiple walls at different angles that will face the street to varying degrees. The fairly small area that will be in the reduced five-foot setback allows for symmetry of design on this challenging lot. For all of these reasons, 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 requested five-foot reduction to the setback is not out of character with this hillside area, where houses are often situated close to or at the front property line. From the street, the proposed dwelling is compliant with the maximum height allowed for houses on steeply-sloping lots, which is 23 feet above average street grade. At this height, the structure's closer proximity to the property line is not going to be noticeable to those driving or walking down the street, especially given that the lot is below the street grade level.

Neighbors wrote in with concerns about the potential hazards related to construction of the house and slides resulting from development. During the building permit review process, several City bureaus will be reviewing technical drawings and plans to ensure that issues such as slope stability, stormwater drainage, and structural integrity are all addressed to the degree that all relevant City and State codes are met.

The Goose Hollow Neighborhood Association, as well as an adjacent neighbor, expressed concern about the proximity of the garage to the public stairway that leads down the hill from Vista to Mill Street Terrace, below. The concerns raised regard safety for users of the stairway, which will be affected by the new development.

While this is a legitimate concern, the reduced front setback is not related to the placement of the garage, and thus conditions cannot be placed on the garage's location, as it complies with the minimum five-foot side yard setback. Nonetheless, staff encourages the applicant and the owner to communicate with these concerned citizens about the impact on the public pedestrian route.

The reduced setback to the front property line will not detract from either the livability or the appearance of this residential area. Therefore, 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; and

**Findings:** Only one adjustment is requested. This criterion is not applicable.

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

**Findings:** City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

**Findings:** As noted above in criterion B, as well as in the "Neighborhood Review" section of this report, neighbors expressed concern about the garage in close proximity to the south property line, which will loom over the public stairway adjacent to it. That structure, they feel, could pose a threat to users of the stairway due to less visibility and light, and opportunity for criminal behavior.

However, the proposed front setback reduction is the subject of this Adjustment review. Neighbors have responded that they are not concerned about the reduced setback, and that it is a preferred alternative that fits in with the general pattern of houses in the area. The wall length of 12 feet in the reduced setback is small relative to the total facade area facing Vista, and it widens to 16 feet at the point where the trapezoidal wall is at the allowed ten-foot setback.

Consequently, the reduced front setback for the wall and eave does not create impacts that necessitate mitigation. Therefore, this criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** The site is not within an environmental zone, which is designated on the zoning map by either a "c" or "p" overlay. Therefore, this criterion is 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.

The applicant has acknowledged that because plans for stormwater management and sanitary sewer systems have not been submitted, it is possible that the final building footprint location could change, and may result in future additional adjustments. The applicant requested to proceed with this review in order to have surety about the proposed footprint, and will proceed with all required designs and plans through the building permit approval process.

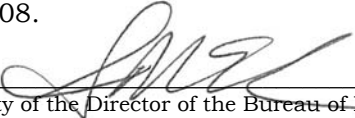
## CONCLUSIONS

The analysis shows that the setback adjustment for a reduced front setback complies with all of the relevant approval criteria. The proposed five-foot setback is not unlike that found throughout this hillside area, where houses are often built in close proximity to the front property line. The intent of the setback standard is upheld by this request. The reduction in setback will not detract from either livability or appearance of this residential area.

Neighbors responded with concerns about the garage's location in relation to the public stairway that abuts the south side of the site. The minimum setback on that side of the site is five feet, which the garage complies with. There is not a legal connection between that setback and a condition related to the stairway. Staff encourages all parties to communicate the concerns in order to come to a possible resolution of the issue.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to zoning code section 33.110.220, Setbacks, to reduce a trapezoidal portion of the front of the house from the required 10 feet to 5 feet from the front property line for the building wall, with eaves projecting an additional 18 inches from the wall. This approval is subject to general conformance with the approved site plan, Exhibits C-1, signed and dated June 12, 2008.

**Decision rendered by:**  **on June 12, 2008.**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: June 16, 2008**

**Staff Planner: Nan Stark**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. 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 March 26, 2008, and was determined to be complete on May 8, 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 March 26, 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 June 30, 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. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. 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](http://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 **July 1, 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 503-823-7967.

**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, or
- In situations involving only the creation of lots, the land division has been recorded.

**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
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. Elevation drawings: a. west, b. east, c. north, d. south
  3. Section drawings
  4. Floor plans
  5. Original site plan and elevation drawings
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Environmental Services
  2. Site Development Review Section of BDS
  3. Bureau of Transportation
  4. Water Bureau
  5. Fire Bureau



6. Bureau of Parks, Forestry Division

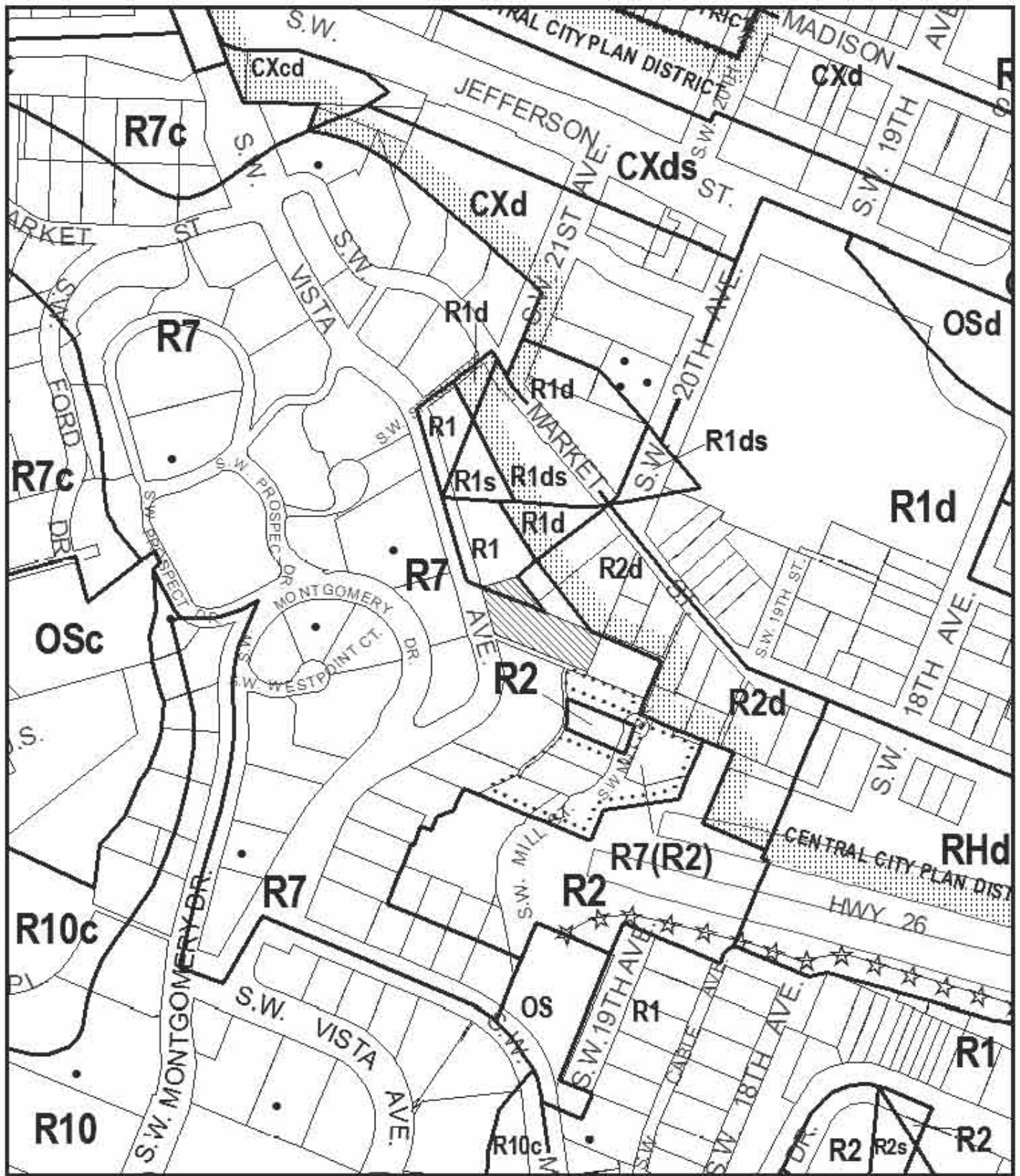
F. Correspondence:

1. K. McKennon, May 18, 2008, opposed
2. J. Powell, chair, Goose Hollow Foothills League, in support, with other concerns
3. J. Klapstein, June 2, 2008, in support, with other concerns

G. Other:

1. Original LU Application
2. Site History Research
3. Incomplete letter, N. Stark to S. Zaik
3. Correspondence between N. Stark and S. Zaik, April 29 through June 9, 2008

**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

 Historic Landmark



File No.	LU 08-118201 AD
1/4 Section	3127
Scale	1 inch = 200 feet
State Id	1S1E04BA 12000
Exhibit	B (Mar 27, 2008)

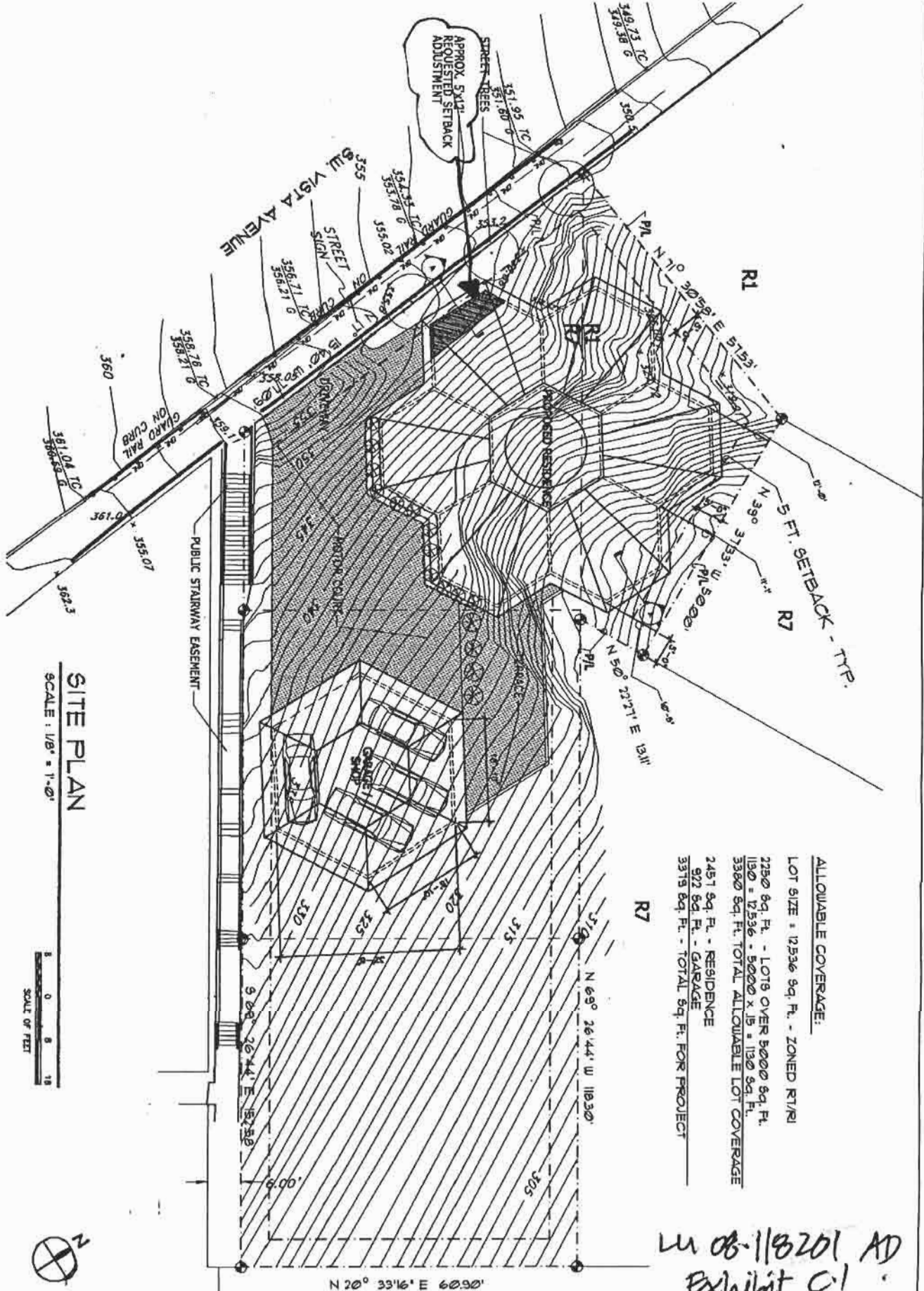
\*Approved\*

City of Portland - Bureau of Development Services

Planner *K. Frank*

Date *June 12, 2009*

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



**SITE PLAN**  
SCALE: 1/8" = 1'-0"



**ALLOWABLE COVERAGE:**

LOT SIZE = 12,536 sq. Ft. - ZONED R1/R1

2250 sq. Ft. - LOTS OVER 5000 sq. Ft.

1150 = 12,536 - 5,000 x .15 = 1130 sq. Ft.

3380 sq. Ft. TOTAL ALLOWABLE LOT COVERAGE

2451 sq. Ft. - RESIDENCE

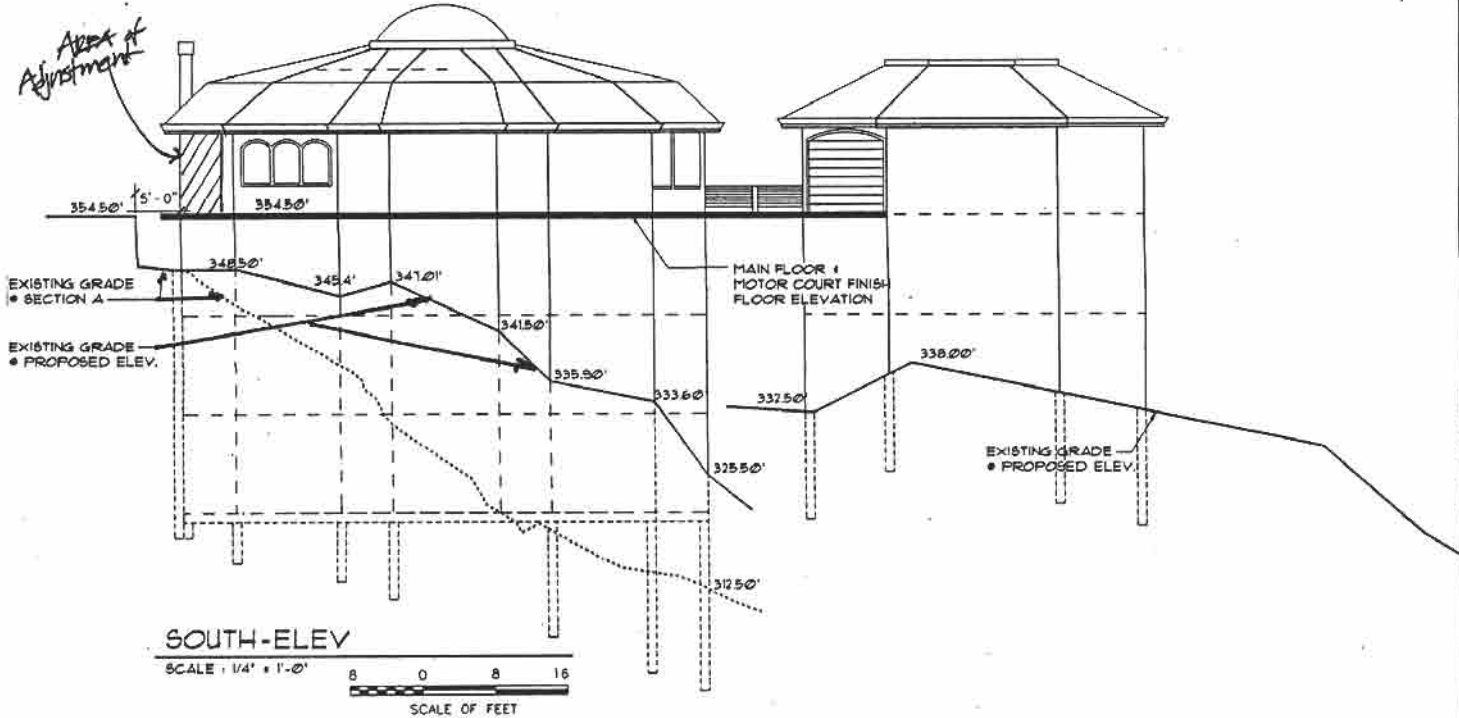
922 sq. Ft. - GARAGE

3375 sq. Ft. - TOTAL sq. Ft. FOR PROJECT

*LU 08-118201 AD*  
*Exhibit C1*

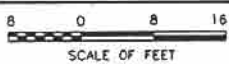
	DRAWING NO.  DATE  DRAWN BY  CHECKED BY  SCALE: 1/8" = 1'-0"	<b>A NEW RESIDENCE FOR: MR CLARKE BINGHAM</b>  1800 SW VISTA AVENUE PORTLAND, OREGON 97216	<b>ZAİK ASSOCIATES</b> ARCHITECTS/PLANNERS © 2008  3340 NW Thurston BLDG 201 PORTLAND, OREGON 97218 (503) 255-9184
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*Area of Adjustment*

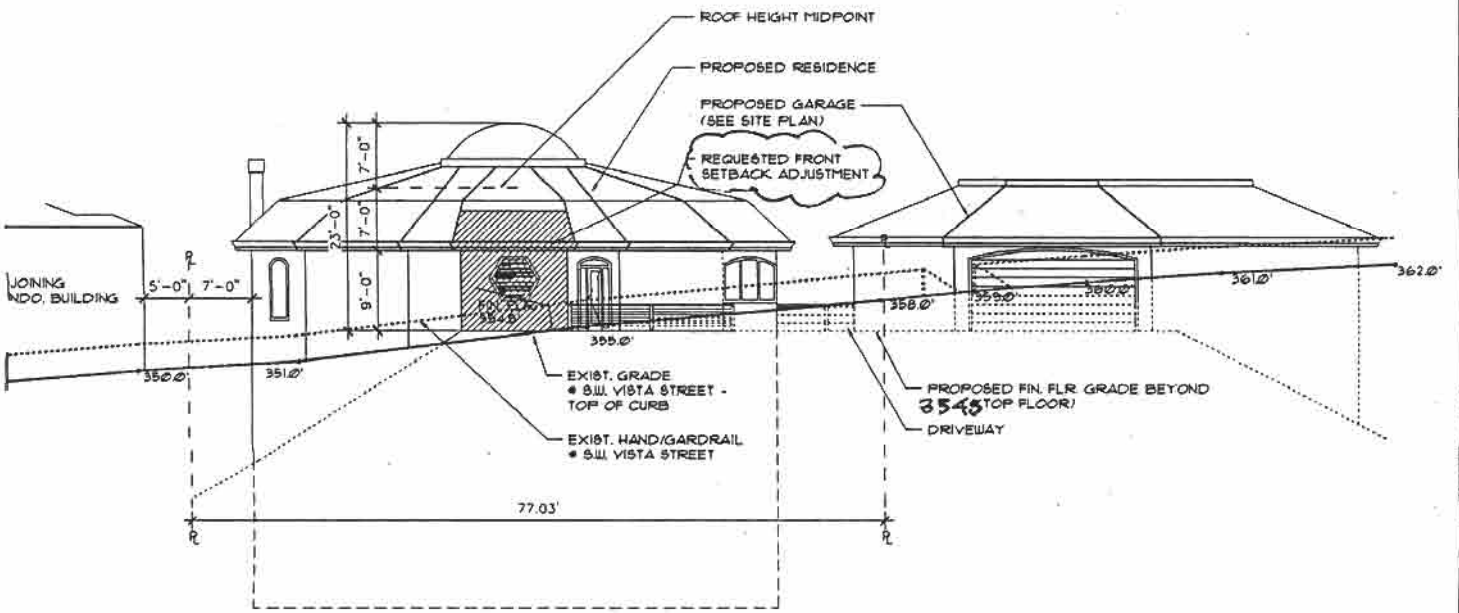


**SOUTH-ELEV**

SCALE: 1/4" = 1'-0"

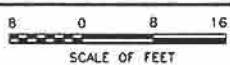


SCALE OF FEET



**WEST ELEVATION**

SCALE: 3/16" = 1'-0"



SCALE OF FEET

*M 08 118201 AD  
Exhibits C-2a, d*

**ZAIK ASSOCIATES**  
ARCHITECTS/PLANNERS  
1000 S.W. VISTA AVENUE  
PORTLAND, OREGON 97216

**A NEW RESIDENCE FOR:  
MR. CLARKE BINGHAM**

1000 S.W. VISTA AVENUE  
PORTLAND, OREGON 97216

REVISIONS  
1 1/24/2008  
2 1/24/2008  
3  
4  
5

DATE 1/7/2008  
JOB NO.  
DRAWN P.L.  
APPROVED  
**EXTERIOR ELEVATION**

SCALE 1/4" = 1'-0"  
DRAWN BY

DRAWING NO.  
**AX**

**ZAIK ASSOCIATES**  
ARCHITECTS/PLANNERS  
1000 S.W. VISTA AVENUE  
PORTLAND, OREGON 97216

**A NEW RESIDENCE FOR:  
MR. CLARKE BINGHAM**

1000 S.W. VISTA AVENUE  
PORTLAND, OREGON 97216

REVISIONS  
1 1/24/2008  
2 1/24/2008  
3  
4  
5

DATE 3/24/08  
JOB NO.  
DRAWN P.L.  
APPROVED  
**WEST ELEV. (VISTA AVE.)**

SCALE 3/16" = 1'-0"  
DRAWN BY