



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

Charlie Hales, Mayor
Paul L. Scarlett, Director
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Date: March 21, 2013
To: Interested Person
From: Mark Walhood, City Planner
503-823-7806 / Mark.Walhood@portlandoregon.gov

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

The Bureau of Development Services has **denied** 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 12-205143 AD –OUTDOOR FIREPLACE

GENERAL INFORMATION

Applicant: Mike Montgomery / Simpl Home Designs
5531 SW Buddington St. / Portland, OR 97219

Property Owner: Clark R. Nye
1224 SW Hessler Dr / Portland, OR 97239

Site Address: 1224 SW HESSLER DR

Legal Description: LOT 30, HESSLER HILLS
Tax Account No.: R380800980
State ID No.: 1S1E16AB 01600
Quarter Section: 3527, 3528
Neighborhood: Hillsdale, contact Duane Hunting at 503-245-7998.
Business District: None
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Zoning: **R10** (Single-Dwelling Residential 10,000)
Case Type: **AD** (Adjustment Review)
Procedure: **Type II**, an administrative decision with appeal to the Adjustment Committee.

PROPOSAL: The applicant has proposed the construction of a detached outdoor fireplace structure in the rear/side yard of the home at 1224 SW Hessler Drive. The structure is proposed just behind the house from the street, near the south side lot line near an existing outdoor spa and terrace. The fireplace would have a natural gas firebox and metal flue in a concrete structure with open shelving and brick details. The footprint of the fireplace is 12'-5" by 6'-7", sited with the long side facing the south side lot line, and measures 6'-11" tall not counting the metal flue which rises another 0'-8" above the main structure (7'-7" tall at top of flue).

Regulations of the R10 zone require a 10'-0" minimum building setback for the fireplace structure from the side and rear lot lines (33.110.220.B). As proposed, the fireplace would be located 0'-6" from the south side lot line. Therefore, the applicant has requested an

Adjustment to reduce the south side setback from 10'-0" to 0'-6", in order to construct the outdoor fireplace shown on the attached drawings.

RELEVANT APPROVAL CRITERIA: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found at **33.805.040.A-F, Adjustment Approval Criteria.**

ANALYSIS

Site and Vicinity: The site is a large parcel, roughly rectangular in shape, with frontage on the east side of SW Hessler Drive in the Hillsdale neighborhood. The property is just under 30,000 square feet in size, and the slope of the land is such that the road sits a few feet above the foundation of the house. The site and surrounding area slopes gradually downhill to the east, outside of the terraces created for roads and many home sites.

The area is characterized by large, often single-story, well-maintained custom ranch homes on oversized lots. Densely planted, attractive landscaping is found throughout the neighborhood, which offers dramatic eastward views of the Portland area and Mt. Hood. A row of evergreen shrubs, ferns, and other plantings is located along the property line between this site and the property directly to the south. A narrow, undeveloped public right-of-way (presumably for an unbuilt hillside stairway) is located along the north edge of the property.

The abutting street is improved with an asphalt two-way roadway, but no curbing or paved public sidewalks. Southwest Hessler Drive is a local service street for all modes in Portland's Transportation System Plan.

Zoning: The Residential 10,000 (R10) base zone is one of six single-family residential zones. The R10 zone is intended to create, maintain and promote single-dwelling neighborhoods. The development standards of the R10 zone seek to ensure desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed.

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 **January 14, 2013.**

The *Water Bureau* reviewed the proposal and responded with informational comments, but no objections or recommended conditions of approval. There is an existing 1" metered water service line providing water to the site from the water main in SW Hessler Drive. Exhibit E.1 contains staff contact and additional information.

The following Bureaus have responded with no issues or concerns:

- *Site Development Section of the Bureau of Development Services* (Exhibit E.2);
- *Life Safety Section of the Bureau of Development Services* (Exhibit E.3);
- *Fire Bureau* (Exhibit E.4);
- *Bureau of Environmental Services* (Exhibit E.5);
- *Development Review Section of Portland Transportation* (Exhibit E.6); and
- *Urban Forestry Division of Portland Parks and Recreation* (Exhibit E.7).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on January 14, 2013. One written response has been received from a notified property owner in response to the proposal. The owners of the home immediately adjacent to the site to the south, and closest to the proposed outdoor fireplace, have written a letter with specific objections and concerns (Exhibit F.1). This letter objects to the proposed setback reduction for the following reasons:

- The fireplace would be located very near their rear patio and numerous windows in the house;
- The neighborhood is characterized by over-sized lots with a ‘spacious, rural appeal’, and the reduced setback of 6 inches is inconsistent with the pattern of development in the area;
- The placement of the proposed fireplace will not allow for adequate landscaping and visual screening between properties;
- During the summer months, the proposed fireplace will be directly upwind of the neighboring home, with potential for heat and smoke coming from the fireplace detracting from the livability of their home and outdoor areas;
- No mitigation measures for potential impacts have been provided; and
- The arguments in the letter have been phrased in direct relation to the Adjustment approval criteria.

Staff Note: The issues raised by these neighbors will be considered further in the findings for this decision, below.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of Adjustment Reviews

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., below, have been met.

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

Findings: The relevant sections of the purpose statement for the side setback standard in the R10 zone are as follows (33.110.220.A):

“The setback regulations for buildings...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 provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity.”*

The proposal involves the construction of a concrete outdoor fireplace in the south side yard setback, along the south edge of an existing back yard patio area on the site, which is already developed with paving and an in-ground concrete spa. The proposed location is 0'-6" away from the adjacent property to the south, which has a side and rear yard directly abutting the project area. The proposed outdoor fireplace is 5'-2" tall on the east and west edges, with a central section that rises to 6'-11" tall, not counting the exposed metal flue which is drawn at 0'-8" tall. The shared lot line between the site and the property to the north is generally screened with tall evergreen shrubs,

although the specific area in question has little in the way of landscaping screening between the properties, and it looks as if the landscaping in this area was recently removed.

The proposed fireplace is oriented with the fire box, open shelving or storage flanking each side of the box, and a rounded decorative brick feature above the fire box facing northwards in to the rear patio of the property. The sides and rear of the fireplace are shown as solid concrete. The submitted drawings indicate that the primary fire box will be fueled by gas, but do not indicate any function for the rounded brick feature above the firebox, which looks like the opening for a wood-fired pizza or bread oven. To clarify this issue, staff asked the applicant to clarify what the fuel source of the fireplace is, and whether or not a wood-burning pizza oven or fireplace was included in the structure. The response from the applicant, a consultant working with the property owner, is that 'my understanding is that the fireplace will be natural gas' (Exhibit A.3).

The surrounding area is characterized by large hillside lots, primarily developed with generous single-story custom ranch homes generally located near the center of the lot. Unlike other close-in neighborhoods in Portland, the neighborhood features almost exclusively midcentury-style homes with attached garages, large yards, and generous side and rear setbacks from adjacent homes. Also unlike other many other neighborhoods in Portland, the area is not characterized by older detached garages or other outbuildings located close to or upon the side and rear lot lines. Dense evergreen hedges and landscape plantings are typically provided along perimeter lot lines in the neighborhood.

The owners of the abutting property to the south, most directly adjacent to the proposed outdoor fireplace, have objected to the proposed setback reduction. Concerns raised by the neighbors include the closeness of the proposed fireplace to their home, windows in the home and rear patio, and that the closeness of the structure to the property line is out of character with the neighborhood. Additionally, concerns were raised that the proposed location will not allow for any landscaping between the fireplace and the shared property line, that smoke and heat will detract from the livability on their home and yard in the summer given southward prevailing winds, and that no mitigation measures have been provided for the setback reduction.

The proposed setback reduction does not appear to equally or better meet the purpose for the setback regulations with regards to reflecting the scale and placement of structures in the neighborhood, maintaining a reasonable physical relationship between residential sites, and providing for privacy between properties. Additionally, there is some confusion about whether or not the fireplace is exclusively natural gas-fueled, or if there is a wood-burning function, which has direct potential impacts on livability, air impacts, and fire safety and fire fighting access between the two abutting properties.

The property in question has an almost 30,000 square foot piece of land to locate structures on, with a large rear yard area behind the home that is over 125 feet long in the north-south dimension. Based on the above facts, the proposed setback reduction for the proposed outdoor fireplace does not equally or better meet the regulatory intent of the side setback standard. *This criterion is not 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 discussed above under findings for criterion A, and for the same reasons as discussed therein, the proposal appears to have significant impacts on the livability and appearance of the residential area, especially for the most impacted property owner directly to the south of the site. *Therefore, this criterion is not 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 has been requested. *Therefore, this criterion does not apply.*

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

Findings: There are no city-designated scenic or historic resources on the site, as indicated by the absence of any Scenic Resource Protection (s) overlay zoning on the property, and by the absence of any historic resource designation. *Therefore, this criterion does not apply.*

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

Findings: Potential impacts associated with the requested setback reduction for the outdoor fireplace include negative visual impacts to the adjacent property, loss of potential for landscape screening along the shared property line, and a functional and visual outcome for the neighbors that is out of character with the spacious, rural development pattern of this hillside neighborhood. There are also questions about potential or future wood-burning functions in the fireplace, which would have direct livability impacts to the adjacent home, especially during the summer. None of these potential impacts to the abutting property have been successfully mitigated in the proposal. *Therefore, this criterion is not 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 in an environmental overlay zone. *Therefore, this criterion does 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.

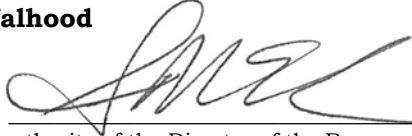
CONCLUSIONS

The applicant has proposed a setback reduction from 10'-0" to 0'-6" for an outdoor fireplace. The most immediately adjacent neighbor has objected to the proposal for a variety of livability and neighborhood compatibility reasons, phrased in terms of the applicable criteria. Because of the nature of the development pattern in the area, and the potential visual and livability impacts to the adjacent home which have not been mitigated for, the request is not able to meet the approval criteria and must be denied.

ADMINISTRATIVE DECISION

Denial of the requested **Adjustment** to reduce the south side setback (33.110.220.B) at 1224 SW Hessler Drive from 10'-0" to 0'-6" in order to construct an outdoor fireplace.

Staff Planner: Mark Walhood

Decision rendered by:  **on March 15, 2013.**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 21, 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 14, 2012, and was determined to be complete on January 9, 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 November 14, 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 May 10, 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 April 4, 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.

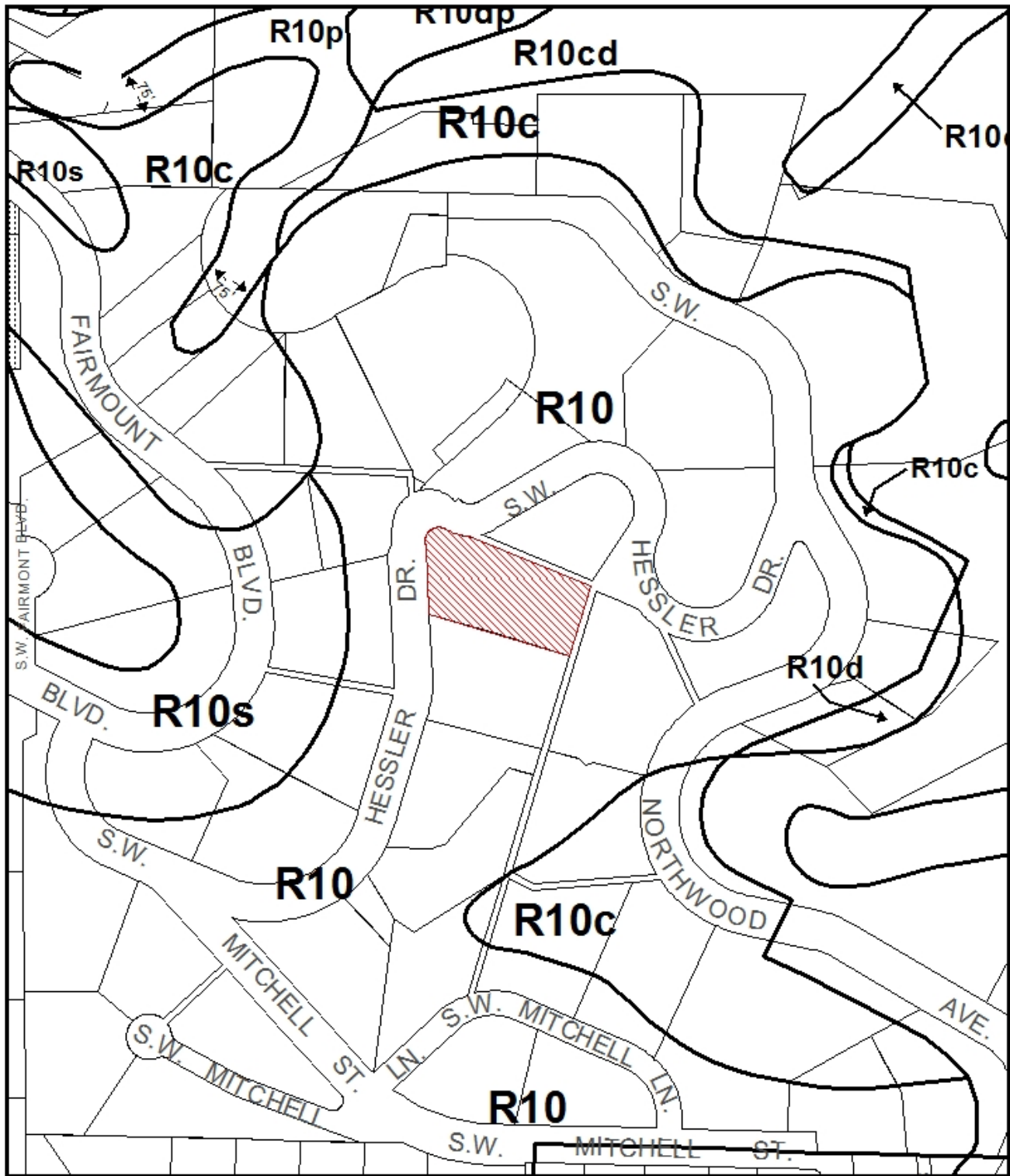
Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statements
 - 1. Original Narrative
 - 2. Original plan set – reference only – not under review
 - 3. E-mail response from applicant to staff query regarding fireplace fuel type, received January 17, 2013
 - 4. Photos of site and surrounding area provided by applicant, received January 9, 2013
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Fireplace elevations (attached)
 - 3. Large, scalable site plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Water Bureau
 - 2. Site Development Section of the Bureau of Development Services
 - 3. Life Safety Section of the Bureau of Development Services
 - 4. Fire Bureau
 - 5. Bureau of Environmental Services
 - 6. Development Review Section of Portland Transportation
 - 7. Urban Forestry Division of Portland Parks and Recreation
- F. Correspondence:
 - 1. Letter with concerns from Edmund and Lora McCall, received January 25, 2013
- G. Other:
 - 1. Original LU application form and receipt
 - 2. Incomplete Letter from staff to applicant, sent November 29, 2013

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



File No.	<u>LU 12-205143 AD</u>
1/4 Section	<u>3527,3528</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E16AB 1600</u>
Exhibit	<u>B (Nov 15,2012)</u>

LU 12-205143 AD
Exhibit C.1

SIMPL HOME DESIGNS
5531 SW BUDDINGTON ST, PORTLAND OR 97219
p 503-515-6495 - f 503-719-4825
www.ezpermits.com / mikewmontgomery@gmail.com

NYE HOUSE
1224 SW HESSLER DRIVE
PORTLAND OR 97239

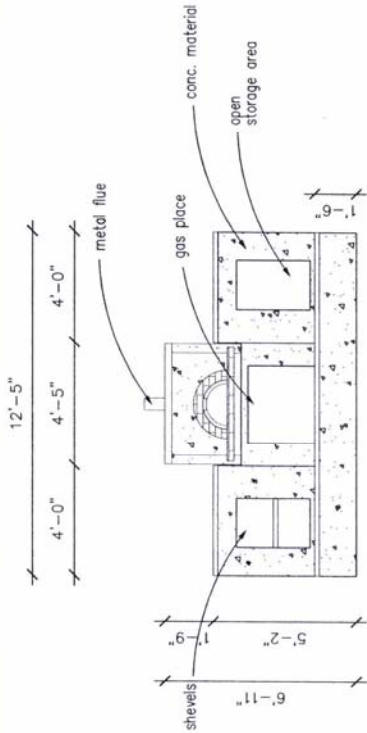
SITE
PLAN

NYE

DATE	12/27/12
SCALE	1/8" = 1'-0"
DRAWN	MM
CHECKED	MM
TITLE NO.	1
TAXER DIST	

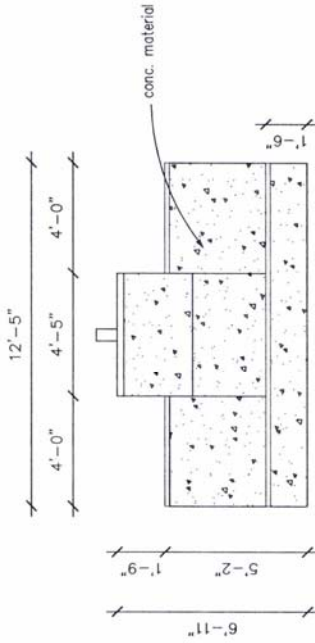


LU 12-205143 AD



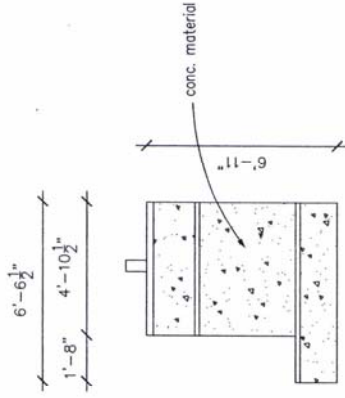
FRONT ELEVATION VIEW

1/4" = 1'-0"



REAR ELEVATION VIEW

1/4" = 1'-0"



SIDE ELEVATION VIEW

1/4" = 1'-0"

Robert Nye
1224 SW Hessler Dr.
Portland, OR 97239

Erving & Behr
Custom Plans
Remodels
Site Plans
Permit Management
502.515.6495 OFFICE
2011 SW Holladay Street
Portland OR 97115
erwinandbehr@gmail.com

ELEVATION PLAN(s)	
DATE	08/07/12
SCALE	PROJ. NO.
1/4" = 1'-0"	12-205143 AD
DRAWN	CHECKED
ERV	AB
A1.0	
1 of 1	

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Exhibit C-2