



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

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Date: July 23, 2010
To: Interested Person
From: Sylvia Cate, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **denied** 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 10-136908 AD

GENERAL INFORMATION

Applicant: Ha Dong Ngo and Daniel A Garcia,
1121 NE 157th Ave
Portland, OR 97230-5308

Site Address: 1121 NE 157TH AVE

Legal Description: LOT 2, PARTITION PLAT 2006-72
Tax Account No.: R649862860
State ID No.: 1N2E36AB 02202
Quarter Section: 2946
Neighborhood: Wilkes Community Group, contact Alice Blatt at 503-253-6247.
Business District: Gateway Area Business Association, contact Fred Sanchez at 503-256-3910.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.
Plan District: Glendoveer
Zoning: R10, Single Dwelling Residential 10,000

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

Proposal:

The applicant has constructed a 12 x 14 foot storage shed. Although the structure is less than 200 square feet in area, it does trigger a building permit due to the height of the walls and zoning regulations do apply. [The original Notice of Proposal incorrectly noted that the structure does not require a building permit.] The shed is located within the required side yard setback. Therefore, the applicant is requesting an Adjustment to reduce the required side yard setback from 10 feet to 2 feet, with an eave projecting to 1.5 feet from the north [side] property line. Attached to this notice are site plans and elevations depicting the proposal.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

The applicant has constructed a structure without benefit of building permit review and issuance. Such a review would have informed the applicant that the structure would need to comply with the required 10 foot set back. Once the construction was inspected by the City, it was determined that the structure did not comply with the required setback and the applicant was informed that the structure needed to be removed or obtain a land use Adjustment approval for the location of the structure. The applicant subsequently applied for this Adjustment request.

Site and Vicinity: The site is a relatively flat, rectangular lot 8201 square feet in area and developed with a 2645 house built in 2008. Vehicular access to the lot is via a private easement per the Land Division that created the lot, but this land division also required dedications for future right of way improvements along the westerly property line. Therefore, although the house is oriented toward NE 157th Avenue and the private access easement, the front property line of this lot is the westerly property line, which functions as the 'rear' lot line due to the orientation of the development.

Zoning: The site is zoned R10, a Low Density Single Dwelling Residential zone.

Land Use History: City records indicate that prior land use reviews include the following: LU 05-147948 LDP, which approved a Preliminary Plan for a 3-lot Partition, resulting in 3 lots for detached single family homes. The subject site is lot 2 of this subdivision.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **June 3, 2010**. The following Bureaus have responded with no issues or concerns:

- Water Bureau notes that the site is served by the Rockwood Water District.
- Bureau of Parks-Forestry Division notes no concerns.

The Bureau of Environmental Services responded with the following comment: BES has no objection to the proposed adjustment provided that stormwater from the shed is discharged safely and all setback requirements of the 2008 SWMM are met. Stormwater from the new development may be discharged to splash blocks if setbacks and grades allow. All points of discharge must be at least 5 feet from property lines, 10 feet from a neighbor's building, 6 feet from a building (on the same property) with a basement and 2 feet from a building (on the same property) without a basement. Gutters on the north side of shed should be directed away from the neighboring property and should discharge outside of the setback

The Bureau of Transportation Engineering responded with the following comment: No impact to the public Right of Way, or to the level of service is anticipated. Transportation has no objection to this proposal.

The Fire Bureau responded with no concerns.

The Site Development Section of BDS responded with the following comment: Site Development has no objection to approval of the proposed Adjustment to setback requirements, provided that the shed has a stormwater system that is acceptable to the Bureau of Environmental Services and meets minimum setback requirements. Site Development would have no objection to on-site infiltration of stormwater at this location.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 3, 2010. Two written responses have been received, one a joint letter from two Neighborhood Associations and a second from a notified property owner in response to the proposal. Both letters state objections and concerns 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 providing 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 regulation to be adjusted is found at 33.110.220 Setbacks. The building setback regulations 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 subject site is zoned R10, a single dwelling residential zone that is characterized by larger sized lots and with development standards, including setbacks, that are greater than the required setbacks for higher density residential zones. Specifically, the required side yard setback in the R10 zone is 10 feet. In contrast, the side yard setback in the R5 zone is 5 feet.

In this instance, the applicant requests an adjustment to reduce the setback from 10 feet to 2 feet with an eave projecting to within 1.5 feet of the property line. However, this does not reflect the general building scale and placement of structures in this area, nor is it consistent with the development standards of the R10 zone. The larger R10 setback is intended to provide good separation between houses and accessory structures due the larger lot sizes characteristic of the zone, but the requested setback would, if approved, result in a physical relationship to the property and structures immediately adjacent to the north that is neither reasonable nor in character with the surrounding development pattern. The applicant notes that there are no windows along the north façade of the structure so privacy is not impacted for adjacent residences, however the extreme proximity of the structure to the adjacent neighbor's fence and

landscaping can result in a perception of loss of privacy when the zoning standards are intended to create a minimum of 20 feet between structures on abutting lots. For all of these reasons, this criterion is not 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 a request to significantly reduce the required setback for an accessory structure. The placement of the structure so close to the adjacent property and landscaping has an impact on the livability of the abutting neighbor and has an appearance that is not consistent with the development pattern in the immediate neighborhood. For these reasons this criterion is not met.

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

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

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

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

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

Findings: The applicant notes that no windows are installed in the façade closest to the property line. While this would be a requirement in order to meet fire code, the overall scale and placement of the structure is not consistent with the overall development pattern in the immediate area, nor is it consistent with the intent of the development standards for the R10 zone. The resultant impacts from the significant reduction in setback from adjacent property are such that it cannot be mitigated. This criterion is not 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 applicant requests an Adjustment to reduce the 10 foot side yard setback to 2 feet, with the eave at 1.5 feet for a structure built without building permit review. The proposal does not meet all of the approval criteria and therefore cannot be approved.

ADMINISTRATIVE DECISION

Denial.

Staff Planner: Sylvia Cate



Decision rendered by: _____ **on July 20, 2010**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 23, 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 May 12, 2010, and was determined to be complete on June 1, 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 May 12, 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. Unless further extended by the applicant, **the 120 days will expire on: September 29, 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 August 6, 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.

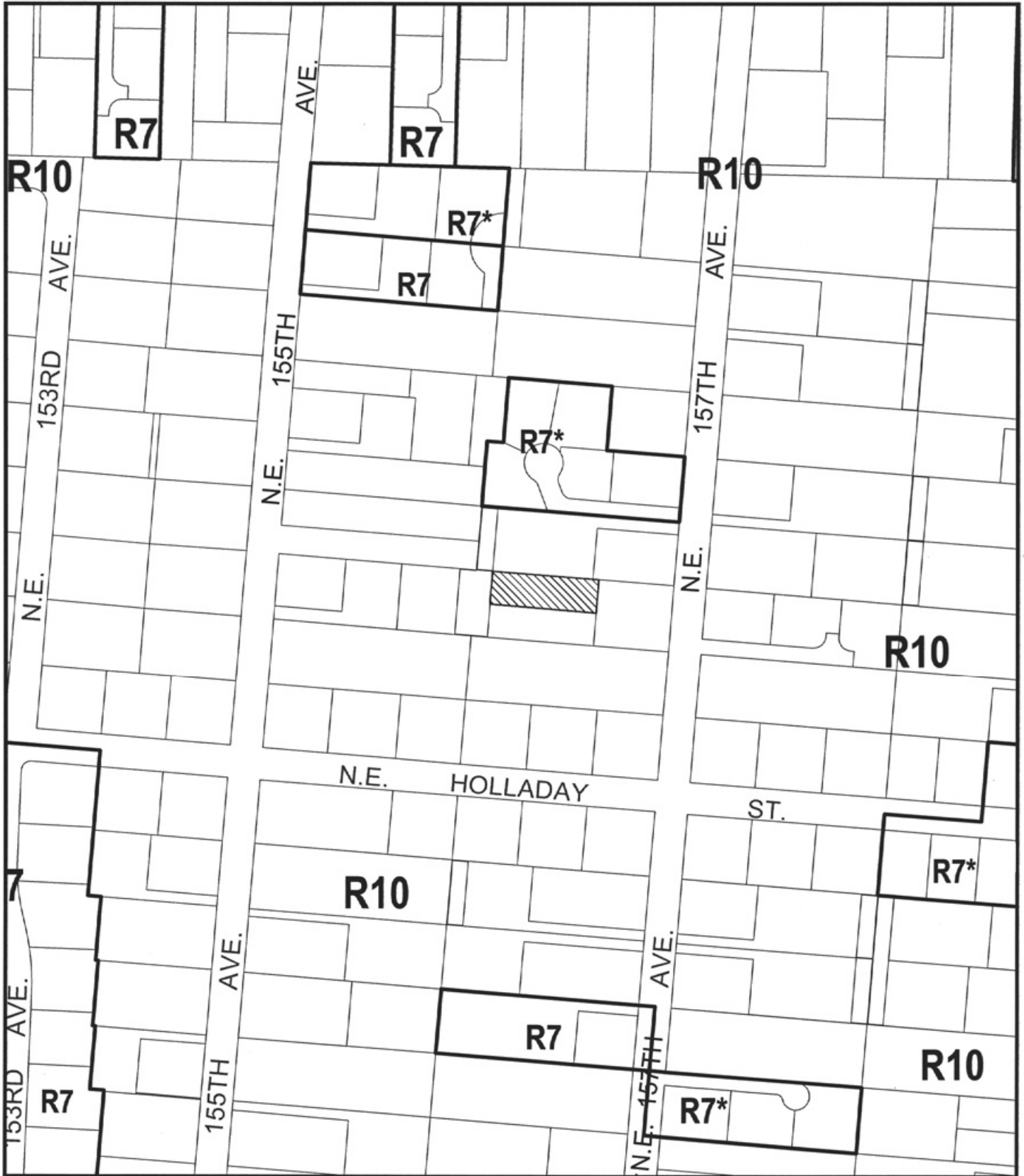
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations
- 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. A Blatt & B McKnight, June 24, 2010, Wilkes & Russell Neighborhood Assns., oppose
 - 2. Buel, June 23, 2010, oppose
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Letter to Applicant June 30, 2010; re: issues with application

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

File No. LU 10-136908 AD

1/4 Section 2946

Scale 1 inch = 200 feet

State_Id 1N2E36AB 2202

Exhibit B (May 13, 2010)



This site lies within the:
GLENDOVEER PLAN DISTRICT

IMPERVIOUS AREA

DRIVEWAY 1800

PATIO 300

WALK 112

ROOF AREA
(INCL. OVERHANG) 2006 (1960 HOUSE - 196 SHED)

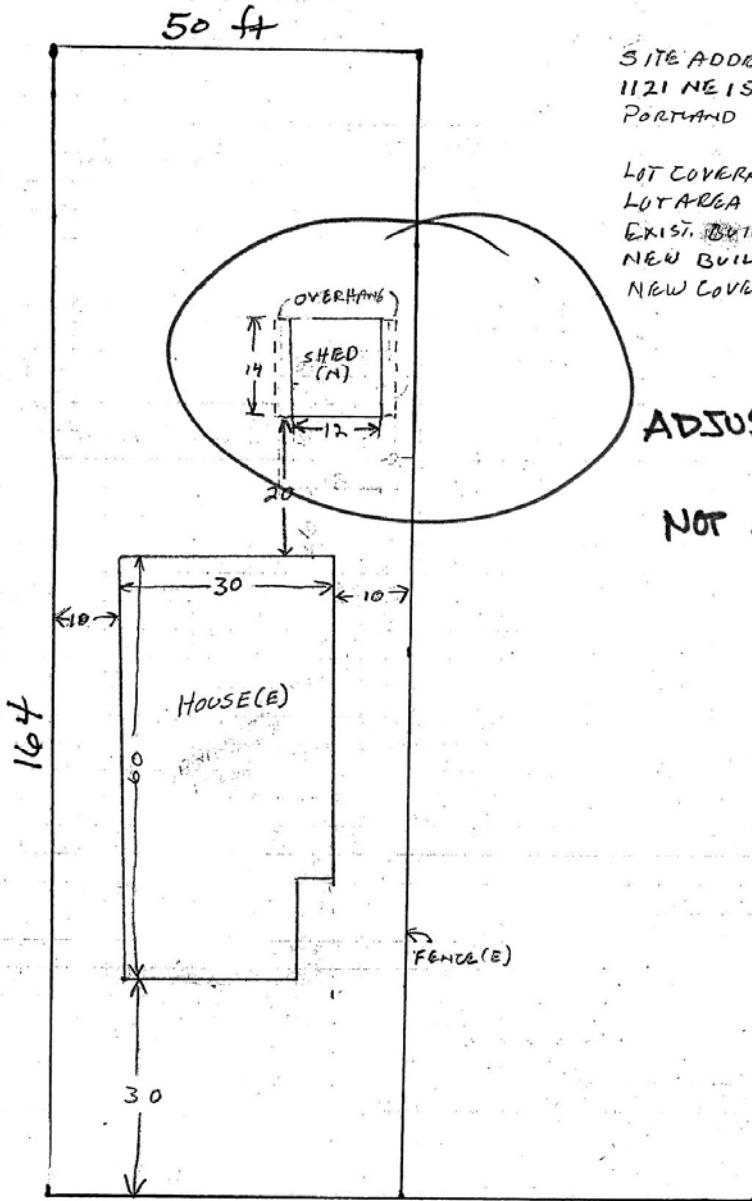
TOTAL 4218

BUILDING COVERAGE

BUILDING FOOTPRINT 1800

LOT AREA

8200



SITE ADDRESS -
1121 NE 157 AVE
PORTLAND OR 97230

LOT COVERAGE:
LOT AREA 8200
EXIST. BUILDING COVERAGE 16.95%
NEW BUILDING COVERAGE 18.94%
NEW COVERAGE % - 2.9%

ADJUSTMENT TO SETBACK

NOT APPROVED

PROJECT LEGAL

PROJECT ADDRESS

1121 NE 157TH AV
PORTLAND, OR
97230

SITE PLAN

SCALE 1" = 20'
4
21
20'



NORTH
ARROW

LU 10 - 136908 AD