



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

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Date: April 10, 2009
To: Interested Person
From: Nan Stark, Land Use Services
503-823-7828 / nstark@ci.portland.or.us

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

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 09-109544 AD

GENERAL INFORMATION

Applicant/Owner: Donald J Sarason
3032 NE Regents Dr
Portland, OR 97212-1759

Representative: Phil Sydnor, Integrate
1715 N Terry St
Portland, OR 97217

Site Address: 3032 NE REGENTS DR

Legal Description: LOT 25&26 BLOCK 7, OLMSTED PK
Tax Account No.: R626501410
State ID No.: 1N1E24CD 08600
Quarter Section: 2633

Neighborhood: Alameda, contact Kenneth Bailey at 503-287-1685.
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321.
District Coalition: Northeast Coalition of Neighborhoods, contact Lauren McCartney at 503-823-4135.

Zoning: R5h: Residential 5,000 with 'h' Aircraft Landing height overlay

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

Proposal: This site was the subject of a recent Adjustment decision (LU 08-146378 AD), in which a reduced side setback for a new garage attached to the east side of the house was approved. The administrative decision was appealed, and the original decision was upheld, allowing the new garage to be located one foot from the east property line. The owner now requests an adjustment to exceed the allowed building coverage, in part due to a future Property Line Adjustment.

Since the appeal and decision on this case, the applicant and abutting neighbor (appellant) have decided to move the applicant's east property line 2.6 feet to the west for the rear 38.5 feet of the property, in order to preserve an existing tree and yard area that the neighbor has been using by easement for many years. An application for the Property Line Adjustment will be submitted if this Adjustment is approved, which will reduce the size of the subject lot by 100 square-feet to 9,793 square-feet. The resulting building coverage allowed is consequently reduced, to 2,968 square-feet. The applicant requests this adjustment to zoning code standard 33.110.225 B, Building Coverage, to allow the building coverage to be increased from the maximum allowed 2,968 square-feet to the proposed 3,102 square-feet. This includes the existing roof area over the front porch not previously counted in the building coverage, and an additional 35 square-feet of building footprint resulting from the addition of one foot to the east side wall of the house, to accommodate a new structural foundation required on that side to meet building code requirements, resulting from major interior renovation work.

Relevant Approval Criteria:

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

ANALYSIS

Site and Vicinity: The site is 9,893 square-feet in area, with frontage on NE Dunckley Street and Regents Drive. The house is oriented to the corner where the two streets intersect, set back from both street property lines by over twenty feet. The main entrance is at the middle of the two wings of the house, thus set back several feet further from the two street-facing walls. With this design and distance from the street property lines, there is considerable yard area in front of the house. A single-car attached garage is being constructed on the east side of the house at 27 feet from the Dunckley Street property line.

The neighborhood is made up primarily of early 20th century houses, many of which are on lots larger than the typical 5,000 square-feet associated with the R5 zoning of this area. Houses range in size from 1½-story cottages to larger 2½-story structures.

Zoning: The site is zoned R5h. The R5 zone is the Comprehensive Plan's High Density Single-Dwelling zone, allowing density of 8 lots per acre, or average lot size of 5,000 square-feet. The 'h' indicates the Aircraft Landing Height overlay zone, which limits height of structures in relation to proximity to Portland International Airport. This proposal is not affected by the overlay zone.

Land Use History: A recent Adjustment review, LU 08-146378 AD, approved on appeal a reduced setback of one foot for the proposed attached garage.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **March 13, 2009**. The following Bureaus have responded with no issues or concerns:

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

The Bureau of Environmental Services and the Site Development Section of BDS noted that stormwater information will be required during the building permit review process.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on March 13, 2009. Staff did not receive any letters or inquiries in response to the notice.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

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

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

Findings: The *purpose* of the building coverage standard, together with the height and setback standards is to control the overall bulk of structures. They are intended to assure that taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses. Additionally, the standards help to define the character of the different zones by limiting the amount of buildings allowed on a site.

The proposal is to allow an increase in building coverage without actually changing the building footprint except for a one-foot move to the east wall, which increases the footprint by 35 square-feet. The request results from a future move in the southeast property line, which will allow the abutting east neighbor to continue use of existing yard area that she has been using by easement. The property line move will also incorporate an existing mature tree that she wishes to preserve as part of her property. Consequently, while the subject site will be reduced in area by 100 square-feet, the relationship between the two properties will not change. The properties are now separated by a grade along the area of the property line adjustment that places the abutting east property several feet above the subject property. The dwellings will be the same distance from each other. The garage addition that involved a setback adjustment met the building coverage standard when the adjustment was proposed and subsequently approved.

The subsequent addition of one foot to the east wall of the house, which is 16 feet from the east property line and will be 13.5 feet from that line when the line is moved, will not result in a discernible change to the relationship between the two dwellings. The new foundation and resulting wall at one foot further from the existing wall is due to structural requirements of the building code, resulting from major interior renovations being done on the house. Consequently, an additional 35 square-feet of lot coverage will be created by this foundation and wall change. Neither this change nor the change to the property line location on the southeast side of the property will affect the bulk of the structure. In combination with the grade difference between the properties, in which the subject site is at a lower grade than the property to the east, the increase in proportion of building coverage resulting from the slight reduction in lot size will assure that the house on the subject property does not overwhelm its east neighbor. Residents of the houses on the abutting properties to the south will not notice any change, as the south property line is not changing, nor is the existing wall of the house on that side. The garage that was formerly in the southeast corner of the property has been removed, so there is actually less building on the south side than previously existed. This results in a perceived reduction in bulk

to those abutting properties, even though the proportion of coverage technically increases. For all of these reasons, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area; and

Findings: The surrounding residential area will not be aware of the increase in building coverage that will result from the future change to the property line that, with the 35 square-foot addition to the east wall of the house resulting from building code requirements, has created. The owner of the subject site and the abutting east neighbor have agreed to apply for the property line adjustment in order to allow continued use of the easement area by the east neighbor. By moving that 100 square-foot area of land to the neighboring property, that part of the subject lot that is several feet above the yard area below it on the subject site, and consequently has not functioned as part of its yard, will now become part of the abutting property. Consequently, the residents of the abutting south properties will not notice a change in the use of that 100 square-feet of space. As indicated in the above finding, the garage that formerly abutted the south property line has been removed, which is the most obvious physical change to the subject site and the properties to the south of it. Consequently, the building bulk on the subject site is actually less from the perception of those abutting properties. The abutting property from the east will benefit by the legal change in property area, bringing the 2.6 feet of yard area onto that property, without otherwise changing the relationship of the two properties. Thus, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

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

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

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

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

Findings: There are no impacts that would result from granting the requested adjustment. The change in building coverage resulting from the future property line adjustment will not be discernible from any of the abutting properties. The property to the east will gain 2.6 feet which has been in use by that owner, through easement, and the property line adjustment will resultantly give that owner assurance of that future area of her property. The position of the dwellings on all abutting lots relative to each other will not be affected. Therefore, this criterion is met.

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

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

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The proposal to exceed the allowed building coverage is requested to facilitate a future property line adjustment that will reduce the size of the subject lot by 100 square-feet. The subsequent decrease in allowed coverage does not change the relationship of the two dwellings on the lots that will be changed in area with the property line adjustment. The house on the subject lot is of a scale and placement that ensures that it does not overwhelm any of the three abutting properties. The increase in building coverage resulting from the new foundation and wall one foot beyond the existing east wall is required for structural purposes during the house renovation, with no discernible change in the relationship to the nearest properties. The resulting move to the property line will allow use of land in a more desirable way for both the subject property and abutting neighbor, creating a workable solution for all involved.

ADMINISTRATIVE DECISION

Approval of an adjustment to zoning code standard 33.110.225 B, Building Coverage, to allow the building coverage to be increased from the maximum allowed 2,968 square-feet to the proposed 3,102 square-feet. This adjustment is subject to the approved site plan, Exhibit C-1, signed and dated April 7, 2009.

Staff Planner: Nan Stark

Decision rendered by:  **on April 7, 2009.**

By authority of the Director of the Bureau of Development Services

Decision mailed: April 10, 2009

About this Decision. This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on February 19, 2009, and was determined to be complete on March 10, 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 February 19, 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 April 24, 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.

Appeal fee waivers. Multnomah County may cover the appeal fees for their recognized associations. An appeal filed by a recognized association must be submitted to the City with either the appropriate fee or the attached form signed by the County. Contact Multnomah County at 503-988-3043, 1600 SE 190th, Portland, OR 97233.

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 **April 27, 2009 – (the first business 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.

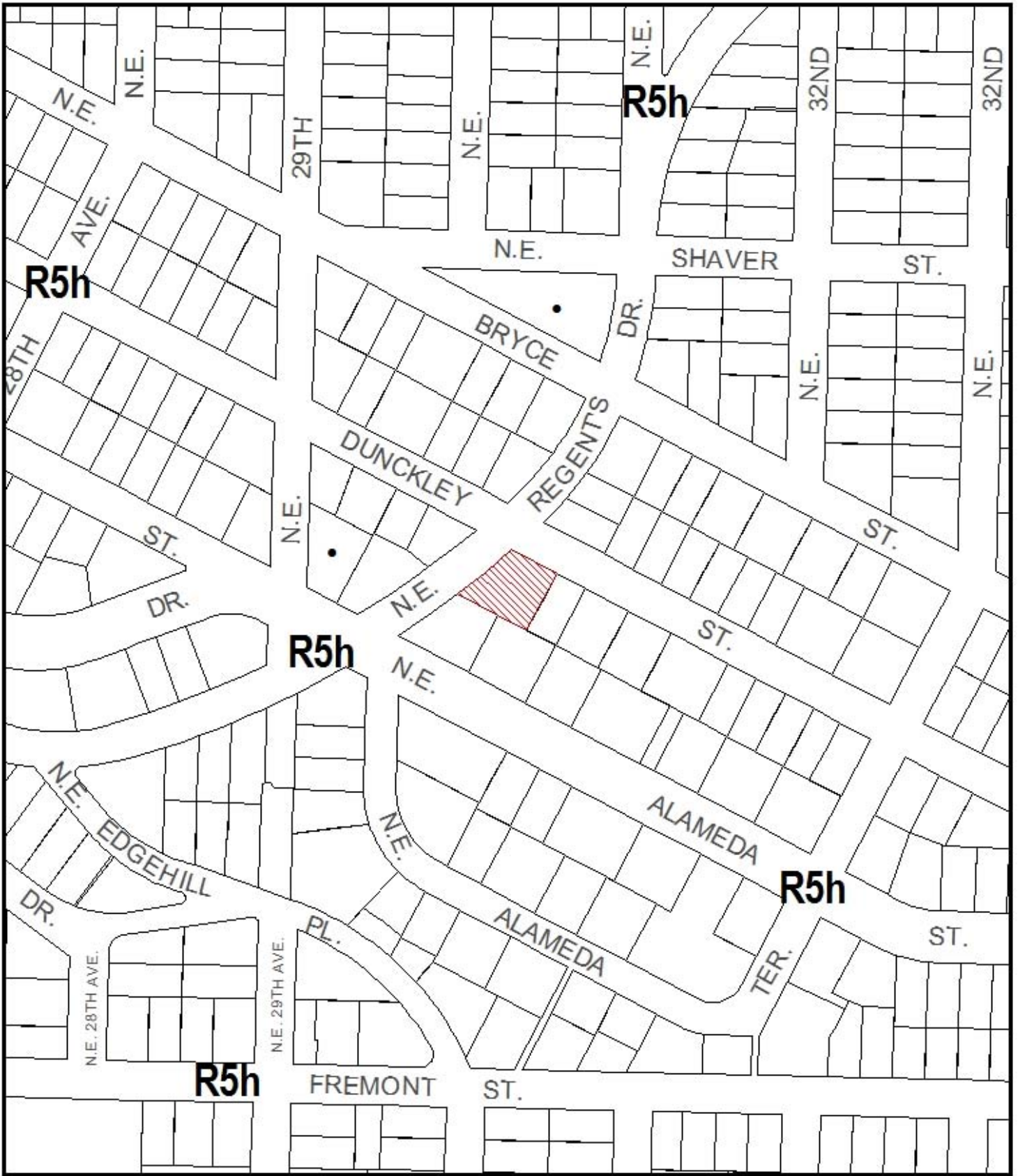
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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 (dated March 10, 2009) (attached)
 2. Elevation drawings
- 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
- F. Correspondence
 1. E. Sheldon, in support, Feb 17, 2009 (submitted with application)
- G. Other:
 1. Original LU Application
 2. Site History Research
 3. Letter requesting additional information, Stark to applicant, March 10, 2009
 4. Email correspondence between N. Stark and applicant, Feb 27 through March 11, 2009



ZONING



Site



Historic Landmark

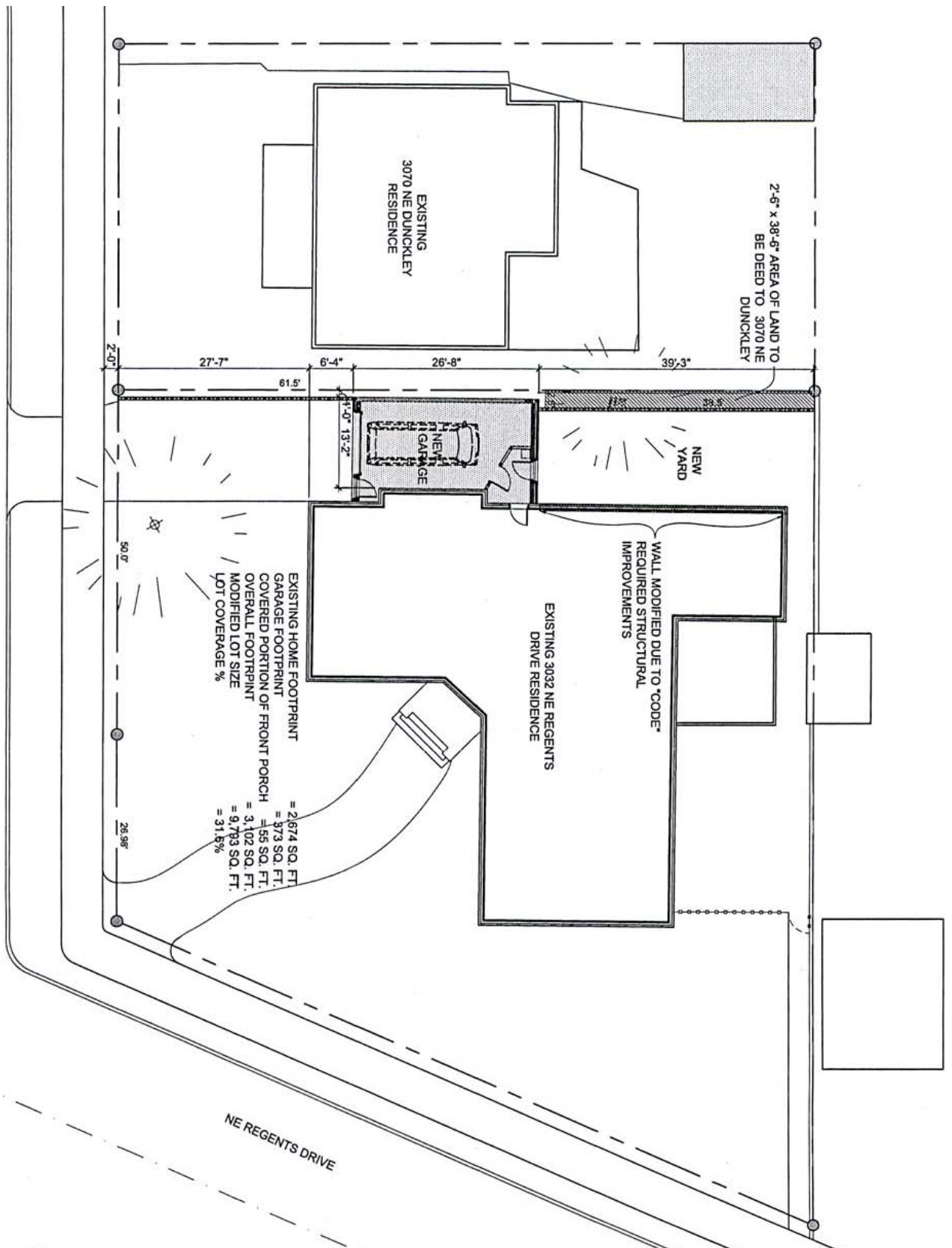


NORTH

File No.	<u>LU 09-109544 AD</u>
1/4 Section	<u>2633</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N1E24CD 8600</u>
Exhibit	<u>B (Feb 20,2009)</u>

1 SITE PLAN
1/16" = 1'-0"

NE DUNCKLEY STREET



NE REGENTS DRIVE

Approved
City of Portland - Bureau of Development Services
Planner [Signature] Date April 7, 2009
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

LN 09-109544AD
Exhibit C.1

Sarason Residence
3032 NE Regents Dr
Zoning Adjustment
March 10, 2009