



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

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Portland, Oregon 97201
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www.portlandonline.com/bds

Date: February 26, 2009
To: Interested Person
From: Crystal Hitchings, Land Use Services
503-823-7583 / 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 09-102916 AD

GENERAL INFORMATION

Applicant: James Keppinger
436 NW Albemarle Terrace
Portland, OR 97210

Site Address: 436 NW ALBEMARLE TER

Legal Description: LOT 1 BLOCK 10, ST FRANCES HILL
Tax Account No.: R737903250
State ID No.: 1N1E32AD 12300
Quarter Section: 2926

Neighborhood: Hillside, contact Gary Berger at 503-228-7606.
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.

Zoning: R7, Single-dwelling Residential 7,000

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

Proposal:

The applicant is requesting four Adjustments to Zoning Code Section 33.110.220, Setbacks, in order to construct a new single-car garage at the street level of the existing home (the western-most garage as shown on the site plan), a new master bedroom below the easternmost garage, and a new mudroom below the entry porch.

The project includes two new single-car garages, but an Adjustment is only required for the western-most garage, which is 12' x 16' in size and is attached to the front, south side of the existing home, at a 2-foot setback from the front property line. The garage is 11 feet in height at the mid-point of the gable, and 13.25 feet in height at its highest point, and has eaves that project approximately 18 inches. New master bedrooms are located below the garages, and

below the street level of the property. The master bedroom to the west is located approximately 6 feet from the front property line at its closest point, and the master bedroom to the east is located approximately 2 feet from the front property line. A new mud room is located below the proposed new entry porch, also below the street level of the property, and is approximately 7 feet from the front property line at its closest point.

The overall project includes the construction of a new crawl space on the ground level; a new master bedroom suite with mudroom entry and kitchen and bathroom remodel on the second level; a new, uncovered front entry deck and two new single-car garages on the third (street) level; and a new roof deck, new skylights, and attic remodel on the fourth level of the home.

The R7 Zone requires a garage wall and garage entrance setback of 18 feet. However, this setback is reduced to 5 feet for lots that are on a 20% or greater slope, as is the subject site. The R7 zone requires a building setback of 15 feet, however this setback is reduced to 10 feet for lots that are on a 20% or greater slope. Therefore, three Adjustments to Section 33.110.220, Setbacks, are required:

1. To reduce the garage entrance setback from 5 feet to 2 feet for the more westerly garage located on the front, south façade of the home, and allow the associated eave to be located 0.5 feet from the front property line;
2. To reduce the front building setback for the more westerly master bedrooms to 2 feet;
3. To reduce the front building setback for the more easterly master bedroom to 6 feet; and
4. To reduce the front building setback for the mud room to 7 feet.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. 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 property is developed with a single-dwelling home originally built in 1926. The 5,800 square foot lot is located between NW Maywood Drive and NW Albemarle Terrace, and has frontage on both streets. A public right-of-way runs along the east property line. The site is located in an area of 20% or greater slope, and is within a “prelim. rapidly moving landslide” and “potential landslide hazard” area. The site slopes down from NW Albemarle toward NW Maywood to the north.

The home is located on the southern portion of the site, along NW Albemarle. The northern and eastern portions of the site are undeveloped and remain vegetated. The site is located at the center of a hairpin curve, and a metal guard rail runs along the entire NW Albemarle frontage of the site. Access to the site is via a pedestrian walkway. NW Albemarle is developed with a 5-foot sidewalk on the south side of NW Albemarle, and the property line begins at the curb edge on the north side of NW Albemarle.

Within 200 feet of the subject site, development is single-dwelling residential and sites are similarly steep. Properties on the south side of NW Albemarle slope up and away from the street and properties on the north side of NW Albemarle slope down and away from the street. Some portions of the streets within the area curve sharply, and lots take on various regular and irregular configurations to fit within these curves.

Zoning: The property is zoned R7, which is a medium-density, single-dwelling zone. 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. The R7 Zone allows attached and detached single-dwelling structures and duplexes.

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

Agency Review: A “Request for Response” was mailed on January 26, 2009. The following Bureaus have responded with no issues or concerns (Exhibits E.1-E.3):

- Fire Bureau
- Water Bureau
- Bureau of Parks-Forestry Division

The following Bureaus have submitted additional comments:

- The **Site Development Section** of BDS (Exhibit E.4): gave no objection to the proposed Adjustments and submitted information regarding sanitary services and stormwater management to inform the building permit process. On-site infiltration is not recommended at this location due to steep slopes and soil conditions. Further information will be required at the time of building permit application to determine if the proposal conforms with requirements for sanitary and stormwater services, including utility plans and a geotechnical report.
- The **Life Safety Bureau** (Exhibit E.5): gave no objection to the proposed Adjustments and submitted information to inform the building permit process.
- The **Bureau of Environmental Services** (Exhibit E.6): gave no objection to the proposed Adjustments and submitted information regarding sanitary services, stormwater management, and water resources to inform the building permit process. Further information will be required at the time of building permit application to determine if the proposal will conform to requirements for sanitary and stormwater services.
- The **Bureau of Transportation Engineering** (Exhibit E.7): gave no objection to the proposed Adjustments. PDOT noted a minor eave encroachment into the alley right-of-way, but expressed no concerns. Minor encroachments into rights-of-way are not subject to Title 33 review. An encroachment permit for the eave projection can be granted at the time of building permit review.

Neighborhood Review: A “Notice of Proposal in Your Neighborhood” was mailed on January 26, 2009. No written responses were received from either the Neighborhood Association or notified property owners in response to the proposal.

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 requesting three Adjustments to **Section 33.110.220, Setbacks**. The purpose statement for this regulation is as follows:

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.*

Adjustment 1: to reduce the garage entrance setback from 5 feet to 2 feet for the more westerly garage located on the front, south façade of the home.

This garage is located 2 feet north of the front property line, adjacent to a street, and therefore its location will not affect air, separation for fire protection or access for fire fighting on adjacent properties. The garage is located on the north side of the street, and is located at least 15 feet east of the adjacent property to the west. Because of its location and single-story design, the proposed garage will not significantly affect sunlight on adjacent properties.

The subject site is located on a steeply sloping lot within a steeply sloping neighborhood, where both homes and garages are commonly built close to the street lot line. The adjacent lot to the east, the lot two lots to the west, and most of the homes along NW Albemarle to the south, all have garages located within the front building or garage entrance setbacks. The proposed garage is one story in height, and is designed to fit within the roofline of the existing home and second proposed garage. The neighborhood is comprised of homes with one- or two-car garages, many of which are located close to the street or front lot line. Therefore, the proposed one-story, one-car garage located in front of the home and within the garage entrance setback reflects the general building scale and placement within this neighborhood. The garage is located adjacent to a street, in the center of the lot, and maintains a reasonable physical relationship with adjacent residences. The garage faces the street and is not directly adjacent to any private outdoor areas or windows on adjacent homes. Privacy to neighboring properties is not affected.

The garage is located within the front setback, and does somewhat reduce the front yard area. However, considering the steeply-sloping nature of the lot, and that the reduction is for only a 12-foot portion of the approximately 50-foot front property line, the impacts to the openness of the front yard area are minimal. The proposed garage blends in with the architecture of the home and presents a visually pleasing façade to the street. The 18-inch eave is consistent with the depth of other eaves around the structure. In addition, the proposal brings the façade of the home up to the street level, creating better visual and physical connection between the home and the street.

The steep topography of this site severely limits opportunities for constructing a garage on this lot. The site slopes steeply down from the street and the garage must be constructed on stilts to gain access from the street. The proposal provides adequate flexibility to site the western-most garage so that it remains compatible with the neighborhood, fits the topography of the site, and allows for required outdoor areas, while retaining the architectural integrity of the existing home. The 2-foot setback does not allow room for a vehicle to park in front of the garage, and therefore vehicles will not be parked so as to overhang the street.

For these reasons, the purpose statement for setbacks is equally met and this criterion is met.

Adjustment 2: to reduce the front building setback for the more westerly master bedrooms to 2 feet;

Adjustment 3: to reduce the front building setback for the more easterly master bedroom to 6 feet;

Adjustment 4: to reduce the front building setback for the mud room to 7 feet.

These proposed additions are located below the street-level of the lot and will not affect light or air to any adjacent properties. Because the additions are adjacent to a steep grade of earth rather than any other structures, fire separation is not affected. Fire access from the street level is not affected.

It is not unusual for structures in this area of steeply sloping lots to contain lower levels that are below the grade of the street and that are within the front building setbacks. The proposed below-street level additions are modest in size and are designed to fit within the footprint of the structures above them, and do not affect the character of the existing home or surrounding neighborhood. The additions are below the grade of the street and will be only minimally visible from the street. The additions will not change the physical relationship of structures on this lot with structures on adjacent lots. Any windows on the additions will be below the grade of the street and will not significantly affect the degree of privacy currently enjoyed on adjacent lots.

The mud room and master bedrooms are partially located within the front setback, and do somewhat reduce the available front yard area. However, considering the steeply-sloping nature of the lot that creates a front yard area that is somewhat unusable and not visible from the street in a manner typical of front yards, the impacts to the openness of the front yard area are minimal. The proposal provides adequate flexibility to site the proposed additions so they remain compatible with the neighborhood, fit the topography of the site, and allow for required outdoor areas while retaining the architectural integrity of the existing home.

For these reasons, the purpose statement for setbacks is equally met and 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; and

Findings: The proposed garage, mudroom, and master bedroom are designed to fit into the architecture of the existing home, and present an attractive façade to the street and neighborhood. The proposed additions remain compatible with the appearance and character of the neighborhood. Issues affecting livability will not result from the proposed additions. 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: Three Adjustments to the front building setback standard and one to the garage entrance standard are requested. 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. The R7 zone is a medium density single-dwelling zone. The R7 Zone allows attached and detached single-dwelling structures and duplexes. The request to reduce the setback for the proposed garage at the street level and for the proposed master bedroom and mudroom below the street level remains consistent with development in the existing neighborhood and maintains housing opportunities for the subject site while not negatively affecting housing opportunities for adjacent sites. This criterion is met.

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

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

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

Findings: The request will result in additional living area and a garage that meet the purpose statements for setbacks. 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 requested Adjustments to reduce the garage entrance setback for the most westerly garage and to reduce the front building setback for the master bedrooms and mudroom that are below street grade do not negatively affect livability or appearance of and remains compatible with the neighborhood. The location does not create a situation where vehicles would park in front of the garage and obstruct the public ROW. All applicable review criteria are met, and therefore this request should be approved.

ADMINISTRATIVE DECISION

Approval of four Adjustments to **Section 33.110.220, Setbacks**, in order to:

1. To reduce the garage entrance setback from 5 feet to 2 feet for the more westerly garage located on the front, south façade of the home, and allow the associated eave to be located 0.5 feet from the front property line;
2. To reduce the front building setback for the more westerly master bedrooms to 2 feet;
3. To reduce the front building setback for the more easterly master bedroom to 6 feet; and
4. To reduce the front building setback for the mud room to 7 feet.

in significant conformance with the approved site plans, Exhibits C-1 through C-3, signed and dated **February 24, 2009**, 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 and design approved by this land use review as indicated in Exhibits C.1-C.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-102916 AD."

NOTE: An encroachment permit must be obtained from PDOT for the portion of the eave located in the ROW.



Decision rendered by: _____ **on February 24, 2009.**

By authority of the Director of the Bureau of Development Services

Decision mailed: February 26, 2009

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 January 16, 2009, and was determined to be complete on January 21, 2009.

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 January 16, 2009.

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 March 12, 2009** 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 **March 13, 2009 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

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

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

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

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

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

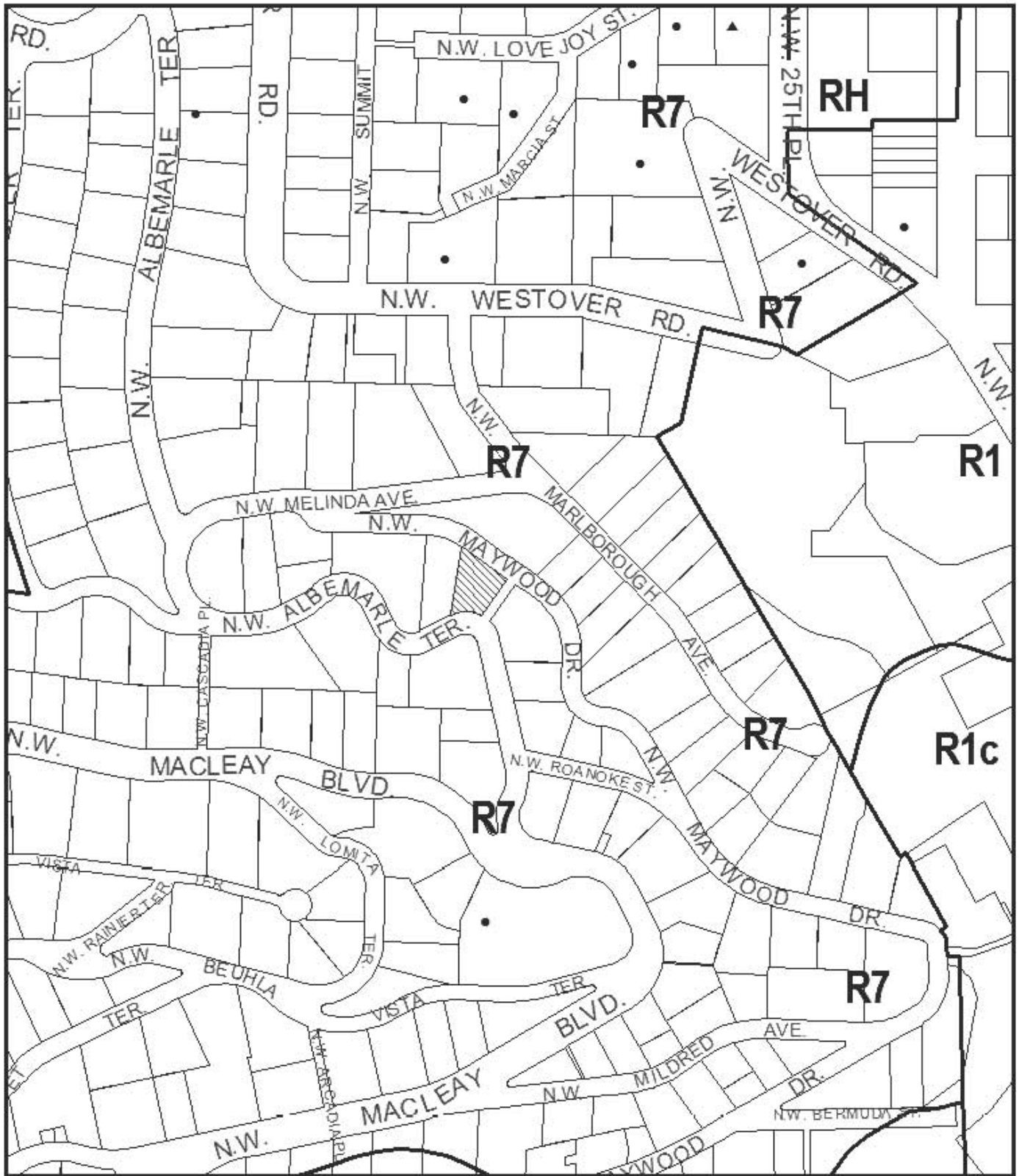
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation, front (attached)
- D. Notification information:
 - 1. Original mailing list
 - 2. Original mailed notice
 - 3. Re-notice mailing list
 - 4. Re-notice mailed notice
- E. Agency Responses:
 - 1. Fire Bureau
 - 2. Water Bureau
 - 3. Bureau of Parks, Forestry Division
 - 4. Site Development Review Section of BDS
 - 5. Life Safety Bureau
 - 6. Bureau of Environmental Services
 - 7. Bureau of Transportation Engineering and Development Review
- F. Correspondence:
 - None received
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

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



ZONING

-  Site
-  Historic Landmark



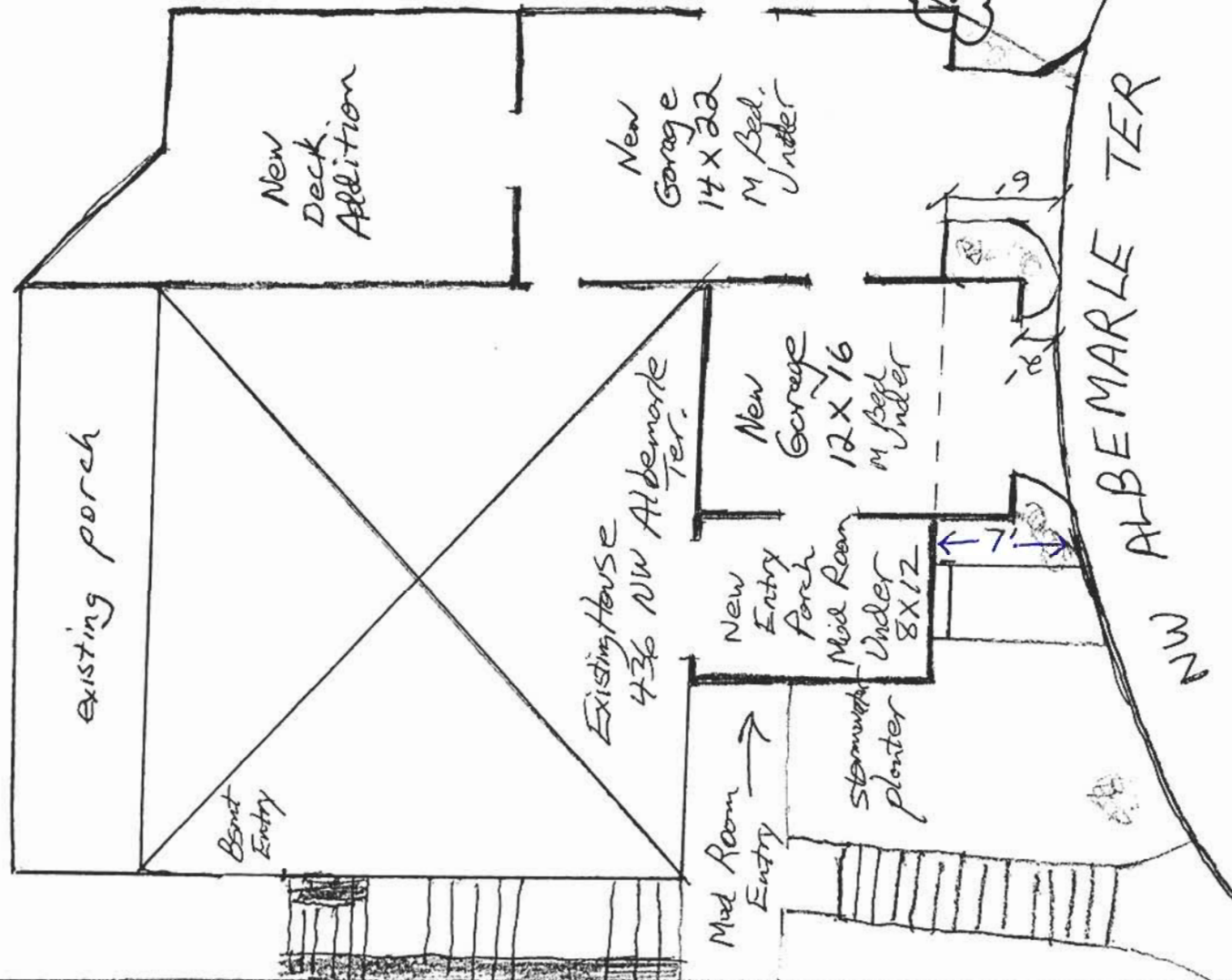
File No.	LU 09-102916 AD
1/4 Section	2926
Scale	1 inch = 200 feet
State_Id	1N1E32AD 12300
Exhibit	B (Jan 23, 2009)



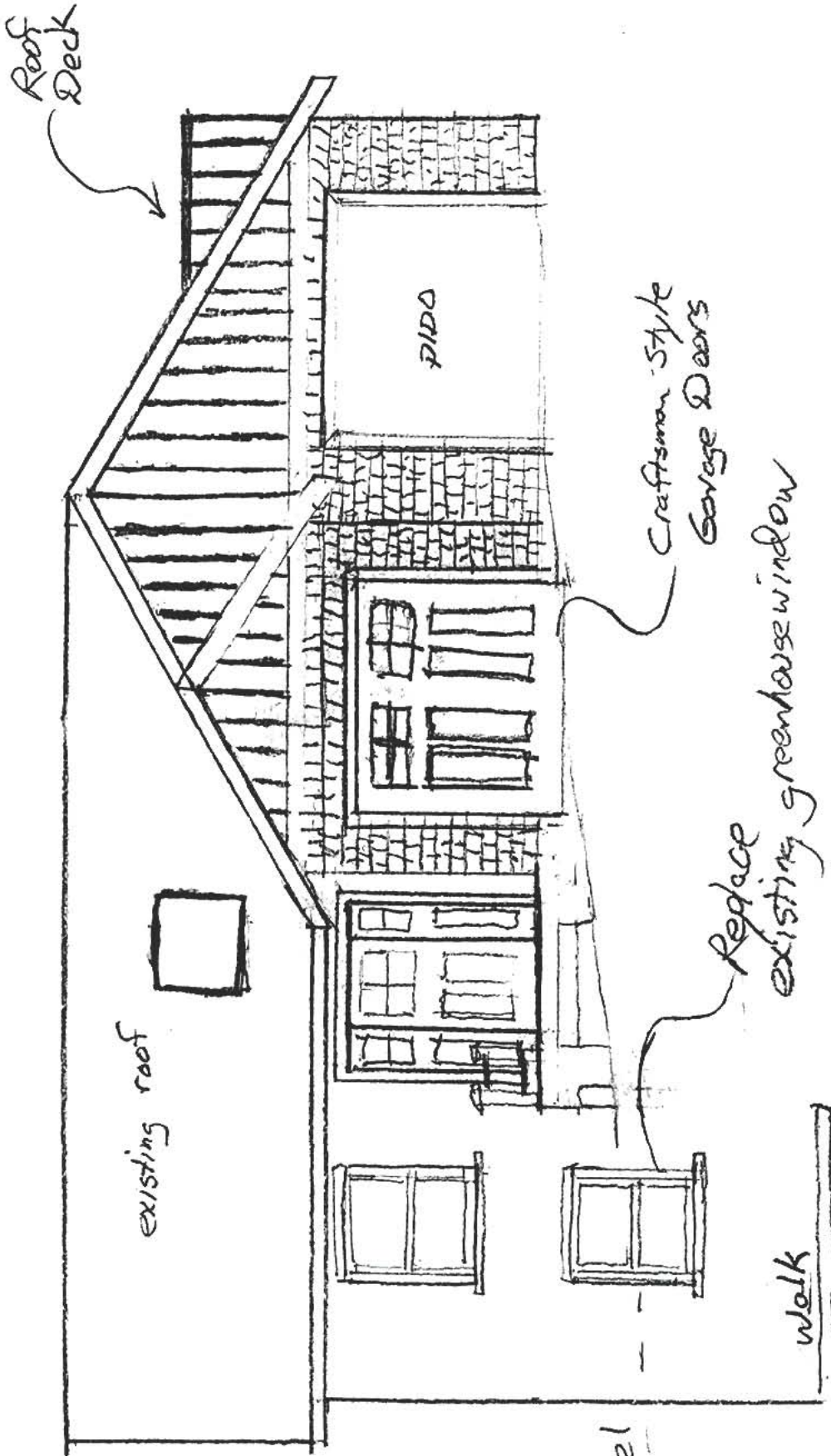
Approved
 City of Portland
 Bureau of Development Services
 Planner Crystal Hittinger
 Date 2-24-09
 * This approval applies only to the reviews requested and is subject to all conditions of approval.
 Additional zoning requirements may apply.

An encroachment permit must be obtained from P OT for the portion of the drive located within the right-of-way.

scale 1/8" =
 James Keppinger
 503 224 9874



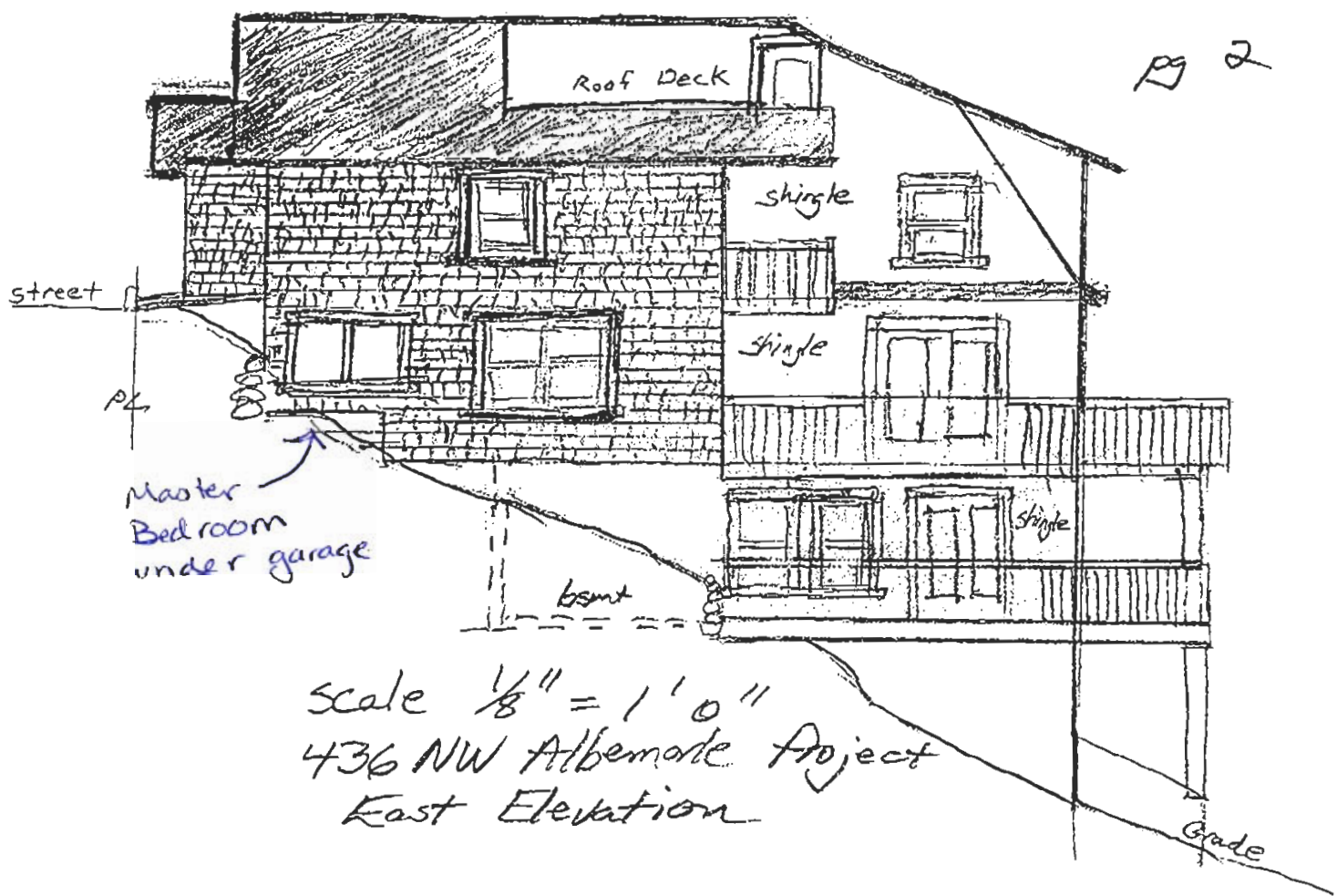
LU09 102916AD
 Exhibit C.1



436 NW Albequerque
 scale $\frac{3}{16}'' = 1'0''$

Approved
 City of Portland - Bureau of Development Services
 Planner Crystal Hitting Date 2-24-09
 *This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

LU09 102916



Scale $\frac{1}{8}'' = 1' 0''$
 436 NW Albemarle Project
 East Elevation

Approved

City of Portland - Bureau of Development Services

Planner Crystal Hicking Date 2-24-09

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

LU 09-102916 A10
 Exhibit C.3