



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

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[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**NOTICE OF FINAL  
FINDINGS, CONCLUSIONS AND DECISION  
OF THE CITY OF  
PORTLAND ADJUSTMENT COMMITTEE  
ON AN  
APPEALED ADMINISTRATIVE DECISION  
(Type II Process)**

**CASE FILE: 08-120440 AD  
LOCATION: 4012 SE 51<sup>st</sup> Avenue  
State ID No.: 1S2E07CD 00100**

The administrative decision for this case was appealed to the Adjustment Committee by Jason Charles. A public hearing was held on July 15, 2008. The original administrative analysis, findings and conclusions were unanimously adopted by the Adjustment Committee and are attached for reference.

**I. GENERAL INFORMATION**

**Applicant:** Karla Urbanowicz  
4012 SE 51<sup>st</sup> Ave  
Portland, OR 97206

**Appellant:** Jason Charles  
5115 SE Gladstone  
Portland, OR 97206

**BDS Staff Representative:** Crystal Hitchings

**BDS Administrative Decision:** Approval with conditions

**Public Hearing:** Hearing was held on July 15, 2008.

**Testified at the Hearing:** Crystal Hitchings, BDS Staff Representative  
Jason Charles, appellant  
Karla Urbanowicz, applicant

**Site Address:** 4012 SE 51<sup>st</sup> Avenue

**Legal Description:** LOT 14 BLOCK 1, LIGHTNERS ADD  
**Tax Account No.:** R495100400  
**State ID No.:** 1S2E07CD 00100  
**Quarter Section:** 3435

**Neighborhood:** Creston-Kenilworth, contact Eryn Deeming at 503-675-3730.  
**Business District:** None  
**District Coalition:** Southeast Uplift, contact Gary Berger at 503-232-0010.

**Plan District:** None  
**Other Designations:** None

**Zoning:** R5, Single-Dwelling Residential 5,000

**Case Type:** AD, Adjustment Review

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

**II. ADJUSTMENT COMMITTEE DECISION**

Deny the appeal and uphold the administrative decision of approval subject to the original conditions outlined in the Administrative Decision (attached), as follows:

Approval of an Adjustment to Section 33.110.220 and Table 110-3, to allow the attached garage to remain at a zero-foot setback from the south (side) property line, in significant conformance with the approved plans, Exhibits C-1 and C-2.b, signed and dated May 16, 2008, subject to the following conditions:

- A. The applicant shall maintain an access passageway to the rear of the lot along the north property boundary. A gate currently exists in the fence which allows access at the northeast corner of the house. This degree of access is sufficient and shall be maintained. Changes to this gate may occur provided they allow sufficient room for human access.
- B. The applicant must submit to the Bureau of Development Services revisions to issued building permit #07-183726. The revisions must include the following two notes on the plans:
  - a) "A zero setback for the attached garage along the south side property line was approved under LU 08-120440 AD"; and
  - b) "A passageway to the rear of the lot for fire access must be maintained along the north property line. The passage must provide sufficient room for human access and for fire response access to the rear of the lot."

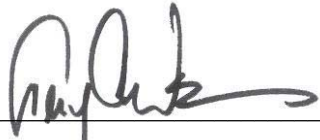
**The applicant prevailed and the appeal was denied.**

**Staff Planner: Crystal Hitchings**

**Final Decision Rendered on July 15, 2008 and mailed on July 22, 2008.**

**The original staff findings, conclusions and decision were adopted by the Portland Adjustment Committee on July 15, 2008.**

By \_\_\_\_\_



Portland Adjustment Committee  
Terry Amundson, Chair

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevations (C2.b attached)
  - 3. Photo from neighbor
  - 4. Floor Plan
  - 5. Tax Map
  - 6. Photos of site and vicinity

D. Notification information:

1. Mailing list
2. Mailed notice
3. Administrative Decision, Dated May 20, 2008 (attached)
4. Mailing List for Administrative Decision

E. Agency Responses:

1. Fire Bureau
2. Bureau of Transportation Engineering and Development Review
3. Water Bureau
4. Parks Bureau
5. Bureau of Environmental Services
6. Site Development Review Section of BDS
7. Life Safety
8. Building Inspections

F. Correspondence:

1. Jason and Jennifer Charles, Zoelle and Jason Sabala; April 10, 2008; opposition of the proposal based on fire safety, privacy, noise, and neighborhood character.
2. Tim Klassen; April 28, 2008; expressed support of the proposal
3. Stephanie Backus; May 9, 2008; opposition of the proposal based on privacy issues.
4. Jason and Jennifer Charles; May 11, 2008; opposition of the proposal based on fire safety, privacy, neighborhood compatibility, and zoning compatibility.

G. Other:

1. Original LU Application
2. Site History Research

H. Appeal

1. Appeal Form submitted by Jason Charles, received June 3, 2008
2. Notice of Appeal Hearing, dated June 9, 2008
3. Mailing List for Notice of Appeal Hearing, dated June 9, 2008
4. Copy of letter dated April 30, 2008 to neighborhood, submitted by Karla Urbanowicz; received June 24, 2008
5. Written statement of support for Applicant's proposal; submitted by Jack and Gerry Saulsbury; dated June 23, 2008
6. BDS PowerPoint Presentation
7. Photos (2) from interior of garage into yard of subject site; submitted by Karla Urbanowicz on July 15, 2008
8. (1-20) Photos (18) of subject site taken from Appellant's yard; 3 e-mails from Sterling Bennet to Jason Charles, dated 2/27/08, 2/29/08, and 3/4/08; site plan with notes from Appellant; submitted by Jason Charles on July 15, 2008

**Copies**

Applicant

Appellant

All parties whom Wrote or Submitted Testimony at the Public Hearing  
Neighborhood and/or Business Association(s)

Auditor's Office

Planning and Zoning

CNH/July 15, 2008

For further information on recording, please call the County Recorder at (503) 988-3034.

**Expiration of this approval.** This decision expires 3 years from the date it is recorded 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.

**Appeal of this decision.** This decision is final and becomes effective the day the notice of decision is mailed (noted above). This decision may not be appealed to City Council; however, it may be challenged by filing a "Notice of Intent to Appeal" with the State Land Use Board of Appeals (LUBA) within 21 days of the date the decision is mailed, pursuant to ORS 197.620 and 197.830. A fee is required, and the issue being appealed must have been raised by the close of the record and with sufficient specificity to afford the review body an opportunity to respond to the issue. For further information, contact LUBA at the Public Utility Commission Building, 550 Capitol Street NE, Salem, OR 97310 [Telephone: (503) 373-1265].

**Recording the final decision.** This is the final local decision on this application. You may record this decision the day following the mailed/filed date shown above.

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.

**Expiration of this approval.** This decision expires 3 years from the date it is recorded 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 must be obtained before carrying out this project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed here.
- All applicable development standards, unless specifically exempted as part of this land use review.
- All requirements of the building code.
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the city.



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**Date:** May 20, 2008  
**To:** Interested Person  
**From:** Crystal Hitchings, Land Use Services  
503-823-7583 / [Crystal.Hitchings@ci.portland.or.us](mailto:Crystal.Hitchings@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 08-120440 AD**

#### **GENERAL INFORMATION**

**Applicant:** Karla L Urbanowicz  
4012 SE 51st Ave  
Portland, OR 97206-3076

**Site Address:** 4012 SE 51ST AVE

**Legal Description:** LOT 14 BLOCK 1, LIGHTNERS ADD  
**Tax Account No.:** R495100400  
**State ID No.:** 1S2E07CD 00100  
**Quarter Section:** 3435

**Neighborhood:** Creston-Kenilworth, contact Eryn Deeming at 503-675-3730.  
**Business District:** None  
**District Coalition:** Southeast Uplift, contact Gary Berger at 503-232-0010.

**Plan District:** None  
**Other Designations:** None

**Zoning:** R5, Single-Dwelling Residential 5,000

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

#### **PROPOSAL:**

The applicant is requesting an adjustment to the south side building setback, from the required 5-foot to a proposed zero-foot setback, for the purpose of legalizing an existing attached garage. The south wall of the garage is located a few inches shy of the south side property line, with an eave extending to the property line for a zero-foot setback.

Under building permit # 07-183726 RS, the applicant removed a porch at the rear (east) of the house and replaced it with a family room (the addition is not subject to this review). The family room now connects what was a detached garage to the primary structure via a roof retrofit,

making it an attached garage. Detached garages which are smaller than 24 feet by 24 feet and lower than 15 feet are allowed within the setback in some situations; the garage is approximately 20 x 9.5' x 10.5', and met these requirements when it was detached. Because the new addition connects the garage to the home, the garage is no longer detached, and is no longer allowed within the setback; therefore, a side building setback Adjustment is necessary. The garage walls have been upgraded to meet current fire codes (building permit #07-183726 REV 01RS). There are no windows or doors on the south wall at the property line. Roof runoff from the garage is currently captured by a gutter and directed north and onto the subject site.

**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 east side of SE 51<sup>st</sup> Avenue, one lot north of the intersection with SE Gladstone Street. The 6,833 square foot lot is developed with a two-story, single-family residence built in 1915, and an accessory garage along the south property line. The original garage, previously detached, is now connected to the home through a roof retrofit to a new addition located at the interior of the site and to the rear of the residence. The lot is long and oriented east/west, fronting on SE 51<sup>st</sup> Avenue. Three lots abut the southern property line, each oriented north/south and fronting on SE Gladstone Street.

The site is accessed off SE 51<sup>st</sup> Avenue by a driveway located at the southwest corner of the property line and leading to the garage. A six-foot wooden fence extends along the entire east property line, along the north property line up to the northeast corner of the house, and along the southern property line except for the portion of the property line occupied by the south wall of the garage. The rear of the lot is accessible around the north side of the lot, through a gate in the fence. Views into the site are limited by the fence and by vegetation at the rear, except for views directly into the site from SE 51<sup>st</sup> Avenue.

The vicinity, within a 200-foot radius, is residentially developed. A flag lot abutting the site to the north and the abutting lot to the east are each developed with a multi-dwelling residential structure.

**Zoning:** The site is zoned R5, High Density Single-Dwelling Residential. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. Lots to the north, south, and west of the site are also zoned R5. Zoning to the northeast and southeast of the site is R2, Multi-Dwelling Residential 2,000. One large lot directly to the east of the site is zoned CO1, Office Commercial 1.

The R5 zone requires buildings to be set back 5 feet from the side and rear property lines. The Zoning Code provides exceptions for detached garages and eaves to be located within the setbacks. Detached garages that are located at least 40 feet back from the front lot line, that have maximum dimensions of 24 by 24 feet and that have walls that are not more than 10 feet tall are excepted from this standard and may be located within the required side and/or rear setbacks, as long as they meet fire code standards. Existing detached garages that meet these exception requirements may be converted to other uses. Garages that meet these exception requirements can also be rebuilt on the existing footprint, but may not be increased in height within the side or rear setback areas. Attached garages and new accessory structures used for any other purpose than as a garage must meet the setback standards, unless an exception to the required setbacks is approved through an Adjustment Review. The applicant's existing detached garage is allowed by right within the side setback and although no additional building coverage is proposed within the setback, attaching the house to the reconstructed garage via the new addition requires an Adjustment.

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

**Agency Review:** The following Bureaus have responded with no issues or concerns (Exhibit E.1-E.4):

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

Other Bureaus responded with additional comments:

- The **Bureau of Environmental Services** (Exhibit E.5) responded with no concerns and included information regarding stormwater management.
- The **Site Development Section of BDS** (Exhibit E.6) responded with no concerns and included information regarding the applicant's plans for stormwater disposal, the status of the inspection, and information about previously approved plumbing permits.
- The **Life Safety Bureau of BDS** (Exhibit E.7) responded with no concerns and included information regarding building code requirements in general and fire code requirements in particular for exterior walls less than three feet to a property.  
*Staff Note: Applicant has met firewall requirements, per building inspector, for revised permit #07-183726 REV 01 RS.*
- The **Building Inspections Division** (Exhibit E.7) responded with no concerns regarding the adequacy of the fire protection upgrades done to the south wall of the existing garage, and provided additional clarifying comments regarding the application of building codes to existing conditions. Inspections stated that the double layers of fire protection, applied to the walls and eaves from the interior of the structure, were a "significant improvement in fire resistive construction" to the previous condition of the existing garage.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on April 21, 2008. Four written responses have been received from notified property owners in response to the proposal. One nearby neighbor expressed full approval of the proposal. Three nearby neighbors expressed opposition to the proposal. The comments contained within the letters of opposition can be summarized under the following categories:

**Fire Safety and Access:** Two of the responses in opposition to the proposal express concern over fire safety, specifically regarding lack of access to the rear of the property, upgrading of the garage to meet current fire codes, installation of an opening (French doors to replace a window) within 3 feet of a property line, and an eave on the south side of the garage which extends to or overhangs the property line.

*Staff Comments: The Oregon Residential Specialty Code does not permit openings in the exterior wall of a structure less than 3 feet from a property line. However, an exception to the code allows openings in walls that are perpendicular to the line used to determine the fire separation distance. The French Doors are located on the east wall which is perpendicular to this line, which is the south property line. Fire Safety and access issues directly relate to the purpose statement for setbacks, and are further addressed under Approval Criterion A.*

**Light and Air:** One response in opposition to the proposal claimed that light and air is not maintained by the proposal because "an accessory building is required to be placed behind and apart [from] the main residence for the reasons set forth in the Zoning Code."

*Staff Comments: The Zoning Code defines Accessory Structures as being either attached or detached from the primary structure (33.910.030). Light and Air issues also directly relate to the purpose statement for setbacks, and are further addressed under Approval Criterion A.*

**Privacy:** All three of the responses in opposition to the proposal express concern over lessened privacy due to the Adjustment. Two of these responses speak specifically about a set of French

doors recently installed to replace a window at the rear (west) wall of the garage, stating that the doors provide a direct line of sight into one neighbor's bedroom window. All three refer to an infringement on privacy in general and how the enjoyment of these neighbors' backyards is negatively affected for by the allowance of a zero setback.

*Staff Comments: Privacy directly relates to the purpose statement for setbacks, and is further addressed under Approval Criterion A.*

**Potential Change of Use of Structure:** Two of the responses in opposition to the proposal cite a potential change of use stemming from the replacement of a window at the rear (west) wall of the garage with French doors, and express concern with how a change of use could potentially affect the livability of their properties.

*Staff Comments: The replacement of a window with doors does not in itself constitute a change of use. This is a structural change allowed by residential building code, even within the setback as it is not along the wall parallel to the setback. A change of use would result from converting the garage to living space. The applicant has expressed no desire to change the use of the garage.*

**Neighborhood Characteristics/Relationship to Other Structures:** Two of the three responses in opposition to the proposal express concern that the Adjustment will allow for a situation that is out of character with the neighborhood, stating that there are no other primary residences located at a zero-foot setback in the neighborhood. One of these two responses refers to "the difference between an accessory building and a single family residence with an attached garage," questions the possibility of a second-story addition to the garage in the future, and states that the applicant is requesting "to have a Zero Side Yard Setback for a Single Family residence in an (R5 Zone), and that the respondent now has "a Single Family Residence with an attached garage located on [their] Rear Yard property line."

*Staff Comments: The Zoning Code does not require absolute uniformity within a neighborhood, and variations to the development standards are allowed through the Adjustment process. Additions to a structure located at a zero-foot setback would require an Adjustment review. A second-story addition at a zero-foot setback is unlikely to be approved. Concerns over neighborhood characteristics speak directly to the Approval Criteria and are further addressed under Criterion A. and B.*

**Compliance with the Zoning Code:** Two of the responses allege that illegal construction was conducted under false submission from the applicant.

*Staff Comments: The review of an Adjustment approval is conducted as a separate review, apart from past development applications, and does not consider whether or not the applicant submitted incomplete or incorrect information for past reviews, nor can it be used to penalize an applicant for incomplete or incorrect submittals for other reviews. All required submissions for this Adjustment review were received from the applicant, and Staff has verified this information through site visits, consultation with other City staff, and information available online. Additionally, the Zoning Code allows Adjustments to the standards outlined in the Zoning Code through the Adjustment process, which includes a full review of all applicable review criteria.*

**Structure Extends Over Lot Line:** One response in opposition notes that there are no property surveys, and that the applicant has no proof the garage is fully located on their lot. In another communication this respondent claimed the eaves were overhanging their property.

*Staff Note: The applicant has stated that the garage in its entirety is on her property, that the eave is located at a zero setback, and that the south wall is slightly set back from the property line. This request is for an Adjustment to determine whether the existing garage, and its existing eave, now attached to the primary residence, can remain in its existing location of zero feet from the property line. This means that the only impacts that staff can consider are the projected impacts that might occur from the garage remaining in its present location within the south side setback. If neighbors dispute the location of the garage and believe that it is partially on the adjacent property, this is a civil matter that would need to be clarified outside of this Adjustment request.*



## **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 providing 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:** The applicant is seeking an Adjustment to the south side building setback, from the required 5 to the requested 0 feet, to legalize an existing garage. The applicable purpose statement for the setback regulation is as follows:

#### **Section 33.110.220 Setbacks**

Purpose: The building setback regulations 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; and
- They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.

The garage is a legally constructed existing structure, located adjacent to the property line with a zero-foot setback for many years. The relationship of the garage to the adjacent property was not changed through the construction of an addition at the interior of the lot which now connects the garage to the existing dwelling unit on the site. No changes are proposed to the garage, either in its physical nature or in its use, other than its being connected to the addition. Therefore, no changes will occur in the relationships between this structure and neighboring residences. The addition far exceeds the required setbacks from adjacent property lines.

The applicant states that homes adjacent to and in the vicinity of the site are typically one to two story homes with both attached and detached garages and driveways sited along a side property boundary; a site visit by staff confirmed this. Staff also observed that many of these garages appear to be directly at the property line and without any screening or fencing between sites. Several homes are also located very close to property lines. Therefore, the existing garage at zero setback remains in keeping with the scale and placement of other similar residential structures within the neighborhood.

Allowing the garage to remain where it is currently located does not negatively affect existing conditions of light and air for neighboring lots, and existing light and air are maintained.

The garage has been upgraded for fire safety. The Oregon Residential Specialty Code requires structures within 3 feet of a lot line to be fire rated from both the interior and exterior of the walls, with no eaves allowed within 2 feet of the property line, and requires eaves within three feet of the line to be fire rated from the exterior. However, the building code allows existing conditions to remain. The south wall of the garage was upgraded from the interior only with two layers of 5/8" fire-rated gypsum board from the floor to the bottom of the sheathing of the roof; there are no eave vents and no openings on this wall. The eave at the lot line is also protected through double fire blocking installed on the interior. The north wall of the garage, adjacent to the addition, was also upgraded with the required one hour fire rating of one layer of 5/8" fire-rated gypsum board. Comments from a building inspector stated that these improvements are substantial and that no further improvements are required.

The structure on the adjacent lot directly to the south is currently located at least 20 feet away from the garage, with some trees at the property line and open yard beyond. The structure on the adjacent lot to the southeast is currently located at least 15 feet away from the garage, again with some trees at the property line and yard beyond. Because there have been no changes in the location of the garage, existing fire separation is maintained. A window at the east wall of the garage was replaced with French doors. The Oregon Residential Specialty Code allows openings within 3 feet of a property line on walls perpendicular to the line used to determine the fire separation distance. There are no doors or windows on the south wall. Fire access previously available through the southern portion of the lot over a porch was cut off when the porch was replaced with the addition. However, fire access to the rear of the lot is adequately maintained along the north property line through a gate in the fence. Fire Bureau staff reviewed this proposal and have stated "no concerns" regarding fire access from the north of the lot. This access should be maintained in order to continue providing emergency access to the rear of the site; a condition of approval is warranted that requires this access to be maintained. By upgrading the garage walls to meet fire codes, and with a condition of approval requiring that access to the rear of the lot is maintained on the north side of the home, fire safety and access are maintained.

Granting this Adjustment does not change the degree of privacy enjoyed on the subject site or neighboring properties. No changes in the location or use of the garage are proposed. There are no windows or doors on the south (side) wall abutting other properties, and no changes are proposed to the existing structure. A window on the east (rear) wall of the garage, which faces the back yard, has been replaced with French doors. The French doors do not face any windows of any neighboring structures, and in fact are oriented toward the rear (east) yard of the subject site, which abuts the parking area of a multi-dwelling structure to the east, and is screened from that site with tall trees and a 6-foot wooden fence. The six-foot wooden fence runs along the entire east property line, along the north property line up to the northeast corner of the house, and along the entire south property line except for the portion where the garage sits on the property line. This fence greatly restricts views into or out of the site. The Adjustment does not change the existing conditions and does not change the degree of privacy already enjoyed on this or any adjacent sites.

For the reasons stated above, this Adjustment request equally meets the purpose of building setback regulations. With the condition that the fire access be maintained along the north of the property, 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:** This Adjustment will not result in any changes to the existing location, size, or use of the garage, and therefore will not affect the existing livability or appearance of the residential area. The garage is located at the property line, where it has been located for some time. The garage is now connected to the residence via a roof retrofit. Staff visited the site and documented with photographs that numerous garages in the immediate vicinity are located at the lot line with a zero-foot setback. Staff was not looking for instances where single-dwelling residences are located at a zero-foot setback. However, in reviewing photos taken at the site, and aerial photos of the site, there appear to be several residential structures which may be located within the 5-foot side setbacks. The garage has been upgraded to meet current fire codes. Existing levels of privacy are maintained. 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:** There are no such resources present on the site. This criterion is not applicable.

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

**Findings:** As a condition of approval, the applicant will maintain fire access to the rear of the lot via the area of yard to the north of the house. Upgrades to fire protection ratings are deemed adequate. Therefore, there are no discernible impacts that would result from granting the requested adjustment. 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. 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.

## CONCLUSIONS

The applicant requests approval of an Adjustment to Section 33.110.220 and Table 110-3, to allow the existing, previously detached but now attached garage to remain at a zero-foot building setback from the south (side) property line. The adjustment is requested in order to bring an existing condition into conformity; no changes to any existing conditions will result from granting this Adjustment. The applicant has submitted information to show that the Adjustment approval criteria are met. With the condition that fire access to the rear of the lot

be maintained along the north property line, there will be no discernable impacts as a result of the Adjustment. Therefore, the Adjustment can be approved.

### ADMINISTRATIVE DECISION

Approval of an Adjustment to Section 33.110.220 and Table 110-3, to allow the attached garage to remain at a zero-foot setback from the south (side) property line, in significant conformance with the approved plans, Exhibits C-1 and C-2.b, signed and dated May 16, 2008, subject to the following conditions:

- C. The applicant shall maintain an access passageway to the rear of the lot along the north property boundary. A gate currently exists in the fence which allows access at the northeast corner of the house. This degree of access is sufficient and shall be maintained. Changes to this gate may occur provided they allow sufficient room for human access.
- D. The applicant must submit to the Bureau of Development Services revisions to issued building permit #07-183726. The revisions must include the following two notes on the plans:
  - a) "A zero setback for the attached garage along the south side property line was approved under LU 08-120440 AD"; and
  - b) "A passageway to the rear of the lot for fire access must be maintained along the north property line. The passage must provide sufficient room for human access and for fire response access to the rear of the lot."

Decision rendered by:  on May 16, 2008.

By authority of the Director of the Bureau of Development Services

Decision mailed: May 20, 2008

**Staff Planner: Crystal Hitchings**

**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 7, 2008, and was determined to be complete on April 18, 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 7, 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 3, 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](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 **June 4, 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.

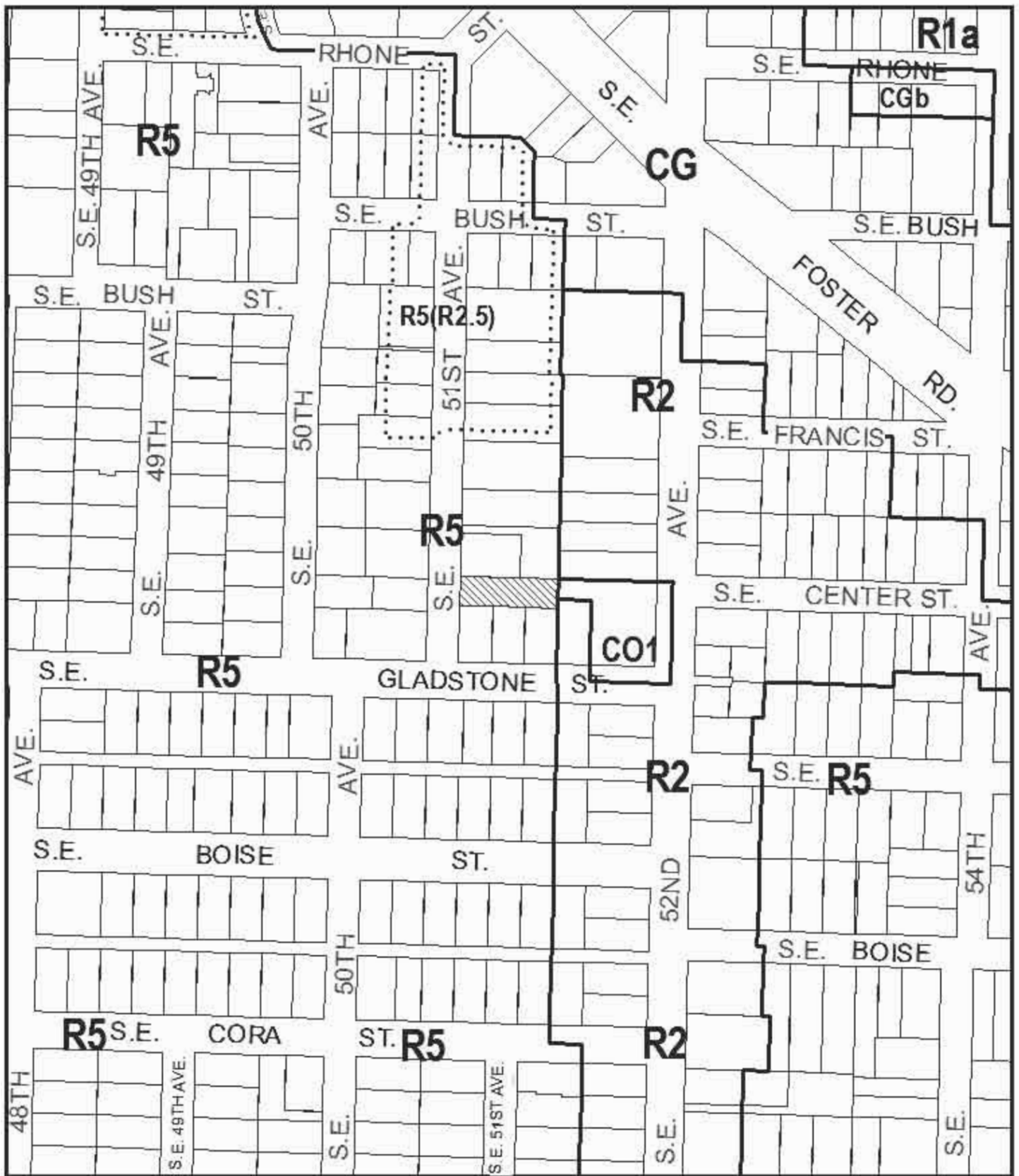
**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

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.

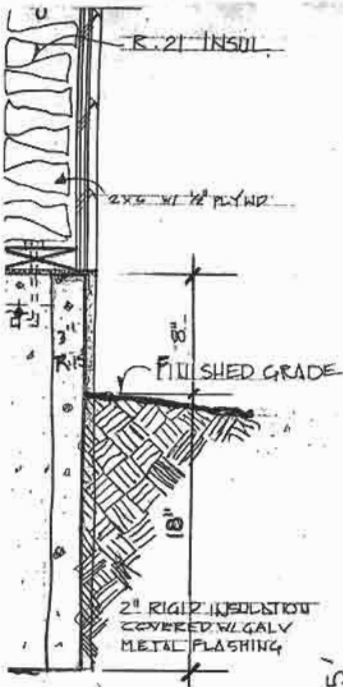


# ZONING

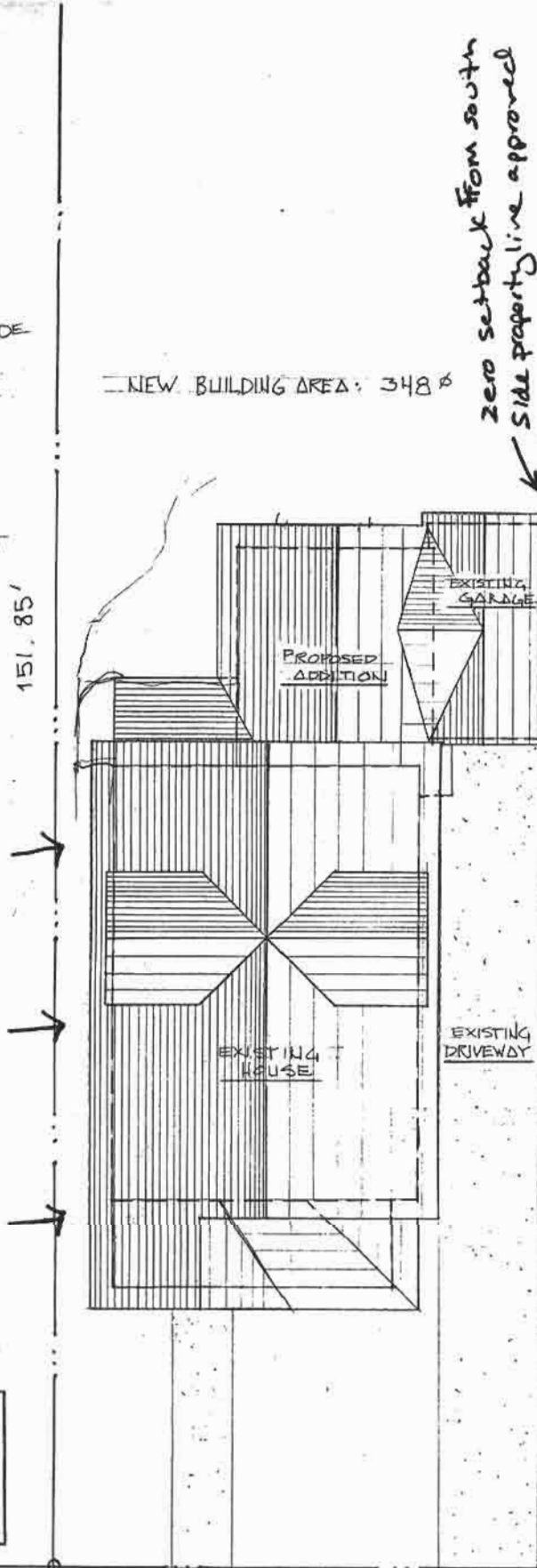


NORTH

File No.	LU 08-120440 AD
1/4 Section	3435,3436
Scale	1 inch = 200 feet
State_Id	1S2E07CD 100
Exhibit	B (Apr 08,2008)



An access passageway to the rear of the lot shall be maintained along the north property line. The existing gate provides adequate access. Changes are allowed provided they allow sufficient room for human access.



zero setback from south side property line approved by LU 08-120440 AD

NEW BUILDING AREA: 348 sq

07-183726 RS

SITE & ROOF PLANS, CONCRETE

12-15-07

Exhibit C.1

URBANOVICZ RES. REMODEL  
4012 S.E. 51ST AVENUE  
PORTLAND, OR. 97202

NICK WEITZER CONTRA  
111 S.E. 71st, PORTLAND  
PH: (503) 251-9900 F: 251-  
6408-120440 AD

City of Portland  
Bureau of  
Development Services  
By SW Date 12-18-07  
Approved by  
Planning and Zoning Review

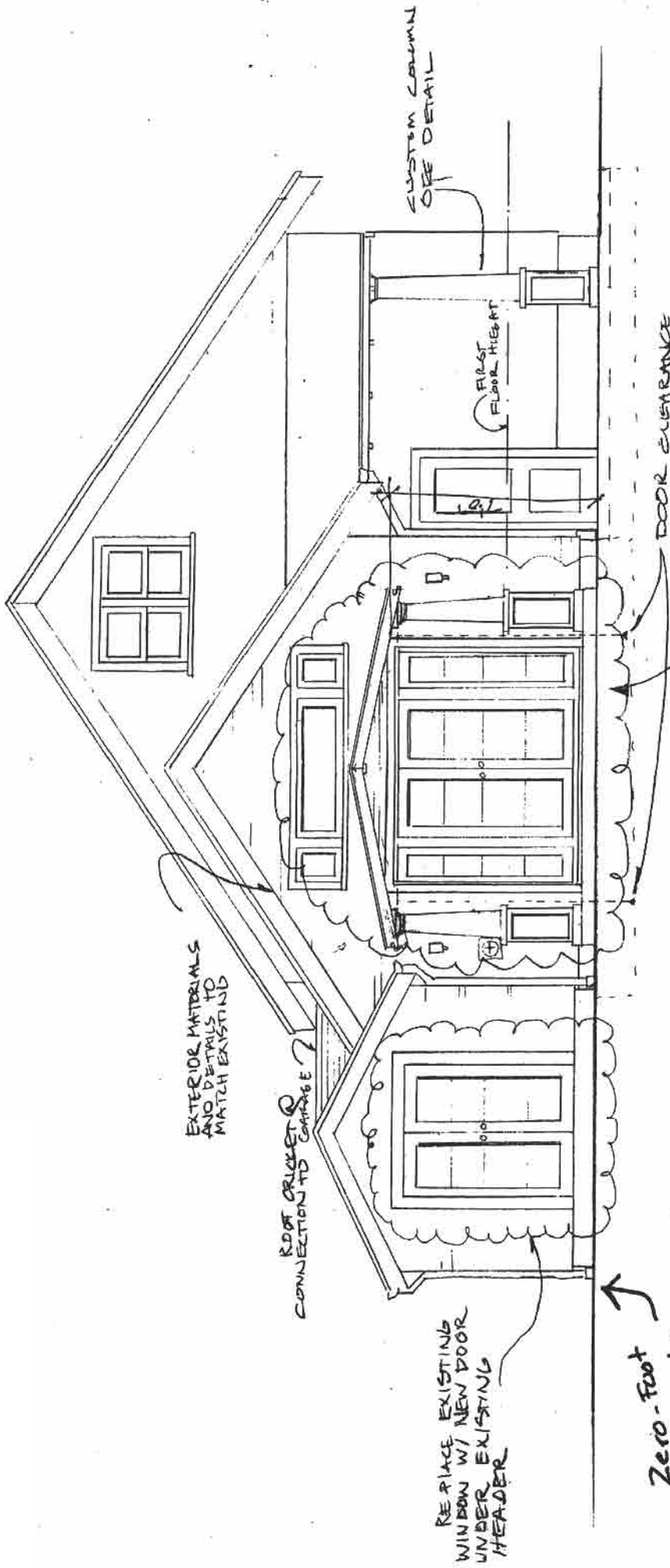
500° 00' E 45'  
SITE & ROOF PLANS  
1" = 10'-0"

LIGHTNERS ADDN BLOCK 1 LOT 14  
R 206807

1 of 5

\*Approved\*  
City of Portland - Bureau of Development Services  
Planner Cynthia Hitchings Date 5-16-08  
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.





ANNILING EXTENDS 30" FROM THOSE COLUMNS TO MATCH EXISTING DETAILS.

City of Portland  
 REVIEWED FOR CODE COMPLIANCE  
 MAR 17 2008  
 Permit Number \_\_\_\_\_

EAST ELEVATION  
 1/4" = 1'-0"

\*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner Crystal Hillings Date 5-16-08  
 \* This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

LU 08-120440 AD

Exhibit C.2b