



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: July 25, 2011
To: Interested Person
From: Mark Bello, Land Use Services
503-823-7810 / Mark.Bello@portlandoregon.gov

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 11-146742 AD 3827 NE STANTON - REDUCE ACCESSORY STRUCTURE SETBACK

GENERAL INFORMATION

Applicant: Ronald M Jimmerson
Winona P Griffin
3827 NE Stanton St
Portland, OR 97212-2859

Site Address: 3827 NE STANTON ST

Legal Description: BLOCK 24 LOT 6, BEAUMONT
Tax Account No.: R060804170
State ID No.: 1N1E25AD 04900
Quarter Section: 2734
Neighborhood: Beaumont-Wilshire, contact Michael Rounds at 503-936-0740.
Business District: None
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.
Zoning: R5h Residential 5,000
Case Type: AD Adjustment
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal:
The applicant is building a garden shed at the northwest corner of their property, utilizing an existing four foot tall rock foundation for the south and east sides of the building. This foundation includes a half circle at the southeast corner of the shed. The east-west roofline is 10 ft. high. The roof also features a conical roof tapering to a point 14 ft. in height. The shed is painted plywood and the roof is to be composition shingle roofing. The shed is six feet south of a retaining wall but as the property line is south of the retaining wall the shed is as close as 3'-7" from the property line. The applicants are requesting an adjustment to reduce the setback from five feet (as required by the zoning code, Section 33.110.220) to 3'-7".

ANALYSIS

Site and Vicinity: The site is an interior lot on the north side of NE Stanton between NE 38th Avenue and NE Caesar Chavez/39th Avenues. The site has 50 feet of frontage and is 150 feet deep. The lot is 9,000 sq. ft. in area. The site is developed with a house, garage and the detached structure subject to this adjustment request. The site is surrounded by three 5,000 sq. ft. lots to the west and two similarly-sized lots to the east.

The other adjacent lot to the north shares a 70 ft. wide common rear property line. This lot is accessed from NE Wistaria Drive and is approximately 6,726 sq. ft. in area. The lot also has 50 feet of street frontage and is 115 ft. deep. The house on this lot on Wistaria is approximately 55 ft. north of the common rear property line. NE Wistaria is higher than NE Stanton so the house on this adjacent lot is higher than the shed on the applicant's site.

Zoning: The Residential 5,000 (R5) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 5,000 square feet of site area. It appears from aerial photographs that accessory structures built on or close to side and rear property lines are common in this residential area.

The Aircraft Landing Zone "h" overlay provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. A height contour map is available for review in the Development Services Center.

Land Use History: City records indicate there are no prior land use reviews for this site.

Summary of Applicant's Statement: The applicant has reduced the height of the ornamentation at the apex of the roof by removing ornamental spheres and leaving only the fleur-de-lis. The applicant is also willing to modify the proposal by painting the shed a light green to match the house and blend in with the yard landscaping and also plant vegetation to further mask the structure.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **June 17, 2011**. The following agencies responded with no concerns:

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
7. Bureau of Development Services Life Safety

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 17, 2011. No written response has been received from the Neighborhood Association. Three letters were received by owners of adjacent properties. Two letters were in support, one opposed. The letter in opposition cited the following concerns:

- The height draws attention to its presence, disrupts the natural character of the surrounding space and encroaches on their privacy and view
- Alternative sites are available that would camouflage and soften the structure
- The location and gravel pathway between the structure and the north property line prevents screening
- A maple was removed and this structure was built, thus removing permeable surface

The concerns are all addressed in this staff report.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose

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. They also 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.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

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

[Zoning Code Section 33.110.220 describes the purpose of the building setback standard as follows:

A. Purpose. 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.]

Findings: The structure will be located approximately six feet from the retaining wall along the north property line and approximately 40 ft. from the garage. The Fire Bureau has reviewed this proposal and has no objections. No changes to the scale or placement of the applicant's house are proposed. The structure is smaller than other detached structures such as a 24' x 24' garage that would be allowed to be located on side and rear lot lines. The structure is lower than an Accessory Dwelling Unit that would be permitted five feet from a side or rear property line. A garden shed does not provide for living space and so affects privacy primarily in a visual sense. Sheds as high as six feet are allowed on side property lines. Front setbacks are not an issue as this proposed structure is located in the rear part of the site.

The siting of the development is appropriate as it is a garden shed located near the rear property line as garden sheds typically are. The location of the shed behind the garage is a suitable location for this part of the yard and the shed cannot be seen from NE Stanton. The architectural embellishments add whimsy for the applicant's enjoyment but otherwise are minimal with the exception of the conical roof that rises to a point 14 ft. high. To ensure that this roof does not significantly detract from aesthetic views from the north, the shed should be painted to blend with landscaping, landscaping should be incorporated, and extra embellishments such as the two spheres originally included in the design should be avoided.

The shed setback request does not affect car parking.

For these reasons, this approval criterion can be met with conditions regarding paint, landscaping, and minimizing ornamental embellishment.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area; and

Findings: Given the location of the shed only immediate neighbors could be affected. The Zoning Code allows two-story structures close to the property line (5 feet) and garages on or near to a side or rear property line. It allows ADUs to be within five feet of a property line and 18 ft. high. Impacts can occur from such development; but the approval criterion speaks to significant impacts. Considering that the shed will not be inhabited, that the shed is below the property to the north, and that the applicant is using paint, landscaping and subdued materials, no significant impact is expected.

- 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. The site is not within either overlay zone; thus, this criterion is not applicable.

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

Findings: Glare will be eliminated by the materials selected and the absence of additional ornamentation on the conical roof. With conditions of approval regarding paint, materials and simplicity of form, impacts are mitigated.

- 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 demonstrated that the applicable Adjustment approval criteria have been met. The request to reduce the setback for the accessory structure will result in development that still meets the intent of the regulation and will not significantly detract from the livability of adjacent neighbors. Properties to the north of this site do not enjoy public view protection such as afforded by the ‘s’ scenic overlay zone.

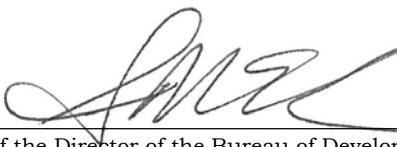
As mitigation for any visual impact the applicant will paint the shed to match their house and blend in with landscaping. The applicant will also landscape to soften the north, utilitarian side of the garden shed.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Section 33.110.220 to reduce the minimum required rear setback from 5 feet to 3'-7", per the approved plans, Exhibits C-1 and C-2, signed and dated July 22, 2011, 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 11-146742 AD. No field changes allowed."
- B. The north façade of the garden shed shall be painted to match the house and surrounding vegetation.
- C. A trellis or other suitable structure shall be added to the north side of the garden shed and landscaped.
- D. The conical top of the pointed roof shall match the new composition shingle roof and no additional ornamentation shall be added in addition to the fleur-de-lis ornament.

Staff Planner: Mark Bello

Decision rendered by:  **on July 22, 2011**
By authority of the Director of the Bureau of Development Services

Decision mailed: July 25, 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 June 8, 2011, and was determined to be complete on **June 13, 2011**.

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 June 8, 2011.

*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: October 11, 2011.***

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 8, 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 **August 9, 2011**.
- 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:

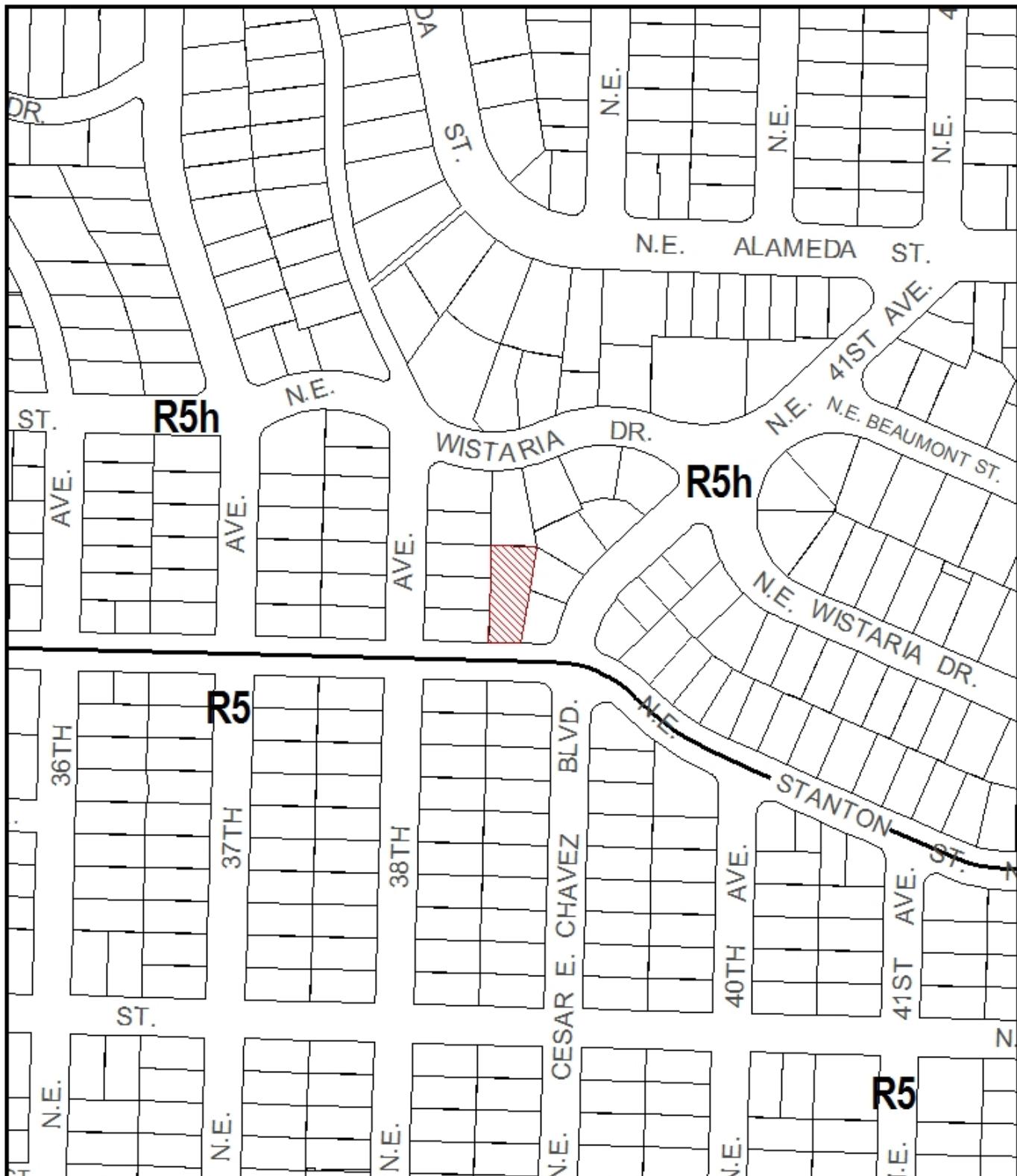
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings: (attached)
 1. Site Plan
 2. Site Plan Details and 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
 7. Bureau of Development Services, Life Safety
- F. Correspondence:

Richard Weber and Eileen Stark, 3820 NE Wistaria Drive, June 28, 2011, opposed.
Ken and Ruth Robinson, 2934 NE Stanton, July 3, 2011, supportive of request
Suzanne Kopetski, 2924 NE 38th Avenue, July 5, 2011, supportive of request
- 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

File No. LU 11-146742 AD

1/4 Section 2734

Scale 1 inch = 200 feet

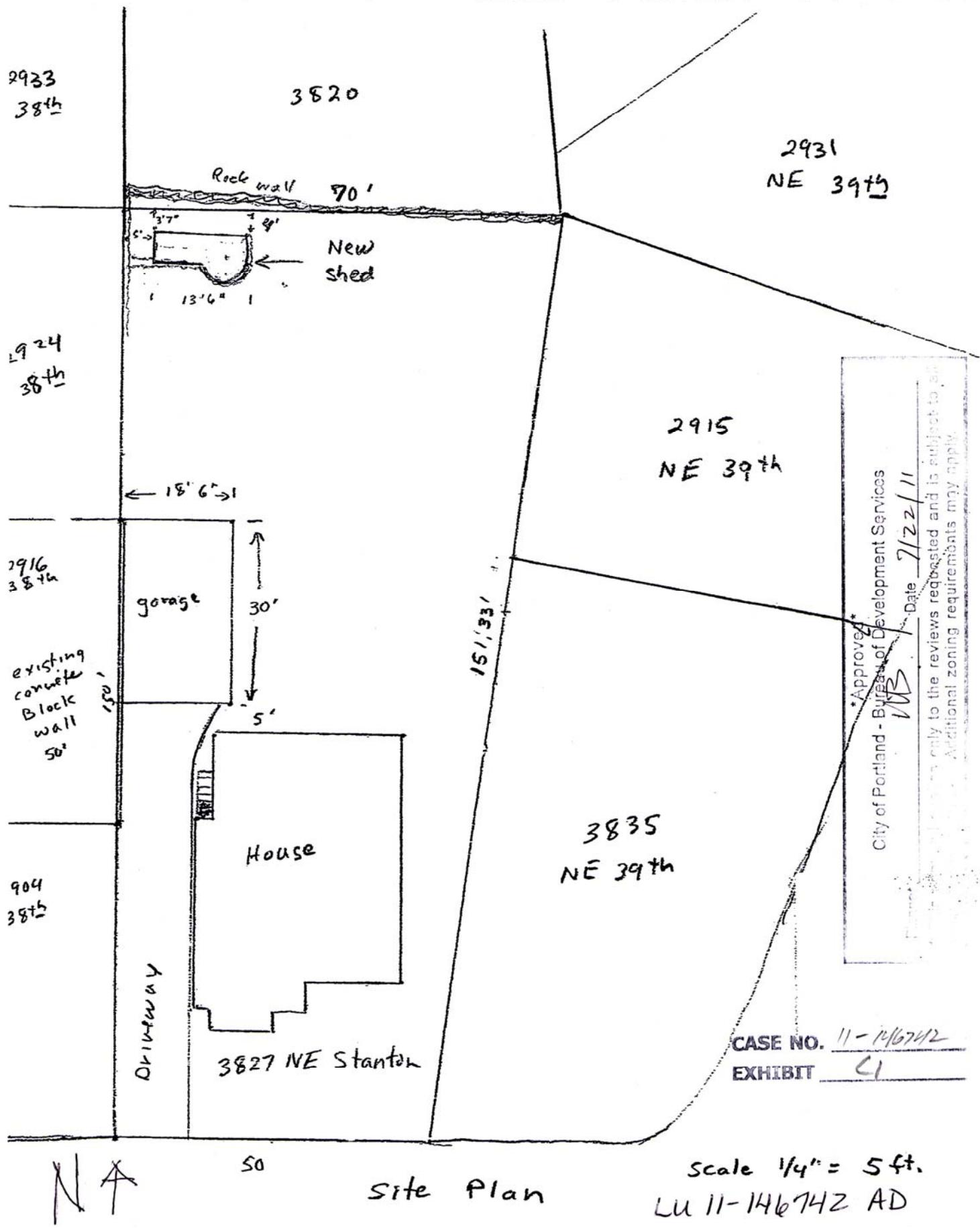
State_Id 1N1E25AD 4900

Exhibit B (Jun 16,2011)



NORTH

Jimmerson / Griffin Shed Addition 3827 NE Stanton



Approved
VBS

*Approved only to the reviews requested and is subject to change.
Additional zoning requirements may apply.

Date 7/22/11

