



City of Portland
Bureau of Development Services
Land Use Services Division

1900 SW Fourth Ave. Suite 5000
Portland, Oregon 97201
Telephone: 503-823-7300
TDD: 503-823-6868
FAX: 503-823-5630
www.portlandonline.com/bds

Date: September 8, 2008
To: Interested Person
From: John Cole, Land Use Services
503-823-3475 / ColeJA@ci.portland.or.us

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved one proposal for a side building setback reduction in your neighborhood and denied a second side building setback proposal. 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 08-136430 AD

GENERAL INFORMATION

Applicant: Douglas Macleod,
John L. Scott
2251 SE Caruthers #5
Portland, OR 97214

Owner: Christopher M Cataldo,
1889 Woodland Ter
Lake Oswego, OR 97034

Surveyor: Joe H Ferguson,
Ferguson Land Surveying
646 SE 106th Avenue
Portland, OR 97216

Site Address: vacant land next to both sideyards of 8004 SE Tolman TL 5001

Legal Description: LOT 1&2 TL 5001, MIDDLETON PL
Tax Account No.: R567700030
State ID No.: 1S2E17DD 05001 **Quarter Section:** 3638
Neighborhood: Mt. Scott-Arleta, contact Jim Williams at 503-772-1059.
Business District: Eighty-Second Avenue Business Association, contact Ken Turner at 503-771-8342.
District Coalition: Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.
Plan District: None
Zoning: R1a: Multi Dwelling Residence 1,000 with an Alternate Design Density Overlay

Case Type: AD: Adjustment from side building setback standards
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal: The applicant is requesting a two foot reduction in the standard five foot minimum sideyard setback required for buildings in the R1 Zone. This request is being made to allow two separate residences to be constructed three feet from their side property line. This request applies to two property lines only. The eastern side property line of proposed Parcel 1 and the southern property line of proposed parcel 2 of related Partition application 08-126080 LDP. Please refer to the attached site plans and building elevations for additional information regarding this request.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

- 33.805.040 Approval Criteria for Adjustments

ANALYSIS

Site and Vicinity: This is a vacant “L” shaped lot with approximately 33 feet of frontage on SE 80th Avenue and 26 feet of frontage on SE Tolman. It is bordered on three sides by existing single family residential development consistent with the residential development of the larger surrounding neighborhood. There are two “non-exempt” trees located on that portion of the lot that fronts SE Tolman while the portion fronting SE 80th Avenue lacks any significant vegetation.

Zoning: The R1 designation is one of the City’s multi-dwelling zones which is intended to create and maintain higher density residential neighborhoods. The zone implements the comprehensive plan policies and designations for multi-dwelling housing.

The “a” overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood.

Land Use History: The adjustment site in its current configuration was created through a lot confirmation/property line adjustment (City File 07-147393 PR) which reoriented the historic property line between lots 1&2 Middleton Place Subdivision. A recent preliminary land division application has been approved to divide the property into two parcels as depicted in the current application. However, a final plat application is still required and must be approved by the City before this site will become two legal parcels.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **August 4, 2008**. The following Bureaus have responded with no issues or concerns:

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

The Office of Life Safety responded with a reminder that exterior walls less than three feet to a property line are required to be on-hour fire rated construction and that eaves less than three feet to a property line must be protected on the underside as required for one hour construction: Exhibit E-7 contains additional details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on August 4, 2008. One written response has been received on behalf of notified property owner in response to the proposal. The letter cites a number of concerns related to extra cars, additional people

and related impacts but does not directly address approval criteria related to the requested reduced sideyard setbacks.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of Adjustments

33.805.040 Adjustment Approval Criteria

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

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

Findings: The setback regulations for buildings in Section 33.120.220 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
- Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users.

The requested adjustment is to reduce two side building setbacks from the minimum 5 feet required in the R1 zone to 3 feet to permit the construction of two single family residences, one on each of the proposed parcels. Setback adjustments are requested from the east side (only) of Parcel 1 facing SE Tolman and the south side (only) of Parcel 2 facing SE 80th Ave. The applicant asserts in their narrative that a three-foot setback equally serves the purpose of the sideyard setback as does a five-foot setback. Staff does not agree with this general statement but does take note of some physical attributes of the proposed adjustment sites and the neighboring properties.

The property to the east of Parcel 1 is developed with a single family residence and detached garage. Immediately adjacent to the shared property line from which the applicants are requesting a reduction in building setbacks is a driveway accessing the detached garage. This adjacent property is approximately forty feet wide and 3,900 square feet in size.

Similarly, the property to the south of Parcel 2 is also developed with a single dwelling residence. Immediately south of the shared property line from which the applicants are requesting a reduction in building setback is a driveway accessing a detached garage. This property is approximately sixty feet wide and 9,700 square feet in size.

To the extent that these driveways are unlikely to be developed further staff is influenced that light, air, privacy and fire access will not be negatively impacted by the proposed request and that a reasonable relationship between existing adjoining residences can be maintained. The Fire Bureau has reviewed this request and offered no objection. Potential redevelopment is greater on the larger lot south of Parcel 2 than it is on the lot east of Parcel 1 however and the future layout of this property cannot be determined at this time.

Proposed development on Parcel 1 will be setback approximately 18 feet from its front property line and screened from the street by a plum tree that is required to be preserved as a condition of this property's land division approval. Due to this setback and screening, a reduction in side

building setback can occur without conflicting with the general building placement or scale along this street frontage. The applicants are proposing to place development on Parcel 2 three feet from the SE 80th Avenue right of way. While this is allowed by the R1 zone standards it is closer than any of the existing houses on this block of SE 80th that are setback between approximately 7 feet and 20 feet from their front property lines. The combination of the three foot front yard setback with a reduced sideyard setback and no screening will not reflect the general building placement or scale in this neighborhood.

The purpose of the adjustment is to facilitate the development of two detached residential structures. Staff concurs with the applicants' statement that this form of development is consistent with the single dwelling residential development that currently predominates within the surrounding blocks.

Proposed Parcel 1 is only 26 feet wide. Development of this parcel meeting both sideyard setbacks would result in a structure no greater than 16 feet in width, a dimension that would leave little street frontage for anything other than a garage door facing the street. The applicant indicates that the additional width will be used to provide additional pedestrian frontage on the street in addition to interior living space. Towards this end staff concurs that the setback adjustment for Parcel 1 will be consistent with the purpose of setbacks to promote compatible building placement and scale.

Parcel 2 is 33 feet wide. A 23-foot wide residence could be placed on this parcel without the need to adjust the side building setback requirement. This would permit the construction of a residence with a single car garage that still left approximately 13 feet of street frontage devoted to the pedestrian entrance and other façade features. In staff's review, the need of a sideyard setback is not necessary to construct a residence on this lot that is of comparable building scale and placement to that which exists in the surrounding neighborhood.

For the reasons stated above this criterion is met as applied to the requested side building setback on Parcel 1 but this criterion is not met for the requested side building setback on proposed Parcel 2.

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.

Findings: The proposed adjustment will facilitate the construction of two single dwelling residences of comparable size to what currently exists in the surrounding blocks. The requested side building setback will occur on Parcel 1, eighteen feet back from the front property line and screened from view by a Plum tree. Therefore this adjustment will not be significantly visible to the neighborhood. In contrast the requested side building setback on Parcel 2 is proposed to begin 3-5 feet back from the front property line where it will be readily visible to the neighborhood. The combination of a building closer to the right of way than other buildings on the block and at a reduced side building setback will detract from the appearance of this residential neighborhood.

This criterion is met as applied to the proposed building setback adjustment on Parcel 1 but it is not met as applied to the setback adjustment requested for Parcel 2.

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

Findings: Two setback adjustments are being requested. These requested adjustments occur on separate street frontages however and will not be visible from any single location nor will they have any cumulative impact on any adjoining property. This criterion is met.

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

Findings: There are no City designated scenic or historic resources on this site or in the immediate neighborhood. Therefore, this criterion is not applicable.

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

Findings: The applicants have provided two sets of preliminary building plans and elevations to support this application. On Parcel 1 the applicants have implied that the area of the wall plane facing the eastern property line will be less than 1,000 square feet and hence eligible for a five foot sideyard setback according to table 120-4. They have also indicated that the requested adjustment will allow an improved street facing façade. They further indicate that an existing 6 foot fence along a portion the shared property line (with Parcel 1) will be maintained providing buffering and privacy for the adjoining residence. Subject to conditions incorporating these features into the approval this criterion is met for the setback adjustment for Parcel 1.

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 in an environmental zone. Therefore, this criterion does not apply.

The approval criteria for an adjustment from side building setback requirement are met for the proposed reduction in side building setback on Parcel 1. The approval criteria for the requested side building setback reduction are not met for Parcel 2.

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 has requested two side building setback adjustments to reduce the R1 zone requirement of five feet to three feet to allow the construction of two single dwelling residences that would be located three feet from the east property line of Parcel 1 and three feet from the south property line of Parcel 2.

On Parcel 1 the proposed building will be located behind a Plum tree approximately 18 feet from the front property line. There is a driveway and detached garage located on the neighboring property and limited additional development potential. For these reasons a reduction in the required sideyard setback requirement of five feet to three feet as proposed can be accommodated while meeting the approval criteria for adjustments. By allowing for an additional two feet of building width an improved building façade can be presented to the street that will not be as dominated by garage wall as would result without the requested adjustment.

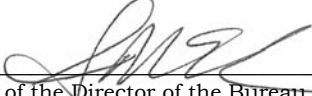
On Parcel 2 the same concerns about building width are not present. In this location the proposed building would be located three feet from the front property line and any sideyard setback reduction would be readily visible from the street. Approval criteria related to compatible building scale and placement and residential neighborhood appearance are not met for this component of the request.

ADMINISTRATIVE DECISION

Denial of a reduction in the side building setback from the south property line of Parcel 2 with frontage on SE 80th Avenue.

Approval of a two foot reduction to the side building setback required along the east property line (only) from 5 feet required to 3 feet per the approved site plan, Exhibit C-1, signed and dated month/day/year, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B and C) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 08-136430 AD AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The area of the building wall plane facing east shall be 1,000 square feet or less.
- C. The width of the garage wall facing SE Tolman Avenue shall not exceed 10'-4".

Decision rendered by:  **on September 4, 2008**
By authority of the Director of the Bureau of Development Services

Decision mailed: September 8, 2008

Staff Planner: John Cole

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 June 11, 2008, and was determined to be complete on July 30, 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 June 11, 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 September 22, 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.

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 **date – (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:

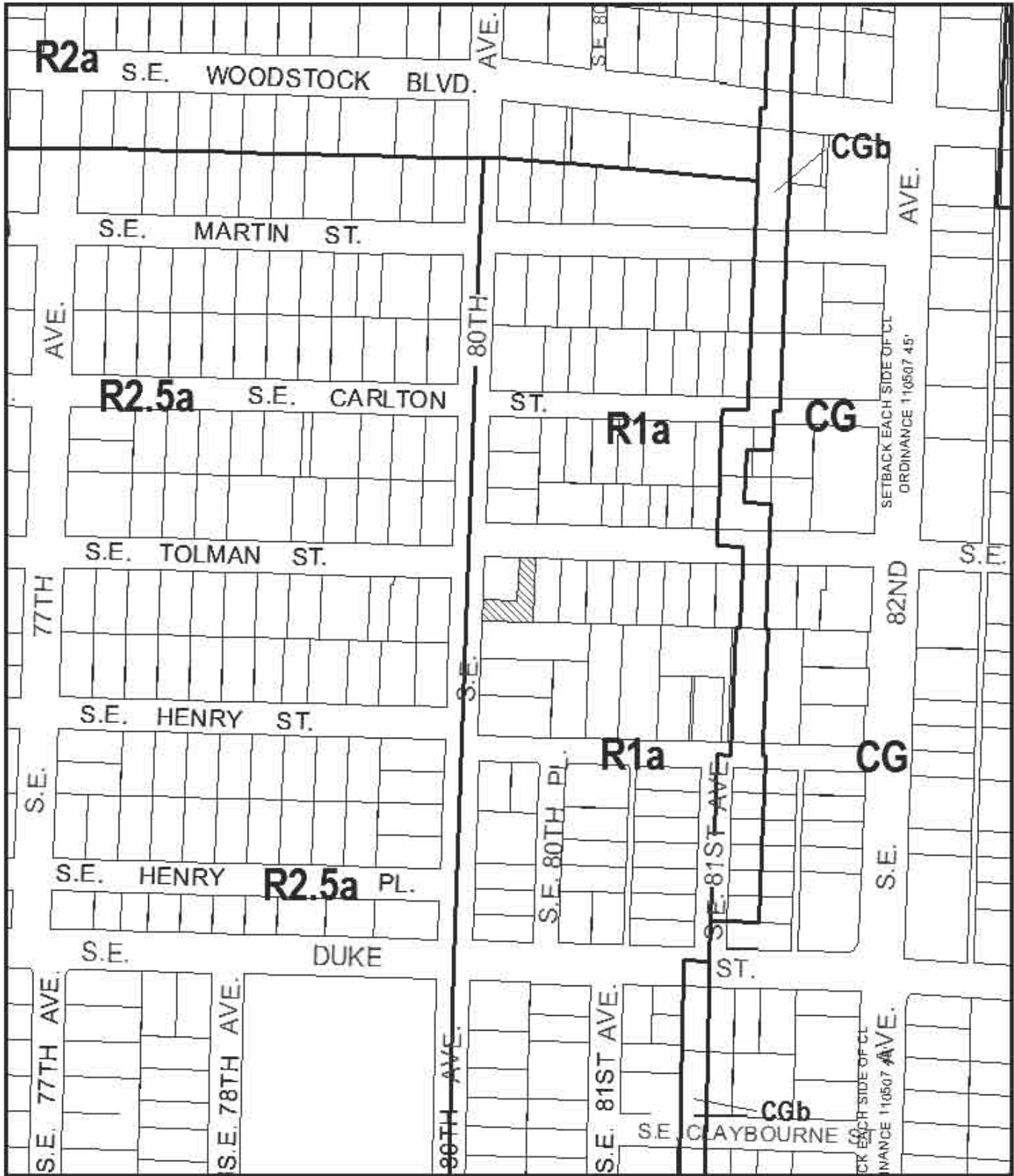
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement including additional written statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Building floor plans and elevations
- 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. Office of Life Safety
- F. Correspondence:
 - 1. Dennis Adair on behalf of Thomas Springer 7919 SE Tolman, 8/20 Opposed
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter

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



File No. LU 08-136430 AD
 1/4 Section 3638
 Scale 1 inch = 200 feet
 State Id 1S2E17DD 5001
 Exhibit B (Jun 16, 2008)



Parcel 1: 26 X 99 Feet

SE Tolman Street Frontage

Existing Corner House

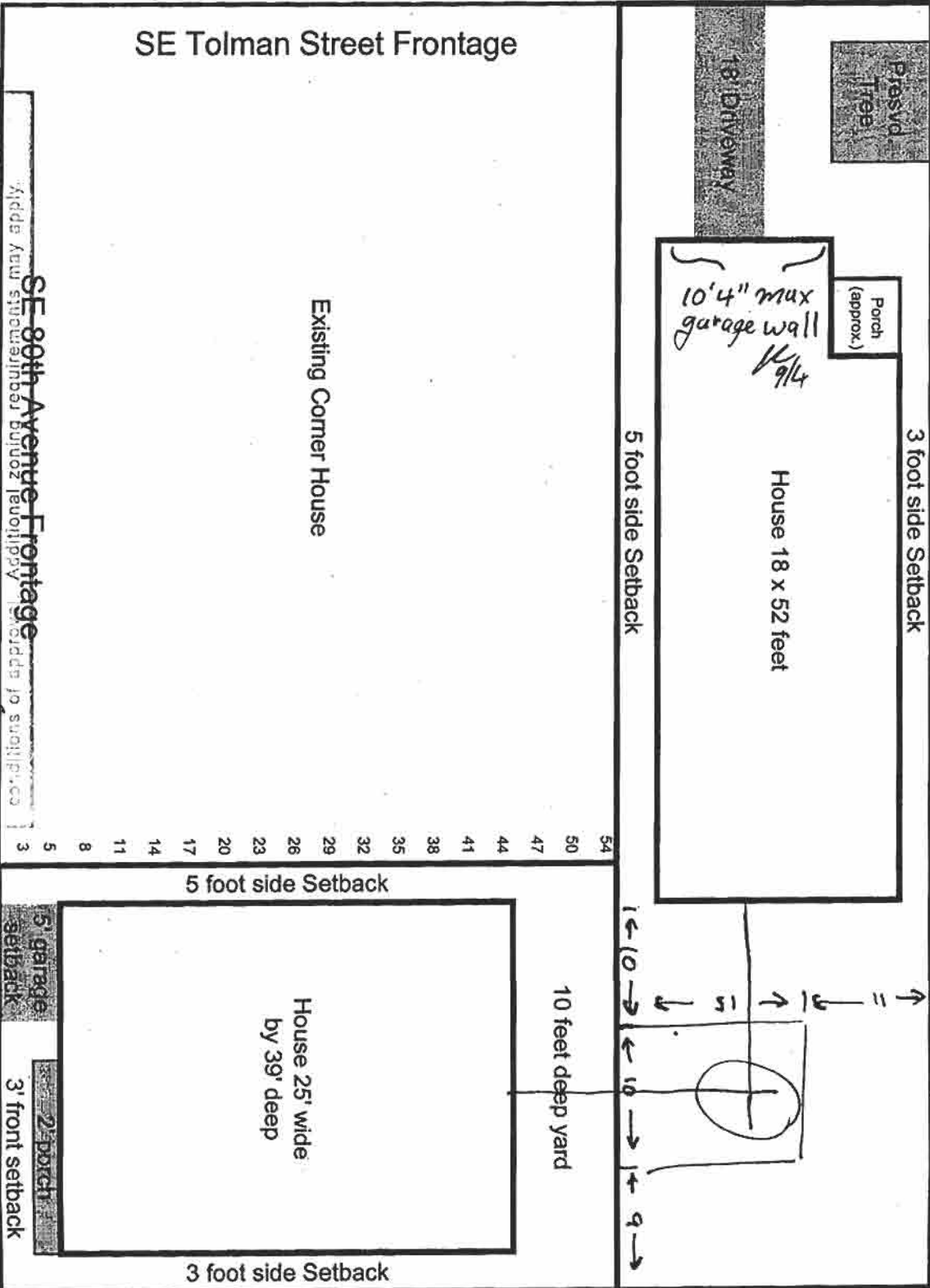
SE 80th Avenue Frontage

Planner _____ Date 8/5/16

City of Portland - Bureau of Development Services

Approved _____

This document is subject to all applicable laws, rules, regulations, codes, and standards. It is intended to provide information only to the reviewer and is not intended to constitute a contract. It is subject to all applicable laws, rules, regulations, codes, and standards. It is intended to provide information only to the reviewer and is not intended to constitute a contract.



adjustment request
Approval 9/4

Adjustment request Denial 9/4

CASE NO. 08-136430
 EXHIBIT C-1

Parcel 2: 33 X 54 Feet