



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

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Date: May 4, 2009
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 09-114432 AD

GENERAL INFORMATION

Applicant: Chris Lewis
Landrise Development LTD.
PO Box 1212
Lake Oswego, OR 97035

Donald E Pollock (property owner)
1834 SW 58th Avenue #202
Portland, OR 97221

Site Address: 04 SW BOUNDARY UNITS 1-3

Legal Description: LOT 5 BLOCK 2, BINGHAM ADD
Tax Account No.: R078800130
State ID No.: 1S1E15BC 04700
Quarter Section: 3529

Neighborhood: South Portland NA., contact Jim Davis at 503-248-9820.
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

Zoning: R1 (R1,000, Medium Density Multi-dwelling Residential)

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

Proposal: The applicant is proposing to locate air conditioners for Units 1 – 3 along the east side of the building, two feet from the side property line. The air conditioners will each be 25 inches wide and deep and 27 inches tall. A "sound blanket" will cover the base of the air conditioners, which the manufacturer's specifications indicate will reduce the noise levels of the machines, by about 5 decibels, to a noise output of about 72 to 74 decibels. Code Section 33.120.280 C.1 states that mechanical equipment, such as air conditioners, are not allowed to be located within required side or rear building setbacks, unless they are contained within a completely enclosed building that is less than 6 feet tall. The applicant is requesting approval of an Adjustment to reduce the required setback from the east side property line for the air conditioners, from 5 feet to 2 feet. A six-foot tall wood fence and landscaping that provide

screening for the air conditioners would remain on site to buffer the residences that are located on the second and third floors of the building on the abutting property to the east.

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 applicant's site is a 5,073 square-foot parcel that is located on the south side of SW Boundary Street, across from the right-of-way for SW View Point Terrace, which lies approximately midway between SW Corbett Avenue and SW 1st Avenue/US Hwy I-5. The site is developed with four townhouse units that were just constructed, according to permits that were issued in 2007. The area around the site has a mixture of residential development types of various densities, styles and ages. The property that abuts the site, on the east side adjacent to the proposed location of the air conditioning units, is developed with a three-story apartment structure that has vehicle parking on the ground floor and two stories of living area above. A wooden fence and landscaping separate the development on the applicant's site from the apartments on the adjacent lot.

Zoning: 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 do not include any prior land use reviews for this site.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **April 6, 2009**. The following Bureaus responded, electronically, to indicate that there are no issues or concerns related to approval of the requested Adjustment:

- Environmental Services
- Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Life Safety Plan Review Section of BDS
- Parks, Forestry Division

Neighborhood Review: One written response was received in response to the proposal. A letter was sent, jointly, by two citizens who are owners in a condominium association that is associated with a property that is approximately one block away from the applicant's site. The letter stated that they believed the applicant's site was over-built and that the location of the air conditioning units should have been considered in advance. They also stated that they believed the units would generate too much noise for the residents of the adjacent apartment building to the east of the applicant's site (Exhibit F-1).

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 purpose of building setback requirements are to maintain light, air, separation for fire protection, and access for fire fighting. Setback standards also reflect the general building scale and placement of development in the City's neighborhoods and promote a reasonable physical relationship between residences. They promote options for privacy for neighboring properties and 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.

Regulations for accessory structures, including mechanical equipment, are intended to ensure these structures are incidental to primary buildings, to prevent them from becoming the predominant element of the site. These standards provide for necessary access around structures, help maintain privacy to abutting lots, and maintain open front yard areas.

The proposed air conditioning units are small and compact mechanical devices which will have no impact at all on light or air. There is adequate space to maneuver around the units for access for fire fighting and the units do not cause any hazards related to fire protection. The air conditioners will not have any impact on privacy. The units were put in place with the original construction, which meets all other relevant codes for setbacks and building coverage. The units were discovered to be within the setback area, after the fact, during building inspection. They are currently existing on the ground level, but have the power disconnected so that they cannot be used unless an exception is approved through this Adjustment Review.

The machines are clearly incidental to the primary building and are adequately screened to prevent any visual detriment to the adjacent area. The "sound blankets" will reduce the level of noise from the compressors to below what could be heard from either window-sill air conditioners or from ground level units that are set back five feet but lack "sound blankets". Furthermore, if window units were used, more air conditioners would be required for the same effect, as they only provide cooling for the room where the window is located and not for the entire residential unit.

The proposed air conditioning units, with "sound blankets," would not generate enough noise to be heard by any but the closest neighbors. The units are also adjacent to the garage area in the development to the east, where automobiles may make considerably more noise than the air conditioners. The separation provided by the difference between the ground level air conditioners and the second and third-story living areas in the adjacent apartments is greater than the separation required by the minimum setback. Therefore, the proposal equally meets the purpose 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 location of the air conditioning units is not expected to cause any impacts to the appearance of the site from the adjacent property to the east or from the street frontage. Noise will not be an issue, due to the separation from

grade level to the living area in the adjacent apartments. Therefore, approval of the requested Adjustment is not expected to significantly detract from the livability or appearance of the residential area 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
- 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: Only one adjustment has been requested. There are no scenic or historic resources on the site. No impacts are expected to occur from the reduced setback and 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

The proposal to locate the air conditional units for Townhouse Units 1-3 at a distance of 2 feet from the east property line will still meet the purpose of the setback requirement by providing adequate separation for fire protection and access for fire fighting. The small size of the units ensures that there will be no impacts on light or air and the character of the units would not have any impact on privacy. The units will be screened so that they not have any significant impact on the appearance of the site. The proposed "sound blankets," and the one-story difference in grade level between the air conditioners and the living units on the property to the east, will ensure that the noise level of the machines does not detract from livability for the neighboring residents . All of the approval criteria can be met, with conditions that require the proposed "sound blankets" and the retention of landscaping, as indicated on the site plan. Therefore, the requested Adjustment can be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.120.280 C.1, to reduce the required setback for the proposed air conditioning units for Townhouse Units, 1-3, from 5 feet to 2 feet from the east property line, in general compliance with the approved site plans and elevation drawings Exhibits C-1 and C-2, signed and dated April 30, 2009 and subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through C) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 09-114432 AD " All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The air conditioning units for Townhouse Units 1 through 3 must be equipped with "sound blankets," as indicated in the applicant's proposal.
- C. The landscaping and fence indicated on the approved site plan must remain or be replaced with like materials, if future loss or damage to these elements occurs.

Staff Planner: Kathleen Stokes

Decision rendered by:  **on April 30, 2009**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 4, 2009

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 13, 2009, and was determined to be complete on April 2, 2009.

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 13, 2009.

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. Therefore, the 120 days will expire on August 1, 2009.

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 18, 2009** 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 **May 19, 2009 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

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

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

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

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

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

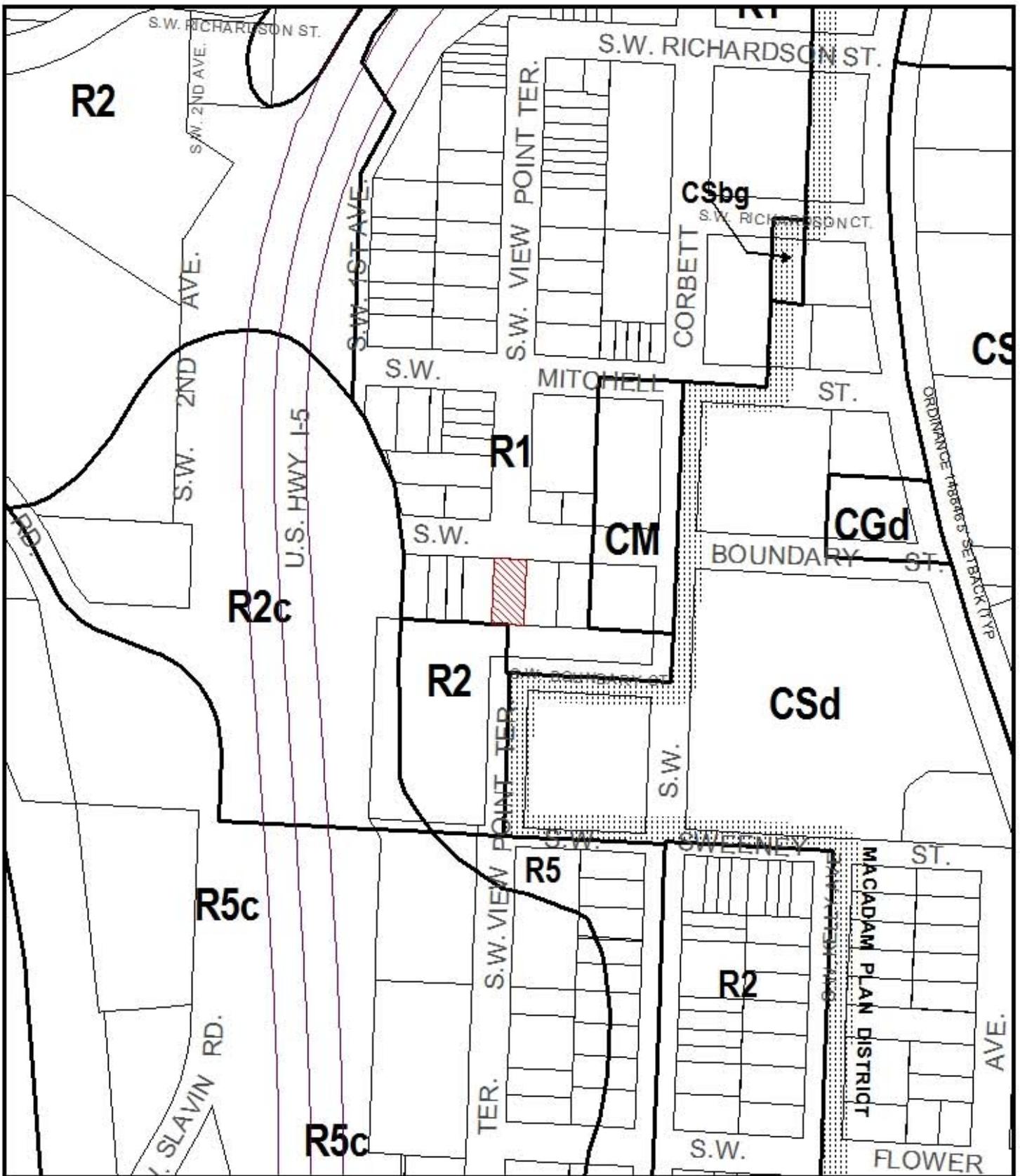
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Application and original submittal
 - 2. Supplemental information, including "sound blanket" details, revised plans and narrative
 - 3. Letter from applicant, April 24, 2008
- 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. Printout showing electronic responses from service agencies
- F. Correspondence:
 - 1. Michele Gamburd and Geraldine Gamburd
- G. Other:
 - 1. Letter from Kathleen Stokes to Chris Lewis, March 19, 2009

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-7300 (TTY 503-823-6868).



ZONING

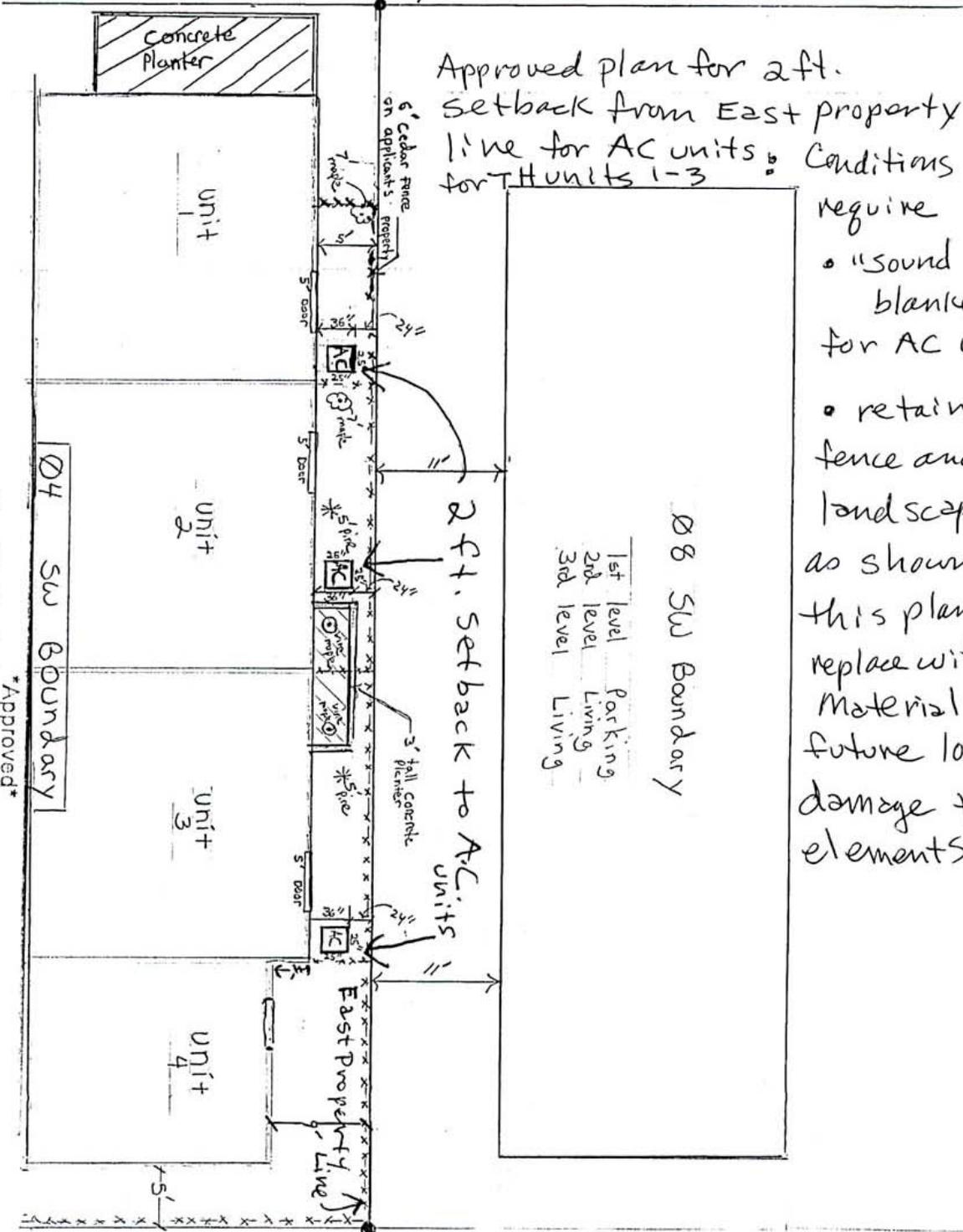
 Site

Included in Density Calculations



File No.	LU 09-114432 AD
1/4 Section	3529
Scale	1 inch = 200 feet
State_Id	1S1E15BC 4700
Exhibit	B (Mar 16, 2009)

SW Boundary Street



Approved plan for 2 ft. Setback from East property line for AC units. Conditions for TH units 1-3

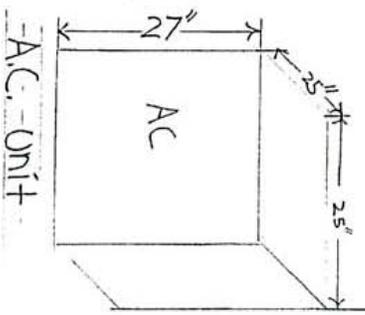
Conditions require

- "sound blankets" for AC units
- retain wood fence and landscaping, as shown on this plan ^{and} replace with like materials if future loss or damage to these elements occurs.

Ø 8 SW Boundary

1st level	Parking
2nd level	Living
3rd level	Living

2 ft. setback to AC units



-A.C. - Unit

- ***** 6' Cedar fence
- * 5' Pine
- ⊗ 7' Maple
- ⊙ 4' Vine Maple



Approved

City of Portland - Bureau of Development Services

Ruthleen A. Stokes Date April 30, 2009

This report applies only to the reviews requested and is not a guarantee of approval. Additional zoning requirements may apply.

Lombise Development
 P.O. Box 1212
 Lake Oswego, OR 97035
 (503) 246-5662
 Project: 04 SW Boundary

Approved

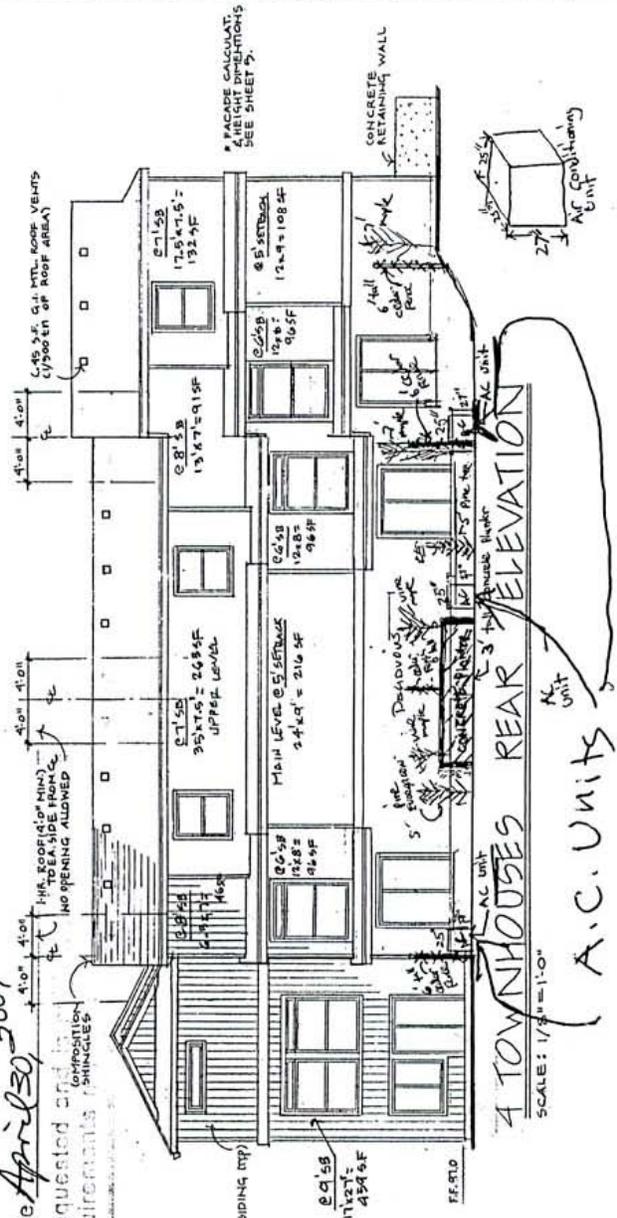
City of Portland - Bureau of Development Services

Rothblatt, Stokes Date *April 30, 2009*

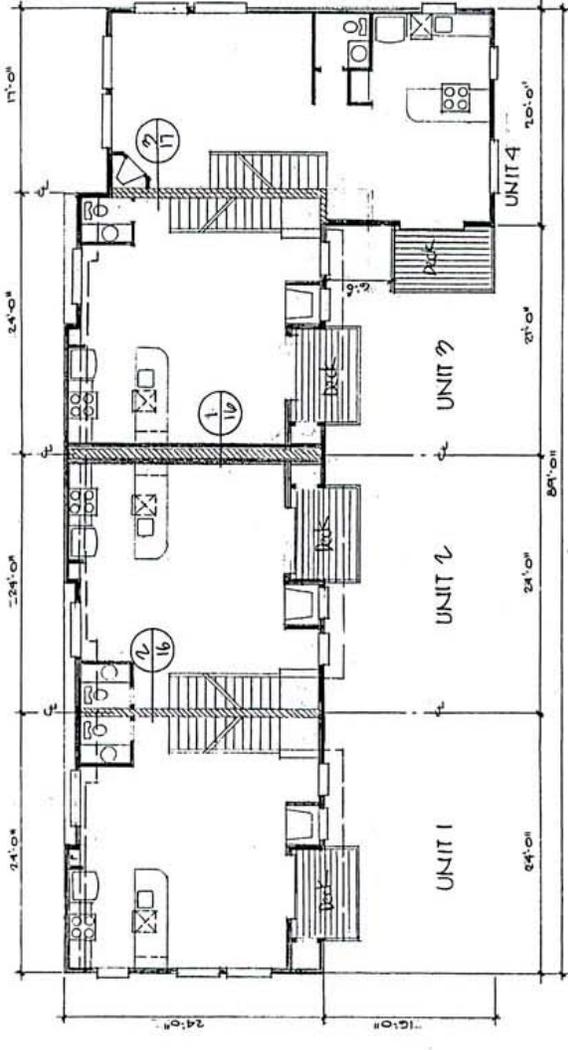
Changes only to the reviews requested and in composition of SHINGLES
Additional zoning requirements

WALL AREA AND SETBACKS

- 0 9'-0" SETBACK = 459 SF + 1720 SF = 2179 SF (2400 SF @)
- 0 5'-0" SETBACK = 137 SF + 1583 SF = 1720 SF (1900 SF @)
- 0 7'-0" SETBACK = 395 SF + 1185 = 1580 SF (1600 SF @)
- 0 6'-0" SETBACK = 288 SF + 900 = 1188 SF (1200 SF @)
- 0 5'-0" SETBACK = 900 SF (1000 SF @)



4 TOWNHOUSES REAR ELEVATION
SCALE: 1/8" = 1'-0"
(A.C. Units)



4 TOWNHOUSES MAIN FLOOR PLAN (530 S.F. UNITS 1-3) (648 S.F. UNIT 4)
SCALE: 1/8" = 1'-0"

(See also C-1 and conditions of Approval)