



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

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: May 29, 2009
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 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 09-121991 AD

GENERAL INFORMATION

Applicant: Mark Person
WB Wells & Associates
4230 NE Fremont Street
Portland OR 97213

Owners: Robert and Mary Tongue
1929 SE 54th Ave
Portland, OR 97215

Site Address: 2053 SE 142ND AVE

Legal Description: TL 7100 0.43 ACRES, SECTION 02 1S 2E
Tax Account No.: R992021070
State ID No.: 1S2E02DA 07100 **Quarter Section:** 3244
Neighborhood: Hazelwood, contact Arlene Kimura at 503-252-9429.
Business District: Gateway Area Business Association, contact Fred Sanchez at 503-256-3910. Midway, contact Bill Dayton at 503-252-2017.
District Coalition: East Portland Neighborhood, contact Richard Bixby at 503-823-4550.
Plan District: None
Zoning: R5a Single Dwelling Residence with Alternative Design Density Overlay
Case Type: AD- Adjustment
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal: A request to reduce the 5 foot (street) side setback required in the R5 zone (33.110.220) to allow the existing detached garage on this site to remain within 3.08 feet of a new private street tract created through a recent land division (LU 08-14722).

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: The site is a flat rectangular property located on the west side of SE 142nd Avenue. There is an existing single family residence with a detached garage located towards the front of the property with access from SE 142nd Avenue and a large unimproved backyard that will be divided to create the two additional lots. There are approximately six trees located on the property which is otherwise in lawn and ornamental shrubs. The surrounding neighborhood is similarly developed with single family dwellings located on individual lots of varying sizes.

The property immediately to the south of the proposed development site has a single family residence that is located approximately 5 feet from its northern (side) property line and 26 feet west of the 142nd Ave.

Zoning: The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-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: Land Division Case LU 08-148722 LDS was approved by the City on March 6, 2009. This decision approved the division of this property into three lots and a private street tract adjacent to its south property line. One of the conditions of approval of this preliminary plat approval was that the applicant either remove the existing garage prior to final plat or obtain an adjustment from minimum street side setback requirements of the Development Code. The applicant is seeking such an adjustment in this current application.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed May 1, 2009. A number of City Bureaus have responded indicating that they do not have any concerns regarding this proposal. Their comments are exhibit series "E" to this decision.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 1, 2009. Two written responses have been received, one from the Neighborhood Association and one from a notified property owner in response to the proposal. Their stated concerns are similar.

- 1) A request that the existing fence along the property line south of the proposed street tract be retained or replaced in order to continue the screening function it serves; and
- 2) A request that a curb be included in the private street design and that stormwater run-off from the private street tract be monitored for two years so that the property to the south of the proposed development is not adversely impacted by the new paving.

Staff Response: These concerns relate more to the recently approved land division and construction of the private street tract than they do to the retention of the existing garage in its current location. Design and construction standards for the private street require stormwater to be retained on site and/or overflow in a 100 year storm event in such a manner as not to impact the neighboring property. Unless a subsequent adjustment is reviewed and granted, a curb will be installed along the south side of the private street. The Bureau of Environmental Services will require an operations and maintenance agreement for this facility but a city monitoring program is not applied to private streets. A site development permit for this private street tract has not yet been submitted.

Staff cannot find a nexus between the retention of the existing garage and the maintenance of the existing chain link fence located south of the proposed street tract necessary to include this as a condition of this adjustment application.

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. stated below, have been met.

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

Findings: The relevant purposes of building setback requirements are

- to maintain light, air, separation for fire protection, and access for fire fighting
- to reflect the general building scale and placement of development in the City's neighborhoods and promote a reasonable physical relationship between residences
- to promote options for privacy for neighboring properties and
- to 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.

The development standards for lots in the R5 zone require structures to be set back a minimum of 5 feet from street side property lines. The applicant is requesting approval of an Adjustment to reduce the southern street side setback from 5 feet to 3.08 feet, in order to retain an existing garage.

The proposed adjustment will not have any impact on light and air or on privacy for the adjacent property because the reduced setback will be adjacent to a new private street tract. The existing garage to remain will continue to be located over 25 feet from the property line with the nearest developable site to the south and behind (west) of the neighboring residence's location relative to the SE 142nd Avenue right of way. The resulting location of the structure will not create any inconsistencies with the development in the area because it is an existing structure. No changes to its location or appearance are being proposed. Finally, the proposed adjustment will not limit fire access to proposed Parcel 1 or Parcel 2. There will be just over 25 feet between the garage wall to remain and the southern property line of Tract A. This is adequate width to provide for a fire apparatus access road which requires an unobstructed horizontal width of 20 feet. Therefore, the proposed setback equally meets the purposes of the regulation 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, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: As stated in the findings above, the proposal to reduce the required setback from the south property line will still meet the purposes of maintaining fire safety, privacy, light and air. The proposed location of the garage will not change relative to SE 142nd Ave or to the property line of neighboring property 2105 SE 142nd Ave. Therefore it will remain compatible with the scale and placement of buildings in the area and will preserve a reasonable relationship between residences. Accordingly there will not be any impacts on

the livability of the residential area as a result of approval of the request to reduce the required setback from 5' to 3.08' between this structure and proposed private street tract A. The placement of the garage addition allows adequate separation between structures so that it will not create any significant negative impacts on the appearance of the property from the street or from the abutting property to the west. Therefore, 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
- D. City-designated scenic resources and historic resources are preserved; and
- E. Any impacts resulting from the adjustment are mitigated to the extent practical.
- 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: Only one adjustment is being requested. There are no scenic or historic resources on the site. No impacts have been identified and the proposed development is not located within the boundaries of the environmental overlay zones. Therefore, these criteria do not apply.

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. Future plans submitted for a building or zoning permits 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

All of the relevant approval criteria have been met. Approval of the request to reduce the required setback from the west side property line is not expected to have significant impacts on light, air, privacy, fire protection or access for fire fighting. The proposed development is compatible with the scale and placement of structures and the relationship of residences in the adjacent area. Therefore there will be no significant impacts on the livability or appearance of the residential area. The Adjustment request can be approved, subject to compliance with the site plan.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.110.220 to reduce the minimum required street side building setback from the southern side property line, from 5 feet to 3.08 feet for the existing garage to remain, in general compliance with the approved site plan, Exhibit C-1, signed and dated May 26, 2009.

Staff Planner: John Cole

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

By authority of the Director of the Bureau of Development Services

Decision mailed: May 29, 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 16, 2009, and was determined to be complete on April 28, 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 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. Unless further extended by the applicant, **the 120 days will expire on: September 25, 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 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 June 15th, 2009
- 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.

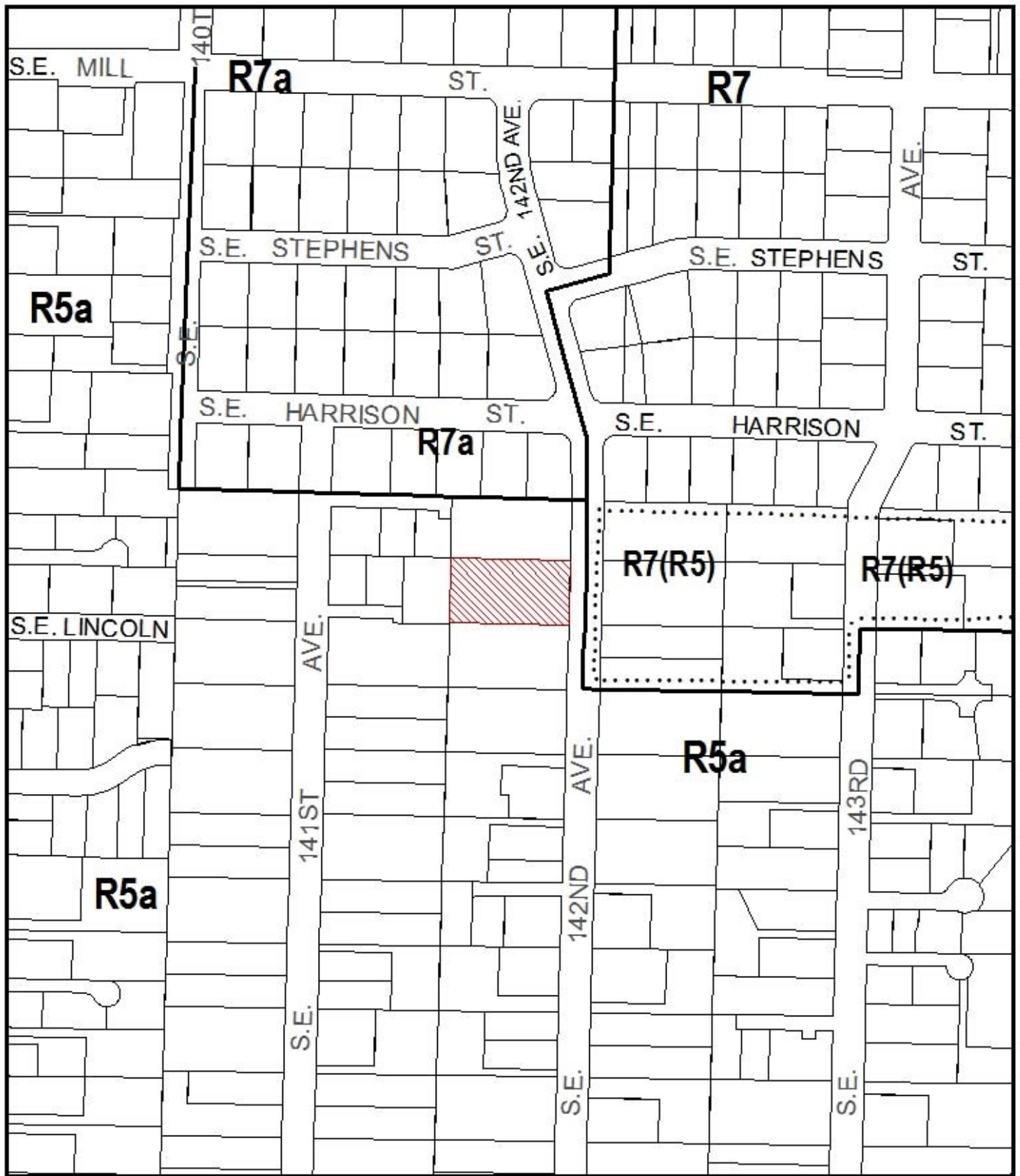
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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)
- 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. Carol Pernar, dated May 22, 2009 conditionally opposed
 - 2. Hazelwood Neighborhood Assoc. May 22, 2009 two concerns
- G. Other:
 - 1. Original LU Application
 - 2. LU 08-148722 LDP Decision

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. LU 09-121991 AD

1/4 Section 3244,3245

Scale 1 inch = 200 feet

State_Id 1S2E02DA 7100

Exhibit B (Apr 23,2009)



NORTH



W.B. WELLS & ASSOCIATES, INC.
 ENGINEERS AND SURVEYORS
 2033 SE 142ND AVENUE
 PORTLAND, OREGON 97223
 PHONE: 503-253-7441
 FAX: 503-253-7441

PRELIMINARY PLAT
 3 LOT PARTITION
 FOR
 2033 SE 142nd Avenue
 Portland, Oregon

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

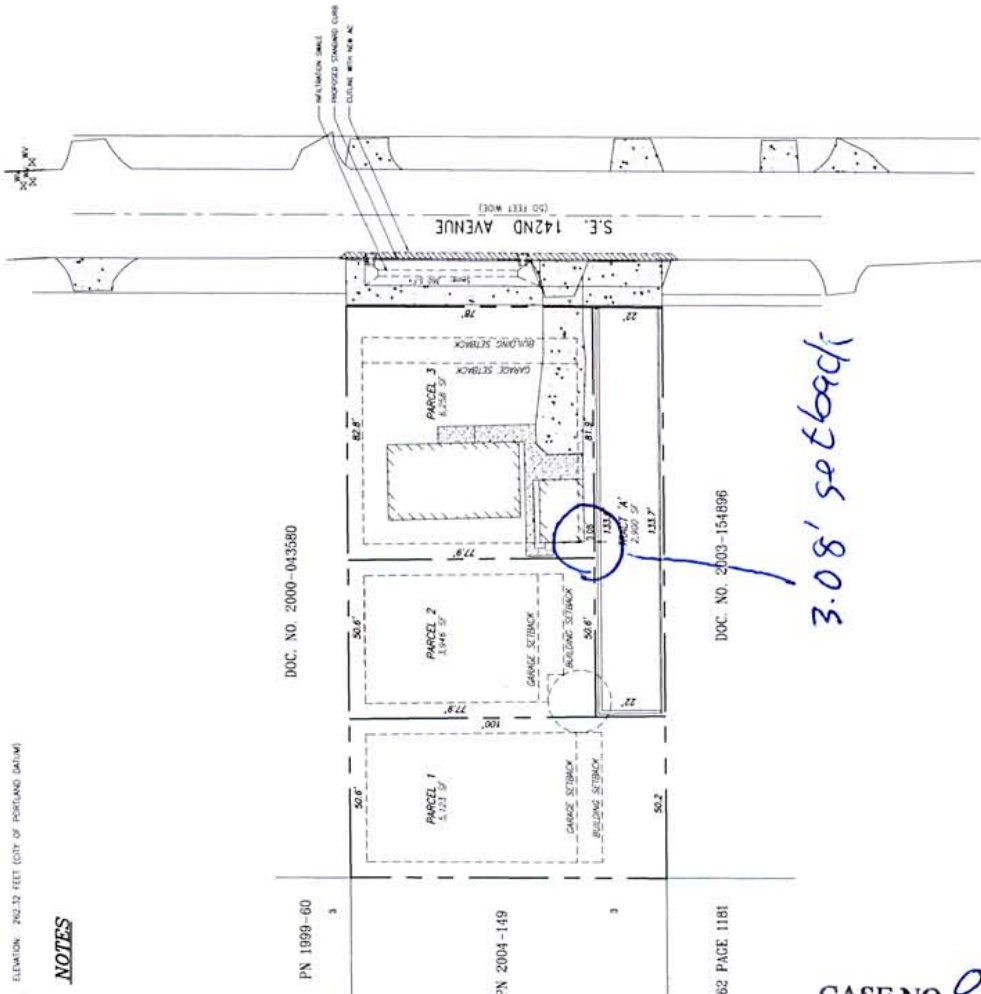
EXPIRES 09-30-10

Bob Tongue
 HOMEOWNERS of Opc.

DESIGNED BY: BSS
 DRAWN BY: DCA
 CHECKED BY: BSS
 FILE NO.:
 PLOT DATE: 7/7/08
 JOB NO.: 08-078
 W.B. WELLS 2008

REVISIONS:

SHEET 2 OF 4



- LEGEND**
- OH- OVERHEAD POWER AND UTILITY LINE
 - GAS- GAS LINE
 - SA- SANITARY SEWER LINE (EXISTING)
 - SS- SANITARY SEWER LINE (PROPOSED)
 - W- WATER LINE
 - LW- WATER METER - EXISTING
 - WV- WATER METER - PROPOSED
 - M- MAILBOX
 - TU- POWER/UTILITY POLE WITH STREET LIGHT
 - S- SANITARY SEWER MANHOLE
 - YL- YARD LIGHT
 - S- SUBJECT'S 6.0 CHAINLINK FENCE
 - A- ASPHALT
 - C- CONCRETE
 - G- GRAVEL

City of Portland
 Bureau of
 Development Services

Approved by *[Signature]* Date *May 26, 09*

By *[Signature]* Planning and Zoning Review

NOTES

BENCHMARK
 BENCH MARK NO. 1111
 2'-1 1/2" BRASS DISK, LOCATED 5' SOUTH OF THE S.E. CORNER
 OF S.E. 141ST AVENUE AND S.E. HARRISON STREET
 ELEVATION: 282.32 FEET (CITY OF PORTLAND DATUM)

DOC. NO. 2000-043580

DOC. NO. 2003-154896

3.08' of 8.03'

PN 1099-60

PN 2004-149

BOOK 962 PAGE 1181

CASE NO. *09-121991*
 EXHIBIT *C-1*