



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

FROM CONCEPT TO CONSTRUCTION

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Date: July 23, 2014
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 **approved** a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 14-150995 AD

GENERAL INFORMATION

Applicant/Owners: Leland Howe and Paula M Gubrud-Howe
3800 SE Bybee Blvd
Portland, OR 97202-7738

Site Address: 3800 SE BYBEE BLVD

Legal Description: BLOCK 5 LOT 8&9, BERKELEY
Tax Account No.: R070900800
State ID No.: 1S1E24AD 15500
Quarter Section: 3734

Neighborhood: Eastmoreland, contact Clark Nelson at clark@pbsenv.com
Business District: Woodstock Community Business Association, contact Sean Daugherty at 503-754-2636.
District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.

Zoning: R5, Single Dwelling Residential 5,000

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

Proposal:

The applicant proposes to construct a new garage near the southeast corner of the site. Generally, the zoning code allows garages to be built to the property line with no setback if the garage meets certain size, height and distance from the street thresholds. The proposed garage meets those thresholds; however, the garage will also include a below grade [basement] for additional storage of small vehicles, including motorcycles and bicycles. Access to the storage level will be internal to the structure and will include a freight elevator or equivalent, as well as an access ladder. Because of the additional basement level, the proposed structure is not considered a 'garage' but a utility storage building. The required setback in the R5 zone is 5 feet from the side and rear property lines. The applicant proposes to place the detached accessory

structure 9-inches from both the rear and side property lines. Attached to this Decision are plans and a zoning map 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

Site and Vicinity: The site is a 4,350 square foot lot developed with a house built circa 1929. The immediately surrounding neighborhood, in all directions consist of lots zoned R5, and developed with residential uses. Berkeley Park, zoned OS, is north of the site, approximately one block.

Zoning: The site is zoned Residential 5,000. This is one of several single dwelling zones that implement the Comprehensive Plan designation for single dwelling residential.

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

A "Notice of Proposal in Your Neighborhood" was mailed **June 9, 2014**.

Agency Review: 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 June 9, 2014. No written responses have been received from either the Neighborhood Association or notified property owners in response to the Notice.

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 purpose for the setback regulations are found at 33.110.220.A., Setbacks, which states:

Purpose: The building setback regulations serve several purposes:

- They maintain light, air, separation for fire protection, and access for firefighting;
- 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.

As noted in the proposal description, garages are allowed to have a 0-foot setback, but because the proposed structure includes a basement area for additional vehicle storage, the proposed 9-inch setbacks from the side and rear lot lines triggers an Adjustment review.

Given the proposed placement of the structure, there is no impact on light or air, and the Portland Fire Bureau notes no concerns regarding the proposal for fire protection and access for firefighting.

The proposed structure, located at the end of an existing driveway and near to the southeast rear corner of the lot is typical of garage placements in the neighborhood. There is no change to the physical relationship between residences resulting from the proposal. The front yard will remain open and visually pleasing. The placement of the structure will preserve most of the backyard of the lot and although the lot has flat topography, the proposed basement level will keep the structure on one story and visible portion of the structure will simply appear to be a garage. The proposed reduction of setbacks will have no impact on parking in front of the garage, as the garage entrance exceeds the minimum 18 foot setback. For all of these reasons, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The site lies within the R5 residential zone. The proposed reduced setbacks will not affect the appearance of the residential area as the structure is well designed and consistent with the existing home on the site. There are no impacts anticipated to the livability of the residential area, as the structure will provide additional on-site parking, thus reducing competition for on-street parking. For these reasons, 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: Although two Adjustments are requested: one to the side setback and one to the rear setback, the cumulative effect of both adjustments will result in a project that appears to be a typical residential garage, consistent with residential uses in the R5 zone. This criterion is met.

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

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

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

Findings: There are no discernible impacts that would result from granting the requested adjustment. 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: Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase "p" (Environmental Protection overlay zone) or a "c" (Environmental Conservation overlay zone). As 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 proposes to construct a new detached accessory structure near the southeast corner of the site. Generally, the Zoning Code allows garages to be built with a 0-foot setback if the garage meets certain size, height and distance from the street thresholds. The proposed garage meets those thresholds; however, the garage will also include a basement for additional storage of small vehicles, including motorcycles and bicycles. The proposal meets all of the applicable approval criteria, and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of:

- An Adjustment from 5 feet to 9-inches to the eave and the building façade to be 10-inches from the (east) side property line, and
- An Adjustment from 5 feet to 9-inches to the eave and the building façade to be 1 foot from the rear property line, per the approved site plans, Exhibits C-1 through C-2, signed and dated July 21, 2014, 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. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 14-150995 AD."

Staff Planner: Sylvia Cate

Decision rendered by:  **on July 21, 2014**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 23, 2014

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 30, 2014, and was determined to be complete on June 4, 2014.

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 30, 2014.

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: August 28, 2014.**

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, 2014** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 2:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 2:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th 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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 7, 2014 – (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.

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

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and

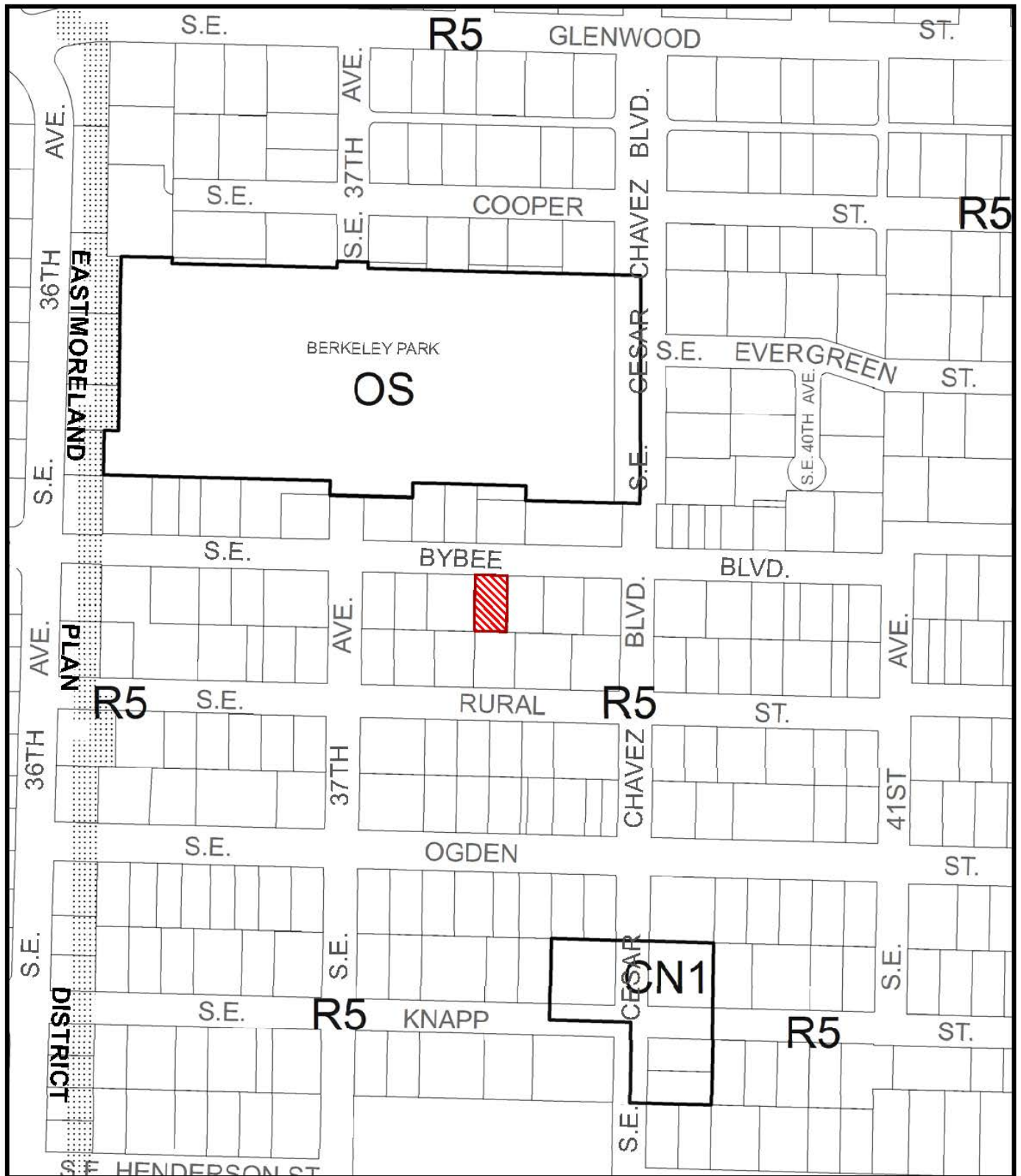
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations
- 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: None
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete letter May 20, 2014; additional info needed
 - 3. Email correspondence clarifying details
 - 4. Property information

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

File No.	<u>LU 14-150995 AD</u>
1/4 Section	<u>3734</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E24AD 15500</u>
Exhibit	<u>B (Jun 05,2014)</u>

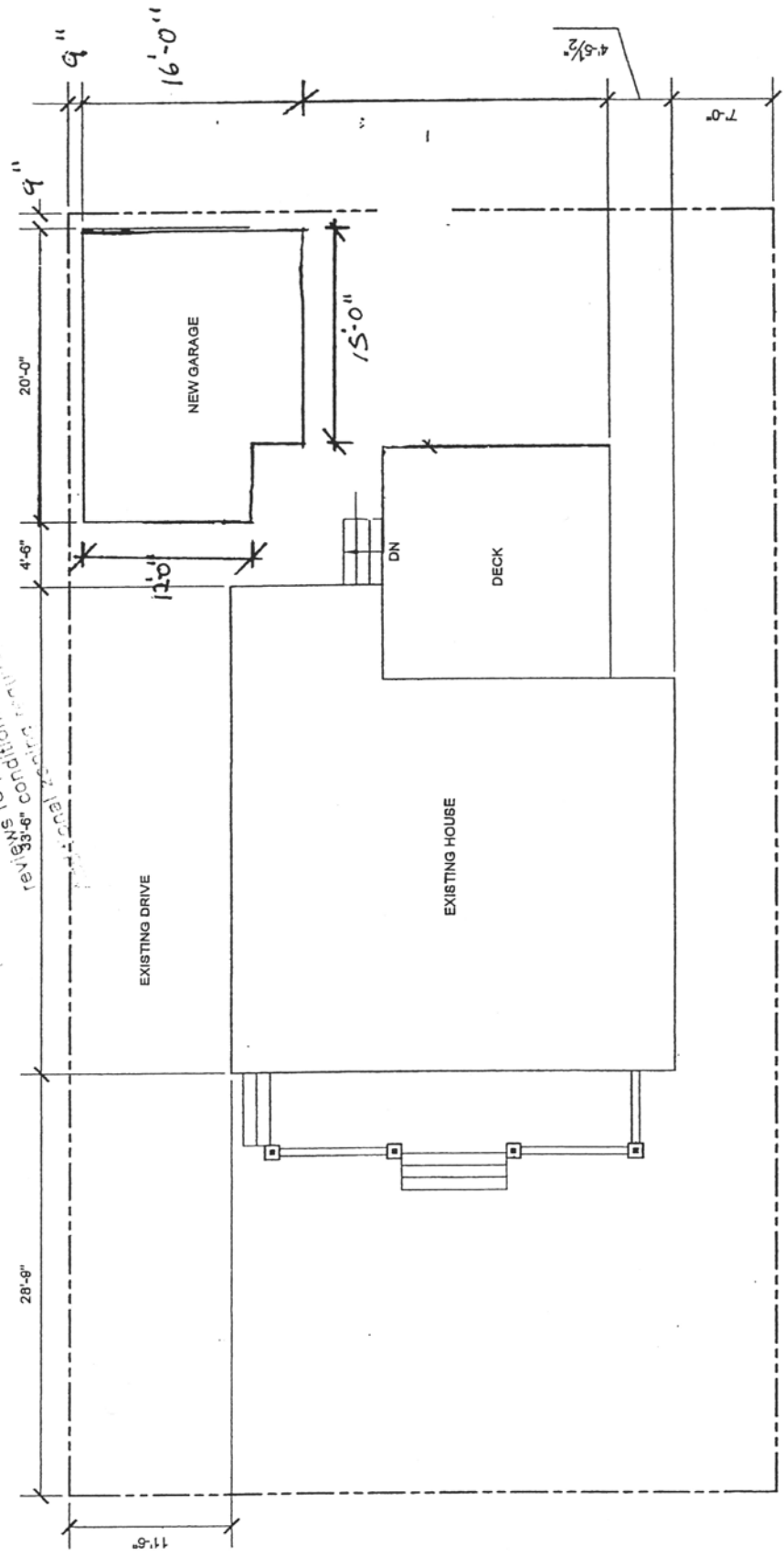
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*** Approved ***
 City of Portland
 Bureau of Development Services

Planner 7.2.1.2014

Date 7.2.1.2014

This approval applies only to the project as shown on the approved plans and is subject to all applicable codes, ordinances, rules, regulations, and other laws of the City of Portland. This approval does not constitute a warranty of any kind. The applicant is responsible for obtaining all necessary permits and approvals from the appropriate agencies. The City of Portland is not responsible for any delays or costs incurred by the applicant in obtaining such permits and approvals.



SITE PLAN
 1/8"=1'-0"
 NORTH

W14-150995AD
 EXHIBIT C-1