



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** July 15, 2013  
**To:** Interested Person  
**From:** Shawn Burgett, Land Use Services  
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## **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 13-153394 AD**

#### **GENERAL INFORMATION**

**Applicant:** Holly Moore  
117 NE 17th Ave / Portland OR 97232

**Owner:** Michel Morgan  
1217 SE 40th Ave / Portland, OR 97214-4403

**Site Address:** 1217 SE 40TH AVE

**Legal Description:** BLOCK 11 S 42' OF LOT 8 S 42' OF E 17.14' OF LOT 9, SUNNYSIDE ADD

**Tax Account No.:** R810501150

**State ID No.:** 1S1E01AD 12700

**Quarter Section:** 3134

**Neighborhood:** Sunnyside, contact Paul Loney at 503-233-8265.

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

**Zoning:** R2.5 (Single Family Residential 2,500 square feet)

**Case Type:** AD (Adjustment)

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

#### **Proposal:**

The applicant is proposing to add a second story addition to the existing single story home on the site. The addition will also extend the home to within 5 feet of its northern property line, add a new front porch and sub grade garage with a new driveway.

The existing home is located 4 feet from the southern property line with an eave extending to 3 feet from the property line which is out of conformance with the current side setback standards in the Zoning Code which require 5 foot minimim side setbacks (33.110.220.B, Table 110-3) with eaves no closer than 4 feet. The second story addition pushes the southern façade of this home further out of conformance with the side setback standards. The applicant has requested an adjustment to this standard.

**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 2,570 square foot lot is developed with a one-story, single-dwelling residence set above street grade. The surrounding vicinity (identified in this decision as properties within roughly a two-block radius of the subject site) is developed predominantly with two-story homes. The homes in the area generally are older, and likely pre-date existing zoning regulations. Setbacks from lot lines, particularly side lot lines, are varied, with many side setbacks being less than the minimum required 5 feet. Properties directly across SE 40<sup>th</sup> Avenue are developed with one-story homes, with the adjacent lots to the north and the south developed with two-story homes.

**Zoning:** The R2.5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing

**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 **June 14, 2013**. The following Bureaus have responded with no issues or concerns:

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

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on June 14, 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****33.805.010 Purpose**

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 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 a reduction in the south side building setback from 5 feet to 4 feet for a second-story addition over the existing house. The proposal includes a 1 foot eave which encroaches into the reduced side setback the same distance as the eave on the existing one story home on the site. The intent for requiring minimum setbacks, as stated in Section 33.110.220.A (Purpose), is as follows:

- 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.

#### Light and Air

The proposed second-story addition with a side facing wall measuring approximately 23 feet in height along the southern property line and an overall height of approximately 30 feet measured to the mid point of the roof is well under the maximum height allowed in the R2.5 zone of 35 feet. The second story addition located within the south side setback is not expected to adversely impact light and air reaching the adjacent property to the south. The house on the subject site abuts the rear lot line of the two adjacent lots to the south which would be most impacted by the adjustment request. Both of these adjacent lots to the south have homes located 30 to 45 feet south of the southern property line of the subject site. In addition, the lot directly south of the subject site has a driveway located along the common property line separating this lot from the subject site. As such, adequate opportunity for light and air will be retained. The second-story addition within the reduced setback will have no significant impact on light reaching the adjacent properties.

#### Separation for Fire Protection/Access for Fire Safety

The proposed addition will be on top of the existing house. The south side wall of the house is currently four feet from the side lot line with a 1 foot eave encroaching into the reduced setback area, and will remain unchanged under the proposal. As such, the proposal to reduce the south side setback for the second-story addition will have no increased impact on access for fire safety. The Fire Bureau has reviewed the proposal and has no concerns. Based on these findings, the proposal will have no impact on separation for fire protection and access for fire safety.

#### Reflect the General Building Scale and Placement of Houses/Reasonable Physical Relationship Between Building

The scale and mass of the house, with the proposed addition, will remain consistent with the scale and mass of the houses in the surrounding area. Many of houses on the SE 40<sup>th</sup> Avenue block front are a full two stories in height, with a ridgeline similar to that of the proposed addition on the subject site. Additionally, given that a majority of the houses were built prior to the existing R2.5 zoning designation being mapped in the area, the side setbacks vary significantly from property to property, with many homes appearing to have less than the minimum required 5 foot side setback. Much of the second-story addition will be under a pitched roof, which further reduces the overall mass of the proposed addition.

#### Options for Privacy

The second-story addition within the reduced setback will contain no windows. The proposed second-story addition will have no impacts on privacy for adjacent residents.

Larger Front Setbacks

The requested Adjustment is for a reduction in one of the side building setbacks. The front setback is proposed to meet the minimum 10 foot setback required in the R2.5 zone.

Room for a Car to Park in Front of the Garage

The requested Adjustment is for a reduction in one of the side building setbacks so this criterion is not applicable. However, it should be noted that the applicant is proposing an 18 foot setback between the proposed garage entrance and the street lot line. This setback provides more than adequate room for a car to park on the driveway without blocking the sidewalk and meets the requirements of the R2.5 zone.

Based on these findings, the proposal will result in development that equally meets the purpose of the minimum side building setback regulations. 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 requested Adjustment to reduce the side setback for the second-story addition will not detract from the livability or appearance of the residential area. As indicated above, the surrounding residential neighborhood is largely characterized by two-story homes with pitched roofs similar to the second story addition proposed on the subject site, many of these homes have side setbacks (and in some case street setbacks) that are less than the minimum required in the R2.5 zone. The resulting massing and placement of the dwelling on the lot will be consistent with the established character of the surrounding neighborhood.

The proposal will have no impact on livability issues. As proposed, 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:** As only one Adjustment is requested, this criterion is not applicable.

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

**Findings:** City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As the subject site, or adjacent sites, are not designated as scenic or historic resources, this criterion is not applicable.

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

**Findings:** As described above in response to Approval Criteria A and B, there are no significant adverse impacts for which mitigation is required. This criterion is not applicable.

- 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:** Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no such designations on this site, 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 via a land use review prior to the approval of a building or zoning permit.

## CONCLUSIONS

The applicant has demonstrated that the applicable Adjustment approval criteria have been met. The request to reduce the south side setback for the second-story addition will result in development that meets the intent of the minimum setback regulation, and will not adversely impact the appearance or livability of the surrounding residential neighborhood.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum south side building setback (Zoning Code Section 33.110.220.B, Table 110-3) for the proposed second-story addition from 5 feet to four feet and from 4 feet to three feet for a 1 foot eave into the reduced setback area (Zoning Code Section 33.110.220.C.1), per the approved site plan (Exhibit C.1), and south building elevation (Exhibit C.2), both signed and dated July 11, 2013, and subject to the following condition:

- A. As part of the building permit application submittal, each of the four required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1 and C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-153394 AD. No field changes allowed."

**Staff Planner: Shawn Burgett**

**Decision rendered by:**  **on July 11, 2013**

By authority of the Director of the Bureau of Development Services

**Decision mailed: July 15, 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 May 14, 2013, and was determined to be complete on June 6, 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 May 14, 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.

**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 29, 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 30, 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**

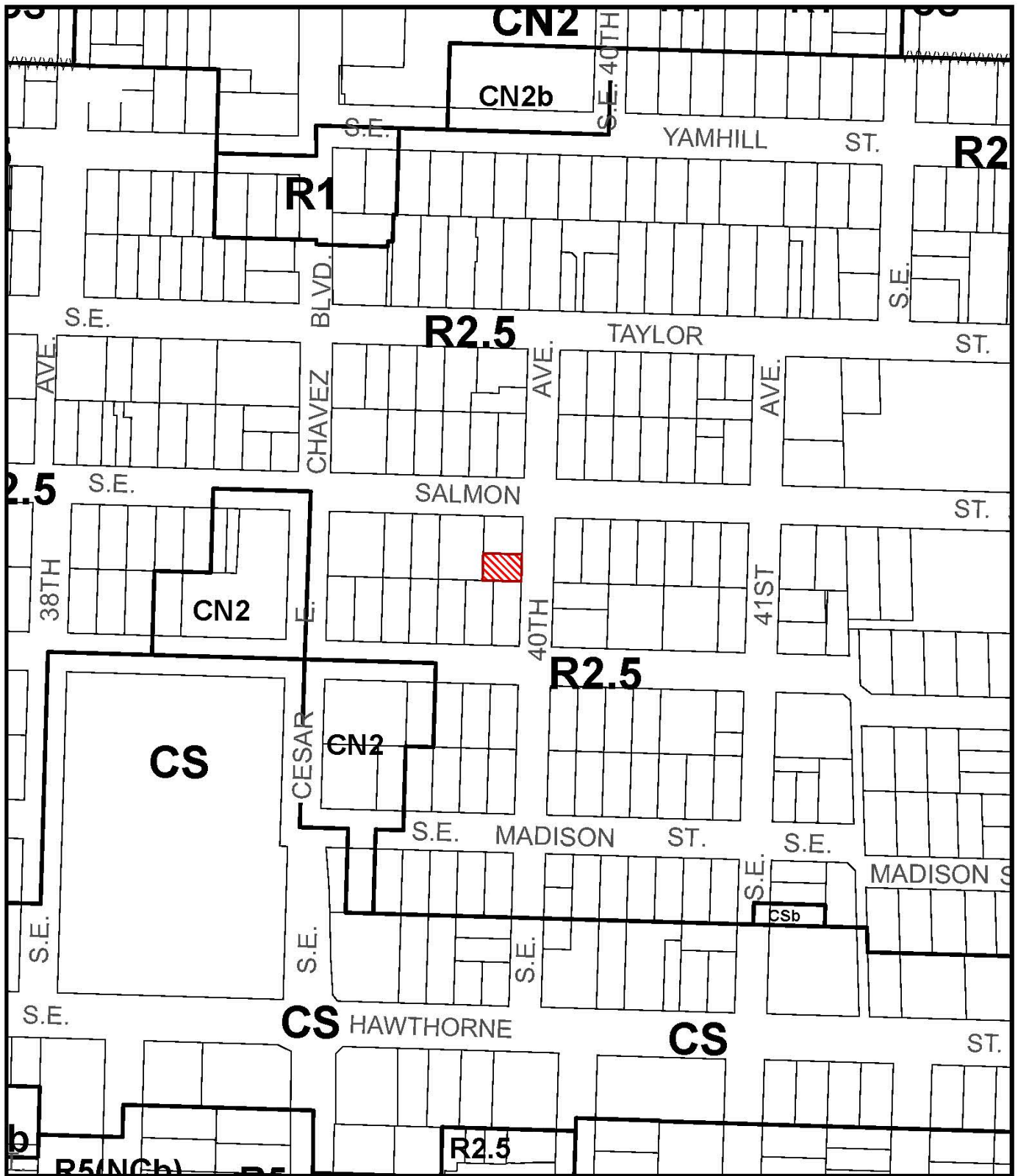
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Narrative
  2. Pictures of site
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. Elevations of proposed addition (attached)
  3. Elevations of existing house
- 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
  7. Life Safety
- F. Correspondence: (None received)
- G. Other:

1. Original LU Application
2. Site History Research
3. Incomplete Letter dated 5/29/13

**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

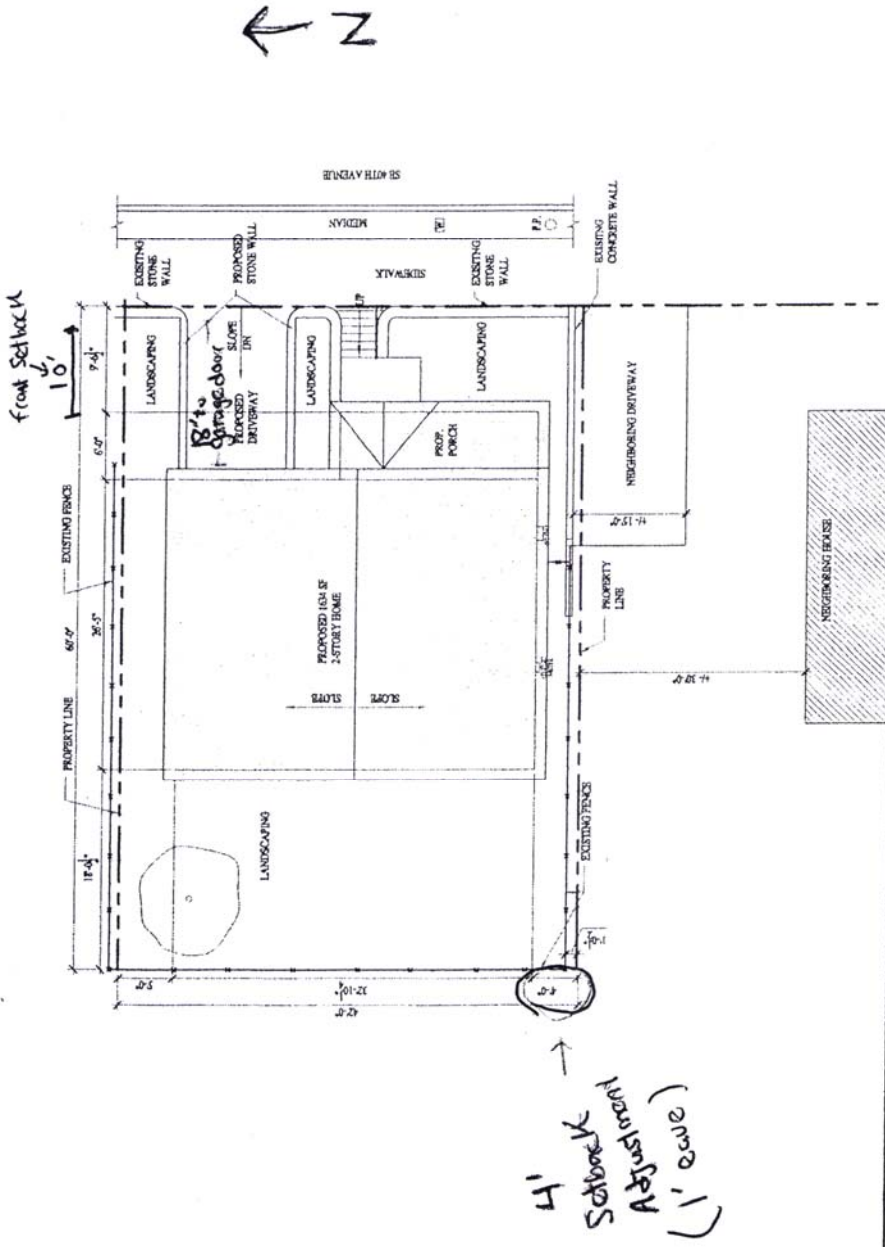
File No. LU 13-153394 AD  
 1/4 Section 3134  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E01AD 12700  
 Exhibit B (May 15, 2013)

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

Planner SRuggell Date 7/11/13

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

A-1  
 DATE: 05-14-13

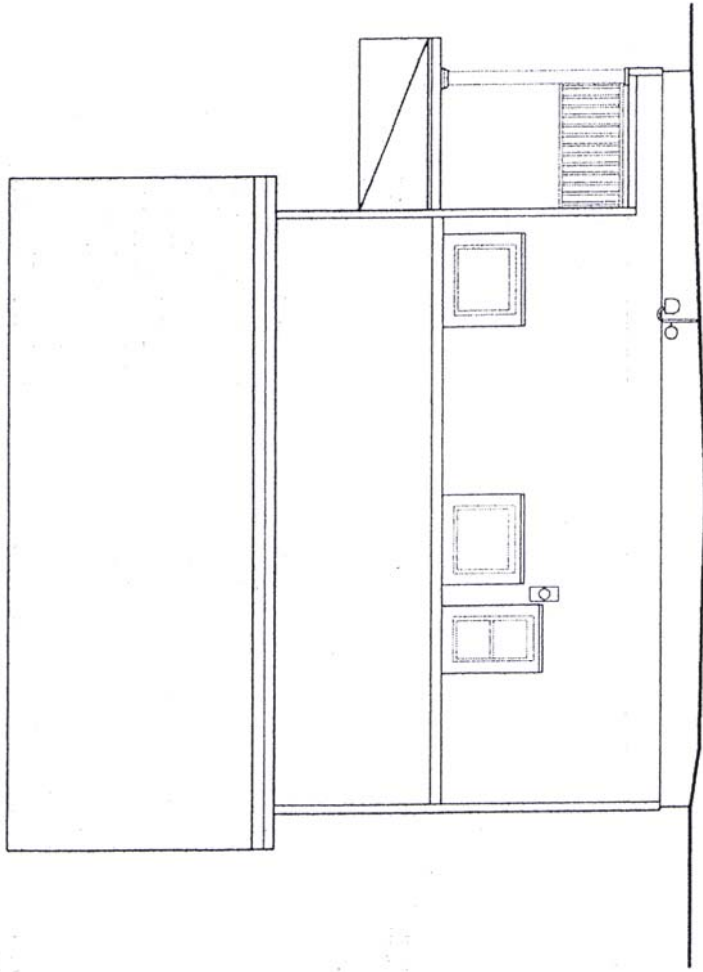


MORGAN'S RESIDENCE  
 1217 SE 40TH AVENUE  
 PORTLAND, OR 97214

PROPOSED SITE PLAN  
 SCALE: 1/16" = 1'-0"

LW 13-153394 AP

CASE NO. 13-153394  
 EXHIBIT G-1



A-5  
DATE: 05-14-13

MORGAN'S RESIDENCE  
1217 SE 40TH AVENUE  
PORTLAND, OR 97214

**\*Approved\***  
City of Portland - Bureau of Development Services  
Planner S. Burgett Date 7/11/13  
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

SOUTH PROPOSED INTERIOR ELEV.  
SCALE: 1/8" = 1'-0"

CASE NO. 13-153394  
EXHIBIT C-2