



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: June 11, 2010
To: Interested Person
From: Sheila Frugoli, Land Use Services
503-823-7817 / frugolis@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 10-133198 AD

GENERAL INFORMATION

Applicant: Lee Allred
Tabor East LLC
7100 SW Gable Pkwy
Portland, OR 97225

Site Address: 7247 SE DIVISION ST

Legal Description: BLOCK 1 LOT 12 EXC W 40' LOT 13, TERRACE GARDENS
Tax Account No.: R824200290
State ID No.: 1S2E05DC 12400
Quarter Section: 3238

Neighborhood: Mt. Tabor, contact Bruce Treat at bruce.treat@mttaborpd.org
Business District: Eighty-Second Avenue, contact Ken Turner at 503-484-6225.
District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.

Zoning: R2, Multi-Dwelling Residential 2,000

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

Proposal: The applicant is requesting an Adjustment to increase the maximum allowed fence height in the required front setback from 3.5 to 6 feet. The front setback is the first 10 feet from the street property line. In response to a complaint, the City has cited the newly-built fence as a Zoning Code violation. The applicant is requesting this Adjustment in order to legalize the 6-foot tall fence and keep it in its current location.

The applicant has installed tall arborvitae shrubs in front of the fence. Shrubs and other vegetation that are used for visual screening are not regulated in the Zoning Code.

ANALYSIS

Site and Vicinity: The site is a 6,750 square foot lot developed with a two story single-dwelling residence. A detached garage is located behind the house.

The western and eastern abutting lots are developed as multi-dwelling residential buildings. The area includes a mixture of single and multi-dwelling development and small commercial businesses including medical offices. Additional commercial properties front onto Division Street farther to the east. To the west of the site is a Portland Public School, and further west is the Warner Pacific College campus. Mount Tabor Park is nearby, to the north,

Zoning: The site is zoned R2, Low Density Multi-dwelling Residential. This zone allows approximately 21.8 dwelling units per acre.

Land Use History: City records indicate there was a prior land use review for this site. In 2004, a Property Line Adjustment was approved to move the west property line four feet to the west (04-018418 PR).

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed May 13, 2010. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 13, 2010. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE 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 statement regarding fences is as follows:

33.110.255 Fences

Purpose: The fence standards promote the positive benefits of fences without negatively impacting the community or endangering the public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.

The applicant is requesting an Adjustment to increase the fence height allowance from 3.5 feet to 6 feet for the portion of fence located within the required 10-foot front setback area. The applicant is requesting approval of the already-constructed fence. The fence is set back one foot from the public right-of-way. The public right-of-way extends 18 feet from the curb

and approximately 10 feet from the edge of the sidewalk. The fence is screened by tall arborvitae shrubs that are spaced closely together, to form a continuous hedge.

This request responds to the purpose of the fence regulations as follows:

Provide privacy and protect children and pets from busy streets. The fence provides privacy for the applicant and a safe enclosure for pets and children, keeping them away from SE Division Street a busy four-lane roadway. The street is a designated Neighborhood Collector street. Outdoor activities can be enjoyed by the applicant in a more private setting.

Safety and Surveillance: The Bureau of Transportation (PBOT) staff determined that the fence would not impact to the public transportation system. Further, no concerns were raised by the Police or Fire Bureaus. Access onto the residential lot is available via a wide driveway located on the east side of the lot.

The street facing windows and front door are elevated to allow views over the fence onto the street and nearby properties. Because the fence is set back from the existing sidewalk at least 10 feet, surveillance opportunities of pedestrians and vehicles entering the sites off SE Division will not be not significantly reduced.

Sense of Community: In the vicinity of the site, between SE 71st and SE 76th Avenues, the properties fronting SE Division reflect a variety of land uses and development styles. Nearby sites are developed as multi-dwelling residences, residential care facilities, medical office uses, single-dwelling residences and a public grade school. There is not a predominant style of building or depth between the buildings and the public right-of-way. Many of the nearby courtyard-like apartment buildings have parking between the building and SE Division Street. The tall fence does not stand out or create a significant barrier between the residence and nearby uses and activities.

Appearance. The fence is comprised of wide vertical boards with horizontal rails creating a cap (top) and shirt (bottom) on the fence panels. The fence material is a white vinyl/plastic material which connotes the appearance of a white-painted wood fence. The fence appears to be solid and well-constructed. The fence is heavily screened by densely planted tall arborvitae shrubs which are taller than the fence and have created a hedge-like appearance. The Zoning Code does not regulate vegetation such as a tall hedge even though it functions like fence, creating a visual and physical barrier. Because the fence is separated from the sidewalk by at least 10 feet and is screened with vegetation, it does not create an unattractive wall.

For the reasons stated above, this approval 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 under criterion A, the portion of the fence located within the front setback area does not significantly detract from the appearance and active character of SE Division Street. 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: There are no such resources present on the site; this criterion is not applicable.

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

Findings: There are no significant impacts that would result from granting the requested adjustment. Therefore no mitigation is needed. This criterion is met.

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

Findings: The site is not within an environmental zone; this criterion is not applicable

DEVELOPMENT STANDARDS

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

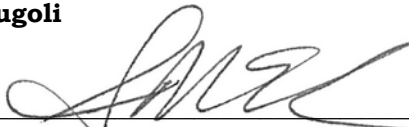
CONCLUSIONS

The fence does not mask the scale of the house or dominate the streetscape. The approval criteria are met for the fence and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to increase the maximum allowed fence height from the required 3.5 feet to 6 feet for the existing fence that is located within the 10-foot front setback area, per the approved site and landscaping plan, Exhibits C.1, signed and dated June 9, 2010.

Staff Planner: Sheila Frugoli

Decision rendered by:  **on June 9, 2010**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 11, 2010

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 29, 2010, and was determined to be complete on May 11, 2010.

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 29, 2010.

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 June 25, 2010** 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.

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 28, 2010 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

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

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

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

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

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

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

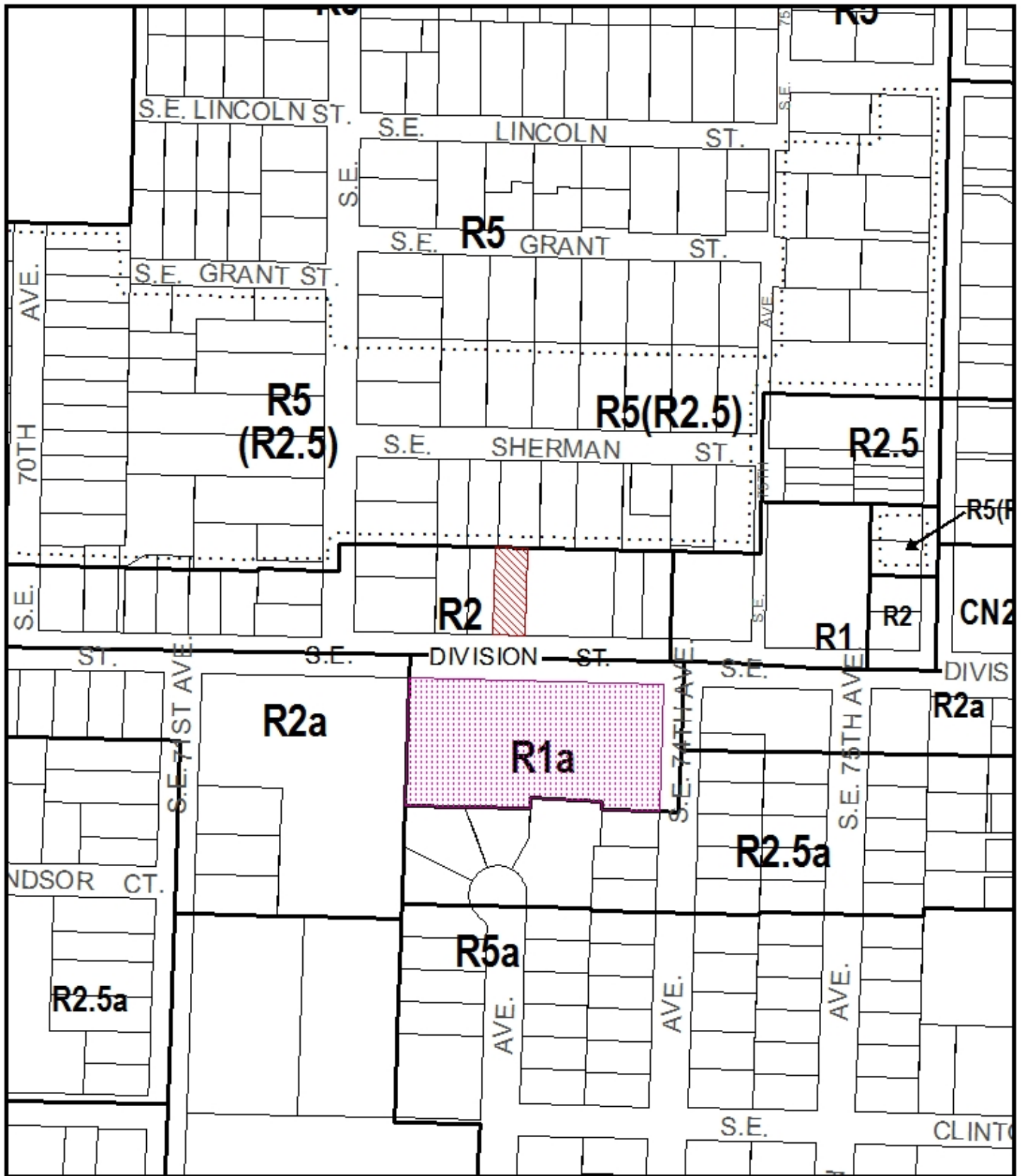
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Front Elevation showing fence

3. Fence Detail
 4. Photos of Constructed Fence and Landscaping and Photos of Nearby Sites
- D. Notification information:
1. Mailing list
 2. Mailed notice
- E. Agency Responses: TRACS Print-out showing "No Concerns"
- F. Correspondence: NONE
- 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
-  Also Owned

File No. LU 10-133198 AD

1/4 Section 3238

Scale 1 inch = 200 feet

State_Id 1S2E05DC 12400

Exhibit B (Apr 30,2010)



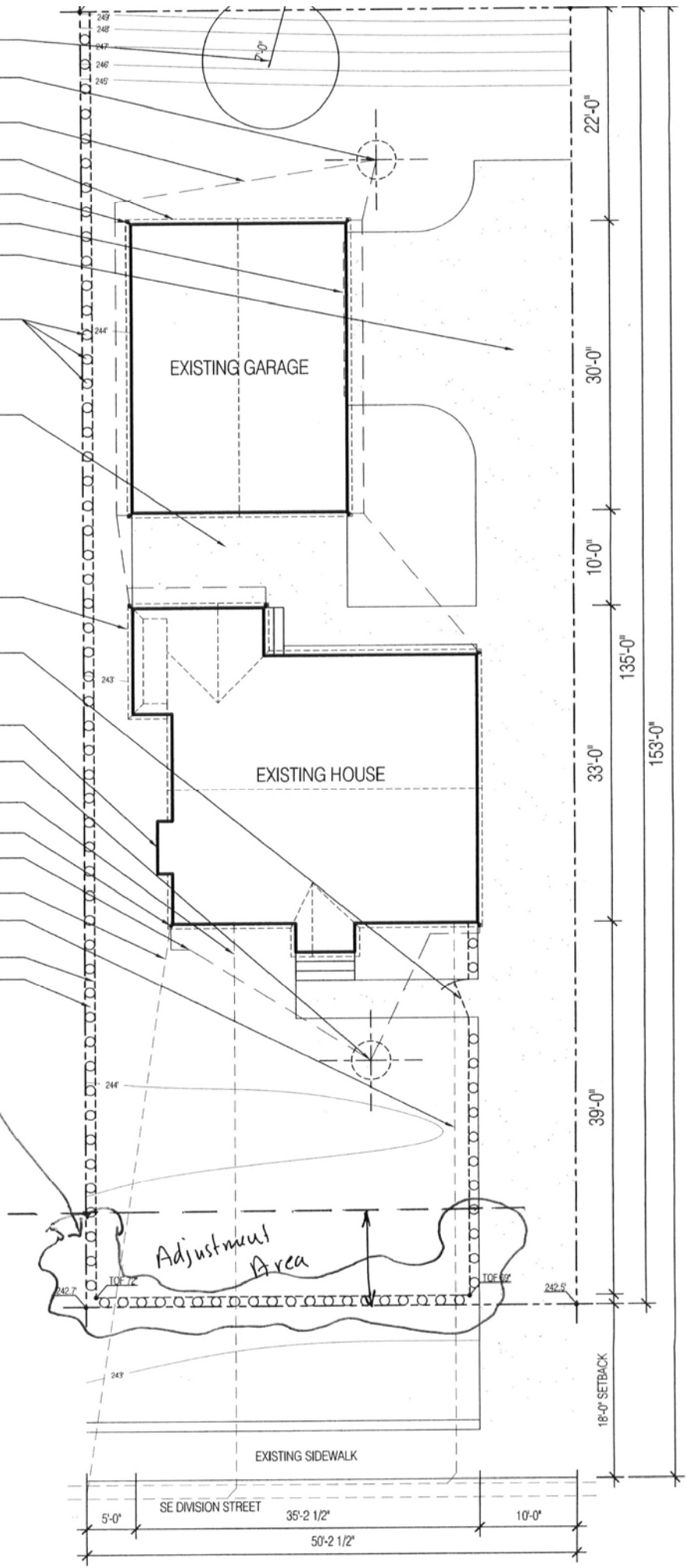
NORTH

RECEIVED
 APR 29 2010
 By _____

*** Approved ***
 City of Portland
 Bureau of Development Services
 Planner *Heidi Fungel*
 Date *June 9, 2010*

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

- EXISTING 12" WALNUT TREE
- EXISTING 4X5' DRYWELL
- DRAINAGE TO REAR DRYWELL
- 6" ROOF OVERHANG
- DOWNSPOUT (TYP AT BLDG CORNERS)
- 16'-0" GARAGE DOOR
- EXISTING CONC. DRIVEWAY
- EXISTING 12" Ø ARBORVITA (ALONG FENCE) TYP
- EXISTING CONC. PATIO
- 6" ROOF OVERHANG
- EXISTING GATE
- FIREPLACE CHIMNEY
- EXISTING 4X5' DRYWELL
- SEWER SERVICE
- DOWNSPOUT (TYP AT BLDG CORNERS)
- DRAINAGE TO FRONT DRYWELL
- OVERHEAD ELECTRIC SERVICE
- WATER SERVICE
- EXISTING 72" FENCE
- 1" PLANTING STRIP (CONTINUOUS)



6' fence

LOT AREA	6777.60 FT
IMPERVIOUS AREA	
DRIVEWAY	1522 SQ FT
PATIO	220 SQ FT
WALK	156 SQ FT
ROOF (INC. OVERHANG)	1747 SQ FT
TOTAL	3546 SQ FT
BUILDING COVERAGE	
(HOUSE)	991 SQ FT
(GARAGE)	660 SQ FT

LEGAL DESCRIPTION
 PROPERTY ID : R284510
 STATE ID : 152E05DC 12400
 MAP # : 3238 OLD

PROJECT ADDRESS
 7247 SE DIVISION STREET
 PORTLAND, OR 97206

Exhibit C.1

LU 10-133198 AD
SITE PLAN
 SCALE 1"=10'-0"

