



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

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www.portlandonline.com/bds

Date: May 28, 2009
To: Interested Person
From: Suzanne Savin, Land Use Services
503-823-5888 / Suzanne.Savin@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 09-121824 AD

GENERAL INFORMATION

Applicant: Thomas R Kubisiak
2144 SE 58th Ave
Portland, OR 97215-4008

Owners: Thomas R Kubisiak and Georgina Ottaviano
2144 SE 58th Ave
Portland, OR 97215-4008

Site Address: 2144 SE 58TH AVE

Legal Description: BLOCK 2 LOT 5, HUTCHINSONS ADD
Tax Account No.: R410900250
State ID No.: 1S2E06DD 05300
Quarter Section: 3236

Neighborhood: Mt. Tabor, contact Bruce Treat at bruce.treat@mttaborpdx.org
Business District: Division-Clinton Business Association, contact Darice Robinson 503-233-1888
District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.

Plan District: None

Zoning: R5 (Single-Dwelling Residential 5,000)

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

Proposal:

The applicant is planning to remove the detached garage located in the northeast corner of the site, and is planning to construct a one-story detached accessory structure in the approximate same location. The garage has a zero-foot setback from the north (side) and east (rear) property lines, while the proposed detached accessory structure will have a setback of

approximately 2 feet, 6 inches from the north and east property lines. The proposed detached accessory structure will be approximately 11 feet wide, approximately 16 feet long, and approximately 10 feet in height from grade to the midpoint of the gable, and will be used for both storage and as an artist's studio.

Zoning Code Section 33.110.220 (Setbacks) and Table 110-3 require structures to be set back a minimum of 5 feet from side and rear property lines. The applicant requests an Adjustment to Section 33.110.220 and Table 110-3, to allow the north and east walls of the proposed detached accessory structure to be set back approximately 2 feet, 6 inches from the north and east property lines, and to allow the north and east eaves of the proposed structure to be set back a minimum of 2 feet from the north and east property lines.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are the Adjustment Approval Criteria of Zoning Code Section 33.805.040.A – F.

ANALYSIS

Site and Vicinity: The site is located on the east side of SE 58th Avenue, between SE Lincoln Street and SE Division Street, and is approximately 5,000 square feet in size. The site is developed with a single-dwelling residence, built in 1912, and a detached garage.

To the north, east, south, and west of the site are properties zoned R5, developed with single-dwelling residences. Many of these properties contain accessory structures, such as garages, that appear to have setbacks of less than 5 feet from their side and/or rear property lines.

Zoning: The site is zoned R5, Single-Dwelling Residential 5,000. 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.

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

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **May 1, 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 (BES) responded that BES has no objections to the proposed accessory structure. Stormwater runoff generated on private property from redeveloped impervious areas such as roofs should be managed onsite where it originates. The response also included additional information about requirements applicable at building permit review. (Exhibit E-1)

The Site Development Section of BDS responded that they have no objection to the requested land use review. The response also included additional information about requirements applicable at building permit review. (Exhibit E-2)

The Life/Safety Plan Review Section of BDS responded that a separate building permit is required for the work proposed and the proposal must be designed to meet all applicable building codes and ordinances. Exterior walls less than 3 feet to a property line shall be one-hour fire-rated with (Exhibit E-3)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 1, 2009. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of 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 Adjustment 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 has requested an Adjustment to Section 33.110.220 (Setbacks) to allow the north and east walls and eaves of the proposed detached accessory structure to have a reduced setback from the north and east property lines. The purpose of the regulation, as stated in Section 33.110.220.A, is as follows:

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

- They maintain light, air, separation for fire protection, and access for fire fighting;
- They reflect the general building scale and placement of houses in the city's neighborhoods;
- They promote a reasonable physical relationship between residences;
- They promote options for privacy for neighboring properties;
- They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;
- They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and
- They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.

The applicant states that the requested Adjustment will equally meet the above purposes of the regulation for the following reasons:

- The setbacks for the accessory structure are larger than the setbacks of the garage that the structure is replacing. The garage has a zero-foot setback from the north and east property lines, while the walls and eaves of the replacement accessory structure will have setbacks of 2 ½ feet and 2 feet, respectively, from both the north and east property lines. These setbacks will maintain light, air, separation for fire protection, access for fire fighting, and a reasonable physical relationship between residences, to a greater degree than the existing setbacks of the garage. In addition, regarding access for fire fighting, the replacement accessory structure will

comply with construction standards for a firewall (one-hour sheetrock) on those two sides or as needed.

- The replacement accessory structure will have no windows, doors, or other openings on its north and east sides; therefore, the privacy of the adjacent properties to the north and east will be maintained.
- The replacement accessory structure will be minimally visible from the adjacent properties to the north and east, due to the existing vegetation along the shared property lines. The adjacent property to the north has a bamboo grove that abuts the shared property line and location of the replacement accessory structure, while the adjacent property to the east has a 3- to 4-foot thick laurel hedge that abuts the shared property line and location of the replacement accessory structure. These existing conditions further ensure that the privacy of the adjacent properties will be maintained.

Staff concurs with the applicant's findings. In addition, as depicted in GIS aerial photo information and as verified during a staff site visit, there are numerous other properties within the block and in the surrounding neighborhood that have accessory structures with setbacks of less than 5 feet from their rear and/or side property lines. Therefore, the location of the proposed accessory structure on the site appears to be consistent with the general building scale and placement of accessory structures in this neighborhood.

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: The proposal is within a residential zone. The garage is at least 66 feet east of the west (front) property line, and the proposed accessory structure will be in the same approximate location as the garage, and will be similar in height to the garage. The applicant states that due to the garage's significant separation distance from the front property line, it is minimally visible from the sidewalk and street. The replacement accessory structure will likewise be minimally visible from the sidewalk and street. The replacement accessory structure will also be minimally visible to the adjacent properties to the north and east, due to the presence of evergreen vegetation on the adjacent properties along the north and east property lines. Therefore, the setback adjustment for the replacement accessory structure will not significantly detract from the livability or appearance of the residential area.

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: One adjustment is requested, to allow the replacement accessory structure to have a reduced setback from the north and east property lines. This criterion is not applicable.

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

Findings: The site does not contain any City-designated scenic or historic resources. Therefore, this criterion is not applicable.

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

Findings: No impacts are expected to result from the setback Adjustment for the replacement accessory structure. The accessory structure will be at least two feet further from the north and east property lines than the garage it is replacing. The structure will not have windows or doors on its north or east sides, so the privacy of adjacent properties will not be affected. In addition, evergreen vegetation buffers are located on the adjacent properties, along the site's north and east property lines. These vegetation buffers limit visibility of the garage from adjacent properties and will likewise limit visibility of the replacement accessory structure. Therefore, no mitigation is warranted.

This criterion is not applicable.

- 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. 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 applicant has requested an Adjustment to Section 33.110.220 (Setbacks) and Table 110-3, to allow a setback reduction for the proposed accessory structure from the north and east property lines. A setback of 2 feet, 6 inches is proposed between the north and east walls of the structure and the north and east property lines. A setback of 2 feet is proposed between the north and east eaves of the structure and the north and east property lines. The applicant has provided information to demonstrate that this adjustment will comply with the Adjustment Approval Criteria. Therefore, the adjustment can be approved, per the plans and elevations. Approval of building permits is still required, after the decision is final and has been recorded with Multnomah County.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Section 33.110.220 and Table 110-3, to allow the north and east walls of the proposed accessory structure to be set back approximately 2 feet, 6 inches from the north and east property lines, and to allow the north and east eaves of the proposed structure to be set back a minimum of 2 feet from the north and east property lines, per the approved plans, Exhibits C-1 through C-2, signed and dated May 26, 2009, subject to the following conditions:

- 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.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-121824 AD."

Staff Planner: Suzanne Savin



Decision rendered by: _____ **on May 26, 2009.**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 28, 2009

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on April 15, 2009, and was determined to be complete on April 29, 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 April 15, 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. Unless further extended by the applicant, **the 120 days will expire on: August 27, 2009.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on June 11, 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 **June 12, 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:

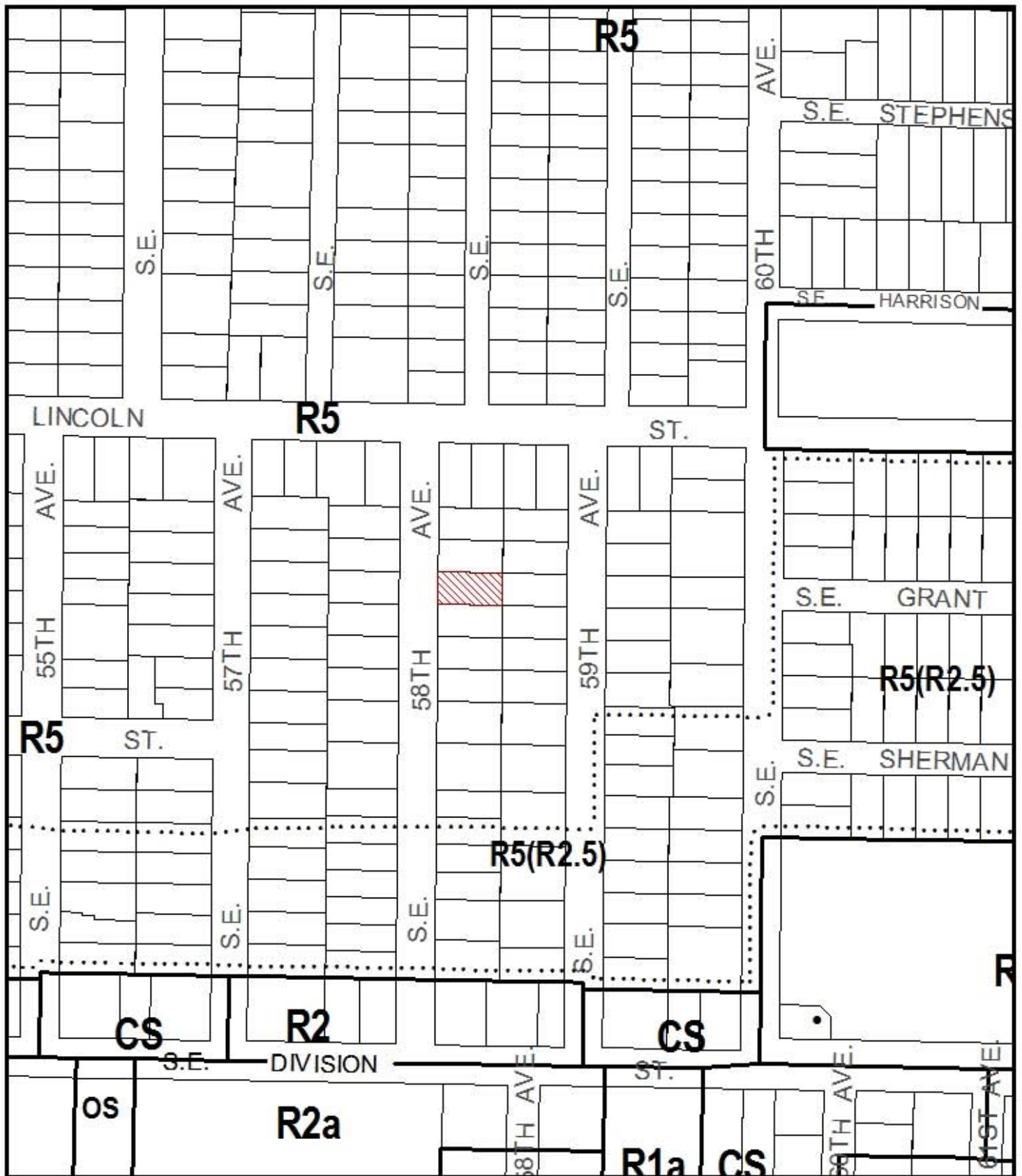
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Proposed Site Plan (attached)
 - 2. Elevations (attached)
 - 3. Existing Conditions Site Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Site Development Review Section of BDS
 - 3. Life/Safety Plan Review Section of BDS
 - 4. Water Bureau
 - 5. "No concerns" responses from Bureau of Transportation Engineering and Development Review, Fire Bureau, Bureau of Parks - Forestry Division
- F. Correspondence:
 - 1. No correspondence submitted.
- 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 503-823-7300 (TTY 503-823-6868).

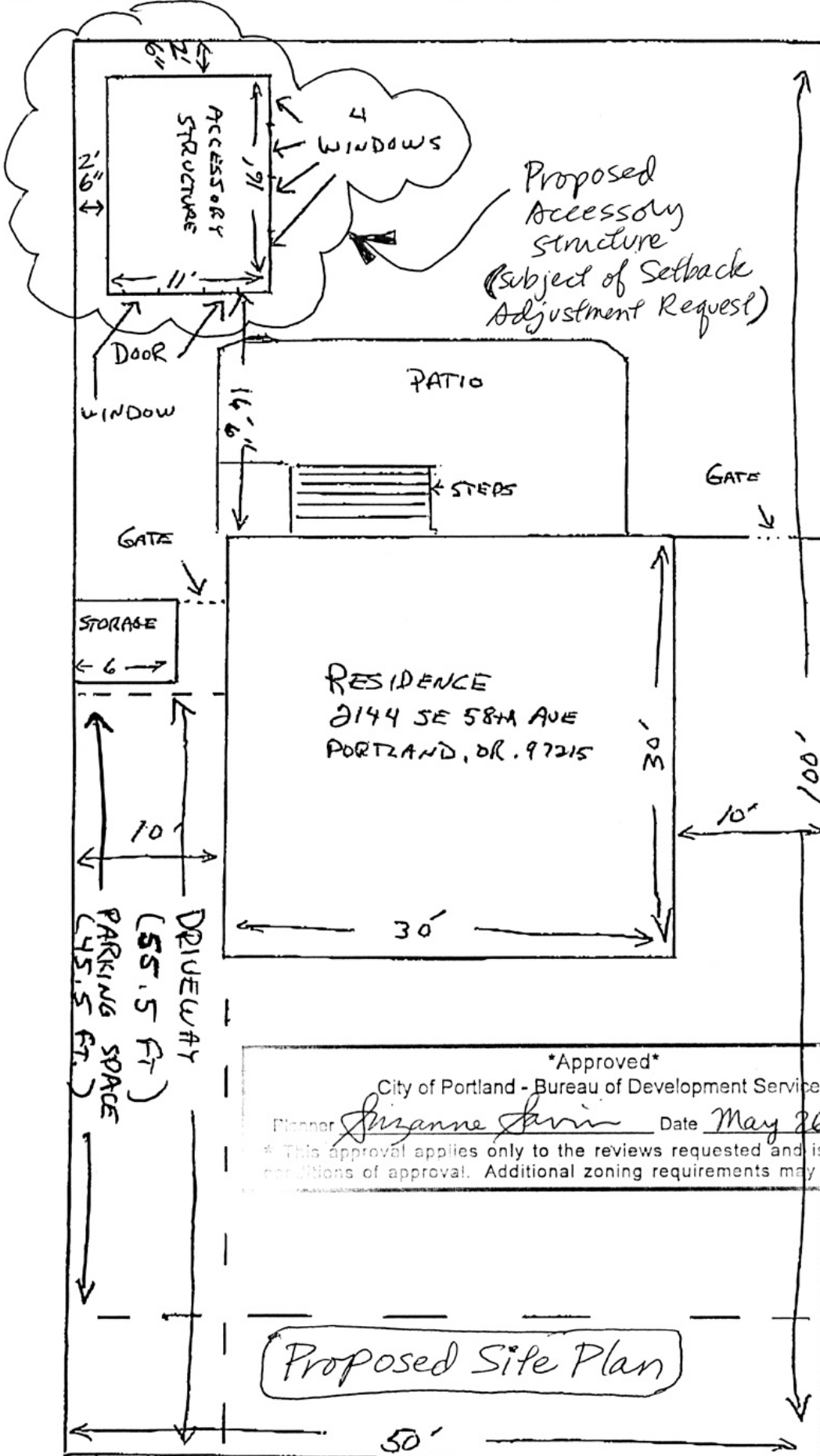


ZONING

 Site



File No.	<u>LU 09-121824 AD</u>
1/4 Section	<u>3236</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1S2E06DD 5300</u>
Exhibit	<u>B (Apr 17,2009)</u>



Proposed Accessory Structure
(Subject of Setback Adjustment Request)

Approved
City of Portland - Bureau of Development Services
Planner *Suzanne Arvin* Date *May 26 2009*
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

Proposed Site Plan

SE 58th Avenue

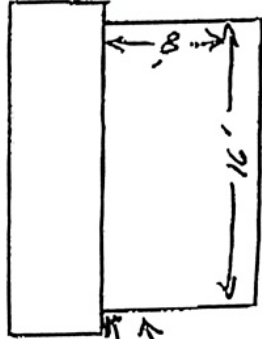
SITE PLAN: GARAGE DEMOLITION AND ACCESSORY STRUCTURE REBUILD ON APPROX. SAME FOOTPRINT

THOMAS KUBISNAK
2144 SE 58TH AVENUE
PORTLAND, OR. 97215
(503) 231-7700
T. KUBISNAK (IN) CONCASTO NET

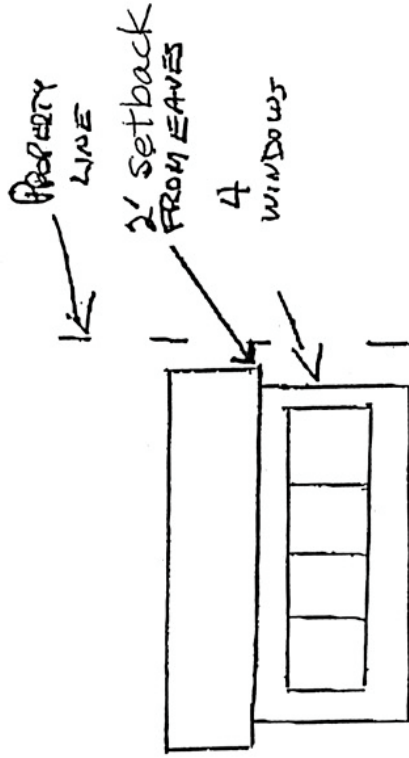
PAGE 2

REVISED 4/29/10
 THOMAS KUBISIAK
 LU 09-121824 A
 (503) 231-7700

← PROPERTY LINE



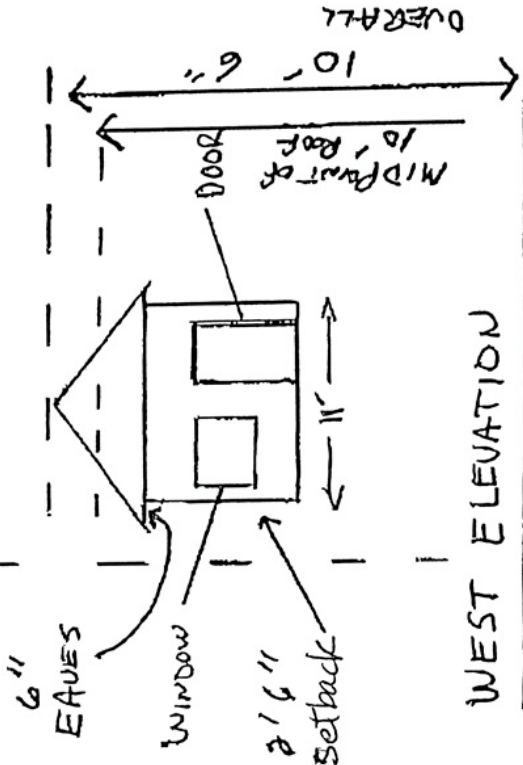
NORTH ELEVATION



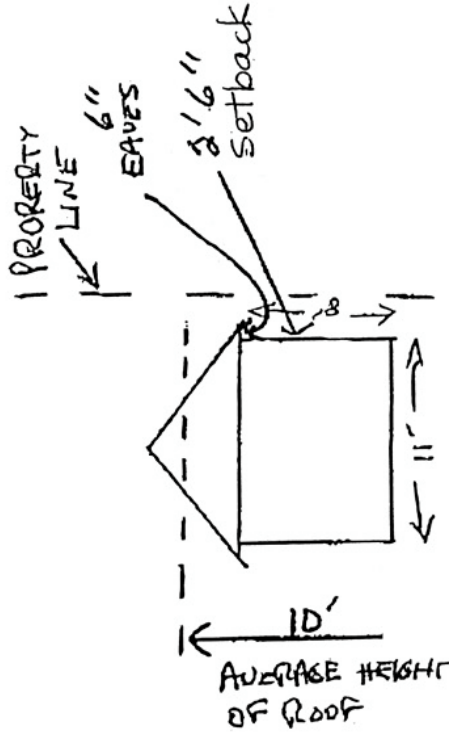
SOUTH ELEVATION

Approved*
 City of Portland - Bureau of Development Services
 Date: May 26, 2009
 *Approval applies only to the reviews requested and is subject to the terms of approval. Additional zoning requirements may apply.

← PROPERTY LINE



WEST ELEVATION



EAST ELEVATION

1" = 10' (ELEVATIONS OF PROPOSED ACCESS STRUCTURE)