



**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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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** June 17, 2013  
**To:** Interested Person  
**From:** Emily Sandy, Land Use Services  
503-823-7828 / [Emily.Sandy@portlandoregon.gov](mailto:Emily.Sandy@portlandoregon.gov)

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

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 13-141115 AD**

#### **GENERAL INFORMATION**

**Applicant:** Zalane Nunn / Portland Parks And Recreation  
1120 SW 5th Rm 1302 / Portland, OR 97204

**Owner:** Thomas E Nelson, Esther A Nelson,  
2753 NW Calumet Ter / Portland, OR 97210-3307

**Site Address:** 1404 SW BROADWAY DR AND ADJACENT

**Legal Description:** S OF SW BROADWAY DRIVE EXC E 10' BLOCK K, GROVERS ADD; BLOCK L LOT 8&9, GROVERS ADD; BLOCK 124 INC PT VAC ST LOT 1&6-8 LOT 2-4 INC PT VAC STS LOT 5, PORTLAND CITY HMSTD; TL 800 8.73 ACRES, SECTION 09 1S 1E; TL 900 4.47 ACRES, SECTION 09 1S 1E; TL 700 14.89 ACRES, SECTION 09 1S 1E

**Tax Account No.:** R346602530, R346602810, R668006910, R991090700, R991091100, R991091440

**State ID No.:** 1S1E04CD 11700, 1S1E04CD 11400, 1S1E09BA 01000, 1S1E09 00800, 1S1E09BA 00900, 1S1E09 00700

**Quarter Section:** 3227

**Neighborhood:** Southwest Hills Residential League, Nancy Seton at 503-224-3840.

**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

**Zoning:** R5, Single-dwelling Residential 5,000 square feet, with portions of "c" Environmental Conservation overlay and "p" Environmental protection overlay.

**Case Type:** AD, Adjustment

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

#### **Proposal:**

A private landowner owns the lot at 1404 SW Broadway Drive. The City of Portland owns an adjacent lot, west of 1404 SW Broadway Drive. The property owners wish to pursue a Property Line Adjustment to transfer a portion of the property from 1404 SW Broadway Drive to the City of Portland for purposes of adding land area to the adjacent Marquam Nature Park to the south. The Property Line Adjustment is currently under review under a different file, 13-

141092 PR. The property at 1404 SW Broadway Drive (Proposed Tract 1) is proposed to change from 28,000 square feet in area to 16,375 square feet in area. The property owned by the City of Portland (Proposed Tract 2) is proposed to change from 6,800 square feet to 21,215 square feet. In order for a Property Line Adjustment to be approved, the proposal must meet all standards in Chapter 33.667, Property Line Adjustments. Standard 33.667.300. A.1 states that a property may not move out of conformance with a regulation as a result of a Property Line Adjustment. The proposed Property Line Adjustment will result in the property owned by the City of Portland to be 21,215 square feet, which exceed the maximum lot size for lots in the R5 zone, 8,500 square feet (33.610). Consequently, an Adjustment to maximum lot size is required to be approved prior to approval of the Property Line 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 is located to the south of SW Broadway Drive, which is a Neighborhood Collector Traffic street, a City Walkway, and a Major Emergency Response route per the Transportation Systems Plan. It is located to the north of the Marquam Nature Park. The northeast corner of the site is developed with a single dwelling house and garage, with a garage entrance located near the edge of the right of way. The site slopes downward to the south and contains an open channel waterway that runs from northwest to southeast at the rear of the property. Most of the property is forested. The surrounding area consists of single dwelling houses on sites of varying size, dimension, and topography. Generally, the land slopes downward to the south of SW Broadway Drive and upward to the north of SW Broadway Drive. An unnamed, undeveloped 12' wide right-of-way is located to the west of the site.

**Zoning: Residential 5,000 (R5) with a “c” Environmental Conservation overlay and “p” Environmental Protection overlay.**

The R5 zone is a high density single-dwelling zone. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The R5 zone allows attached and detached single-dwelling structures and duplexes. It also allows for a variety of park and open area uses.

The majority of the site behind the location of the existing house is either in “c” Environmental Conservation, or “p” Environmental Protection overlay zones. Environmental zones protect resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources. These regulations also help meet other City goals, along with other regional, state, and federal goals and regulations. The environmental regulations also carry out Comprehensive Plan policies and objectives.

**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 **May 3, 2013**. The following Bureaus have responded with no issues or concerns:

- Water Bureau
- Fire Bureau
- Bureau of Environmental Services
- Site Development Section of BDS
- Life Safety Section of BDS

- Bureau of Transportation  
The Bureau of Parks-Forestry Division

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on May 3, 2013. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.805.040 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

#### **33.610.200 Lot Dimension Regulations**

*Lots in the RF through R5 zones must meet the lot dimension regulations of this section.*

**A. Purpose.** *The lot dimension regulations ensure that:*

- *Each lot has enough room for a reasonably-sized house and garage;*
- *Lots are of a size and shape that development on each lot can meet the development standards of the zoning code;*
- *Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;*
- *Each lot has room for at least a small, private outdoor area;*
- *Lots are compatible with existing lots;*
- *Lots are wide enough to allow development to orient toward the street;*
- *Lots don't narrow to an unbuildable width close to the street*
- *Each lot has adequate access from the street;*
- *Each lot has access for utilities and services; and*
- *Lots are not landlocked.*

**Findings:** The lot sizes resulting from this Adjustment and the related Property Line Adjustment are just over 16,000 square feet and just over 21,000 square feet. Each property will be rectilinear in shape and will be greater than 36' wide, the minimum lot width for the zone. The intention for the City of Portland to utilize Proposed Tract 2 for Park and Open Area use, not Household Living Use). However, should Household Living use be proposed in the future the size, shape, and dimensions of each lot will be such that a reasonably sized house and garage, a private outdoor area and be able to meet the development standards of the zoning code. The surrounding lots vary greatly in size, shape and dimension, especially on the south of SW Broadway Drive, so there is no evident pattern of compatibility with surrounding lots to adhere to. Finally the proposal does not alter each lot's access to a street, utilities or services, nor does it result in either lot being landlocked.

Finally, the proposal may not have an effect on the overall maximum density of the site. Prior to the proposed Property Line Adjustment, Tract 1 has an allowed density of 5 units and Tract 2 has an allowed density of 1 unit for a total of 6 units. After the proposed Property Line Adjustment Tract 1 will have an allowed density of 3 units and Tract 2 will have an allowed density of 4 units, for a total of 7 units. The Adjustment to maximum lot size will result an overall increase in maximum density for both lots combined. The likelihood of Tract 2 developing to 4 units at some future date is unlikely, given the site configuration and presence of "p" Environmental Protection overlay zone. In addition, the present plan for Tract 2 is to be in Park and Open Area use, not Household Living use. Nonetheless, there must be some assurance that the overall number of units developed on both lots combined does not exceed the current

units allowed, 7. Therefore, it is necessary to impose a condition that proposed Tract 2 cannot be developed with more than 3 units at any point during the future.

With the condition that Proposed Tract 2 cannot be developed with more than 3 dwelling units, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** The proposal does not include any new development, or create the potential for development other than what is already allowed by right in the R5, R5c, and R5p zones. The proposal has no effect on the appearance of the residential area. 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 proposal does not include any new development, or create the potential for development other than what is already allowed by right in the R5, R5c, and R5p zones. The proposal has no effect on the protected resource and resource values. This criterion is met.

## 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

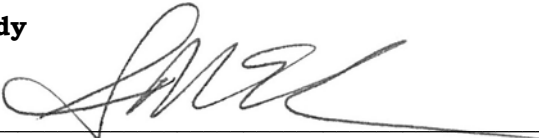
The proposal has no effect on the livability or residential appearance of the neighborhood, and does not have a detrimental effect on the resource protected by the environmental zones. In addition, with the condition listed below, the proposal can equally meet the purpose of the regulation (lot dimensions) to be modified.

**ADMINISTRATIVE DECISION**

Approval an adjustment to maximum lot size in the R5 zone from 8,500 square feet to 21,215 square feet for the enlargement of an existing property through a related Property Line Adjustment, per the approved site plans Exhibit C-1 and subject to the following condition:

**A.** If and when Proposed Tract 2 resulting from the related Property Line Adjustment reviewed in 13-141092 PR is developed for Household Living use, it cannot be developed with more than 3 dwelling units.

**Staff Planner: Emily Sandy**

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

By authority of the Director of the Bureau of Development Services

**Decision mailed: June 17, 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 April 18, 2013, and was determined to be complete on May 1, 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 April 18, 2013.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: August 2, 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 July 1, 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 July 2, 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:

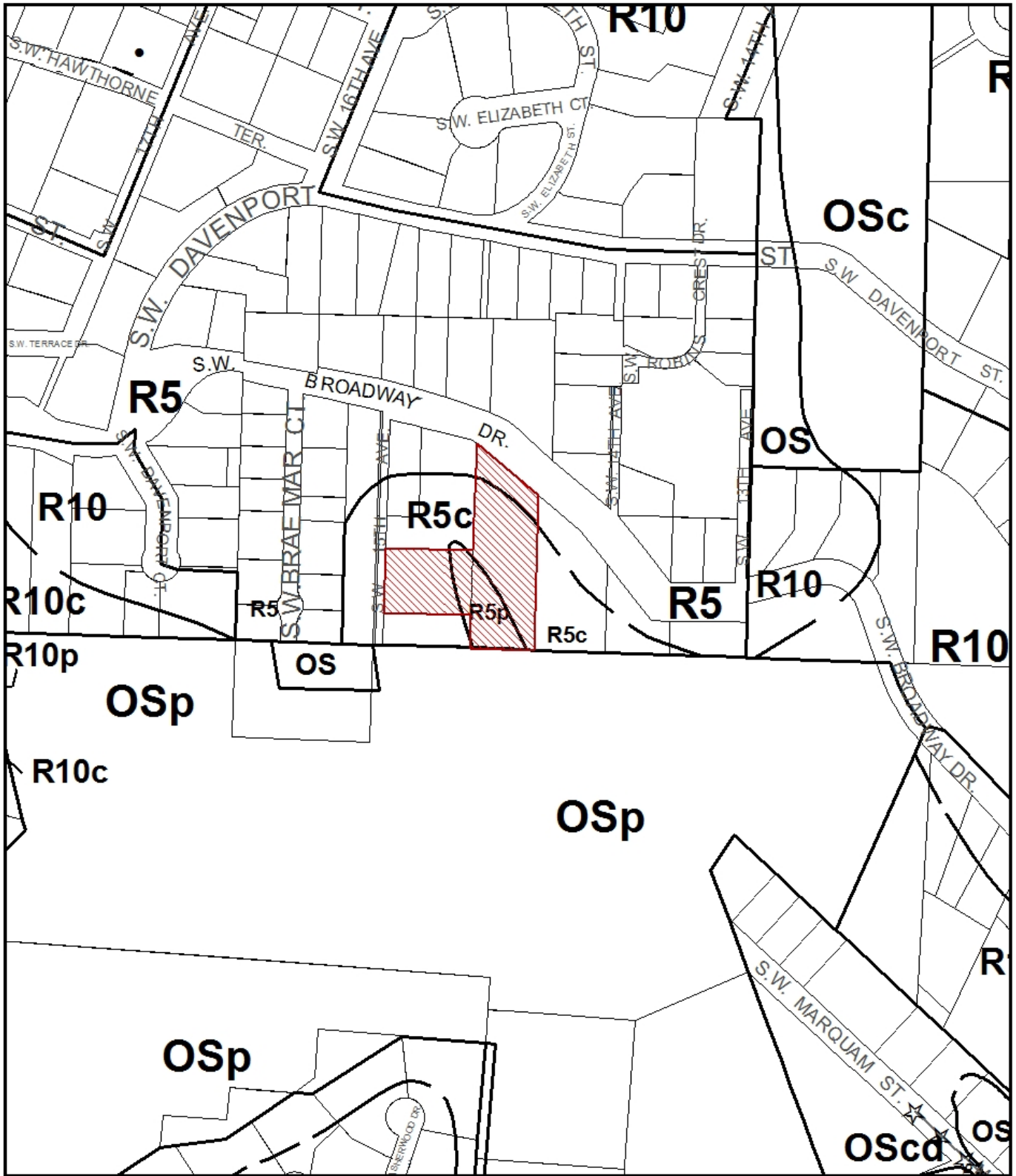
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations 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. Water Bureau
  - 2. Site Development Review Section of BDS
- F. Correspondence: None
- 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



File No.	LU 13-141115 AD
1/4 Section	3227
Scale	1 inch = 200 feet
State_Id	1S1E04CD 11400
Exhibit	B (Apr 23, 2013)



**EXISTING CONDITIONS SURVEY**  
 FOR A PROPERTY LINE ADJUSTMENT  
 SITUATED IN THE S.W. 1/4 OF  
 SECTION 4, T.1S., R.1E., W.M.  
 CITY OF PORTLAND,  
 MULTNOMAH COUNTY, OREGON

PROPOSED TRACT 1:  
 16,375 square feet

PROPOSED TRACT 2:  
 21,215 square feet

- LEGEND:**
- FOUND MONUMENT
  - POWER POLE
  - WATER METER
  - GAS METER
  - STORMWATER MANHOLE
  - ✕ SPOT GRADE
  - ▭ STORMWATER CATCH BASIN
  - ▭ STORMWATER CURB INLET
  - ▭ STORMWATER CLEANOUT
  - ▭ STORMWATER DRAIN
  - ▭ SUBJECT PROPERTY
  - ▭ EDGE OF GRAVEL
  - ▭ ROCK RETAINING WALL
  - ▭ EASEMENT
  - ▭ CENTERLINE
  - ▭ DITCHLINE
  - ▭ FENCELINE
  - ▭ 2' CONTOUR INTERVAL
  - ▭ 10' CONTOUR INTERVAL
  - ▭ GAS LINE
  - ▭ WATER LINE
  - ▭ OVERHEAD POWER LINE
  - ▭ SANITARY SEWER LINE
  - ▭ STORM LINE
  - ▭ BUILDING
  - ▭ CONCRETE SURFACE
  - ▭ PAVEMENT SURFACE

**NOTES:**

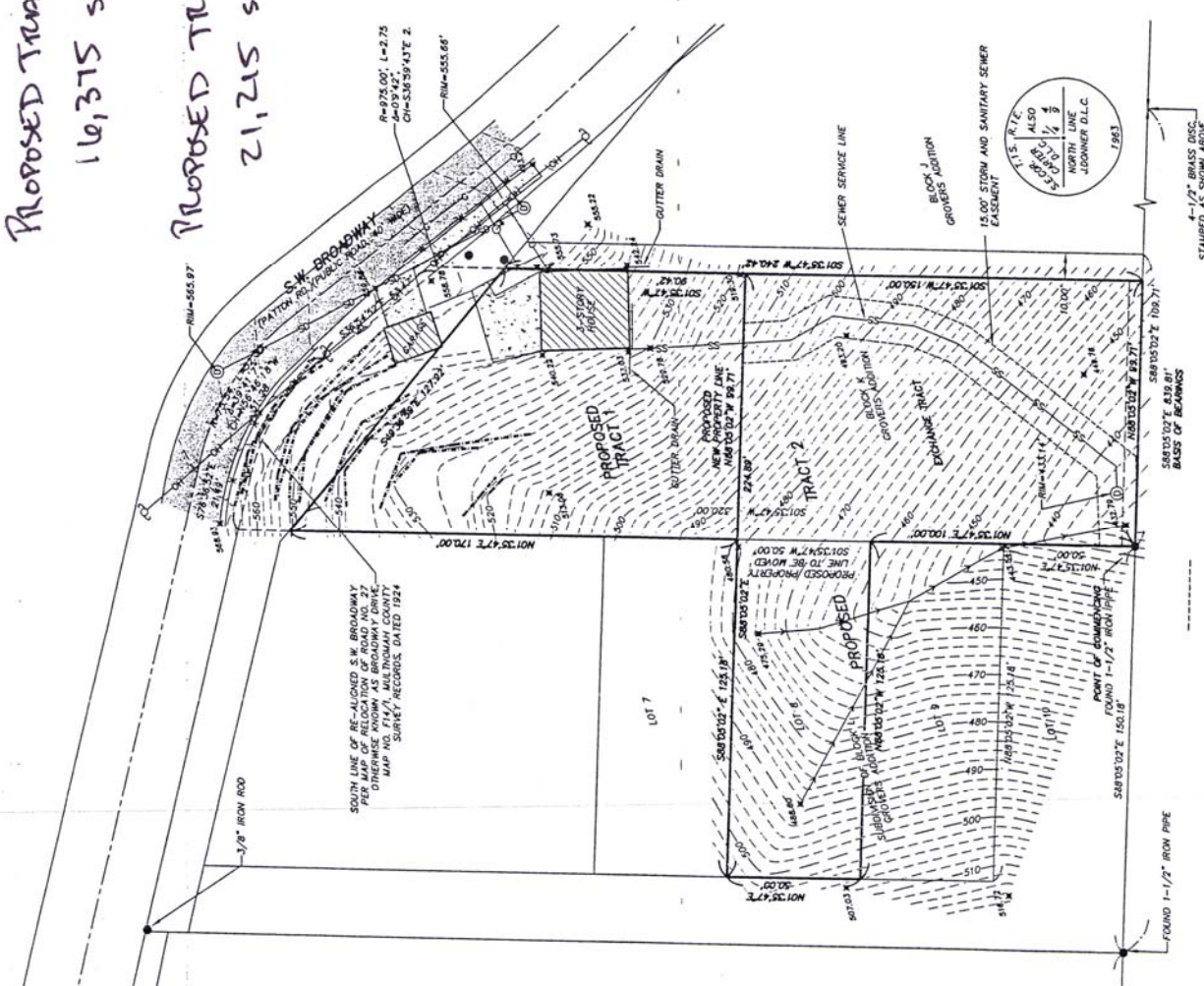
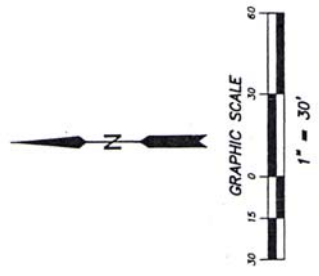
- THE BASIS OF BEARINGS SHOWN HEREON IS PER RECORDS OF SURVEY NUMBER 58420, FILED OCTOBER 1, 2004, MULTNOMAH COUNTY SURVEY RECORDS.
- ELEVATIONS ARE BASED ON CITY OF PORTLAND BENCHMARK NO. 1087. ELEVATION = 719.34'
- THE UTILITIES SHOWN ON THIS MAP ARE LOCATED FROM APPARENT ABOVE GROUND FEATURES INCLUDING WATER VALVES, MANHOLES, ETC. WE MAKE NO GUARANTEE TO THE ACCURACY OR COMPLETENESS OF ANY UTILITY LOCATIONS SHOWN ON THIS MAP. WE DO NOT GUARANTEE THE ACCURACY OR GUARANTEE THAT THE PIPES ARE IN FACT A STRAIGHT LINE BETWEEN SURFACE FEATURES.

REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR  
*Thomas G. Nelson*  
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 P.O. BOX 100  
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 RENEWAL 12/31/14

SURVEYED FOR:  
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 (503) 230-1962

**Tom Nelson & Associates, L.L.C.**  
 1001 SE WATER AVE SUITE 300  
 PORTLAND, OREGON 97214  
 PHONE: (503) 230-1932  
 FAX: (503) 230-1962

DATE: APRIL 10, 2013  
 SHEET: 1 OF 1



LU 13-14115 AD EXHIBIT C-1