



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

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**Date:** January 27, 2011  
**To:** Interested Person  
**From:** Sheila Frugoli, Land Use Services  
503-823-7817 / [frugolis@ci.portland.or.us](mailto: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 10-161705 AD**

#### **GENERAL INFORMATION**

**Applicants/Owners:** Robert and Karina Fountain  
10043 SE Harold St  
Portland, OR 97266-4347

**Site Address:** 10043 SE HAROLD ST

**Legal Description:** BLOCK 6 S 120' OF LOT 13 W 4' OF S 120' OF LOT 14, CHAP-EL HTS  
**Tax Account No.:** R149800790  
**State ID No.:** 1S2E16AD 11900  
**Quarter Section:** 3640

**Neighborhood:** Lents, contact David Hyde at 503-772-1376.  
**Business District:** Midway, contact Bill Dayton at 503-252-2017.  
**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

**Plan District:** Johnson Creek Basin  
**Zoning:** R5, Single Dwelling Residential 5,000

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

**Proposal:** The owners are requesting an Adjustment to reduce the required building setback from 5 feet to 4 feet for a 480 square foot carport and to allow the roof eave of the carport to extend within 3 feet of the east property line. Further, because the carport is attached to the existing garage the applicant is requesting to allow the garage wall to extend within 3 feet of the east property line. Note: Only detached garages may extend to the side property line.

The carport, which is attached to both the house and detached garage, was built without a Building Permit. To obtain a permit and legalize the structure, the Adjustment must be approved.

**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

**Site and Vicinity:** The site is a 5,280 square foot lot with an existing house. The house, like many others on SE Harold, near SE 101<sup>st</sup> Avenue is one-story and contains a detached garage. Many of the nearby homes have accessory structures such as detached and attached garages, carports and sheds.

SE Harold is developed with sidewalks. Because the #4 Tri-Met bus line runs on SE Harold there are painted bus stop lanes along the street. The roadway is wide enough for on-street parking on both sides of the street.

**Zoning:** The site is zoned R5. The R5, Single-Dwelling Residential zone provides housing opportunities for individual households. This zone is generally developed with detached homes on individual lots at a density of one unit per 5,000 square feet.

**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 December 21, 2010. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering (Exhibit E.2)
- Water Bureau (Exhibit E.3)
- Fire Bureau (Exhibit E.6)
- Bureau of Parks-Forestry Division (Exhibit E.6)

The **Bureau of Environmental Services** responded with the following comment:

Staff does not consider the carport to be 'redeveloped impervious area' per the definition in the Stormwater Management Manual, as it is located over a driveway that was already impervious and was not removed in order to construct the carport. In addition, photos taken by BDS staff for the documentation of violation case 10-131164-VI clearly show that a gutter was installed to catch and convey stormwater runoff from the carport roof. Therefore BES does not object to the setback adjustment request. (Exhibit E.1)

The **Site Development Section of BDS** responded with the following comment:

Septic system. City records do not show that the septic system on the site was decommissioned at the time the house was connected to the public sewer system. However, it does not appear that the location of the carport is within ten feet of the septic system. If within ten feet, it would need to be decommissioned at the time the building permit is reviewed.

Floodplain. A portion of this site is located in the 100-year floodplain, however the carport structure does not appear to be affected by the floodplain regulations. (Exhibit E.4)

The **Life Safety Plan Review Section of BDS** responded with the following comment:

A separate Building Permit is required for the work proposed and the proposal must be designed to meet all applicable building codes and ordinances.

Engineered lateral design - The construction as proposed will not meet prescriptive lateral design requirements. A lateral design analysis by an Architect or Engineer licensed in Oregon and based on the Oregon Structural Specialty Code is required. ORSC R104.11 and R301.2.2.2.2

Exterior wall and opening protection – As shown on the site plan, the edge of the eave is located 3’ from the East property line. At this distance, **no** fire rated construction is required. Please be aware that if any of the construction is less than three feet to a property line, one-hour fire-rated construction with no openings is required. ORSC R302.1 (Exhibit E.5)

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on December 21, 2010. Four written responses have been received from an adjacent property owner, in response to the proposal.

To summarize, the abutting property owner, Ms. Maxwell raised the following points:

- The Fountains do not respect neighbors need for quiet and have not been receptive to neighbors request to address dog barking, loud music and numerous outdoor parties.
- Noise frequently disturbs her sleep. The bedroom is located near the common property line. Even watching TV in other rooms is drowned out by noises from the Fountains patio area.
- A 12-foot tall row of ivy, which was growing on Ms. Maxwell’s property along the common property line near the new carport was removed by the Fountains without her permission.
- After the carport was built, the Fountains never parked their cars under it. Rather they placed outdoor furniture and stereo speakers in the space. It was built for year-round social gatherings. (Exhibit F. 1 – F.4)

**Staff Response:** *Some of the issues raised speak directly to the approval criteria and therefore will be analyzed under the applicable findings below. The issues that relate to barking dogs and trespassing (to remove vegetation) are regulated through other codes and titles and therefore cannot be considered as part of this Adjustment review. Communication, consideration and goodwill between neighbors is highly desirable but is not a development or use-related Zoning Code requirement. However, staff would be remiss to not mention that in the City of Portland, through the Office of Neighborhood Involvement, there are neighborhood mediation services available.*

## ZONING CODE APPROVAL CRITERIA

### 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 is seeking an Adjustment to the side building setback. The purpose of the building setback standards are found in Section 33.110.220, which states:

**Purpose:** 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 requested Adjustment is to reduce the required side building setback from 5 to 4 feet for an attached carport and to allow the roof eave to extend within 3 feet of the side (east) property line. The 4 foot distance is from the carport columns (support structure) to the fence that follows the east property line. The roof extends one foot over the columns.

The carport extends toward the neighboring house to the east (10051 SE Harold St.). The adjacent one-story home is located approximately 3.5 feet from the common property line. A chain link fence is located on the shared property line of the two lots, separating the two homes. A taller, solid wood fence is constructed on the eastern abutting lot, approximately 70 feet back from the front lot line, at approximately the same location as the applicants' detached garage.

The home at 10051 SE Harold has two west-facing windows. According to the owner Ms. Maxwell, the portion of the house closest to the carport is a bedroom. In written comments, Ms. Maxwell states that the applicants use the carport primarily as an outdoor patio area. The applicant's initial submittal included photos that showed a table and chairs under the structure (Exhibit A.3). In response to staff's question (Exhibit G.3) about the use of the new structure, the applicant stated the structure would be used as a carport. The Zoning Code applies the same building setback requirement for attached carports and patios. Therefore, for either use of the structure a setback of 5 feet applies. However, in order to comply with on-site parking requirements, the applicants must have at least one on-site parking space that is not within the 10 foot front setback and is at least 18 feet in length. Hence, at least the first 5 feet of the new attached structure must be used for parking.

A separation of at least six feet between the applicants' carport and the home on the abutting lot will provide adequate separation and will not significantly reduce access to light or air, emergency access, and separation for fire protection. The Fire Bureau staff noted no concerns. The BDS Life Safety Plans Examiner reviewed the proposal and raised no concerns regarding fire protection separation. However, the applicants will be required to obtain a Building Permit for the carport. The building code structural requirements will apply (Exhibit E.5).

The eastern abutting lot has an outdoor patio area, which appears to be screened on the common property line via dense vegetation. And most of the back yard is screened with a tall solid wood fence. However, the windows have an unobstructed view into the open carport area. According to the neighbor Ms. Maxwell, the applicants removed a tall vegetative hedge that provided visual separation between the two lots. Even though the applicants are requesting a reduction of only a foot for the required setback, because the structures are relatively close and the carport and/or patio area is open, the adjacent property owner has no options for maintaining privacy. To provide some privacy, a condition will require the applicants construct a tall solid wood fence along the length of the carport, at least 48 feet long, on the internal side of the existing chain link fence.

With a condition that requires the installation of a sight-obscuring fence along the length of the carport, on the interior side of the existing chain link fence, the proposed structure will meet this approval criterion.

- 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 new attached structure is relatively sleek and creates minor visual or aesthetic impacts to the street. However, given that it lacks walls and/or doors on the south and east side, the activities and use of the covered space will create visual impacts. The parking of vehicles, storage of goods, and human activities will at times create impacts that generally are not noticeable in enclosed structures such a garage.

The new space provides a gathering place for the applicants and friends. As stated above, carports and patio areas require the same setback distance. Therefore, as long as a portion of the carport remains unobstructed to provide a “legal” on-site parking space, the remaining portion of the structure may be used as a patio. The 5-foot side setback requirement is the minimum distance required to provide separation between structures and property lines. According to the most affected neighbor, a twenty percent reduction (1 foot) in the requirement has created significant impacts to her and her family’s livability.

In order to allow the structure in its current location, the applicants must construct a physical barrier. There are numerous approaches available to create a physical screen or barrier such as constructing a solid continuous wall on the east side of the carport or planting a continuous tall hedge along the east property line. Staff determined that a solid wood fence, at least 6 feet tall would be the best approach. It would provide separation but would not necessitate additional construction costs/challenges for the carport structure. Given that the applicants choose to pursue the Adjustment instead of altering the carport to meet Zoning Code standards (via a Building Permit) staff assumes the applicants wish to retain the carport as originally constructed. Finally, given that the applicant removed a tall vegetative screen near the east property line, it would be counterproductive to require new landscaping to be installed in that location. A tall solid fence will provide immediate, full visual separation (privacy) and will lessen the impacts of noise.

Through compliance with the condition, this criterion will be 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. 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:** The impacts to livability will be lessened with the construction of a fence along the east property line. As stated under Criterion B, a fence is a practical approach to reducing impacts to the adjacent property owner. With compliance with the condition, this criterion will be met.

## 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


Based upon the findings of this report, each applicable approval criterion is met or will be met through compliance with conditions.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the require side building setback (33.110.220.B) from 5 feet to 4 feet for a 480 square foot carport and to allow the roof eave of the carport to extend within 3 feet of the east property line, per the approved site plan, Exhibits C.1 signed and dated January 24, 2011, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition B must be noted on each of the required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 10-161705 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. A fully sight-obscuring wood fence, designed and constructed per Zoning Code figure 248-2, at least 6 feet tall must be constructed along the east property line for at least the 48 foot length of the carport/patio structure. *The fence may be as tall as 8 feet, if constructed under the review and approval of the Building Permit.*

**Staff Planner: Sheila Frugoli**

**Decision rendered by:**  **on January 24, 2011**

By authority of the Director of the Bureau of Development Services

**Decision mailed: January 27, 2011**

**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 July 30, 2010, and was determined to be complete on December 17, 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 July 30, 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 February 10, 2011** 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 **February 11, 2011 – (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 Submittal
  1. Response to Approval Criteria
  2. Additional Information, response to incomplete application letter from staff, submitted Dec. 10, 2010



3. Photos of carport
  4. Photos of carport and adjacent lot, submitted Dec, 10, 2010
- B. Zoning Map (attached)
- C. Plans/Drawings:
1. Site Plan, submitted Dec. 10, 2010 (attached)
  2. Site Plan, original submittal
- 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. Site Development Review Section of BDS
  5. Life Safety Plan Review Section of BDS
  6. TRACS printout showing “no concerns” from Fire Bureau and Urban Forestry
- F. Correspondence:
1. Katherine Maxwell, December 28, 2010, e-mail letter, opposes Adjustment request
  2. Katherine Maxwell, December 28, 2010, 3-mail letter, opposes Adjustment request
  3. Katherine Maxwell, Jan. 1, 2011, e-mail letter, opposes Adjustment request
  4. Katherine Maxwell, Jan. 2, 2011, e-mail letter, opposes Adjustment request
- G. Other:
1. Original LU Application
  2. Site History Research
  3. Incomplete Application Letter to Applicant from Staff
  4. Notice of Zoning and Building Code Violation Letter

**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



NORTH

This site lies within the:  
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	<u>LU 10-161705 AD</u>
1/4 Section	<u>3640</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E16AD 11900</u>
Exhibit	<u>B</u> (Aug 10,2010)



IMPERVIOUS AREA

DRIVEWAY 744  
PATIO N/A  
WALK 55

BUILDING COVERAGE

BUILDING FOOTPRINT 1096  
Garage 280

LOT AREA

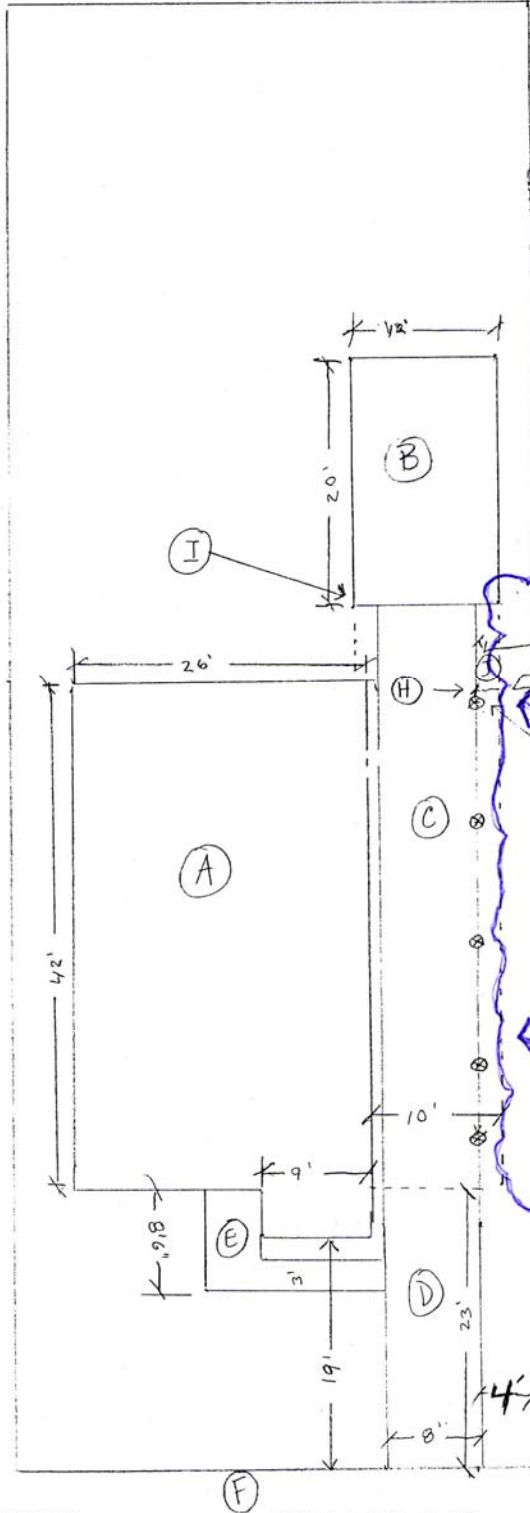
4800 Sq Ft

ROOF AREA (INCL. OVERHANG) 1196

New over driveway 480

TOTAL \_\_\_\_\_

- (A) Existing house  
42' x 26' footprint  
1' overhang East + West sides only
- (B) Existing garage  
20' x 12' footprint  
1' overhang East + West sides only
- (C) Dotted area new carport  
roof line.  
10' x 47'
- (D) Existing driveway  
73 x 8'
- (E) Walkway (existing)
- (F) Portland City Sidewalk
- (G) ⊗ Column
- (H) Drain - Existing
- (I) Existing drain
- (J) 1' Eve
- (K) Distance between fence  
and Column



\*Approved\*

City of Portland - Bureau of Development Services

Planner S. F. [Signature] Date Jan. 24, 2011

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

Required 6-8 ft.  
tall, sight-obscuring  
wood fence



PROJECT LEGAL  
By \_\_\_\_\_

PROJECT ADDRESS  
10043 SE Harold St  
Portland, OR 97266

**SITE PLAN**

SCALE 1" = 10'  
21  
10'



Exhibit C.1