



CITY OF PORTLAND
Bureau of Development Services
1900 SW Fourth Avenue, Suite 5000
Portland, OR 97201 **P524**
Land Use Notice Enclosed
Case # LU 09-141614 AD

16

Return Service Requested



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

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: August 18, 2009
To: Interested Person
From: Marty Stockton, Land Use Services
503-823-3493 / Marty.Stockton@ci.portland.or.us

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has 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 09-141614 AD

GENERAL INFORMATION

Applicant/Owner: Steven J Romero and Martie Kilmer
3729 SW Kelly Ave
Portland, OR 97239

Site Address: 3729 SW KELLY AVE

Legal Description: LOT 3&4 BLOCK 162, CARUTHERS ADD
Tax Account No.: R140915250
State ID No.: 1S1E10CA 04500
Quarter Section: 3429

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

Zoning: R2, Multi-Dwelling Residential 2,000

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

Proposal:

The applicant is planning to repair the existing detached garage on the site. No changes to the exterior and/or size of the structure are proposed. The existing garage is approximately 34 feet in width, 20 feet in length, and will be approximately 10 feet, 9 inches in height (measured from the grade at the northeast corner of the garage to the top of the garage's flat roof). The applicant/property owner plans to replace the roof and construct it for a deck. Deck railing's will extend up to 6 feet above the height of the garage roof on the garage's north, east, and south sides.

The garage is located 3 feet, 10 inches from the north (side) property line, and approximately 0 feet (at its closest point) from the east property line abutting SW Kelly Avenue. The entrance of

the existing garage also faces SW Kelly Avenue and is set back approximately 0 feet the east property line.

Zoning Code Section 33.110.220 and Table 110-3 (Setbacks) require detached structures, including garages, to have minimum side setbacks of 5 feet and minimum front setbacks of 10 feet.

The applicant is requesting approval of two Adjustments to Section 33.110.220 and Table 120-3 for the proposed rooftop deck on the garage:

- 1) Side Setback Adjustment, to allow the existing garage's proposed rooftop deck to be approximately 3 feet, 10 inches from the north (side) property line, rather than complying with the required 5-foot minimum setback.
- 2) Front Setback Adjustment, to allow the existing garage's proposed rooftop deck to be as close as 0 feet from the east (front) property line, rather than the required 10-foot minimum setback.

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 10,000 square foot site is located at the southeast corner of the intersection of SW Kelly Avenue and SW Lane Street. The site is currently developed with a single-dwelling, single-story home originally built in 1904, and a detached one-car garage. The home is located in the center of the site, and the site is characterized by open front and side yards and minimal rear yard. The site is accessed from SW Kelly Avenue with the detached garage at the NE corner of the lot abutting the street.

Within 200 feet of the site, development is a mix of single-dwelling and multi-dwelling residential. Most homes have attached or detached garages. Most detached garages appear to be located within the side setbacks, and several of the attached garages also appear to be located in side setbacks. There appears to be a few rooftop decks on these garages.

Zoning: The site and surrounding vicinity is zoned R2, which is a multi-dwelling residential zone. The multi-dwelling zones are intended to preserve land for urban housing and to provide housing opportunities for multi-dwelling housing. The zones implement the comprehensive plan policies and designations for multi-dwelling housing. The R2 zone is a low density multi-dwelling zone and allows duplexes, townhouses, rowhouses and garden apartments. The R2 zone requires a 5-foot side building setback and a 10-foot front building setback.

Land Use History:

Agency Review: A "Request for Response" was mailed on July 21, 2009. The following Bureaus have responded with no issues or concerns (Exhibits E.1-E.4):

- Fire Bureau
- Bureau of Transportation Engineering
- Bureau of Parks-Forestry Division
- Bureau of Environmental Services

The following Bureaus have no concerns with the request and have submitted additional comments to assist with the building permit process:

- Site Development Section of BDS (Exhibit E.5): Site Development has no objection to approval of the proposed Adjustment to property line setback requirements, provided that a stormwater management system that conforms to the Stormwater Management Manual can be shown on the plans at the time of building permit review. Specifically the garage deck and front porch roof drain should be tied into the public sewer.
- Life Safety Bureau (Exhibit E.6)
- Water Bureau (Exhibit E.7)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on July 21, 2009. No written responses have been received.

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 applicant is requesting an Adjustment to **Section 33.110.220, Setbacks**. The purpose statement for this regulation is as follows:

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.

In addition to the purpose statement for setbacks, as stated above, this Adjustment is also subject to the purpose statement for **Accessory Structures, Section 33.110.250**, as follows:

This section regulates structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards provide for necessary access around structures, help maintain privacy to abutting lots, and maintain open front setbacks.

The proposed rooftop deck occupies the same footprint as the existing detached garage. Separation for fire protection and fire fighting access is adequate for the garage, and the deck would not further infringe into this separation and access. The proposed deck is composed of the roof of the garage, with an open style railing around it. Therefore, the deck and railing would not decrease light and air access for the adjacent property. Because the proposed rooftop deck occupies the roof

of the garage, and the garage reflects a reasonable physical relationship between structures, the rooftop deck in itself does not significantly change the horizontal physical separation between structures. The associated railing does increase the amount of vertical structure located about 8 feet from the adjacent home, although due to the open nature of the railing, this is not significant.

The proposed deck platform is located 10 feet, 9 inches in height (measured from the grade at the northeast corner of the garage to the top of the garage's flat roof) and is located 3 feet, 10 inches from the side property line, approximately 10 feet from the adjacent home onsite to the south. The deck railing is another 6 feet of structural height, for a total of 16 feet, 9 inches of vertical façade height. The applicant provided photos of other neighborhood properties with rooftop decks that also appear to be located within the front and side setbacks. While the proposed rooftop deck would locate an elevated, potentially high-use outdoor area close to the property line, the closer of two apartment buildings on the adjacent property to the north is approximately 15 feet away with limited windows facing the rooftop deck.

For these reasons, the purpose statement for setbacks is equally or better met by the rooftop deck request. Therefore, this approval criterion is met.

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

Findings: The proposed rooftop deck is located 10 feet, 9 inches above the surrounding grade, 3 feet, 10 inches from the north side property line, and about 15 feet from the closest adjacent apartment building on the property to the north. Limited windows on the adjacent multi-dwelling face the common side property line. Heavy vegetation is between the two structures. The location and height of the deck would not enable people on the deck to look directly into the windows of the adjacent apartment building. Privacy for the adjacent lot, and thus livability, will not be significantly detracted from the proposed rooftop deck. For this reason, this approval 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 cumulative effect of the adjustments would place a new elevated deck 3 feet, 10 inches from the common side property line and approximately 0 feet (at its closest point) from the front property line abutting SW Kelly Avenue.

The multi-dwelling zones are intended to preserve land for urban housing and to provide housing opportunities for multi-dwelling housing. The R2 zone is a low density multi-dwelling zone. The R2 zone allows duplexes, townhouses, rowhouses and garden apartments. The request to allow a rooftop deck on an existing detached garage currently located in the side and front setbacks serves as an accessory structure to an individual household. The garage and deck are accessory uses to the main home, and enhance the housing opportunities of that site. Housing opportunities on adjacent lots are not reduced by this request. 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 rooftop deck to be located in the side setback due to the distance between structures, heavy vegetation, and limited windows on the closer apartment building to the north. This criterion is met for the rooftop deck request.

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

The proposal to allow the rooftop deck is not out of character, location, and scale with surrounding development and equally meet the approval criterion for setbacks, and does not significantly detract from the privacy and livability of the adjacent site. Approval criterion A, B, C and E are met by the proposal. Therefore, the Adjustment request to allow the rooftop deck to be located in the north side and east front building setbacks are approved.

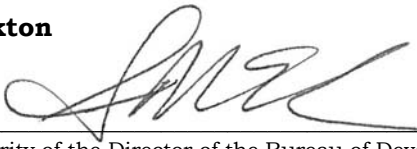
ADMINISTRATIVE DECISION

Approval of an Adjustment to **Section 33.110.220 and Table 33.110-3, Setbacks**, to allow the rooftop deck and deck railing to be located 3 feet, 10 inches from the north side property line and 0 feet from the east front property line;

per the approved site plans, Exhibits C-1 through C-4, signed and dated August 14, 2009, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B) 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 09-141614 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

Staff Planner: Marty Stockton

Decision rendered by:  **on August 14, 2009**

By authority of the Director of the Bureau of Development Services

Decision mailed: August 18, 2009

About this Decision. This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. 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 7, 2009, and was determined to be complete on July 16, 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 July 7, 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. Unless further extended by the applicant, **the 120 days will expire on: November 15, 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 September 1, 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.

Appeal fee waivers. Multnomah County may cover the appeal fees for their recognized associations. An appeal filed by a recognized association must be submitted to the City with either the appropriate fee or the attached form signed by the County. Contact Multnomah County at 503-988-3043, 1600 SE 190th, Portland, OR 97233.

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 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 **September 2, 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 503-823-7967.

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, or
- In situations involving only the creation of lots, the land division has been recorded.

Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the City Planning Director, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

Recording other land use decisions. If the preliminary land division approval also contains approval of other land use decisions (examples include adjustments, conditional uses, and environmental reviews), these other approvals must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

The applicant, builder, or their representative may record the final decisions on these other land use decisions 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.

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, or
- In situations involving only the creation of lots, the land division has been recorded.

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:

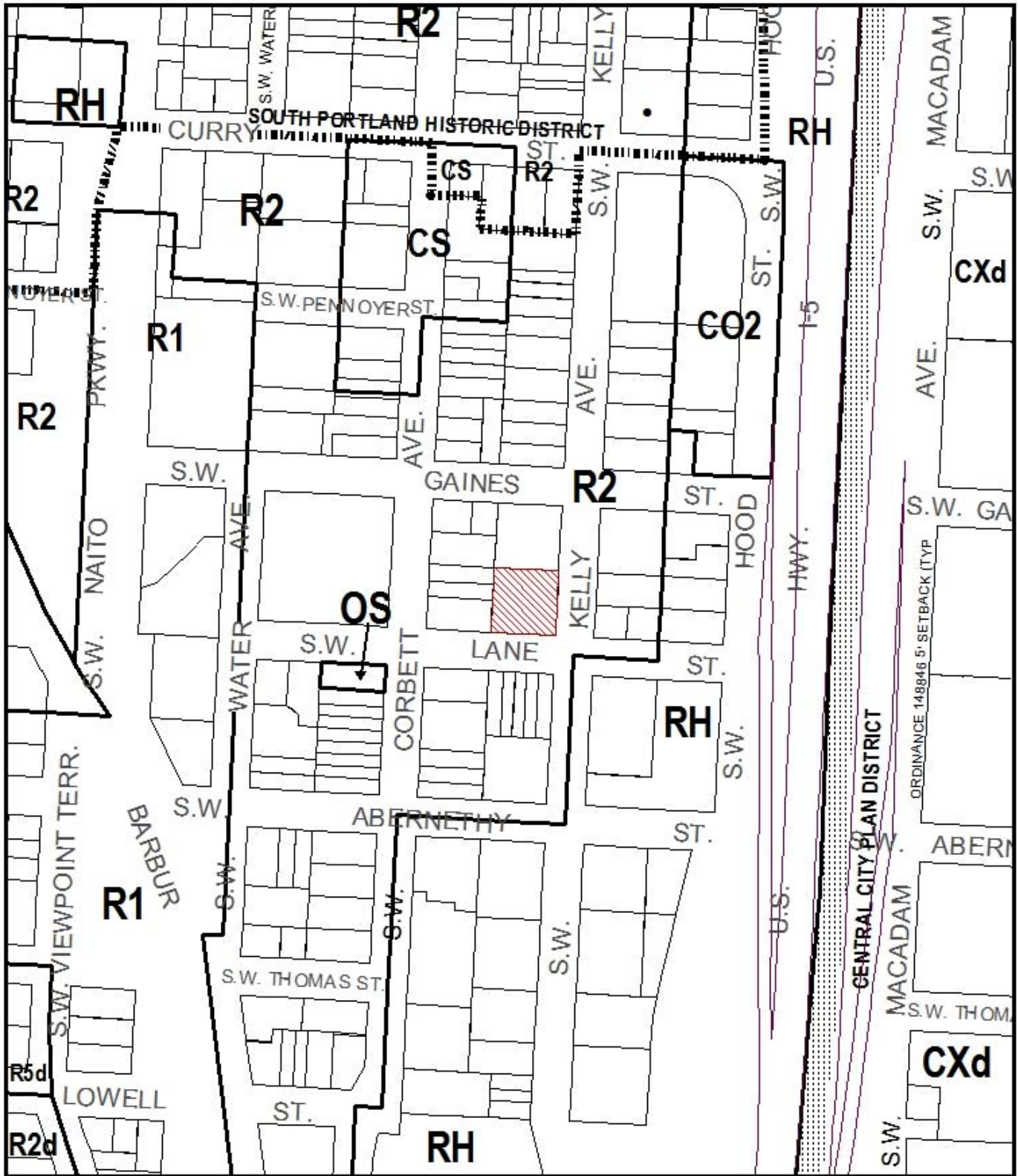
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Landscape Plan (attached)
 - 3. Garage Elevations (East and West) (attached)
 - 4. Garage Elevations (North and South) (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Fire Bureau
 - 2. Bureau of Transportation Engineering
 - 3. Bureau of Parks-Forestry Division
 - 4. Bureau of Environmental Services
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Bureau
 - 7. Water Bureau
- F. Other:
 - 1. Original LU Application
 - 2. Site History Research

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).

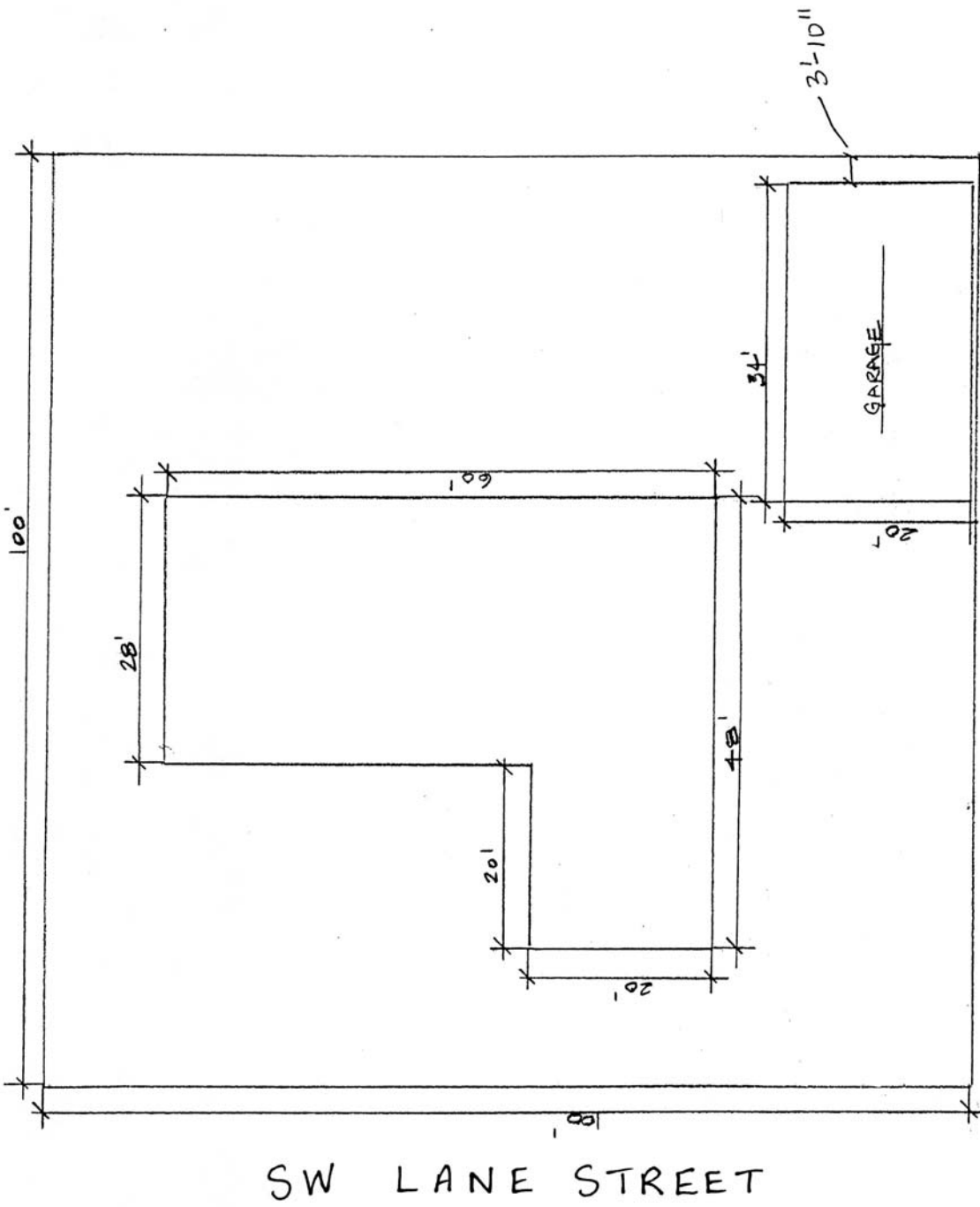


ZONING

 Site



File No.	<u>LU 09-141614 AD</u>
1/4 Section	<u>3429</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1S1E10CA 4500</u>
Exhibit	<u>B (Jul 09,2009)</u>



SW KELLY AVENUE

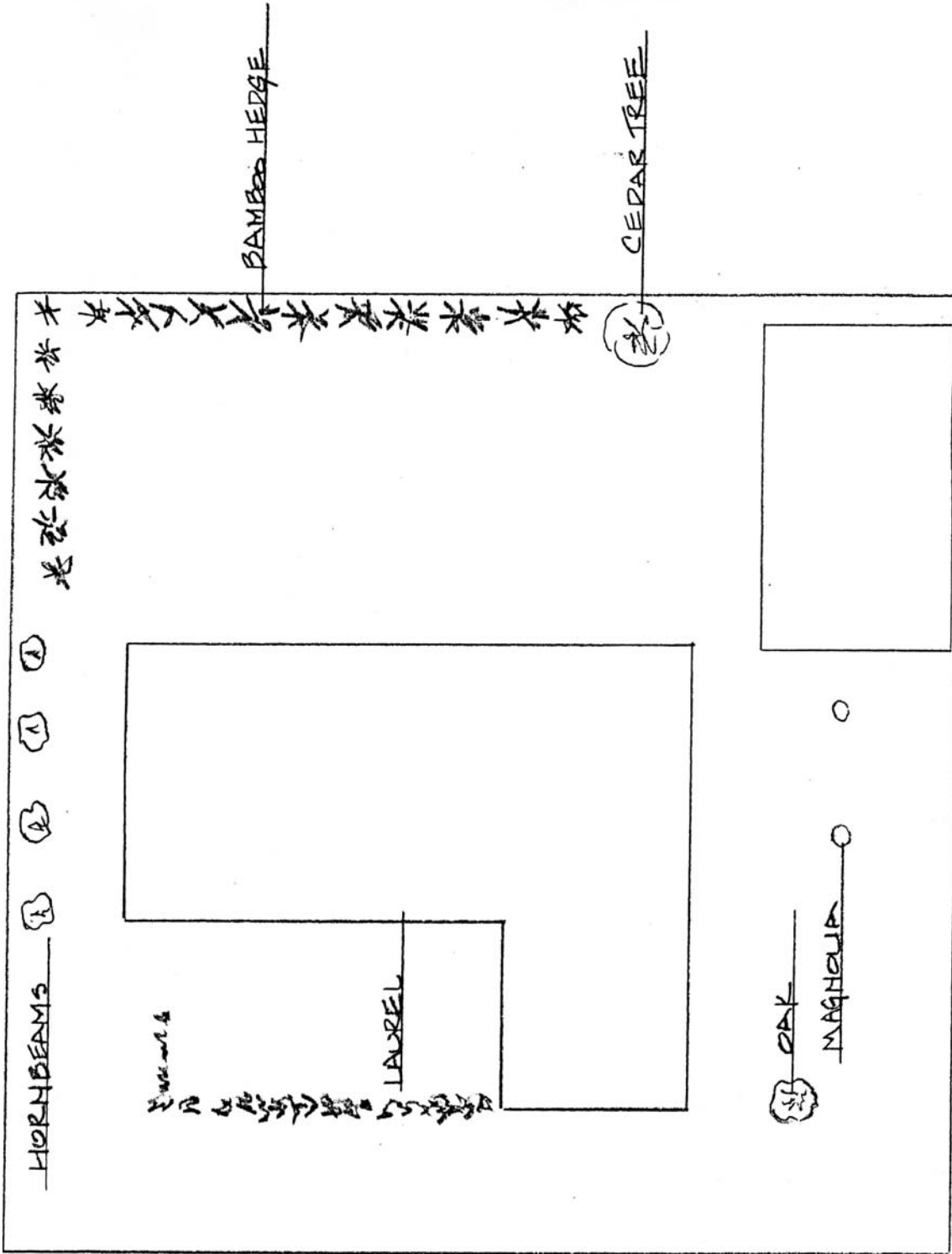
SITE PLAN 5/32 = 1/8"



Approved
 City of Portland - Bureau of Development Services
 Planner Misty B. Strick Date 2/14/09
 * This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

LU 09-141614AD
 CASE NO. LU 09-141614AD
 EXHIBIT C-1

LU09-141614 AD



LANDSCAPE PLAN
3/32 = 1-0



SW KELLY AVENUE

Approved
 City of Portland - Bureau of Development Services
 Planner Marty B. Strick Date 2/14/09
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

LU09-141614AD

SW LANE STREET

CASE NO. LU09-141614AD
 EXHIBIT C-2

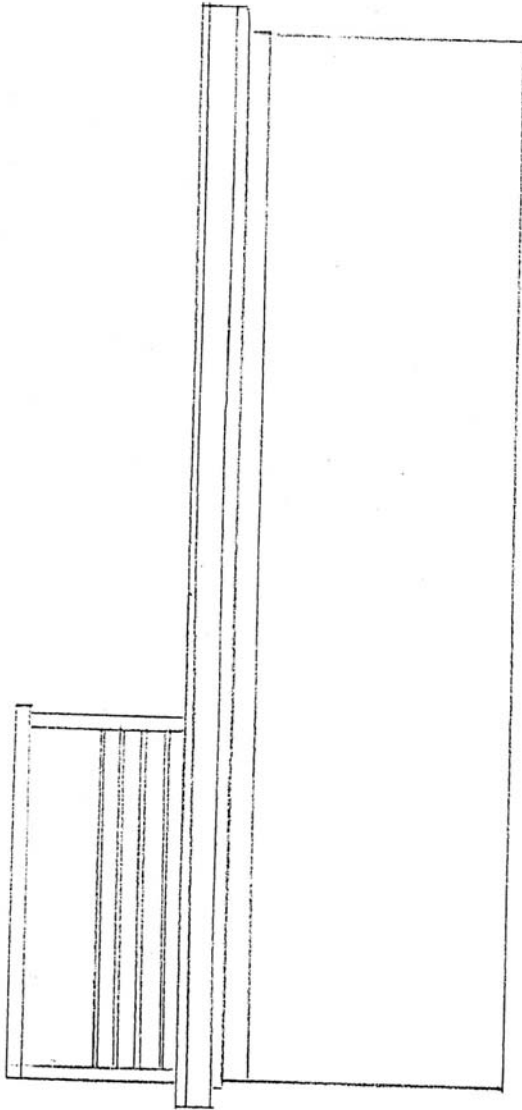
Approved

City of Portland - Bureau of Development Services

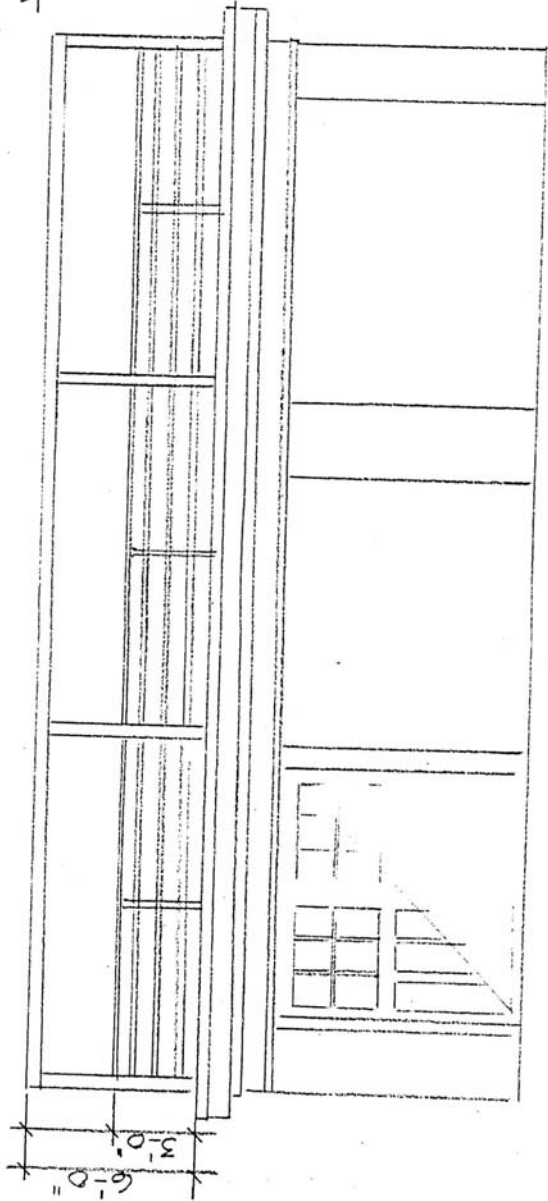
Planner Marty B. Stocke

Date 8/14/09

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



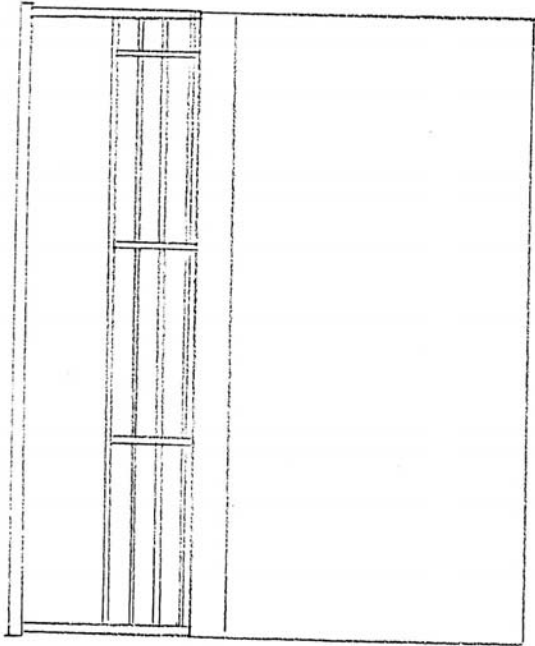
WEST ELEVATION
1/4" = 1'-0"



LU09-141614 AD

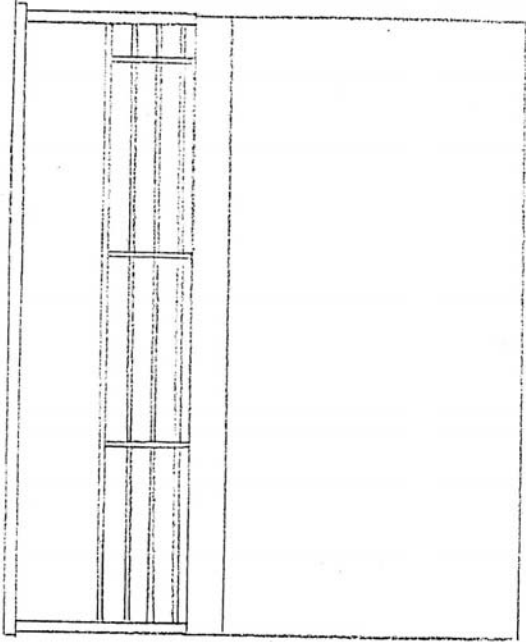
KELLY AVE. ELEVATION

CASE NO LU09-141614AD
EXHIBIT C-3



SOUTH ELEVATION

1/4" = 1'-0"



NORTH ELEVATION

1/4" = 1'-0"

Approved

City of Portland - Bureau of Development Services

Planner Misty B. Stork Date 8/14/09

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LU09-141614 AD

CASE NO. LU09-141614 AD
EXHIBIT C-4