



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** August 12, 2013  
**To:** Interested Person  
**From:** Amanda Rhoads, Land Use Services  
503-823-7837 / [Amanda.Rhoads@portlandoregon.gov](mailto:Amanda.Rhoads@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 13-175518 AD**

#### **GENERAL INFORMATION**

**Applicant/Owners:** Stephen Piucci, 3626 NE 70th Ave, Portland, OR 97213  
**Owner:** Melissa Powers, 3626 NE 70th Ave, Portland, OR 97213  
**Site Address:** 3626 NE 70TH AVE  
**Legal Description:** BLOCK 31 LOT 32&33, HYDE PK  
**Tax Account No.:** R411408470  
**State ID No.:** 1N2E20CD 17000  
**Quarter Section:** 2637  
**Neighborhood:** Roseway, contact Bob Price at 503-807-4009.  
**Business District:** Portland International District Business Association, contact Thomas Wright at 503-249-3926.  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.  
**Plan District:** None  
**Zoning:** R5h (Single Dwelling Residential with Aircraft Landing Overlay zone)  
**Case Type:** AD (Adjustment)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant is requesting an adjustment to reduce the rear setback for an existing detached garage from 5' to 0', to allow a building permit to convert a portion of it to living space. The applicant proposes to convert the two-car garage into a one-car garage with a 187 square foot covered patio, maintaining the same overall building footprint. The 29'4" x 21' garage is located on the east property line with no rear setback; the garage is set back the required 5 feet from the south property line. This project will not result in any change to the current building footprint.

The applicant is requesting an adjustment to standards found in Zoning Code sections 33.110.220 (Table 110-3, Setbacks) which require a 5-foot rear setback for accessory buildings over 6 feet tall in the R5 zone. Garages in the R5 zone are allowed to be built at a 0 foot side and rear setback if they meet certain requirements [size, height, distance from the front property line, etc.]. Garages are allowed to be converted to other accessory uses as shown in Zoning Code chapter 33.110.250.C.4.c; however, because the garage is bigger than the

maximum size, this exception does not apply and an adjustment is required to change the use of the accessory structure located in the setback.

**Relevant Approval Criteria:**

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

**ANALYSIS**

**Site and Vicinity:** The subject site is a 5,000 square foot lot developed with a two-story home built circa 1925 and with frontage along the eastern half of NE 70<sup>th</sup> Ave. The property is in a predominantly single-dwelling residential neighborhood constructed largely in the 1920s. The block lies just north of significant commercial development on Sandy Blvd and Fremont St. The property and those around it share the R5 single-family zone, with the exception of the properties to the east of the subject site, which are in the R2.5 zone.

The property currently has a fenced-in backyard. Aerial photos indicate the garage in question may have been built around 1999 or 2000.

**Zoning:** This property is zoned R5h. The R5 zone is a high density single-dwelling zone, with a maximum density of one living unit per 5,000 square feet. The R5 zone allows attached and detached single-dwelling structures and duplexes.

This site also has an “h” or Aircraft Landing Overlay. The provisions of this overlay zone, which limit the height of structures and vegetation within the aircraft landing approach patterns for the Portland International Airport, are not relevant to this proposal.

**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 **July 15, 2013**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1)
- Parks Bureau – Forestry Division (Exhibit E.1)

The Site Development Section of BDS registered no concerns. Cesspool decommissioning is not required for the project in question (Exhibit E.2).

Life Safety responded with no concerns. Comments included preliminary building code information for the project (Exhibit E.3).

The Bureau of Transportation Engineering responded with the following comment: *The site's existing 10-6-2 sidewalk corridor exceed[s] current City standards. PBOT has no objections to the proposed AD* (Exhibit E.4).

The Water Bureau responded with no concerns (Exhibit E.5).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on July 15, 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 (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 of the standards for Accessory Structures is explained under Section 33.110.250.A as follows:

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

The purposes of the setback standard requested for Adjustment are found in Section 33.110.220, Setbacks. The setback regulations for buildings and garage entrances serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity.*
- *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.*

The garage currently sits in the SE corner of the property on the rear property line. The proposed project would not change the existing footprint of the building. Because of the placement of the covered living space, the existing and proposed fencing on the site and the fact that the project is not visible from the street, the project meets the purpose of the regulation.

The opening being cut into the existing garage to open a section as a covered patio will not abut any property line, and is located in a part of the garage outside of the required 5' setback, meaning there is no net loss of privacy with the proposed development.

The proposed changes to the detached garage are compatible with the neighborhood, many houses in which have detached garages. The proposed development will not impact the property to the south and to the east (adjacent to the detached garage) since the footprint of the detached garage will not change with the proposed development. The house on the property directly to the east of the garage is 26-30 feet away, indicating that keeping the structure on its current footprint would result in little loss of air, light, privacy or access to that property.

The detached garage is set back approximately 70 feet from NE 14th Avenue. This distance provides abundant vehicle parking area within the driveway and meets the purpose statement by allowing adequate room for a car to park in front of a garage door without overhanging into the street or sidewalk while enabling an open front yard.

For the reasons stated above, this approval criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, 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 proposed development will be taking place in the existing building envelope, meaning the impact on the neighborhood will be negligible

Currently, the view of the two-car existing garage is blocked from the street by a cedar fence and gate. The proposal includes the addition of another fence more clearly delineating the garage and driveway area from the backyard with the proposed covered patio. These two fences will both block any changes made to the garage from the street or from the property to the south.

Since the appearance of the property will not change from the street, this approval criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

**Findings:** This criterion is not applicable, as only one adjustment has been requested.

- 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:** The change in use to a covered patio is proposed on the north side of the garage, with a new fence dividing the yard area from the rest of the garage (and the property to the south). A substantial ~6-foot-tall cement block fence along the north and east of the property blocks views and noise from the backyard. The covered patio is 10' from the east property line and 24' from the north property line.

The proposed development will not necessarily lead to an increased amount of use, since the current owners can already spend time in their backyard. Regardless, there is significant screening and distance between the subject site's backyard and the surrounding neighbors. Further, the patio portion of the converted garage will be located outside the required 5' setback in all directions.

Because no impacts are expected from the 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

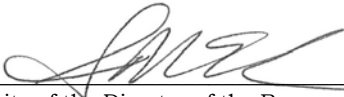
The applicant proposes to convert the existing two-car garage into a one-car garage with a covered patio. This project triggers an adjustment because the garage currently has a rear setback of 0' and an additional use is proposed within the garage footprint. Based upon the findings of this report, each applicable approval criterion is met. The proposed adjustment will not detract from the livability of the neighborhood and it meets the intent of the individual standard being adjusted as well as of the residential zone. For these reasons, the adjustment should be approved.

## ADMINISTRATIVE DECISION

Approval of Adjustment to convert a stand-alone two-car garage in the rear setback to a covered patio and one-car garage, per the approved site plans, Exhibits C.1 through C.3, signed and dated August 9, 2013, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 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-C.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-175518 AD."

**Staff Planner: Amanda Rhoads**

**Decision rendered by:**  **on August 9, 2013.**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: August 12, 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 July 3, 2013, and was determined to be complete on July 12, 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 July 3, 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: October 31, 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 August 26, 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 775 Summer St NE, Suite 330, Salem, OR 97301-1283 , 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 **August 27, 2013 – (the day following the last day to appeal).**
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to:

Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.

- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**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:

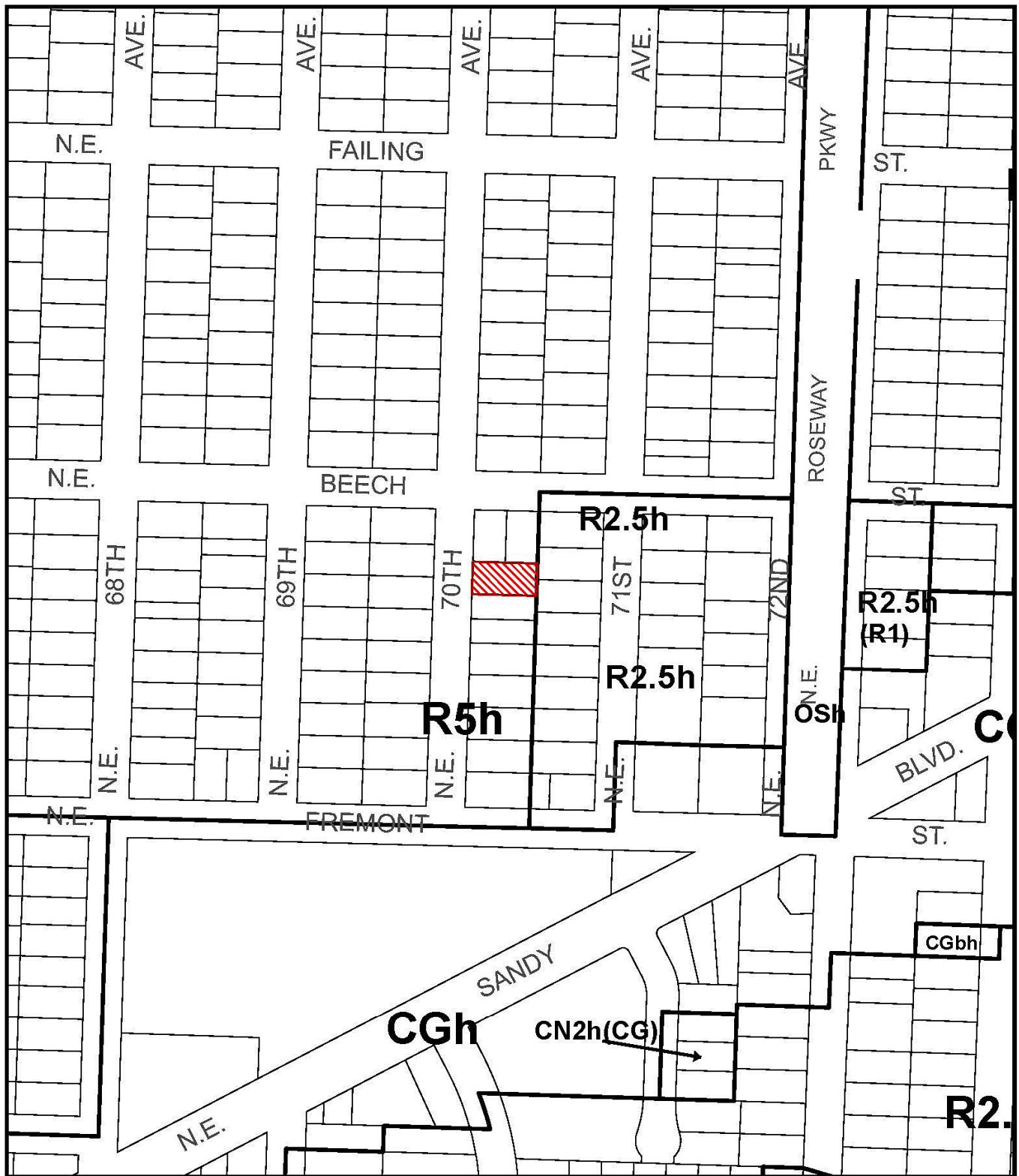
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. North Elevation (attached)
  3. West Elevation (attached)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Environmental Services; Bureau of Parks, Forestry Division
  2. Site Development Review Section of BDS
  3. Life Safety
  4. Bureau of Transportation Engineering and Development Review
  5. Water Bureau
- F. Correspondence: None submitted
- G. Other:
  1. Original LU Application

**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



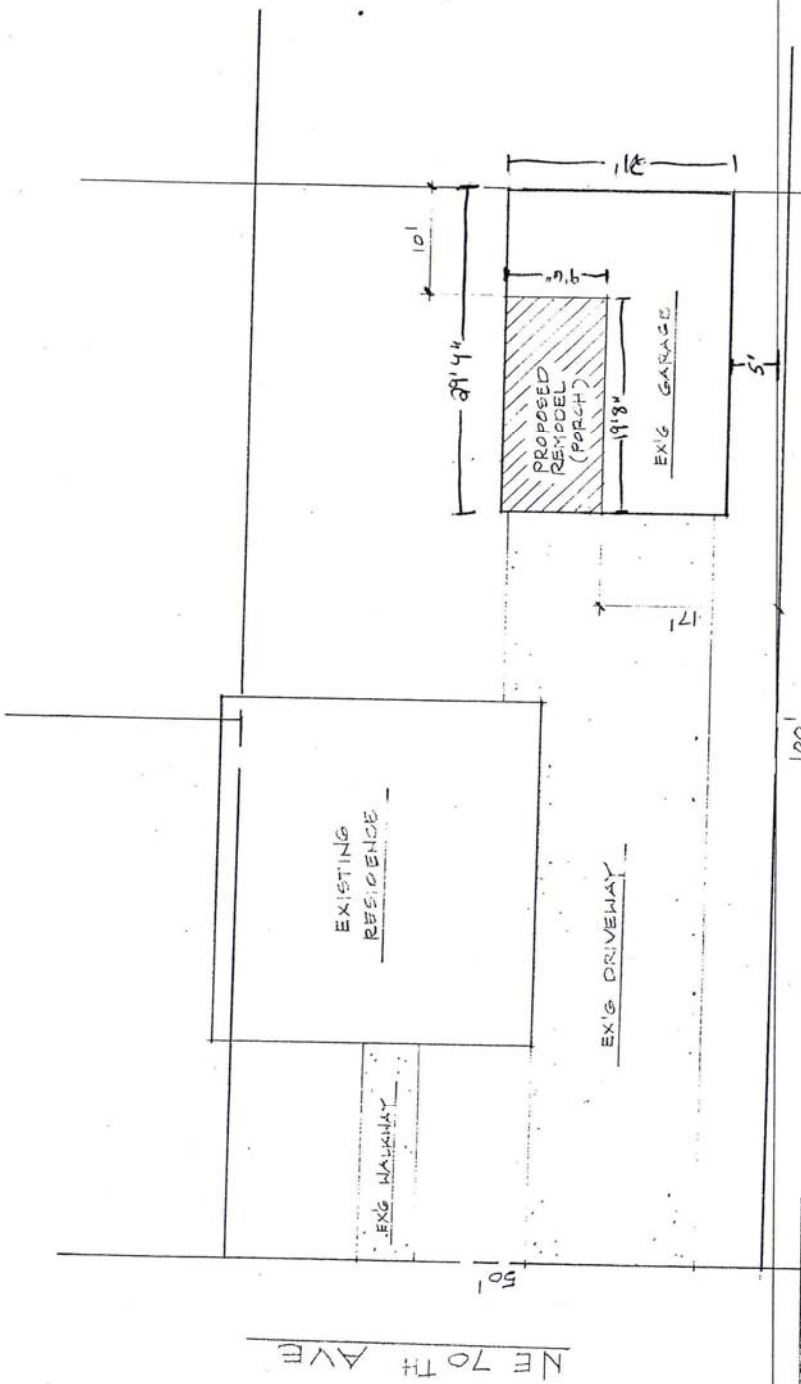
File No. LU 13-175518 AD  
 1/4 Section 2637  
 Scale 1 inch = 200 feet  
 State\_Id 1N2E20CD 17000  
 Exhibit B (Jul 08, 2013)



RICKARD  
1306 N. LINDSEY ST. #210  
PORTLAND, OR. 97209  
503.226.2316

PROPOSED  
CABANA FOR  
MELISSA POWERS & STEVE PUCCI

1  
OF 6



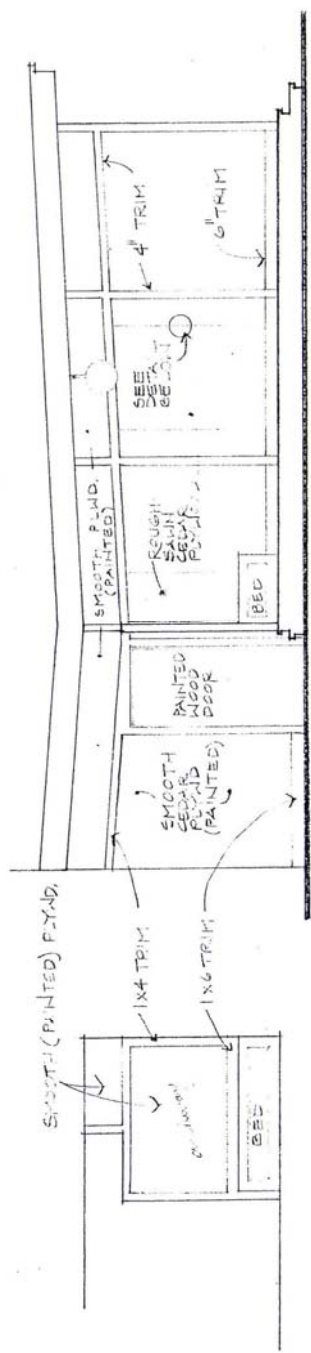
SITE PLAN  
SCALE: 1/4" = 1'-0"  
NOT TO SCALE

LEGAL DESCRIPTION  
I.D. # R.185949  
MULTNOMAH COUNTY  
IN 2E20CD - 17000  
MAP No. 2637 OLD  
3626 NE 70TH AVE,  
PORTLAND, OR. 97218  
HYDE PARK  
BLOCK 31, LOTS 32 & 33

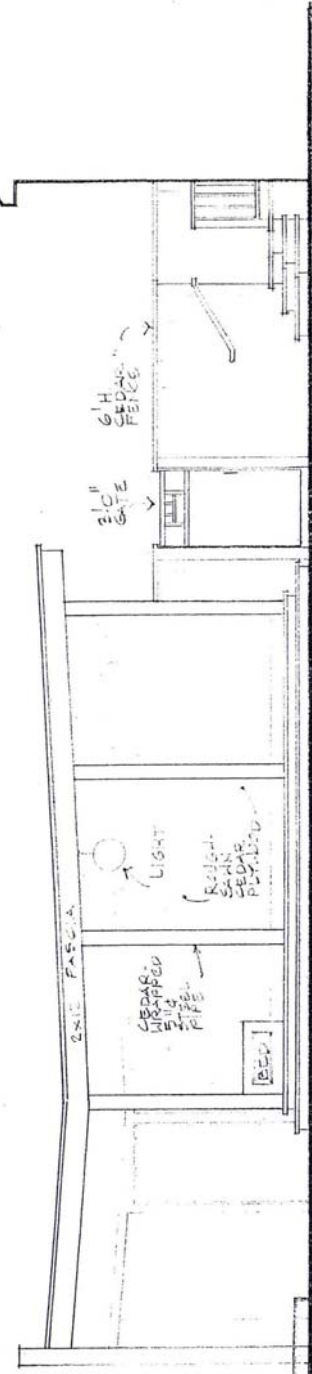
LN 18-175518 AD

Exhibit C.1

\*Approved\*  
City of Portland  
Bureau of Development Services  
Planner [Signature]  
Date 8/8/2013  
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



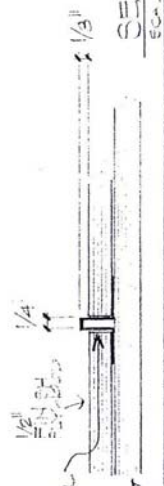
INTERIOR ELEVATION  
 SCALE: 1/4" = 1'-0"



NORTH ELEVATION  
 SCALE: 1/4" = 1'-0"

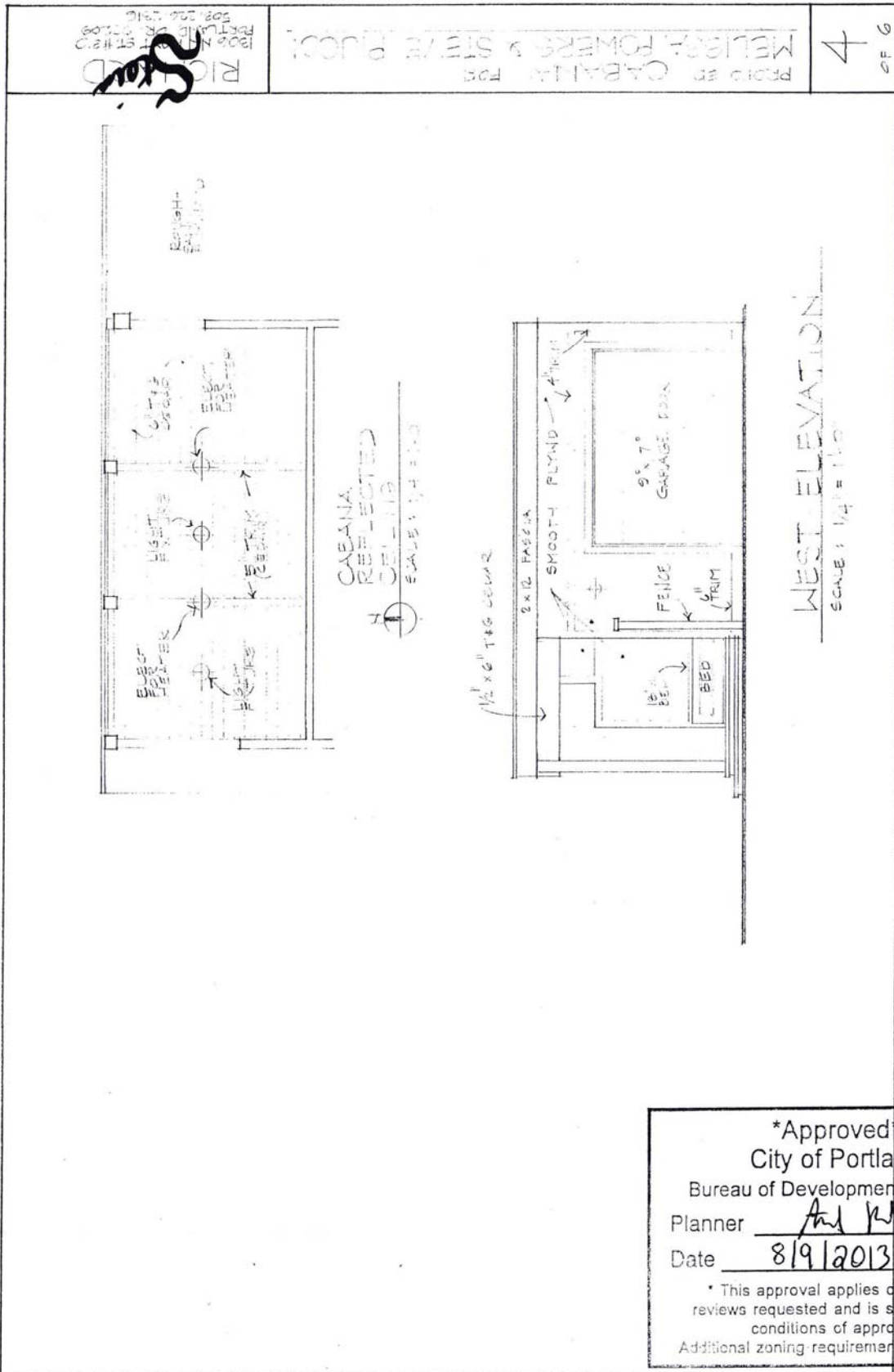
7.1.13

SEAM DETAIL  
 SCALE: 1" = 1'-0"



Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner *[Signature]*  
 Date 8/9/2013

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



CASE NO. LA 13-175518 AD  
 EXHIBIT C-3

\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner And M  
 Date 8/19/2013

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