



City of Portland, Oregon
Bureau of Development Services
Land Use Services

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

CASE FILE: LU 08-101321 AD
LOCATION: 2847 NE 30th Avenue

The administrative decision for this case was appealed to the Adjustment Committee by the applicant, Gregory N. Martenson.

The Adjustment Committee overturned the administrative decision of denial and granted the appeal, approving the request. The original analysis, findings and conclusions have been revised by the Adjustment Committee and follow.

I. GENERAL INFORMATION

Owner/Appellant: Gregory N Martenson
2847 NE 30th Ave
Portland, OR 97212-3527

Site Address: 2847 NE 30TH AVE

Legal Description: LOT 1 BLOCK 10, WAYNEWOOD

Tax Account No.: R886303170

State ID No.: 1N1E25BD 09400

Quarter Section: 2733

Neighborhood: Alameda, contact Kenneth Bailey at 503-287-1685.

Business District: North-Northeast Business Assoc, contact Joyce Taylor at 503-445-1321.

District Coalition: Northeast Coalition of Neighborhoods, contact Lauren McCartney at 503-823-4135.

Zoning: R5 – R5,000, High Density Single-Dwelling Residential

Case Type: AD – Adjustment

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

Proposal:

The applicant has constructed an above-grade deck to the north of the house within the side setback and partly within the Stanton Street right-of-way. The applicant wishes to alter the deck to the extent of trimming the deck back to the vertical support columns that are on the applicant's property, approximately six inches from the property line.

This is a 50 ft. by 100 ft. corner site at the southwest corner of NE Stanton Street and NE 30th Avenue. The long dimension of the lot lies along NE Stanton. The deck is approximately 13 ft. deep and parallels NE Stanton for approximately 28 feet.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of zoning code section 33.805.040 A. – F., Adjustments.

The following administrative decision was issued on August 14, 2008.

Administrative Decision

Denial

Public Hearings: The appeal hearing was held on October 21, 2008. At that hearing, the Adjustment Committee made a decision to overturn the administrative denial and approve the proposal.

Testified at the October 21, 2008 Hearing:

- Mark Bello, BDS Staff Representative
- Greg Martenson, owner and appellant
- Richard Caplan, 2927 NE 30th Avenue
- Holly McLean, 2927 NE 30th Avenue

II. ANALYSIS

Site and Vicinity: The site is a corner lot at the southwest intersection of NE Stanton Street and NE 30th Avenue. The house is sited somewhat above the street and orients to NE 30th Avenue. The entrance to the house comes from the corner up a full flight of stairs. The NE Stanton frontage is the "side" property line and still retains landscaping from the original plantings below the deck to the west of the basement garage entrance.

Along Stanton, there is enough of a grade change from house level to street level to allow access to a basement garage at approximately street level below the deck. The deck is currently constructed partly within the right-of-way.

The site is within Alameda neighborhood boundaries but to the south and below Alameda ridge. The neighborhood is relatively level with regularly platted lots and blocks. Most houses are at grade along NE Knott, one block to the south. From NE Knott to NE Stanton the elevation rises about ten feet; as the elevation rises, the houses are sited above the street. At this location, the deck is about eight feet higher than the NE Stanton right-of-way.

In general, the property line is set back two feet from the sidewalk in this neighborhood. Some properties have retaining walls, fences, and other accessory structures built adjacent to, or within, five feet of the sidewalk. Most homes are clearly visible from the sidewalk. Some homes have solid fences at grade or above the retaining walls. These fences are relatively recent compared to the historical age of this early to mid-Twentieth Century neighborhood.

The site is six blocks to the northwest from Grant Park and High School.

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

Land Use History: City records indicate there are no prior land use reviews for this site. Since June 26, 2008 the deck has been cited in violation of city code. The applicant is working with the Bureau of Development Services on both construction and setback issues. Enforcement has been suspended pending the outcome of this adjustment land use review.

Summary of Applicant's Statement: The original statement noted that the deck enhanced the livability of the house and fit in with the general look of the house. The applicant stated that it doesn't impede views or affect parking and stated that the deck is open below for landscaping.

The applicant's revised statement refers to the new proposal to trim back the deck to the vertical posts approximately six inches behind the property line.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **January 23, 2008**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS

Transportation has responded that neither the deck nor any new plantings (to buffer the view of the underside of the deck) will be allowed within the right-of-way.

As of July 30, 2008 Bureau of Development Review, Structural Engineering, has requested additional information from the applicant.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on January 23, 2008. A total of ten written responses have been received. Nine neighbors have written in favor. Respondents in favor state that the deck is aesthetically pleasing – height and location are not an issue. They also say that the deck is well constructed. Furthermore, the house and grounds are well-maintained.

The dissenting neighbor specified issues with the disruption to the previous landscaping, the “looming” nature of the new construction and hot tub and outdoor speakers. No response was received from the Neighborhood or Business Association.

ZONING CODE APPROVAL CRITERIA

Adjustments

33.805.010 Purpose

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 (Section 33.110.220 A):

Findings: The setback regulations for buildings and garage entrances serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*

This purpose can be met because the deck is adjacent to NE Stanton Street and fire fighting equipment and personnel would have easy access in the event of an emergency. The reduced street setback will not impact light or air to adjacent properties, as the encroachment is adjacent to the public right-of-way.

- *They reflect the general building scale and placement of houses in the city's Neighborhoods;*

While not a house, the deck is attached to the house and it is common in this neighborhood to have accessory structures within the side setback.

- *They promote a reasonable physical relationship between residences;*

This purpose is not relevant as the requested setback adjustment is a reduction of setback from NE Stanton Street, not a mutual property line.

- *They promote options for privacy for neighboring properties;*

This purpose is not relevant as the requested setback adjustment is a reduction of setback from NE Stanton Street, not a mutual property line.

- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*

This purpose is not applicable as the adjustment proposal will not reduce the front yard setback on NE 30th Avenue.

- *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;*

This purpose is not applicable as the adjustment is relative to a deck, not a “building” (a defined term in the Code).

- *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.*

This purpose is not applicable as the distance from the garage door to the street will not be affected by this proposal.

For 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: As noted in the discussion of Criterion A, when present, the location of decks, fences and retaining walls in this neighborhood shows considerable variation relative to sidewalk setbacks. Because the applicant’s proposal is consistent with this existing neighborhood pattern, the proposed reduced setback will not significantly detract from the livability or appearance of this residential area. Additionally, the

Committee found that the appearance of the deck would be enhanced if the overhang (beyond the vertical support columns) is cut back to the zero-foot setback (two-feet inside of the sidewalk) rather than flush with the supports.

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 does not apply.

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

Findings: The site is neither designated scenic or historic. This criterion does not apply.

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

Findings: There are no impacts attributable to the lessened setback (five to zero feet). 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 not in an environmental zone. This criterion does not apply.

III. ADJUSTMENT COMMITTEE CONCLUSIONS

The existing deck is built within the side street setback and right-of-way; the purpose of the adjustment request is to legalize the existing structure. The Adjustment Committee determined that due to the evidence of a variety of structures (fences, walls, garages) within the street setback in this neighborhood the above-grade deck (zero setback) is consistent with the area and the purpose statement for setbacks.

IV. ADJUSTMENT COMMITTEE DECISION

Grant the appeal and reverse the administrative decision of denial, as follows:

Approval of an Adjustment to Code Section 33.110.220 and Table 110-3 to reduce the minimum required setback from the north (side) property line for the proposed above-grade deck, from 5 feet to zero feet for the overhang and six inches for the vertical supports, in general compliance with the final approved site plan, as approved by the Adjustment Committee, Exhibit C.4, signed and dated _____, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information indicated by Exhibit C.4 The sheet on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 08-101321 AD."

Staff Planner (Administrative Denial): Mark Bello

These findings and conclusions were adopted by the Adjustment Committee on November 4, 2008

By _____


Adjustment Committee
Terry Admundson, Chair

Final Decision Rendered on November 4, 2008 and Mailed on November 7, 2008.

EXHIBITS – NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original statement
 - 2. Revised Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan
 - 2. Deck Dimensions
 - 3. East Elevation
 - 4. Revised Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Bureau of Development Services, Structural Engineering
- F. Correspondence:
 - 1. James and Becky Grosse, January 29, 2008, support
 - 2. Robin and Ralph Guariglia, February 1, 2008, oppose
 - 3. Pattie Renouard, February 4, 2008, support
 - 4. Dan and Ann LaGrande, August 3, 2008, support
 - 5. Judith Luque, August 3, 2008, support
 - 6. Nancy Porter, August 3, 2008, support
 - 7. Richard Caplan, August 5, 2008, support
 - 8. Stephen Baugh, August 5, 2008, support
 - 9. Mark Mallory, August 5, 2008, support
 - 10. Michael Medbury, August 5, 2009
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Applicant Request for Hold

H.

1. Appeal Submittal
2. Notice of Appeal
3. NOA mail list
4. 120th Day Review Extension
5. Letter dated Oct 7, 2008, Greg Martenson
- 5.a. Pictures, Greg Martenson

Copies

1. Applicants
2. Representatives
3. Appellants
4. All Parties who wrote or submitted Testimony at the Public Hearing
5. Neighborhood and/or Business Association(s)
6. Auditor's Office
7. Planning and Zoning

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 97301 [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.

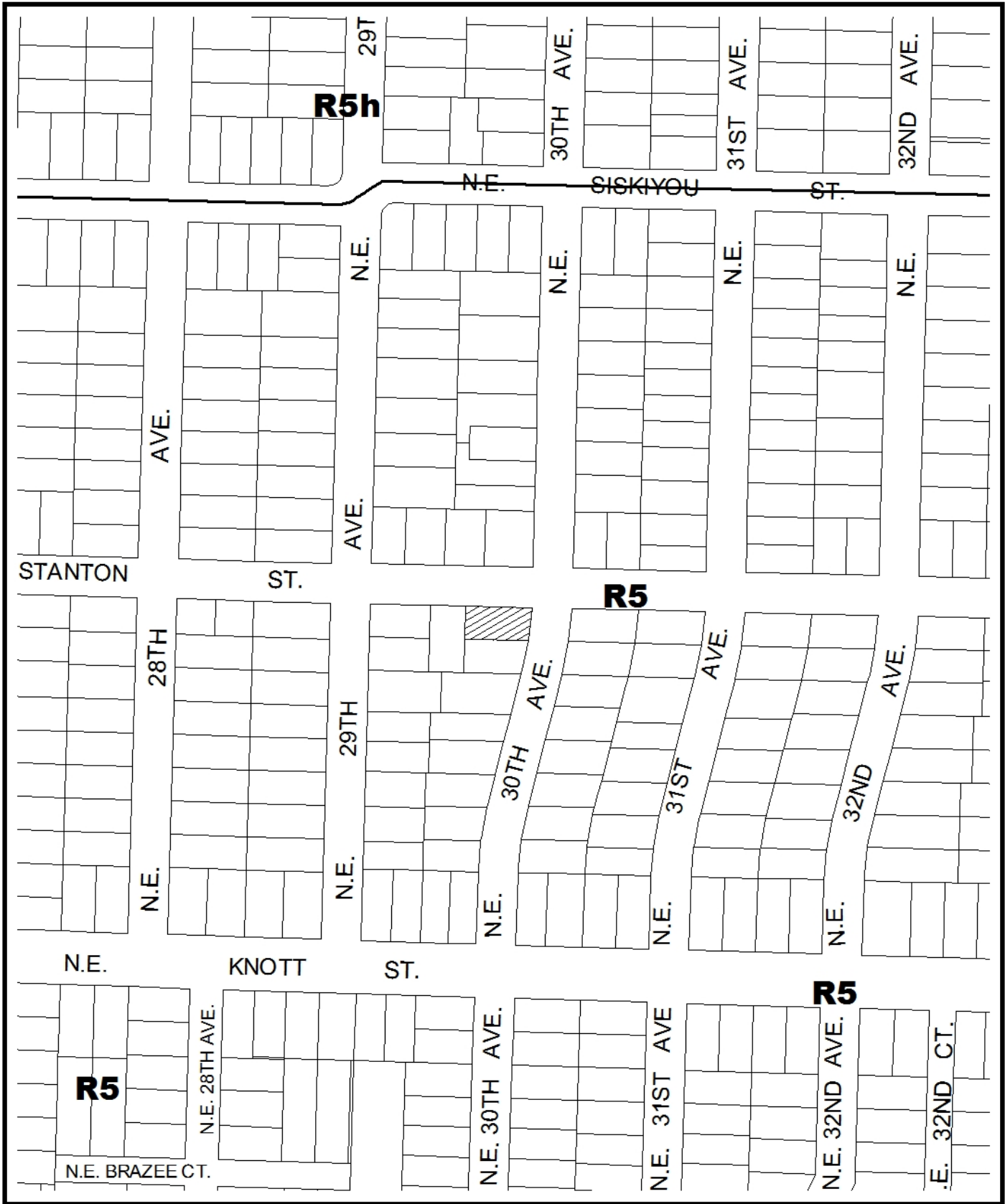
For further information on recording, please call the County Recorder at (503) 988-3034.

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.



ZONING

 Site



| | |
|-------------|-------------------|
| File No. | LU 08-101321 AD |
| 1/4 Section | 2733 |
| Scale | 1 inch = 200 feet |
| State-Id | 1N1E25BD 9400 |
| Exhibit | B (Jan 15, 2008) |

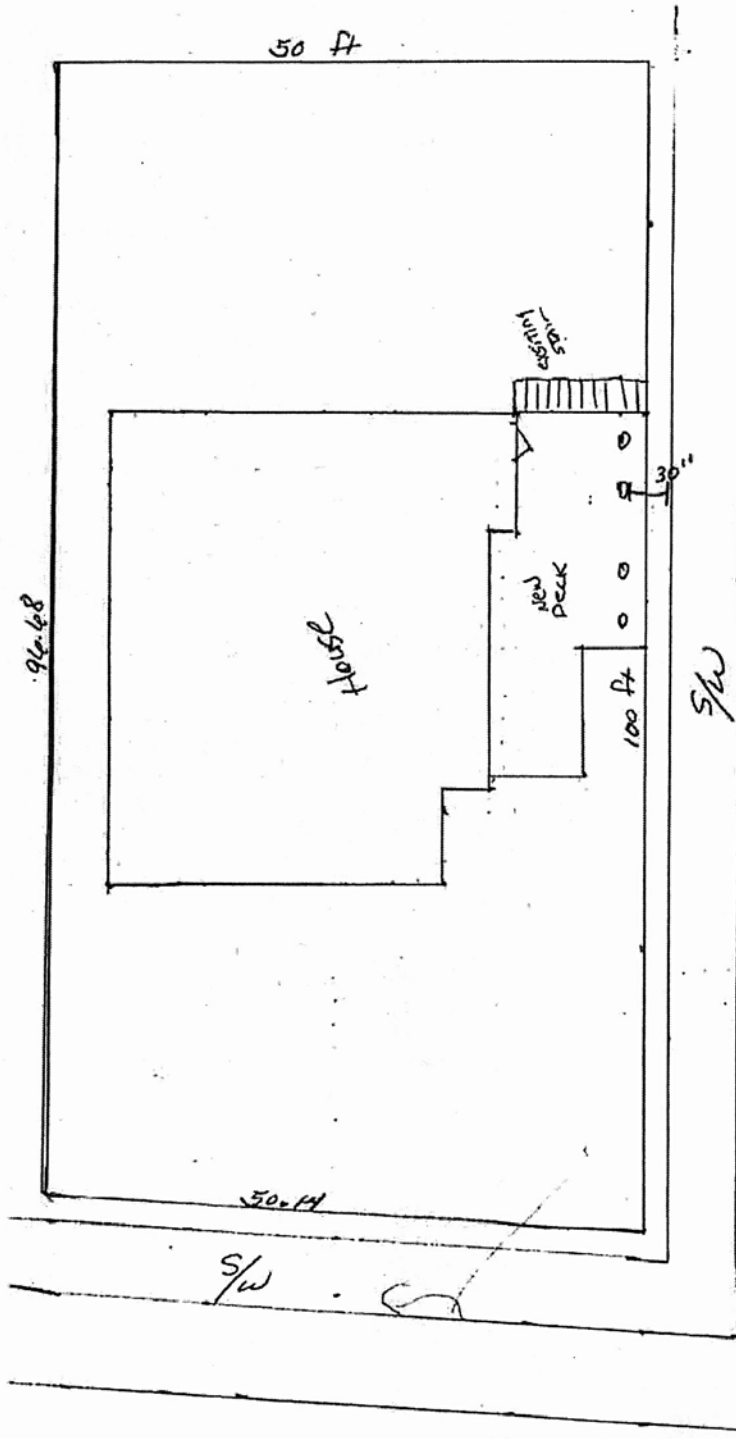
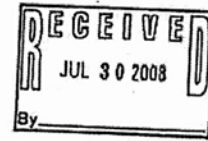
IMPERVIOUS AREA

DRIVEWAY _____
 PATIO _____
 WALK _____
 ROOF AREA
 (INCL. OVERHANG) _____
 TOTAL _____

BUILDING COVERAGE

BUILDING FOOTPRINT _____

LOT AREA



NE Stanton

CASE NO. 05-10134 AD
 EXHIBIT 64

PROJECT LEGAL

NE

PROJECT ADDRESS

50th Ave

2847 N.E 30 TH

SITE PLAN

SCALE 1" = 10'
 2' 10'

