



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

Dan Saltzman, Commissioner  
Paul L. Scarlett, Director  
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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** January 7, 2013  
**To:** Interested Person  
**From:** Sylvia Cate, Land Use Services  
503-823-7771 / [Sylvia.Cate@portlandoregon.gov](mailto: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 12-206025 AD**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Victor Remmers, / Everett Homes  
735 SW 158th Ave, Suite 180 / Beaverton, OR 97006-4952

**Engineer:** Neil Fernando, Consulting Engineer / Emerio Design  
6107 SW Murray Blvd #147 / Beaverton, OR 97008

**Representative:** Mike Coyle, Main Contact / Faster Permits  
14334 NW Eagleridge Lane / Portland, OR 97229

**Site Address:** 420 NE 28TH AVE

**Legal Description:** BLOCK 8 S 25' OF LOT 1&2 N 1/2 OF LOT 11&12, HAWTHORNES  
1ST ADD

**Tax Account No.:** R367800710

**State ID No.:** 1N1E36CB 00500

**Quarter Section:** 3033

**Neighborhood:** Kerns, contact Steve Russell at 503-784-8785.

**Business District:** East Burnside Business Association, Matt Bender at 503-803-4224.

**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.

**Zoning:** R5, CS: Single Dwelling Residential 5,000 [south portion of site] and  
Storefront Commercial [north portion of site]

**Case Type:** AD: Adjustment

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

**Proposal:** The site consists of two lots as shown on the attached zoning map. The north lot is zoned CS, the south lot, is zoned R5 and is developed with a house. The applicant proposes to demolish the existing house and replace it with a new dwelling on the southern lot, which is allowed by right. The applicant also proposes to develop a new single-dwelling detached dwelling, which is an allowed use in the CS zone. However, the new house to be built on the north lot is subject to the commercial development standards, which requires the proposed new house to be set back 8 feet from the abutting R5 lot to the south, per 33.130.215.B and

Table 130-4. The R5 zone requires a five foot setback. Therefore the applicant is requesting an Adjustment to reduce the 8-foot side setback required by the CS zone to 5 feet for a new single dwelling home. Attached are plans and a zoning map depicting the approved Adjustment.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

## ANALYSIS

**Site and Vicinity:** The site consists of two lots, the north lot is a lot of record [12-205509 PR] and is 1,875 square feet in area. The southern lot is developed with a single dwelling house and is 3,750 square feet in area. The northern lot is vacant. CS zoning surrounds the site on all sides, except for the southern lot, which is zoned R5, as are the lots immediately adjacent to the east. The site has frontage along NE 28<sup>th</sup> Avenue, and is approximately 75 feet from NE Glisan Street.

**Zoning:** The site is zoned R5, Residential 5,000 and CS, Storefront Commercial. The southern lot is zoned R5, and the north lot is zoned CS. The R5 zone is a high density single-dwelling zone. The R5 zone allows attached and detached single-dwelling structures and duplexes.

The Storefront Commercial (CS) zone is intended to preserve and enhance older commercial areas that have a storefront character. The zone intends that new development in these areas will be compatible with this desired character. The zone allows a full range of retail, service and business uses with a local and regional market area. The desired character includes areas which are predominantly built-up, with buildings close to and oriented towards the sidewalk especially at corners. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged. Residential development and household living are allowed uses in the commercial zones.

**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 November 29, 2012. The following Bureaus have responded with no issues or concerns:

- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division
- Bureau of Environmental Services
- Bureau of Transportation Engineering

No Bureaus objected to the requested setback Adjustment, but noted various code requirements to be met at time of building permit review.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on November 29, 2012. One written response was received from a notified property owner. The neighbor objects to the potential of a "...skinny house next to any house with only 5 feet between the two..." The letter also includes several additional objections to a 'skinny house' and its impacts on views, property values, and livability of the neighborhood. *Staff Comment:* The proposed reduction in the setback will result in two houses separated by 10 feet, which matches the development standard of the abutting R5 zone. Residential development is allowed by right in the CS zone.

## ZONING CODE APPROVAL CRITERIA

### 33.805.010 Purpose (Adjustments)

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

### **33.805.040 Approval Criteria**

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

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

**Findings:** The purpose for setback regulations for properties within the Commercial zones is found at 33.130.215.A. This purpose statement notes:

*The required building setbacks promote streetscapes that are consistent with the desired character of the different commercial zones. The CN1, CM, CS, and CX setbacks promote buildings close to the sidewalk to reinforce a pedestrian orientation and built-up streetscape. The setback requirements for areas that abut residential zones promote commercial development that will maintain light, air, and the potential for privacy for adjacent residential zones. The setback requirements along transit streets and in Pedestrian Districts create an environment that is inviting to pedestrians and transit users.*

The request to reduce the required setback for the lot in the Storefront Commercial zone is for a new home to be built on this lot, a use and development that is allowed by right. However, because the southern property line abuts a residentially-zoned lot, also owned by the applicant, the regulations require an 8 foot setback. Because the proposed development on the CS zoned lot is residential, and not commercial, any impacts of the development and use on the abutting residentially zoned lot to the south will be residential and not commercial in nature.

The R5 zone requires a 5 foot setback, which results in a 10 foot space between homes. The request to reduce the commercial setback standard will result in a typical residential setback of 5 feet from the property line. The existing home to the south is proposed to be demolished and replaced with a new home. There is nothing apparent on the southern lot that would prevent the new home from complying with the applicable setback requirements.

Because the purpose for the commercial setbacks for adjacent residential zones is to maintain light, air and potential for privacy, the requested adjustment will result in the typical development pattern found in the R5 zone, thus maintaining sufficient separation between two proposed residential developments to enjoy light, air and potential for privacy commensurate with the required 5-foot side setback applicable to houses developed in the R5 zone. The Fire Bureau noted no objections to the setback Adjustment. Life Safety noted no objections, but stated building permits are required for the demolition and construction proposed. For these reasons, the request meets the purpose of the regulation to be adjusted, and therefore meets this criterion.

- 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 Adjustment request is for a lot within the CS, Storefront Commercial zone. The proposal has no impact on the street classification of NE 28<sup>th</sup> Avenue in terms of the Adjustment, and Portland Bureau of Transportation has responded with no objections, but notes at time of building permit that “NE 28<sup>th</sup> Avenue will need to be reconstructed to provide a 4.5-6-1.5 configuration...” With this reconstruction, the sidewalk corridor will be consistent with the street classification of NE 28<sup>th</sup> Avenue as a Neighborhood Collector and City Walkway. The small reduction in the side yard setback for a residential development will have no impact on the desired character of the CS zoned 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:** Only one adjustment is requested. This criterion is not applicable.

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

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

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

**Findings:** There are no discernible impacts that would result from granting the requested adjustment. This criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** The site is not within an environmental zone. This criterion is not applicable.

## DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## CONCLUSIONS

The applicant proposes to reduce the required 8 foot side yard setback in the CS zone to a 5-foot setback along the south property line for a single dwelling residential development. As described above, the request meets all of the applicable approval criteria and therefore should be approved.

## ADMINISTRATIVE DECISION

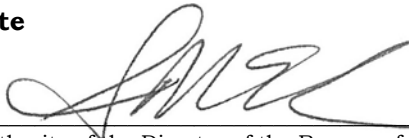
Approval of:

- An Adjustment to 33.130.215.B and Table 130-4, to reduce the side setback along the south property line from 8 feet to 5 feet *for a new single dwelling residential*

*development*, per the approved site plan, Exhibit C-1, signed and dated January 2, 2013, 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 12-206025 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. This adjustment is for single-dwelling residential development only. If a commercial development and use is proposed in the future, the development must meet the CS standards, or obtain an Adjustment approval through a new Land Use Review.

**Staff Planner: Sylvia Cate**

**Decision rendered by:**  **on January 2, 2013**

By authority of the Director of the Bureau of Development Services

**Decision mailed: January 7, 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 November 15, 2012, and was determined to be complete on **November 27, 2012**.

*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 November 15, 2012.

*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: March 29, 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 January 22, 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](http://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 **January 23, 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:

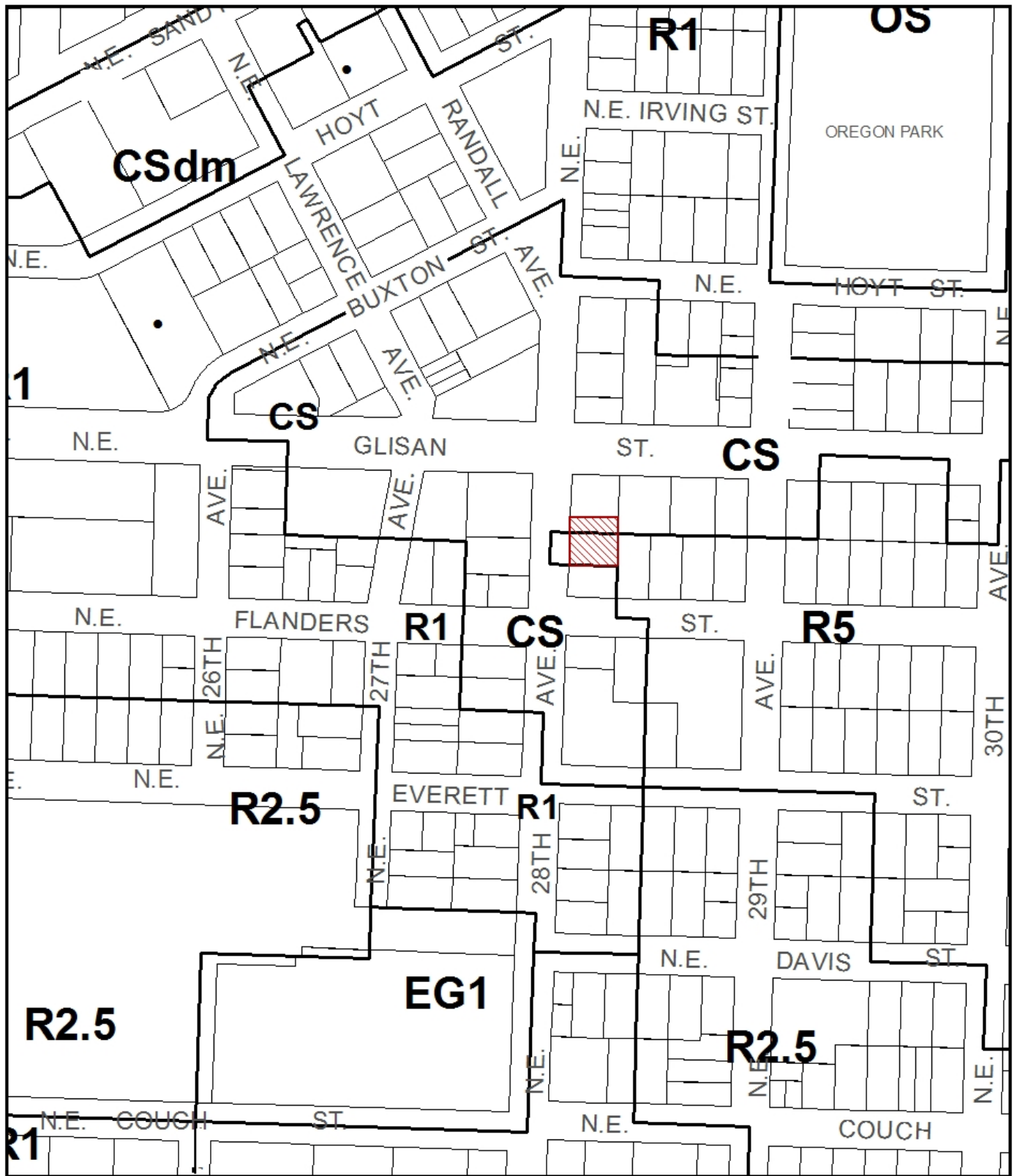
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- 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:
  - 1. J. Booth, December 7, 2012, objections
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research

**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 12-206025 AD

1/4 Section 3033

Scale 1 inch = 200 feet

State\_Id 1N1E36CB 500

Exhibit B (Nov 20 2012)



422 NE 28TH AVENUE  
 TAX MAP T1N R1E 36CB  
 TAX LOT 500  
 MULTNOMAH COUNTY, OREGON

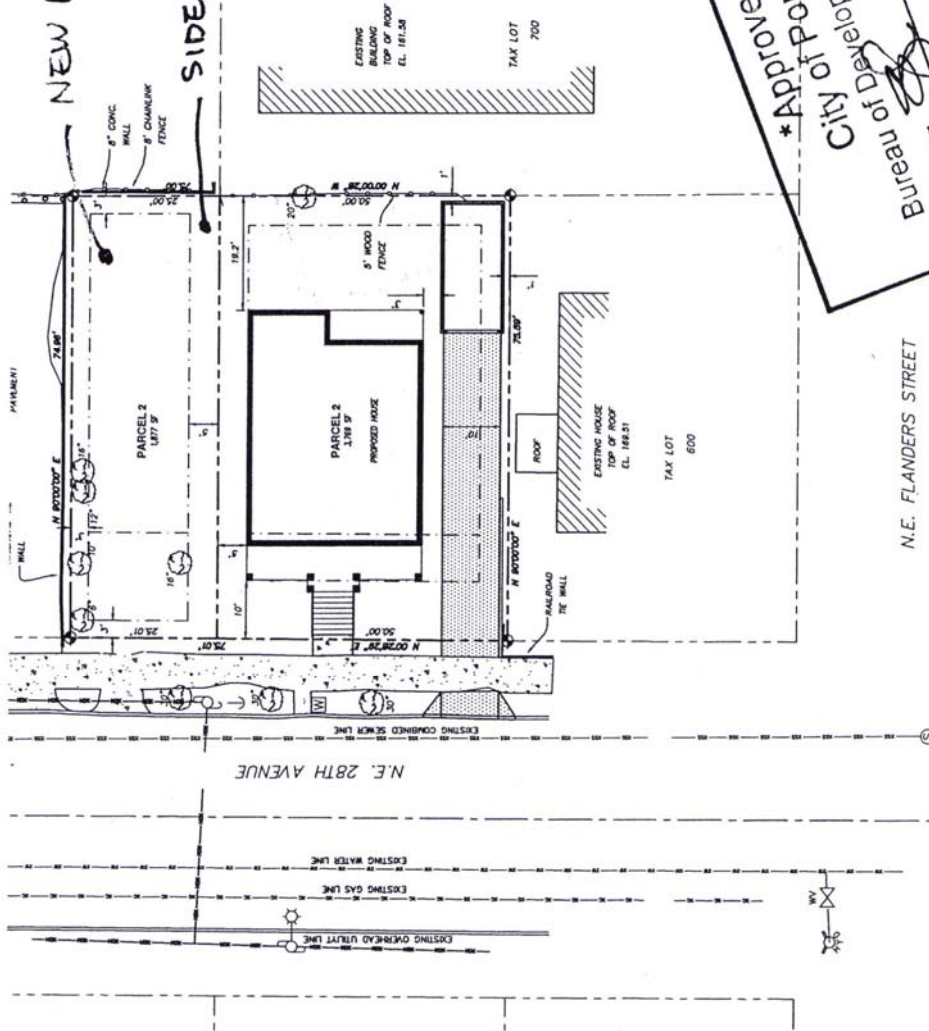
SITE

NO.	DATE	DESCRIPTION

**EMERIGO**  
*Designs*  
 6107 SW MURRAY BLVD, SUITE 147  
 BEAVERTON, OREGON 97008  
 PH: (503) 515-5528



NEW HOUSE FOOTPRINT  
 SIDESSET BACK TO 5'



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

**Planner**  
*[Signature]*  
 Bureau of Development Services

**Data**  
 This approval is subject to the conditions of approval. Additional zoning requirements may apply.

1119-206025AD