



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

1900 SW 4th Avenue, Suite 5000  
Portland, Oregon 97201  
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[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** October 8, 2009  
**To:** Interested Person  
**From:** Nan Stark, Land Use Services  
503-823-7828 / [nstark@ci.portland.or.us](mailto: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 09-142365 AD**

#### **GENERAL INFORMATION**

**Applicants/Owners:** Juan L Martinez-Poyer and Lara K Martinez-Plachta  
4246 NE Wistaria Dr  
Portland, OR 97213-1255

**Representative:** Scott Dual, Dual Purpose Construction  
2202 SW Mossy Brae Rd.  
West Linn, OR 97068

**Site Address:** 4246 NE WISTARIA DR

**Legal Description:** BLOCK 22 LOT 1, BEAUMONT  
**Tax Account No.:** R060803770  
**State ID No.:** 1N2E30BC 13700  
**Quarter Section:** 2735

**Neighborhood:** Beaumont-Wilshire, contact Michael Rounds at 503-936-0740.  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

**Zoning:** R5h, High-density single-dwelling 5,000 with 'h' Aircraft Landing height overlay zone

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

#### **Proposal:**

The owners wish to remove the existing garage and rebuild it in the same location on the property. The proposed garage is 25 feet wide and 20 feet long, with a 5-foot long shed attached to the rear. A second story is proposed above the garage, for storage space. The existing garage is 1 foot from the rear (west) property line, and the entrance is between 10 and 15 feet from the side property line on Wistaria Drive; the distance varies due to the curving street. The proposal is to maintain those setbacks for the new garage. The existing setbacks do not conform to current Zoning Code standards. Consequently, the owners request Adjustments to Zoning Code

standard 33.110.220 C., Setbacks, to reduce the setbacks for the new structure from the required 18 feet for the garage entrance to between 10 and 15 feet, and from the required 5 feet for the rear setback to 1 foot.

## ANALYSIS

**Site and Vicinity:** The site is a corner lot with three street frontages. The site's front property line abuts NE Wistaria Drive to the east, and its side property lines abut NE Stanton Street to the south and NE Wistaria Drive to the north. The site is approximately 8,200 square feet in size and is developed with a single-dwelling residence built in 1926, and a detached, flat-roofed garage. The proposed replacement garage, to be located in the approximate same location as the existing garage, is the subject of this Adjustment request.

The properties surrounding the site on all sides are zoned either R5 or R5h, and are developed with detached single-dwelling residences.

**Zoning:** The site is zoned R5h. The R5 zone corresponds to the High-Density Single-Dwelling zone of the Comprehensive Plan. This zone is found in the closer-in single dwelling residential areas of the city where public services are at high levels. Typical lot size in this zone is 5,000 square-feet. The 'h' signifies the Aircraft Landing Height overlay zone, which is applied to areas within the vicinity of Portland International Airport, and limits heights of structures and vegetation. The overlay zone does not apply to this proposal.

**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 **September 11, 2009**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau

The Bureau of Transportation Engineering responded that as proposed, the garage door will be 24 to 31 feet from the face of the curb. This distance is long enough to prevent overhang into the street by cars parked in the driveway, and it is the same as the existing garage. Additionally, there are several similar garage approaches in this vicinity. (Exhibit E-2)

The Site Development Section of BDS reviewed the simple infiltration testing and the applicant's infiltration/stormwater plan and determined that the proposed drywell is acceptable. (Exhibit E-5)

The Life/Safety Plan Review Section of BDS responded with information concerning access to the second floor storage space portion of the proposed garage. Conversion of the second floor storage space to "habitable" space will be subject to additional building code requirements. (Exhibit E-6)

**Staff Comment:** Conversion of the second floor storage space to living area (including a bedroom, office, or Accessory Dwelling Unit) would also be potentially subject to additional land use review requirements, in addition to the additional building code requirements described in the Life/Safety Plan Review response.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on September 11, 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 (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 applicant has requested setback adjustments for the replacement garage's rear (west) setback and side (north) setback. The purpose of the setback regulations, as stated in Section 33.110.220.A, are 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 Criterion A will be met because the proposed replacement garage's north-south length along the west property line, and its setbacks from the west and north property lines, are virtually the same as those of the existing garage. For that reason, there will be no negative effects on separation for fire protection and access for fire fighting. The west side of the replacement garage will have no windows, so the privacy of the abutting property to the west will be maintained.

The proposed 2-story replacement garage will be taller than the existing single-story garage, and with a 1-foot setback from the west property line, this taller structure has the potential to shade a portion of the rear yard on the abutting property to the west, in the morning when the sunlight is coming from the east. However, there is an existing detached garage and shed on the abutting property to the west, both of which are located adjacent to the location of the replacement garage on the site. These structures provide a spatial separation of approximately 10 feet between the replacement garage on the site, and the open back yard of the abutting property to the west. It is reasonable to expect that shading impacts of the replacement garage will be limited to the early

part of the day, and will be mainly concentrated on the rooftops of the garage and shed on the abutting property to the west, rather than that property's yard. Therefore, light will be maintained, and a reasonable physical relationship between residences will be maintained.

The Bureau of Transportation has reviewed the request for the garage entrance to be less than 18 feet from the north property line and has concluded that the proposed setback distance is long enough to prevent overhang into the street by cars parked in the driveway. Therefore, the proposal provides room for a car to park in front of a garage door without overhanging the street or sidewalk, and maintains driver visibility when backing onto the street.

For the above reasons, the request will comply with the purpose of the setbacks regulation. 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 site is within a residential zone. The applicant states that the proposal will not significantly detract from the livability and appearance of the residential area, because the replacement garage's location will be virtually the same as that of the existing garage. In addition, the applicant notes that the replacement garage will have lap siding and period lighting, and its main roof line will be a peaked roof that ties in with the peaked roof of the residence on the site, as well as the peaked roofs of the detached garage and residence on the abutting property to the west. For these reasons, the request will comply with Adjustment Approval Criterion B.

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:** The applicant is requesting Adjustments for the replacement garage's setbacks to both the north and west property lines. However, the proposed setbacks will simply replicate the setbacks of the existing garage. Therefore, the cumulative effect of the adjustments will result in a project that is still consistent with the overall purpose of the zone.

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 only potential impact of granting the Adjustment is the potential for additional shading of the rear yard of the abutting property to the west, by the placement of a 2-story garage wall at 1-foot from the west property line, which will replace the existing 1-story garage wall. However, the abutting property to the west contains a detached garage and a shed, both of which are located adjacent to the

shared lot line and the location of the replacement garage's west wall. These accessory structures provide a structural and spatial separation of at least 10 feet, between the west wall of the proposed replacement garage and the open rear yard of the abutting property to the west.

Therefore, potential shading impacts of the proposed replacement garage's west wall will be offset by the spatial separation provided by the location of the garage and shed on the abutting property to the west. Therefore, no mitigation is warranted.

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 applicant has requested Adjustments to Section 33.110.220.C (Setbacks), to reduce the setbacks of the replacement garage from the required 18 feet for the garage entrance to between 10 and 15 feet, and from the required 5 feet for the rear setback to 1 foot. The applicant has provided information to demonstrate that the Adjustment will comply with the Adjustment Approval Criteria. Therefore, the Adjustment can be approved, per the site plan and elevations. Approval of a building permit is still required, after the decision is final and has been recorded with Multnomah County.

## **ADMINISTRATIVE DECISION**

Approval of Adjustments to Zoning Code standard 33.110.220 C., Setbacks, to reduce the setbacks for the new accessory structure from the required 18 feet for the garage entrance to between 10 and 15 feet, and from the required 5 feet for the rear setback to 1 foot. This approval is subject to the approved site plan and elevation drawings, Exhibits C-1 through C-2, signed and dated October 6, 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 09-142365 AD."

**Staff Planner: Nan Stark**



**Decision rendered by:** \_\_\_\_\_ **on October 6, 2009.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: October 8, 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 July 9, 2009, and was determined to be complete on September 8, 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 July 9, 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: January 6, 2010.**

**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 October 22, 2009** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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 call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, 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](http://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 **October 23, 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 503-823-7967.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless:

- A building permit has been issued, or
- The approved activity has begun, or
- In situations involving only the creation of lots, the land division has been recorded.

**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the City Planning Director, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

**Recording other land use decisions.** If the preliminary land division approval also contains approval of other land use decisions (examples include adjustments, conditional uses, and environmental reviews), these other approvals must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

The applicant, builder, or their representative may record the final decisions on these other land use decisions 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.

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- The approved activity has begun, or
- In situations involving only the creation of lots, the land division has been recorded.

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

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

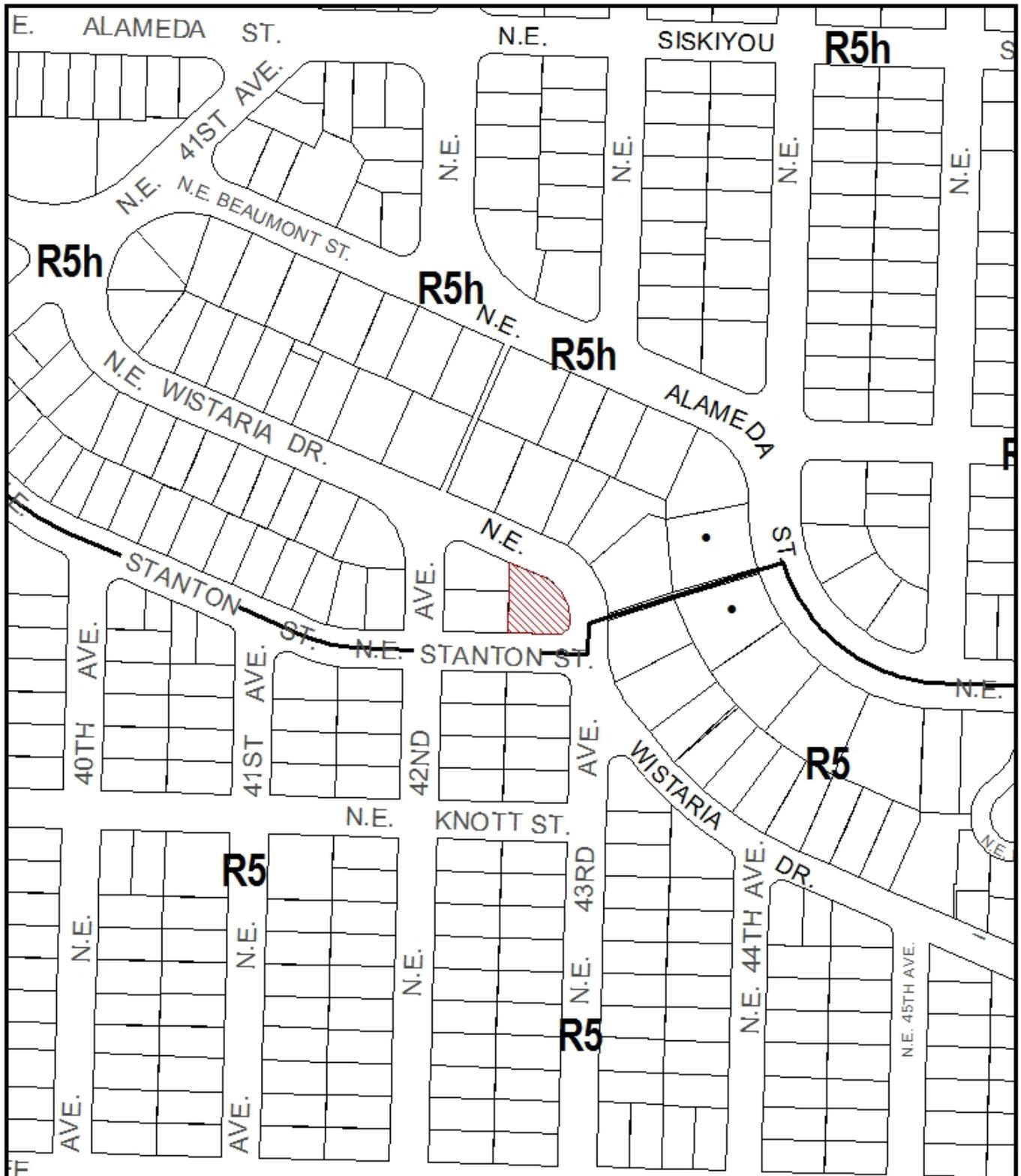
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

A. Applicant's Statement

- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevations (attached)
  - 3. Floor Plan, Garage First Floor
  - 4. Floor Plan, Garage Second Floor
- 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. "No concerns" responses from Fire Bureau, Bureau of Parks – Urban Forestry
  - 5. Site Development Review Section of BDS
  - 6. Life/Safety Plan Review Section of BDS
- F. Correspondence:
  - 1. No correspondence was 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. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



# ZONING

-  Site
-  Historic Landmark



File No. LU 09-142365 AD  
 1/4 Section 2735  
 Scale 1 inch = 200 feet  
 State\_Id 1N2E30BC 13700  
 Exhibit B (Jul 14, 2009)

\*Approved\*

City of Portland - Bureau of Development Services

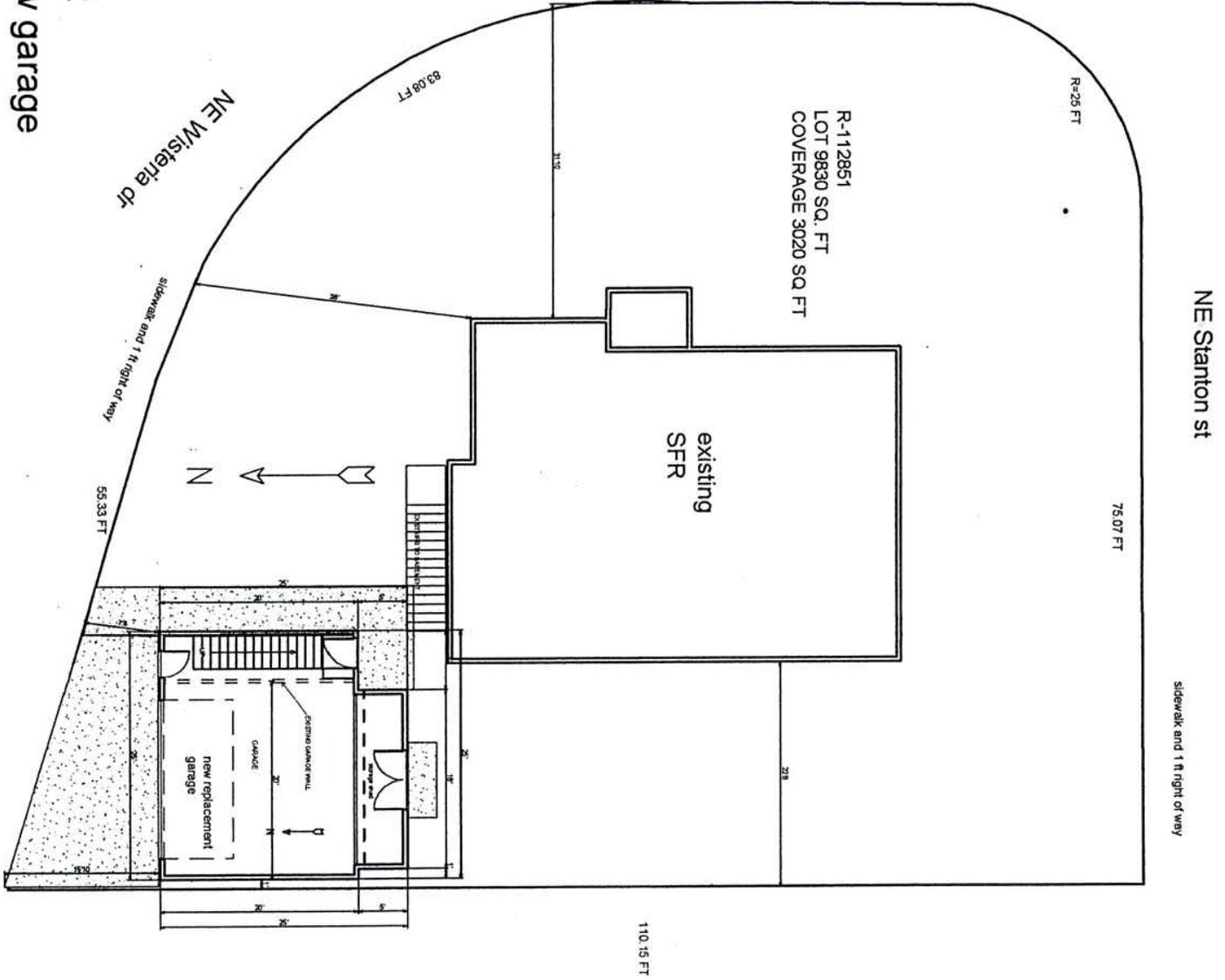
Planner Suzanne Savin for Man Stark Date October 6, 2009

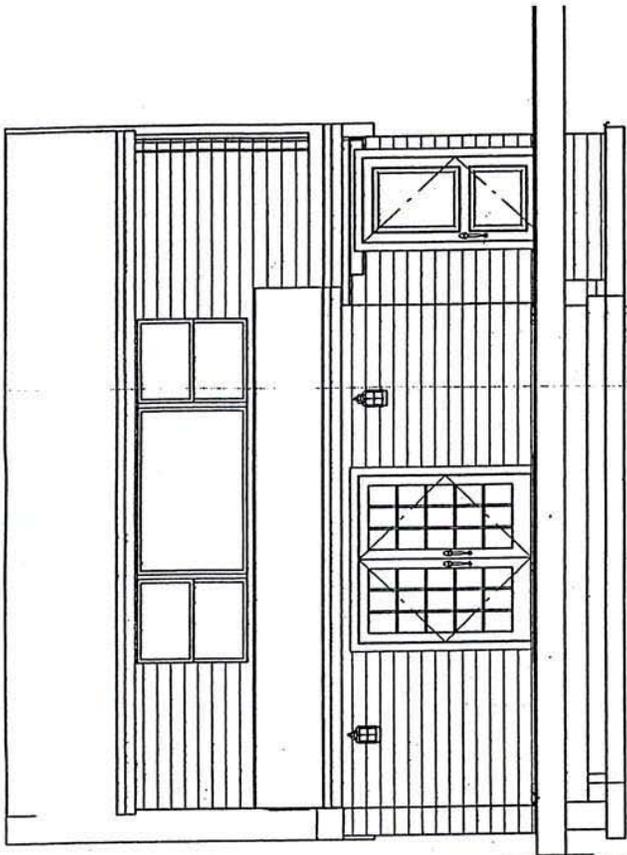
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

NE Wisteria dr

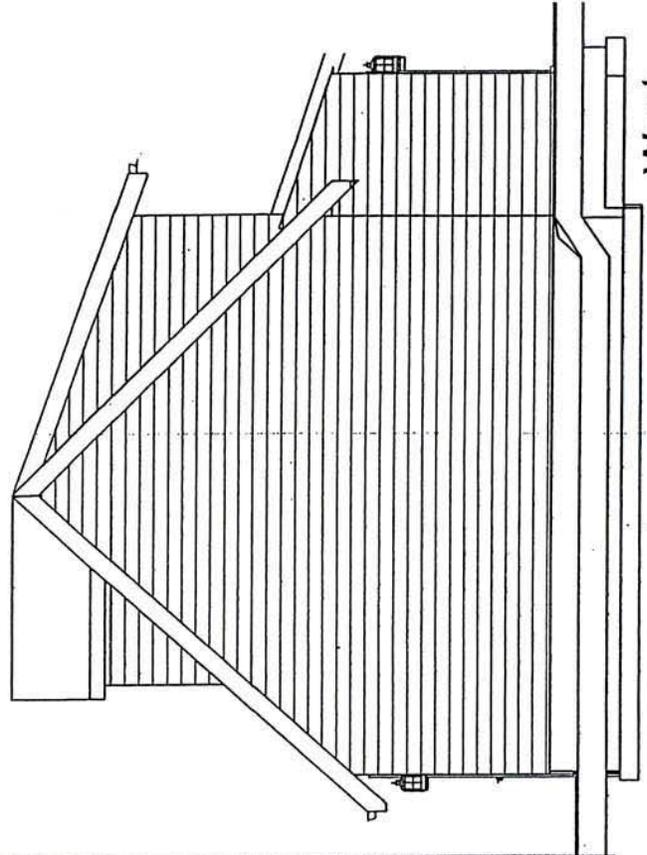
sidewalk and 1 ft right of way

1/4 in = 1 ft  
 proposed new garage





SOUTH



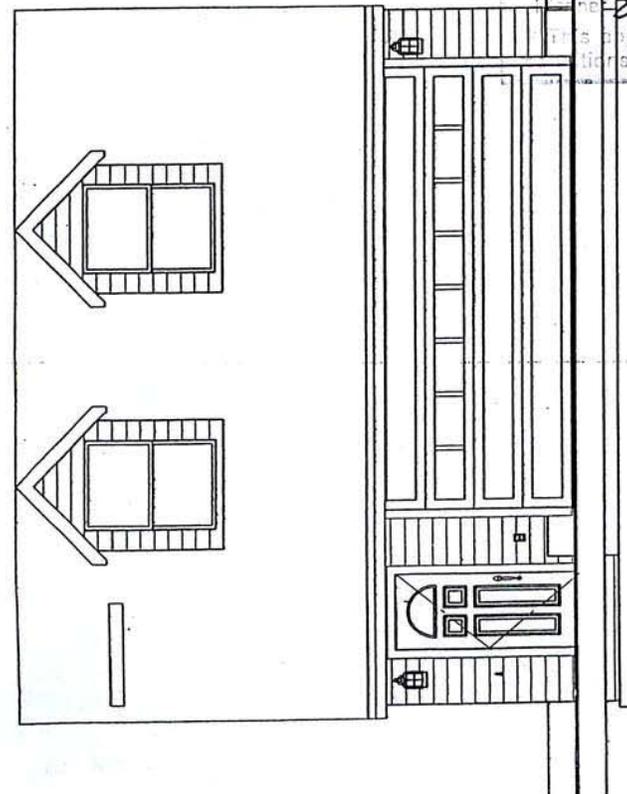
West

\*Approved\*

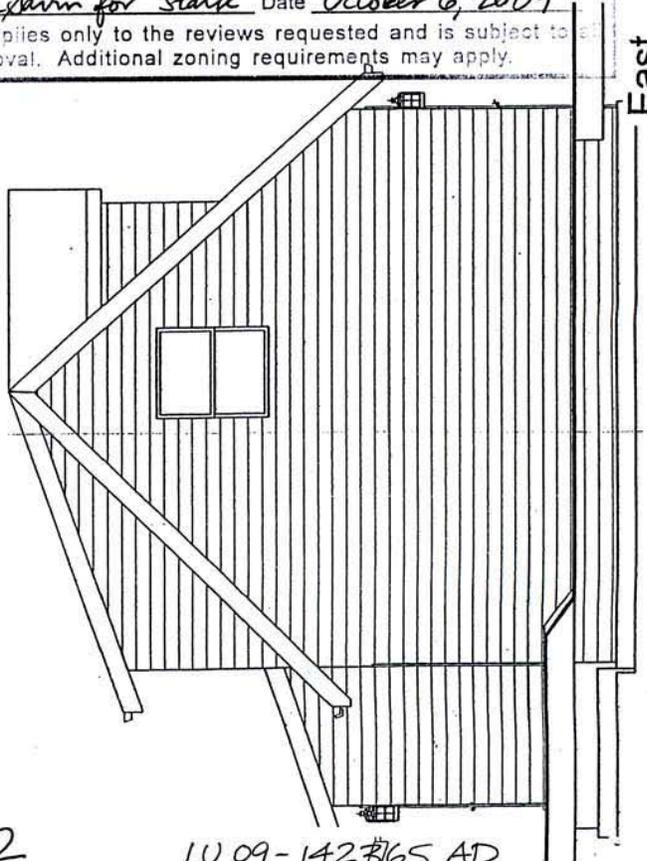
City of Portland - Bureau of Development Services

*Suzanne Levin for* <sup>*Man*</sup> *Stark* Date *October 6, 2009*

This approval applies only to the reviews requested and is subject to the City of Portland's approval. Additional zoning requirements may apply.



NORTH - PEARL WISTAR



East

Exhibit C-2

LW 09-142 3/65 AD