



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

Charlie Hales, Mayor
Paul L. Scarlett, Director
Phone: (503) 823-7300
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TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: May 16, 2013
To: Interested Person
From: Sylvia Cate, Land Use Services
503-823-7771 / Sylvia.Cate@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 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 13-133294 AD

GENERAL INFORMATION

Applicant/Owner: Garnett P McMillan
7950 SW 46th Ave / Portland, OR 97219

Representative: Riley M Makin / Law Office Of Riley M Makin
1606 SE Glenwood St. / Portland, OR 97219

Site Address: 7950 SW 46TH AVE

Legal Description: BLOCK 1 LOT 9-12&21-24 TL 11100, PORTLAND PK ADD
Tax Account No.: R669400140
State ID No.: 1S1E19DA 11100
Quarter Section: 3824
Neighborhood: Multnomah, contact Susan Rudloff at 503-358-2316.
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Zoning: R7s, Single Dwelling Residential 7,000 with 's' Scenic overlay
Case Type: AD, Adjustment
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant proposes to construct a 21 x 33.5 foot addition on to the existing home. The site is zoned R7, which requires a 5 foot setback from side property lines, and a 15 foot front setback. Because the lot is defined as a 'through lot' by the Portland Zoning Code, Title 33, as it has frontage along SW 46th and SW Multnomah Boulevard, and both frontages are subject to the front yard setback regulations. The site also has a Scenic overlay zone which requires a 20-foot setback from Multnomah Boulevard. The applicant requests an Adjustment to reduce the R7 and Scenic Overlay required setbacks to 5 feet for the proposed addition. Attached to this Notice are plans and a zoning map depicting the proposal.

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.

ANALYSIS

Site and Vicinity: The site is an 'L' shaped lot comprising 7,852 square feet in area. It is developed with a single story home built circa 1905. To the north is SW Multnomah Boulevard, to the west and south are lots and parcels in the R7 zone, developed with residential uses. Immediately east are lots zoned R2, although the existing development remains primarily single dwelling development.

Because the Scenic overlay zone is applied along this section of SW Multnomah, from SW 45th to SW Garden Home, to designate it as a Scenic Drive, a discussion about the road and its configuration is pertinent. This Scenic Drive is ranked 12th out of 16 designated Scenic Drives, and is noted for this section of road being "...lined with trees and heavy vegetation, creating an enclosed passageway. Development is generally sparse or is screened from the road." The description further notes that because of its use as a rail line earlier, SW Multnomah is unusually wide and has an elevated roadbed.

The right of way characteristics of SW Multnomah and its elevated roadbed are not typical of an arterial street due to its prior history as a railway. City records and historical references note that SW Multnomah Boulevard follows the original right of way for the Oregon Electric Railway, which was constructed through the Garden Home area in 1907. Originally providing rail service from downtown Portland to Garden Home, the OER quickly grew to provide passenger and freight service from Portland to Forest Grove, Salem, Albany and Eugene. However, with the increasing popularity of the automobile, passenger traffic for the OER declined so steadily that the Public Utilities Commission held hearing in 1933 and voted to end passenger service. Ultimately, the abandoned Oregon Electric Railway right of way was ceded to Multnomah County, and the elevated railway trestle was dismantled and filled in for a new road.

Today, the railway roots of SW Multnomah are still evident in the unusually wide public right of way and the existing roadway configuration, which is laid over landfill where the elevated wooden train trestle once stood. The original right of way for the railway varied, depending on the extent of the embankments needed for the elevated trestle and tracks. The right of way width in the vicinity of the subject site varies between 200 and 150 feet. For comparison's sake, the right of way width minimum for arterial streets with an improved roadway width is typically 60 to 80 feet in width, with a 36 foot wide paved roadway, curbs, sidewalks, and a planter strip. This segment of SW Multnomah does not have curbs or sidewalks.

Zoning: The site is zoned R7s, Single Dwelling Residential 7,000 with 's' Scenic overlay. The R7 zone is a medium density single-dwelling zone. The R7 Zone allows attached and detached single-dwelling structures and duplexes.

The Scenic Resource zone is intended to:

- Protect Portland's significant scenic resources as identified in the *Scenic Resources Protection Plan*;
- Enhance the appearance of Portland to make it a better place to live and work;
- Create attractive entrance ways to Portland and its districts;
- Improve Portland's economic vitality by enhancing the City's attractiveness to its citizens and to visitors;
- Implement the scenic resource policies and objectives of Portland's Comprehensive Plan.
- The purposes of the Scenic Resource zone are achieved by establishing height limits within view corridors to protect significant views and by establishing additional landscaping and screening standards to preserve and enhance identified scenic resources.

Land Use History: City records indicate there are two prior land use reviews for this site: Case File MCF 12-55 approved a sign in 1955. In 1995, an Adjustment was approved to reduce required parking on part of the site that has since become a separate lot. Neither of these prior reviews have any bearing on the current application.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **April 18, 2013**. The following Bureaus have responded with no issues or concerns:

- *Water Bureau* notes water service is existing to the property.
- *Fire Bureau*
- *Bureau of Parks-Forestry Division*
- *Life Safety Section of BDS* notes building permits will be required.
- *Bureau of Environmental Services*
- *Bureau of Transportation Engineering*

The *Site Development Section of BDS* responded with comments noting a number of requirements that will be imposed as part of the building permit review process, including the decommissioning of all drywells within the footprint of the proposed addition and any abandoned on-site sanitary disposal facilities, including septic tank.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 18, 2013. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

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

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

Findings: The purpose of the regulations to be adjusted are as follows:

The purpose for *Setbacks* in Single Dwelling zones is found at 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 purpose for the *Scenic Corridor* setback is found at 33.480.040.B.1., *Purpose*, which states:

The scenic corridor designation is intended to preserve and enhance the scenic character along corridors, and where possible, scenic vistas from corridors. This is accomplished by limiting the length of buildings, preserving existing trees, providing additional landscaping, preventing development in side setbacks, screening mechanical equipment, and restricting signs.

The subject site is considered to be a "Through Lot" per Title 33's definitions at 33.910 and Figure 910-4 because of the "L" shaped configuration, which results in the site having frontage on both SW 46th Avenue and SW Multnomah Boulevard. Although the lot configuration is such that the frontage along SW Multnomah functions more as a side property line, the zoning provisions deem this a *front* lot line, and therefore both Adjustments are triggered: the proposed addition is required by the R7 regulations to be set back from the *front* property line along SW Multnomah Boulevard by 15 feet, and the Scenic Corridor requires a 20 foot setback.

Given the orientation of the existing house, the proposed addition, and the configuration of the lot, the property line along SW Multnomah Boulevard functions as a side property line; the R7 development standards require a 5 foot setback from side property lines. The Fire Bureau notes no concerns regarding fire protection and access. Because the reduced setback is adjacent to SW Multnomah Boulevard, there is no impact on light and air. The applicant has submitted photos of the site and adjacent development, demonstrating that homes on the abutting lots to the east and west have minimal setbacks from SW Multnomah. Exhibit G-3 also demonstrates that the footprints of the existing development on either side of the subject site have greatly reduced setbacks. The proposed addition and the reduced setback will be consistent with the placement of these homes.

Additionally, the proposed addition will reflect the general building scale and placement of homes in the immediate area, and the addition will not change the separation between residences as the requested reduced setback would place the addition closer to SW Multnomah Boulevard rather than closer to an adjacent home. Although this setback is technically considered a front setback due to the 'through lot' configuration of the site, a considerable distance, including slopes and heavy vegetation will continue to separate the proposed addition from the SW Multnomah right-of-way, thus continuing to provide an open and visually pleasing 'front yard' area. Because the reduced setback is toward the right of way and not reducing separation between houses, there is no anticipation of reduced privacy for adjacent properties. Given the relatively flat nature of the site, and the elevation difference between the site, the roadway of SW Multnomah, and the steep embankment in between, the reduced setback will provide sufficient flexibility to locate the proposed addition on the site in such a way that it has minimal visual impacts on neighbors and allows the addition to be placed such that the set back is compatible and consistent with adjacent development.

Because of the existing conditions, the reduced setback will have no impact on the scenic corridor along SW Multnomah. An existing 7 foot high wooden fence along the property line is not visible from the public right-of-way. The proposed development will be five additional feet behind the fence, which will remain in its current position. The distance from the paved roadway and the property line of the site is heavily vegetated with trees and underbrush, further screening the proposed

addition from view. Due to the natural state of the vegetation and the fact that the scenic designation is based, in part, on this aspect of SW Multnomah, the applicant has noted that no additional landscaping is proposed, as more formal plantings, as spelled out in the Scenic Overlay Chapter at 33.480.040.B.2.[2] would impinge on the natural appearance of the existing vegetation, and thus would not preserve the scenic character of the corridor. For 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 is within a residential zone. The proposed addition will provide additional living area for the property owner, and is designed to look residential in nature, which will be compatible with the surrounding residential development. There are no aspects of the proposal that are anticipated to impact the overall livability of the residential area. 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: Two Adjustments are requested, both of which, in effect, reduce a required setback. The proposed project is to add an addition to the existing house to provide more living space and rooms for the owner and family. This residential use is consistent with the overall purpose of the Single Dwelling Residential 7,000 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 historic resources present on the site.

However, one Adjustment requested is to reduce the setback required in a designated Scenic Corridor. As discussed previously in this decision, because of the existing conditions between the subject site and the Scenic Corridor, the proposed reduction to the required Scenic setback will continue to preserve the scenic resource as the proposed development will not be visible from SW Multnomah Boulevard. This criterion is met.

- 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: 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

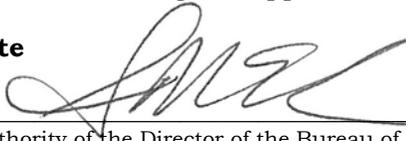
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ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to reduce the required R7 front yard setback [15 feet, per 33.110.220 and Table 110-3] and the Scenic Corridor setback [20 feet, per 33.480.040], per the approved site plans, Exhibits C-1 through C-3, signed and dated May 13, 2013, 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.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-133294 AD.

Staff Planner: Sylvia Cate

Decision rendered by:  **on May 13, 2013**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 16, 2013

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 March 28, 2013, and was determined to be complete on April 15, 2013.

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 March 28, 2013.

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 13, 2013.**

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 May 30, 2013** 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 **May 31, 2013**.
- 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:

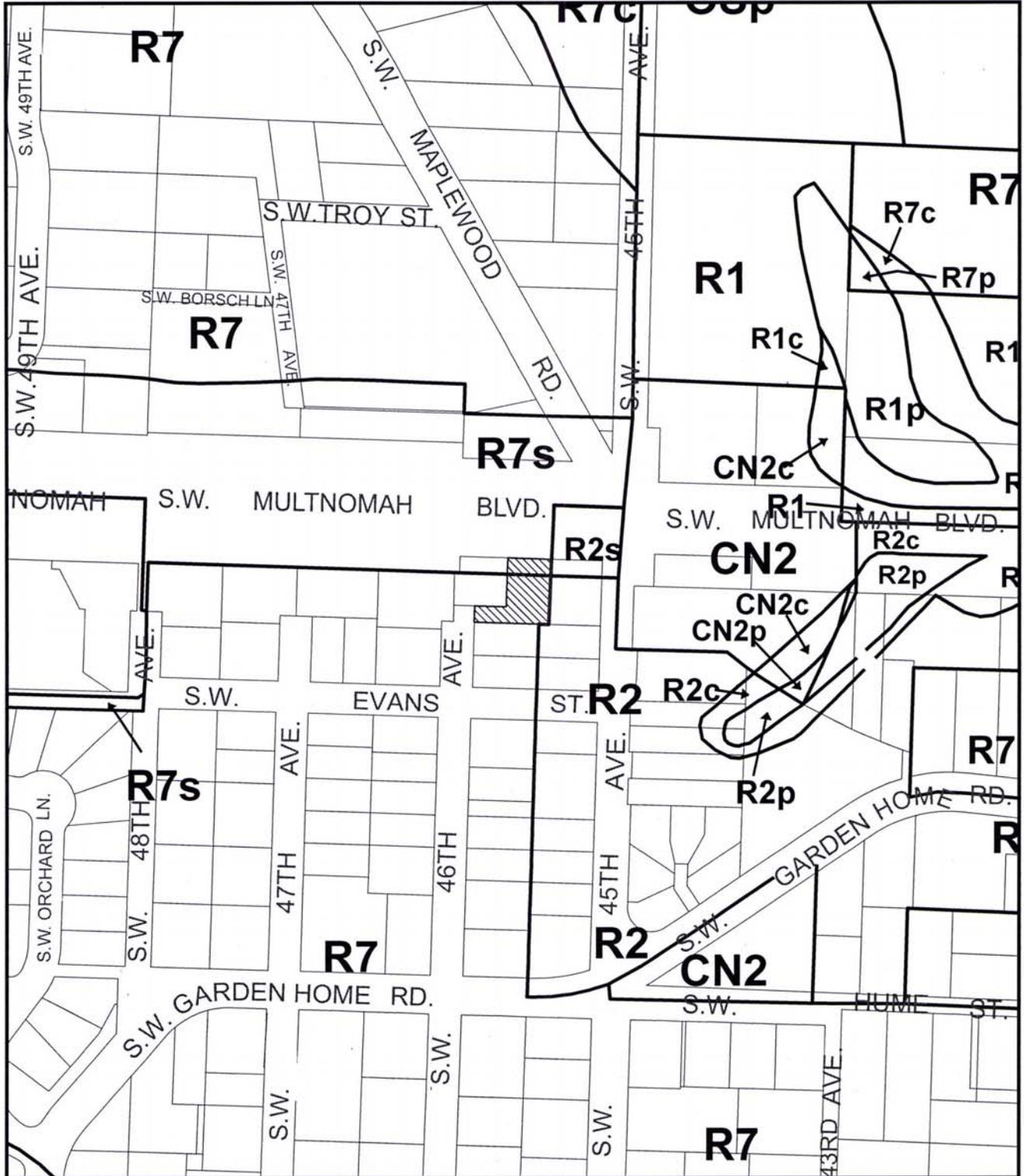
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. South & East elevations
 - 3. North & West 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 received*
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Map of footprints of existing homes adjacent to subject site

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

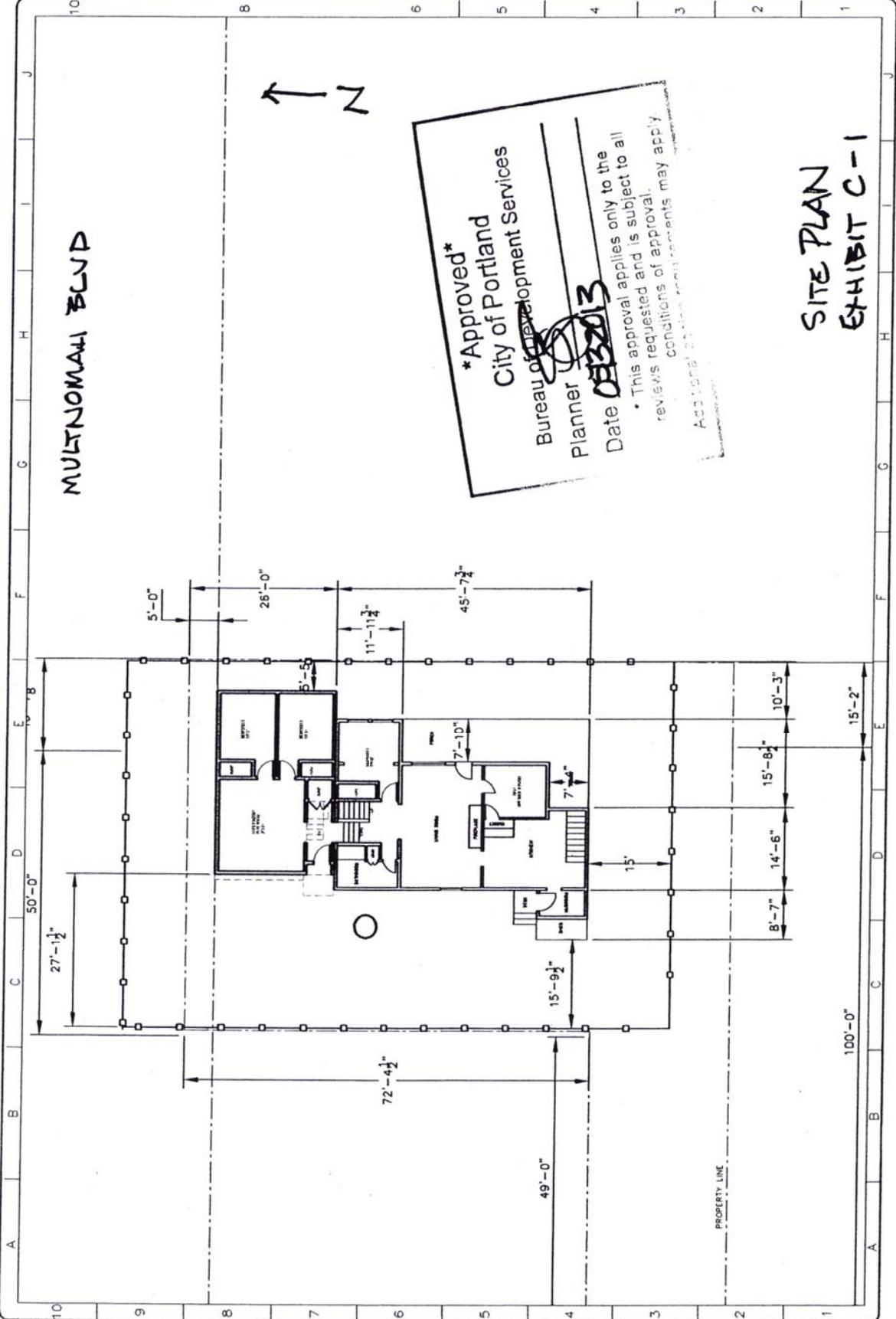
File No. LU 13-133294 AD
 1/4 Section 3824
 Scale 1 inch = 200 feet
 State_Id 1S1E19DA 11100
 Exhibit B (Apr 03, 2013)

REV.	DESCRIPTION	DATE
1	REVIEW APPROVAL	9/18/12

Garnett-7950 SW 46th
 Portland Oregon 97219
 Mudroom Addition - Site Plan

Buildstrong Construction LLC
 Office: (503) 433-1838
 38222 Hood St
 Sandy, OR 97055
 www.BuildstrongConstruction.com

DRAWING #:	DATE:	SCALE:	SHEET #:	DRAWN BY:
Garnett1	9/18/12	1" = 15'	1 OF 3	David Esler

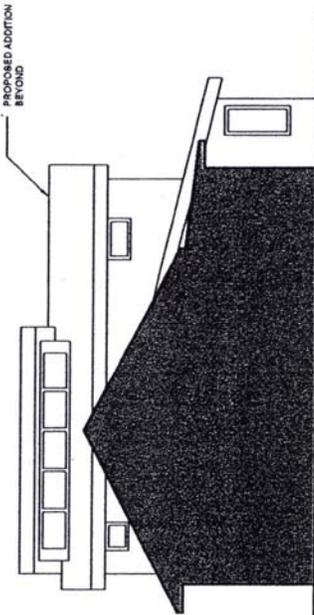


Approved
 City of Portland
 Bureau of Development Services
 Planner: *[Signature]*
 Date: **09/20/13**
 * This approval applies only to the review's requested and is subject to all conditions of approval.
 Additional conditions/requirements may apply.

**SITE PLAN
 EXHIBIT C-1**

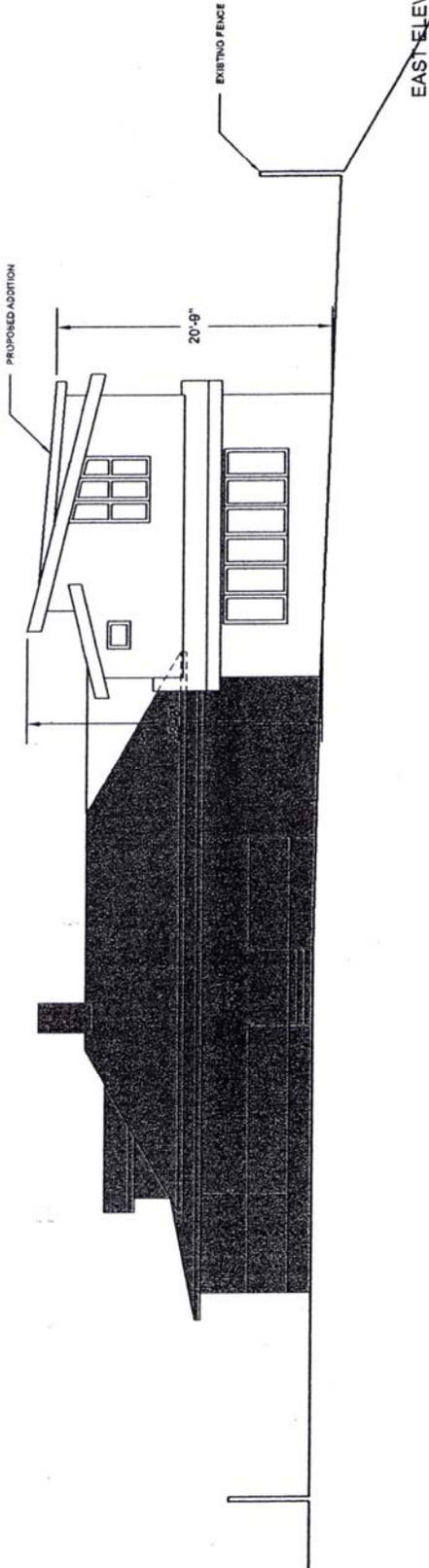
MULTNOMAH BOUND

W13 133294AD



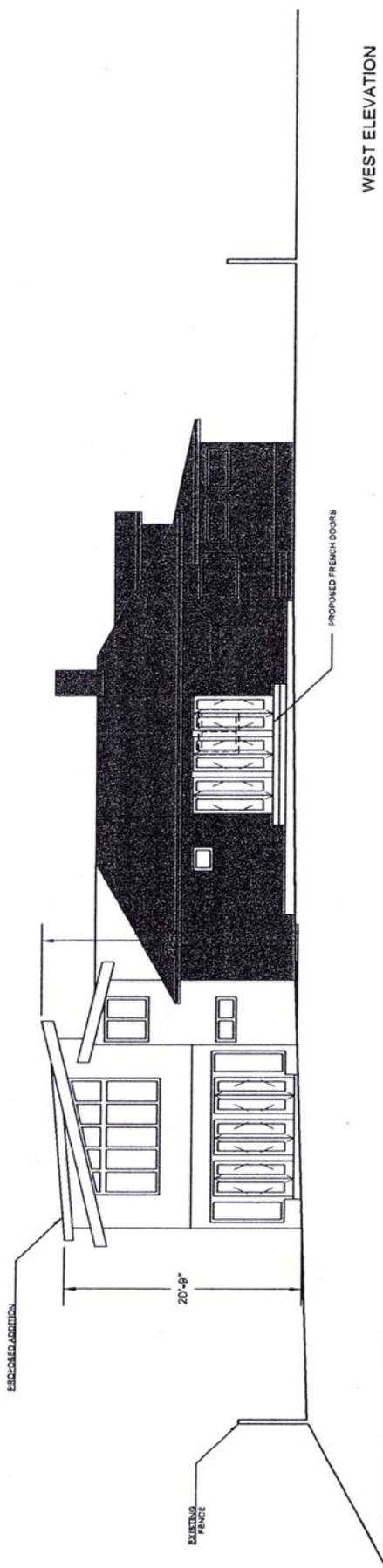
* Approved *
 City of Portland
 Bureau of Development Services
 Planner: [Signature]
 Date: 02/22/13
 * This approval applies only to the conditions of approval. Any other reviews requested may apply.

EXHIBIT C-2
 LU 13 133294AD

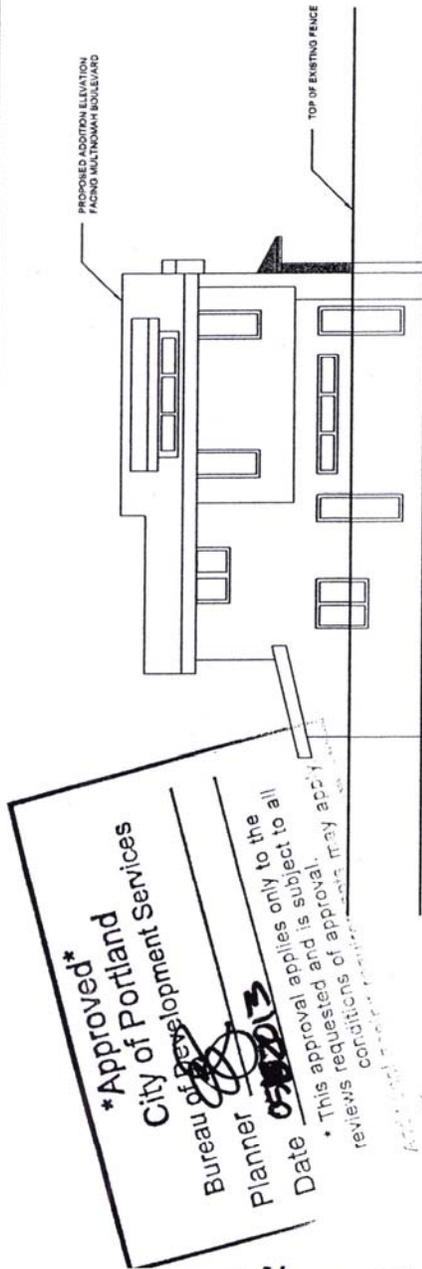


MCMILLAN HOUSE ADDITION
 7950 SW 46TH AVE
 PORTLAND, OR 97219

24 FEBRUARY 2013
 1/8" = 1'-0"



WEST ELEVATION



NORTH ELEVATION

24 FEBRUARY 2013
1/8" = 1'-0"

Approved
 City of Portland
 Bureau of Development Services
 Planner *[Signature]*
 Date *02/20/13*
 * This approval applies only to the reviews requested and is subject to all conditions of approval.

Exhibit C-3
 LV 13 133294AD

MCMILLAN HOUSE ADDITION
 7950 SW 46TH AVE
 PORTLAND, OR 97219