



City of Portland
Bureau of Development Services
Land Use Services Division

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Portland, Oregon 97201
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Date: September 5, 2008
To: Interested Person
From: Kathleen Stokes, Land Use Services
503-823-7843 / kstokes@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 08-148563 AD

GENERAL INFORMATION

Applicant: Samir Mokashi, Evergreen Engineering (applicant)
7431 NW Evergreen Pkwy Suite 210
Hillsboro OR 97124

Paradise 39 Grape L L C (property owner)
P O Box 13023
Portland, OR 97213

Christopher Cournoyer, City Houses Inc (property manager)
401 NE 63rd Ave
Portland OR 97213

Site Address: 600-610 SE 39th Avenue

Legal Description: TL 5100 LOT 4&5, PARADISE SPR FARM SUB 1; EXC PT IN SE 39TH AVE INC 10' X 40' OF LT A ADJ S 40' OF LOT 5, PARADISE SPR FARM SUB 1

Tax Account No.: R643300100, R643300160
State ID No.: 1S1E01AA 05100, 1S1E01AA 05200
Quarter Section: 3134

Neighborhood: Sunnyside, contact Tim Brooks at 503-295-1699.
Business District: Belmont Business Association, contact Don Porth at 503-823-3615.
District Coalition: Southeast Uplift, contact Gary Berger at 503-232-0010.

Zoning: R1 (R1000, Medium Density Multi-Dwelling Residential) and R2 (R2000, Low Density Multi-Dwelling Residential)

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

Proposal: The applicant is proposing to convert an existing structure, from use as a garage, to use as a residential unit. The structure is located in the northeast corner of the site, with no setbacks from the abutting property lines. The development standards for the multi-dwelling

zones require that buildings be set back a minimum distance from side and rear property lines. The required setback distance varies from of 5 feet to 14 feet, depending on the size of the building wall that is adjacent to the property line. In this case, the minimum 5-foot setback is required, unless an exception is approved through an Adjustment Review. The proposal also includes building a masonry wall on the east property line to provide a buffer and fire-break for the patio that is located at the south end of the unit. This new wall would be considered a fence and can be located within the setback, but due to its height, which is approximately 7 feet, it will require a building permit. The applicants have requested approval of Adjustments to Code Section 33.120.220 B, to reduce the minimum required building setback from the north side and rear property lines, from 5 feet to zero, for the proposed dwelling unit.

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

ANALYSIS

Site and Vicinity: The site consists of two parcels with a cumulative area of 35,913 square feet. The property is located on the east side of SE 39th Avenue, about 185 feet south of the intersection with SE Stark Street. The site is developed with a court-yard apartment complex, that was built in 1943. The main complex includes 16 units and features lush, mature landscaping with pedestrian walkways at the center of the complex. The proposed new unit was created from a former accessory structure, located to the rear of the original apartments. A small shed is also located along the north property line, between the original apartments and the proposed new unit. The southern portion of the property has a surface parking lot for the residents. Several parking spaces are also located to the east of the apartments and south of the proposed new unit.

The area around the site has a variety of uses and development. The west side of SE 39th Avenue contains a mixture of commercial uses, including small offices, retail and institutional uses. The same type of development and uses occur to the north of the site, with a parking area immediately adjacent to the north side of the proposed new residential unit. To the south of the site there is a mixture of single and multi-dwelling residential development. East of the site, there is a single-dwelling residential community, that fronts onto SE Peacock Lane and mostly consists of vintage homes from the early 1900s.

Zoning: This site has two zoning designations. The eastern portion of the site is zoned R2, Low Density Multi-dwelling Residential. This zone allows approximately 21.8 dwelling units per acre. The major type of new development will be duplexes, townhouses, rowhouses and garden apartments. These housing types are intended to be compatible with adjacent houses. Generally, R2 zoning will be applied near neighborhood collector and district collector streets, and local streets adjacent to commercial areas or major streets.

The western portion of the site is zoned R1, Medium Density Multi-dwelling Residential. This zone allows up to one unit per 1,000 square feet of site area and requires a minimum of one unit per 1,450 square feet of site area, or 1 unit per 2,000 square feet of site area for sites that are smaller than 10,000 square feet. Allowed housing is characterized by one to four story buildings and a higher percentage of building coverage than in the lower density multi-dwelling zones. The major type of new housing will be condominiums and apartments, duplexes, townhouses, and rowhouses. Generally, R1 zoning will be applied near neighborhood collector and district collector streets, and local streets adjacent to commercial areas, or major streets.

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 **August 8, 2008**. The following Bureaus have responded to indicate that there are no issues or concerns related to approval of the requested Adjustments. Agencies that included information on requirements for building permit submittal are noted with exhibit numbers:

- Environmental Services (BES) noted that storm water management requirements must be met with plans that are submitted for building permits. A detailed site utility plan with proposed and existing sanitary connections and storm water management details must be submitted (Exhibit E-1).
- Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS noted the same requirements for building permit submittal as BES (Exhibit E-2).
- Life Safety Plan Review Section of BDS provided information on building permit requirements, as they are related to the building code standards for this proposal. A change of occupancy permit will be required (Exhibit E-3).
- Parks-Forestry Division

Neighborhood Review: Two written responses were received from notified property owners in response to the proposal. The first response asked questions regarding the proposed separation between the subject property and the abutting lots to the east. Specifically, the comments discussed a fence that exists along part of the property line and asked about whether it would be replaced. The response also asked about the height of the proposed masonry wall that would be located to the south of the converted structure (Exhibit F-1). *(Note: The masonry wall is proposed to be 7 feet tall, as measured from grade level on the applicants' site. The additional questions were referred to the applicant, who stated that he would contact the neighbors).* The second response, which was from the same neighbors, noted that there had been a conversation with the applicant and that the project was now seen as an improvement and there were no objections (Exhibit F-2).

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of 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 to provide certainty and rapid processing for land use applications.

33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below, have been met.

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

Findings: The relevant purposes of building setback requirements are

- to maintain light, air, separation for fire protection, and access for fire fighting;
- to reflect the general building scale and placement of development in the City's neighborhoods and promote a reasonable physical relationship between residences;
- to promote options for privacy for neighboring properties, and
- to 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.

The development standards in the R2 zone require structures of this size to be set back a minimum of five feet from side and rear property lines. Roof eaves are required to be a minimum of four feet from the side and rear property lines. The applicants are requesting approval of an Adjustment to reduce the rear (east) and north side setbacks to zero for the

proposed conversion of this existing structure for use as a detached residential unit. The structure does not have any windows or other openings on the facades that are within the required setback areas. Residential uses only abut the site on the east side. The north side of the structure abuts an accessory parking area that serves an institutional use in a commercial zone. An enclosed, covered patio area, on the south end of the structure would have the existing east wall replaced with a solid, 7 foot-tall masonry wall. Skylights are proposed to be located within the roof structure to add additional interior illumination. The proposed walls meet the building code requirements for fire protection. There will be no change in access for fire fighting, which is seen as adequate by the City's fire marshal. There will be no change in the impacts on light and air for the adjoining properties, which currently are not impacted, as they are separated by block walls, fences and vegetation that are as tall or taller than the proposed residential unit. Due to the lack of east-facing windows, there will be no impacts on privacy. The scale and placement of development in the City's neighborhoods will not be impacted because the structure has existed in this location for many years. A reasonable physical relationship between residences will still be maintained because the structure abuts the rear yards of the adjacent residences and the masonry walls will provide additional separation from the sounds and activities that would occur in the new residence. Therefore, the proposed setback equally meets the purposes of the regulation and 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: As stated in the findings above, the proposal to reduce the required setbacks from the north and east property lines will not have any significant negative impact on the appearance or livability of the residential area because it will still meet the purpose of preserving fire safety, privacy, light and air and will still reflect the scale and placement of buildings in the area and preserve a reasonable relationship between residences. The scale of the structure and the architectural details that are compatible with the character of the existing residential units on the site enhance the appearance of the building. The structure is tucked into the far corner of this multi-dwelling development and is not visible from the street. Due to mature vegetative screening on the abutting single-dwelling lots the structure is not readily visible from the abutting properties to the east. Therefore, there are no anticipated impacts to the appearance and livability of the residential area from approval of the requested Adjustments and 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: Two Adjustments are being requested. The purpose of the multi-dwelling zones is to preserve land for urban housing and to provide opportunities for multi-dwelling housing. The conversion of this structure to provide a detached residential unit on this site is within the allowed density for R2 zone. The conversion allows recycling of a useful existing structure for a purpose that is in keeping with the purpose of the zone and will not create any cumulative impacts. Therefore, this criterion is met.

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

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

- 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: There are no scenic or historic resources on the site. No impacts from the proposal have been identified. The site is not located in an environmental zone. Therefore, these criteria do not apply.

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.

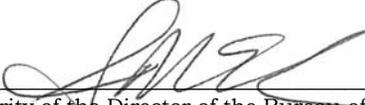
CONCLUSIONS

All of the relevant approval criteria have been met. Approving the request to reduce the required setback to zero feet from the rear (east) and north side property lines is not expected to have any significant impacts on the adjacent properties or on the livability or appearance of the residential area. The Adjustments can be approved, subject to compliance with the site plan and elevation drawings.

ADMINISTRATIVE DECISION

Approval of Adjustments to Code Section 33.120.220, to reduce the required minimum building setbacks from the rear (east) and the north side property lines, from 5 feet to zero feet, in order to allow conversion of the existing detached structure for use as a residential unit, in general compliance with the approved site plan and elevation drawings, Exhibits C-1 through C-2, signed and dated September 3, 2008, and subject to the following condition:

- 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 08-148563 AD."

Decision rendered by:  on September 3, 2008
By authority of the Director of the Bureau of Development Services

Decision mailed: September 5, 2008

Staff Planner: Kathleen Stokes

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 23, 2008, and was determined to be complete on August 6, 2008.

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 23, 2008.

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 September 19, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., 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 contact the receptionist at 503-823-7967 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 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 **September 22, 2008 – (the first business day following the last day to appeal).**
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

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

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

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

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

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

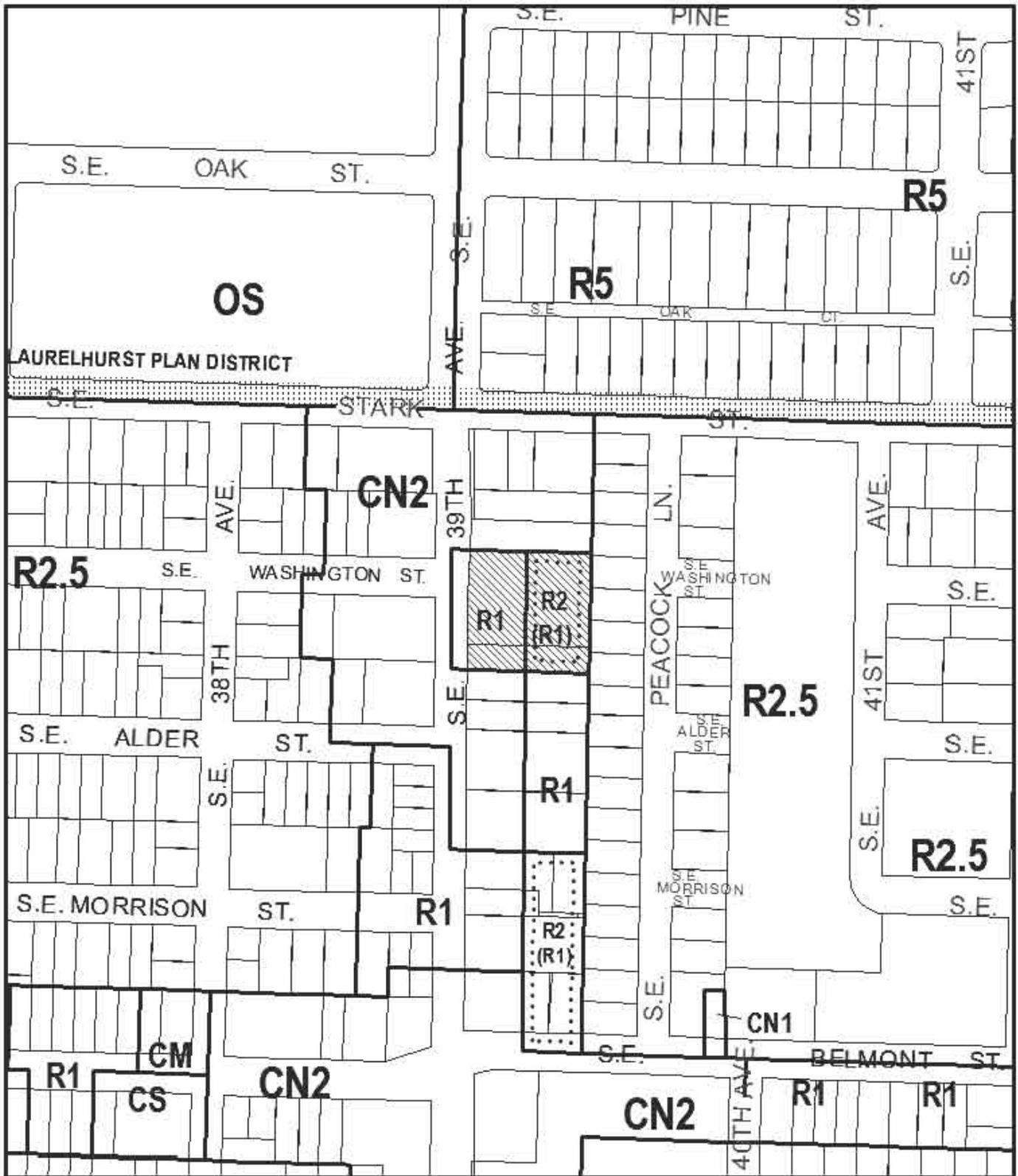
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Elevation Drawings (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Site Development Review Section of BDS
 3. Life-Safety Plan Review Section of BDS
- F. Correspondence:
 1. Becky Patterson, email dated August 14, 2008
 2. Becky Patterson, email dated August 28, 2008
- G. Other: (none)

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING

 Site



File No. LU 08-148563 AD
 1/4 Section 3134
 Scale 1 inch = 200 feet
 State_Id 1S1E01AA 5100
 Exhibit B (Jul 24,2008)

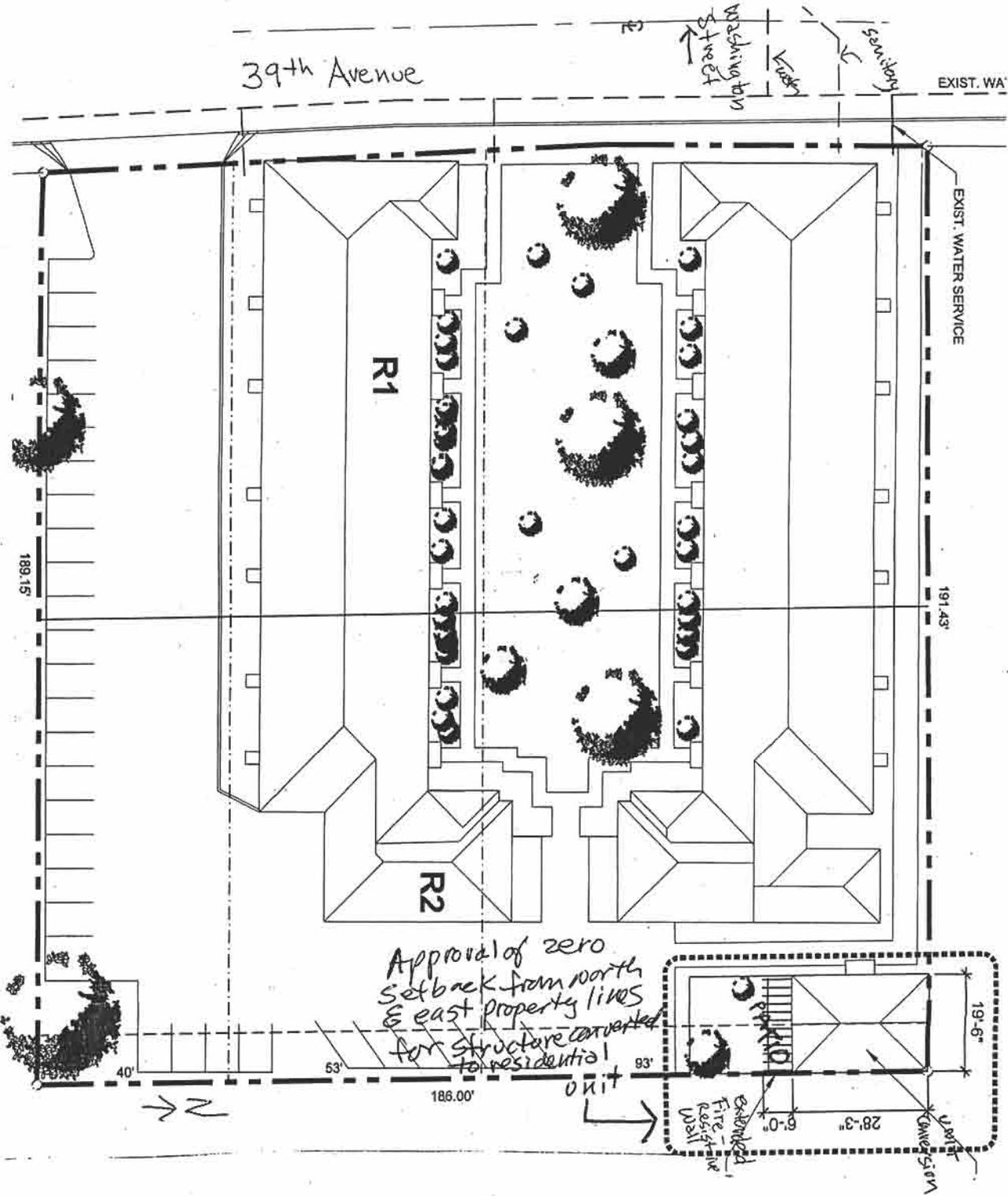
Approved

City of Portland - Bureau of Development Services

Planner Kathleen A. Stokoe Date September 3, 2008

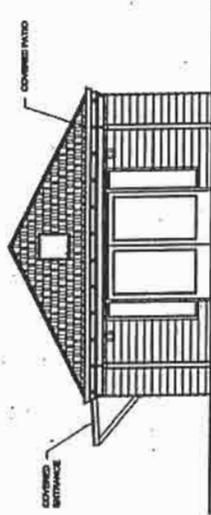
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

LU08-148563 AD
Exhibit C-1

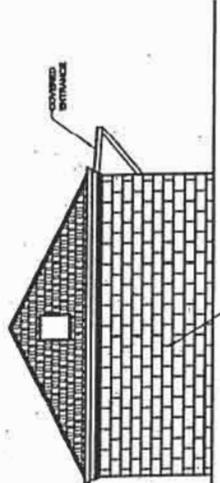


LU 08-148563 AD - Proposed converted unit - Exhibit C-2

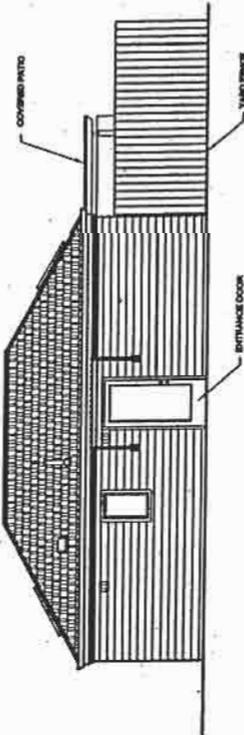
Approved
City of Portland - Bureau of Development Services
Planner Kathleen A. Stokes Date September 3, 2008
* This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.



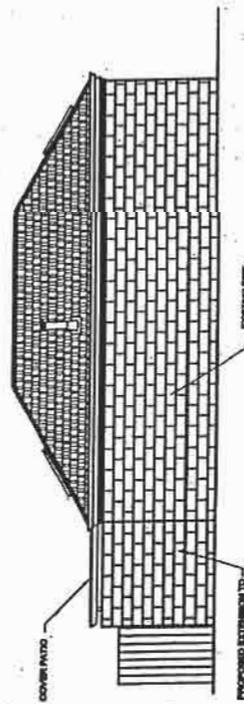
SOUTH ELEVATION
SCALE 1/8" = 1'-0"



NORTH ELEVATION
SCALE 1/8" = 1'-0"

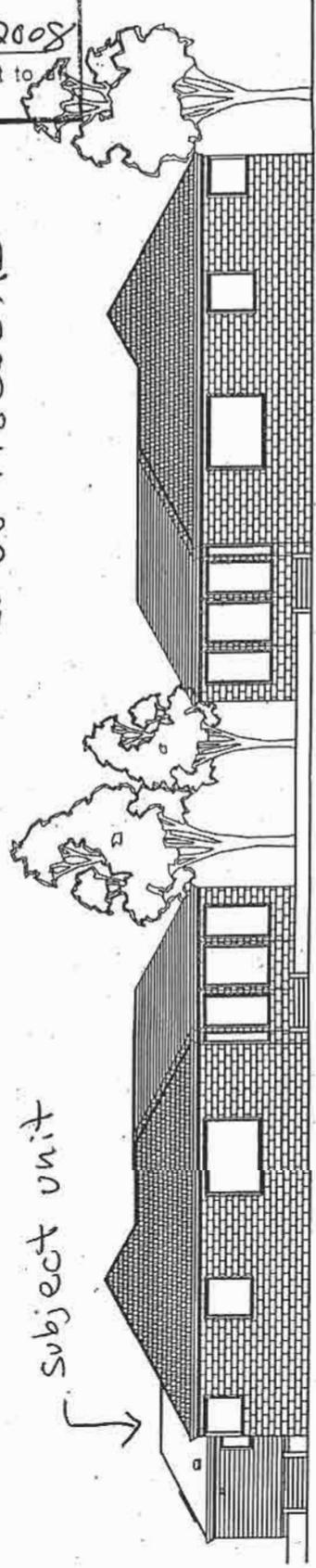


WEST ELEVATION
SCALE 1/8" = 1'-0"



EAST ELEVATION
SCALE 1/8" = 1'-0"

LU 08-148563 AD



SITE WEST ELEVATION
SCALE 1/8" = 1'-0"