



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
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Date: October 3, 2013
To: Interested Person
From: Sheila Frugoli, Land Use Services
503-823-7817 / Sheila.Frugoli@portlandoregon.gov

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

The Bureau of Development Services has **partially 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 13-191302 AD

GENERAL INFORMATION

Applicant/Owner: Mike Hubbell / Portland Development Group LLC
11124 NE Halsey St., Suite 300 / Portland, OR 97213

Contact: Nick Daniken / Portland Development Group
4224 NE Halsey St., Suite 300 / Portland OR 97213

Site Address: 1710 SE HAROLD ST

Legal Description: W 14' OF LOT 12 BLOCK 3 LOT 13 BLOCK 3, MIDWAY ANNEX; W 14' OF LOT 12 BLOCK 3 LOT 13 BLOCK 3, MIDWAY ANNEX

Tax Account No.: R568800490, R568800490, R568800490, R568800490

State ID No.: 1S1E14DB 16700, 1S1E14DB 16700, 1S1E14DB 16700, 1S1E14DB 16700

Quarter Section: 3632

Neighborhood: Sellwood-Moreland, contact Ellen Burr at 503-234-2233.

Business District: Sellwood-Westmoreland, contact Tom Brown at 503-381-6543.

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

Zoning: R2.5 a, d: R2.5, Single-Dwelling Residential zone with the "a" Alternative Design Density and "d" Design overlay zones.

Case Type: AD, Adjustment Review

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

Proposal: The applicant is requesting an Adjustment to reduce the required side building setback from 5 to 3 feet on both the west and east sides of a proposed new single-dwelling home that is proposed to be constructed on a 3,523 square foot, 28-foot wide lot (Tract 2). The proposed new home is 2-stories with a partial basement. The applicant had submitted a Property Line Adjustment request (case file 13-167297 PR) to move a platted lot line, to create two buildable lots. Tract 1 will be 4,429 square feet and 36 feet wide.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria.

ANALYSIS

Site and Vicinity: The subject site—Tract 2 and the western abutting lot (Tract 1) that is also owned by the applicant both are vacant and have been cleared for new development. The immediate area is primarily developed with single-dwelling homes. Most of the homes were constructed in the early 1900s. They are modest in scale, one to two stories in height. Interspersed nearby, are multi-dwelling residential buildings and rowhouses. From a visual assessment, it appears that many of the older homes are located less than 5 feet from at least one of its side property lines.

SE Harold is fully improved with sidewalks, curbs, planter strips and on-street parking on both sides of the roadway. Most of the homes and apartment buildings have on-site parking.

Zoning: The site is zoned Single-Dwelling Residential 2,500 with an Alternative Design Density overlay zone and a Design overlay zone (R2.5ad). The R2.5 zone allows single-dwelling residential development with a maximum density of one dwelling unit per 2,500 square feet. The Alternative Design Density (“a”) overlay zone allows additional density for projects complying with specific design criteria. This proposal is not utilizing the provisions of the “a” overlay zone. The Design (“d”) overlay zone requires new development and alterations to existing development to comply with design criteria.

Land Use History: City records indicate that prior land use reviews include the following:

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **August 27, 2013**. The following Bureaus have responded with no issues or concerns regarding the Adjustment request. Comments were provided that apply to the future building permits.

- Bureau of Transportation Engineering (Exhibit E.5)
- Fire Bureau (Exhibit E.5)
- Site Development Section of BDS (Exhibit E.3)
- Life Safety Plan Review Section of BDS (Exhibit E.4)
- Bureau of Environmental Services (Exhibit E.1)
- Water Bureau (Exhibit E.2)
- Bureau of Parks-Forestry Division (Exhibit E.5)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on August 27, 2013. A total of two written responses have been received from notified property owners in response to the proposal (Exhibits F.1 and F.2). To summarize, nearby neighbors oppose the request because:

- The setback requirements are the rules that all should follow.
- A setback reduction will not fit in with the overall look for the neighborhood.
- A 3-foot setback is tight up against a neighbor’s property and does not allow for green space or vegetation to grow.
- Allowing the splitting of lots and removal of setbacks is a slippery slope that will lead to a change in character and livability of the neighborhood.
- If reduced to 3-feet, why not remove the setback requirement entirely?
- A reduced setback will create fire safety and drainage impacts to the eastern abutting home, which is down slope from the property.
- Issues of reduced privacy, light and air are also a concern.
- A new 2-story home will tower over the eastern abutting home and obstruct light to its west-facing windows.
- The eastern abutting home sits close to the east property line, as it was built in 1912, before codes existed.

- The developer should find a house plan design that fits the property or the lots should be divided (sized) differently.

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

Findings: The applicant is seeking an Adjustment to the side building setback. The purpose of the building setback standards are found in Section 33.110.220, which states:

Purpose: The building setback regulations 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; 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.

The requested Adjustment to reduce the required side building setback from 5 to 3 feet is consistent with the purpose of the regulation for the west property line but does not equally or better meet the purpose for the east property line. The western abutting lot (Tract 1) is a newly created, 36-foot wide vacant lot. This lot is also owned by the applicants. A new home, comparable to the proposed home on the subject site could be constructed outside of the setbacks. In fact, a 22-foot wide home could be situated on the lot with as much as 9 feet distance between the shared property line of Tract 1 and Tract 2. Even if reduced by 2 feet, there will be ample setback distance along this shared property line. The applicant is not requesting an Adjustment to the setbacks for Tract 1. The separation between the two new homes will not adversely impact the physical relationship of other homes in the area.

In contrast, the setback reduction along the east property line will not maintain adequate separation and a reasonable physical relationship. In a letter of opposition, the eastern abutting property owner notes that the home at 1724 SE Harold is located very close to the eastern abutting house. A reduction of separation between her house and the proposed new house on Tract 2 will adversely impact access to light, air and privacy.

For the reasons stated above, the reduction in setback along the west property line meets this approval criterion while the request to reduce the east setback does not and therefore cannot be approved.

- 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 stated above, the reduced setback along the west side property line will not detract from the livability of those who will reside in the proposed new homes on Tract 1 and Tract 2 because there is space available for the two homes to be at least 8 feet apart. The new homes will likely be similar in scale and can be designed to maximize privacy with varying window orientation.

However, along the east property line of the subject site, there will not be adequate separation. The neighbor to the east has stated the proposed location of the home will significantly detract from her livability. The property owner at 1724 SE Harold submitted photos and raised concerns that because her home is located near the east property line, most of the windows are oriented to the west. A reduction in privacy and light will make her home “pressed for space on both sides”.

Except for a lack of eaves, the proposed new home includes many of the architectural elements used in homes of the early 1900s. However, the scale of the new home would be emphasized without the necessary 5 foot setback between it and the side (east) property line. Given Tract 2 is current vacant and there are no limitations to selecting plans or designing a new home that can better fit the lot, there is no compelling reason to approve the reduced eastern side setback.

- 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: One development standard is being adjusted. As the findings under criterion A and B explain, the anticipated effects of the reduced setback along each side property line will be markedly different. The reduced setback along the east property line cannot be approved. For those reasons, the cumulative impacts of both side setback adjustments has been determined not to be consistent with the development standards of the single dwelling residential zone. Therefore, the approval of a reduced setback on only one side addresses this criterion.

- 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. There are no such resources present on the site. This criterion is not applicable.

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

Findings: As explained under criterion A and B, there would be no discernible impacts along the west property line. However, the impacts of a reduced setback along the east property line are significant. There are no actions, such as creating a visual barrier or removing all windows on the east side of the building that would appropriately and practically mitigate the impacts. Therefore, this criterion is met for the side setback along the west property line but not met for the east property line.

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

As the findings explain above, the impacts of the requested side setback adjustments are markedly different. For the reasons stated above, the setback reduction along the west property line satisfies the approval criterion and therefore should be approved. The approval criterion is not met for the side setback reduction along the east property line and therefore must be denied.

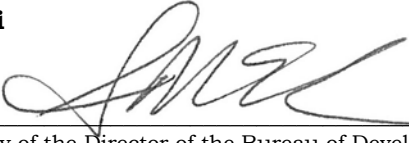
ADMINISTRATIVE DECISION

Denial of a side (east) building setback reduction from 5 to 3 feet for a proposed new home on Tract 2 (created through a Property Line Adjustment, case file 13-167297 PR).

Approval of a side (west) building setback reduction from 5 to 3 feet for a proposed new home, on Tract 2 (created through a Property Line Adjustment, case file 13-167297 PR).per the approved site plan, Exhibits C.1, signed and dated October 1, 2013, subject to the following condition:

- 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. The sheets on which this information appears must be labeled, "Proposal as approved in Case File # LU 13-191302 AD."

Staff Planner: Sheila Frugoli

Decision rendered by:  **on October 1, 2013**
By authority of the Director of the Bureau of Development Services

Decision mailed: October 3, 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 August 9, 2013, and was determined to be complete on August 22, 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 August 9, 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 October 17, 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.

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 **October 18, 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:

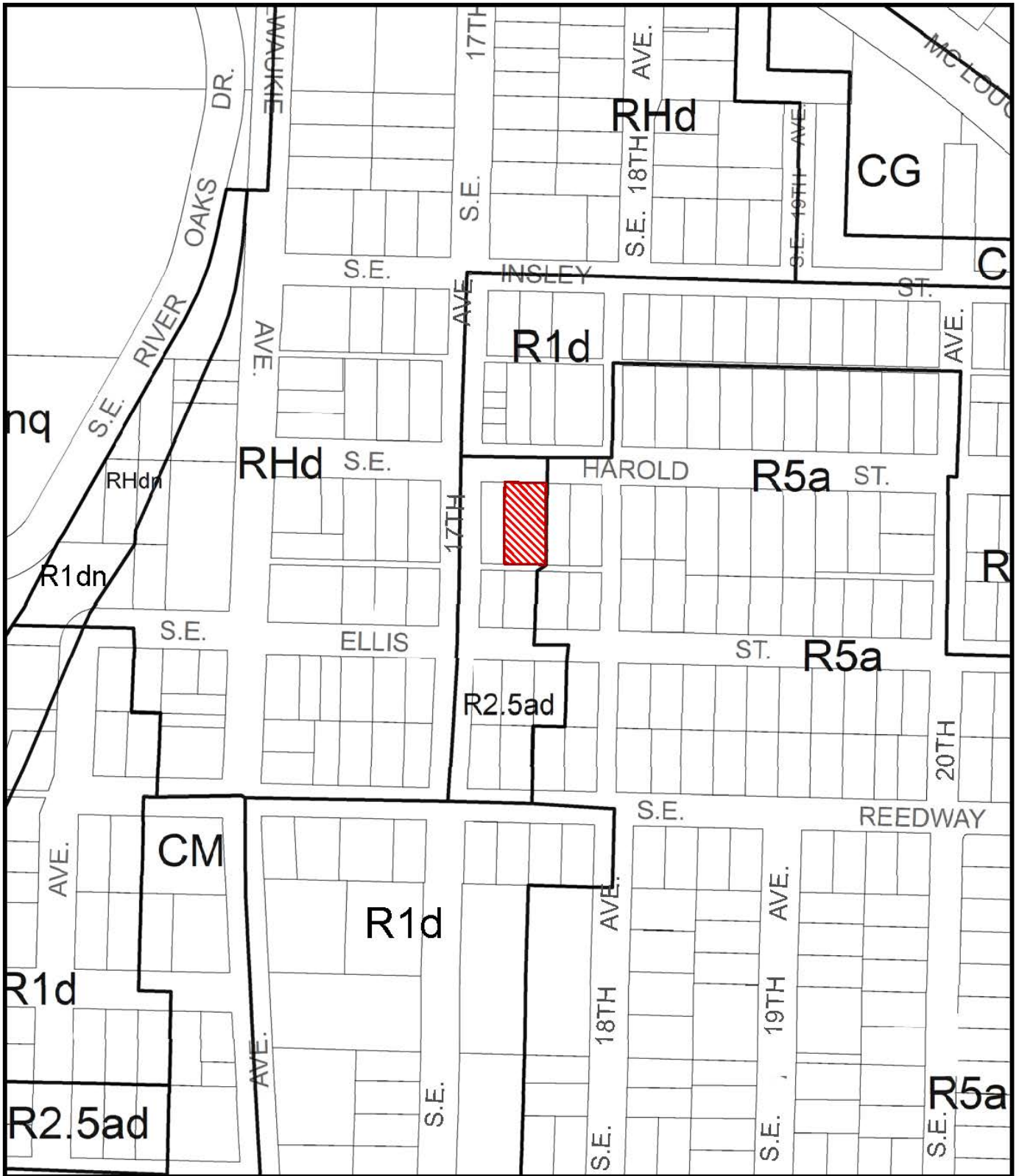
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Proposed Building Elevations
 - 3. Proposed Floor Plan
 - 4. Survey Submitted for Property Line Adjustment – 13-167297 PR
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
 - 3. Site Development Review Section of BDS
 - 4. Life Safety Plan Review Section of BDS
 - 5. TRACS print-out showing "No Concerns" from Fire Bureau, Portland Bureau of Transportation, Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. Dean and Meryl Scrutton, Sept. 10, 2013, Opposes the Requested Adjustment
 - 2. Mary McVein, Sept. 11, 2013, Submitted Letter and Photos, Opposes the Request
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Application Letter to Applicant from Staff

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



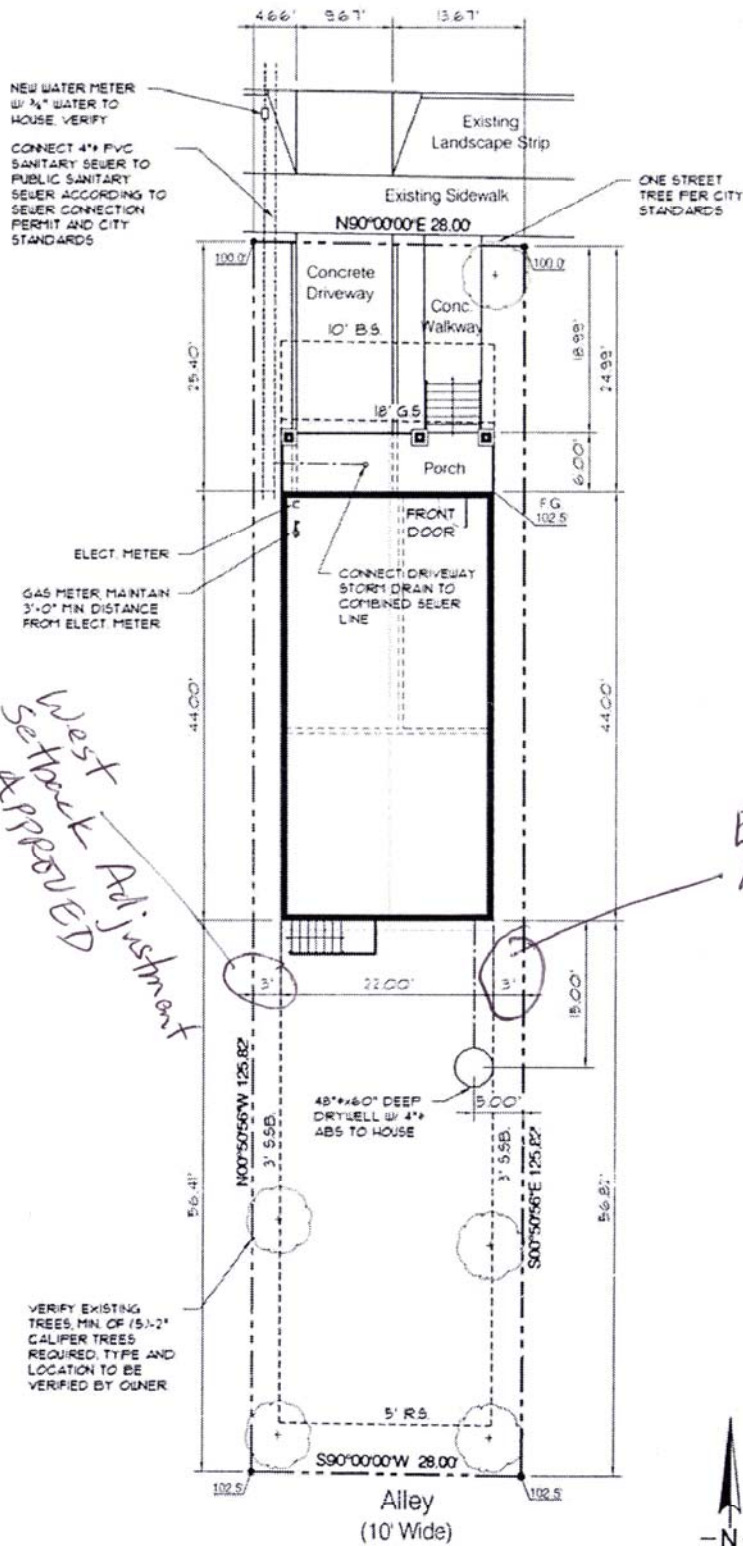
Site



NORTH

File No. LU 13-191302 AD
 1/4 Section 3632
 Scale 1 inch = 200 feet
 State_Id 1S1E14DB 16700
 Exhibit B (Aug 14, 2013)

1714 SE Harold St. Tract 2
60' R.O.W.



*West
Setback Adjustment
APPROVED*

*East setback
Adjustment is
DENIED.*

Approved
City of Portland - Bureau of Development Services
Planner S. Frugal
Date Oct. 1, 2013
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

SITE PLAN
SCALE: N.T.S.

1
C-S

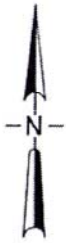


Exhibit C.1

LW 13-191302 AD