



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

FROM CONCEPT TO CONSTRUCTION

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Date: January 14, 2014
To: Interested Person
From: Andrew Gulizia, 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 13-234014 AD

GENERAL INFORMATION

Applicant/Owner: Patrick Heins
5220 SE 43rd Ave / Portland, OR 97206-5018

Site Address: 5220 SE 43rd Avenue

Legal Description: BLOCK 6 S 1/2 OF LOT 4 LOT 6, LEXINGTON HTS
Tax Account No.: R494101250
State ID No.: 1S2E18BC 08200 **Quarter Section:** 3535
Neighborhood: Woodstock, contact Terry Griffiths at 503-771-0011.
Business District: Woodstock Community BA, contact Sean Daugherty at 503-754-2636.
District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.
Zoning: R5 – Single-Dwelling Residential 5,000
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant has constructed a 198 square-foot shed on the north side of the property. The wall of the shed is four feet from the north side property line, and the eave is 1.5 feet from the north side property line. Although a building permit was not required for this structure, the Zoning Code requirements for the R5 zone apply. As the Zoning Code requires a minimum five-foot setback to the wall, and a minimum four-foot setback to the eave, the applicant is requesting approval of an Adjustment to legalize the shed.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The site is a 7,500 square-foot lot is located on the east side of SE 43rd Avenue, between SE Mitchell Street and SE Steele Street. The site is developed with a two-

story single-family residence that is set back approximately ten feet from the street lot line. Surrounding lots are zoned R5 and are developed with a mix of one-story and two-story houses.

Zoning: The R5 designation is one of the City's single-dwelling zones, which are intended to preserve land for housing and to promote housing opportunities for individual households.

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 December 17, 2013. The following Bureaus have responded with no issues or concerns:

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

Neighborhood Review: A "Notice of Proposal in Your Neighborhood" was mailed on December 17, 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 applicant has demonstrated 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 an Adjustment to the minimum five-foot side setback requirement for structures in the R5 zone. The purpose of the setback requirement is stated in Zoning Code Section 33.110.220.A:

Purpose. *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; 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 north wall of the shed is only four feet from the wall of the northerly neighbor's detached garage. However, neither of these accessory buildings contains habitable space, and the separation between the two neighboring houses is more than 50 feet. The Portland Fire Bureau responded with no concerns. Since the shed lines up with the neighbor's garage, and no windows are proposed on the north building wall, the reduced setback from the property line does not impact neighbors' privacy.

The shed is similar in scale to other detached accessory buildings in the vicinity, and therefore is consistent with the overall scale and placement of structures in the neighborhood. Architectural details of the shed match the house on the lot, and are compatible in design with the surrounding residential neighborhood.

Placement of the shed close to the north property line maximizes the usable outdoor area of the property, and since the shed is 18 feet from the street lot line (exceeding the R5 zone front setback requirement of 10 feet), the Adjustment does not affect the open front yard. As the existing driveway into the back yard will remain unchanged, the proposal will not affect visibility for drivers backing onto the street and there will be ample space for cars to park on the driveway without overhanging the street or sidewalk.

Based on these reasons, the Adjustment equally meets the intent of the regulation and 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: Because the site is located in a single-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. The building is one story, relatively small in size (198 square feet), and has a quality design which matches the house on the lot. Because the shed lines up with the neighbor's garage, and there are no windows proposed on the wall facing the property line, the reduced setback does not negatively impact neighbors' privacy.

For these reasons, the proposal will not result in any significant negative impacts to neighborhood livability or appearance. 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 being 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 there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

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

Findings: As discussed in the findings for approval criterion B, the proposal has no adverse impacts on the livability or appearance of the surrounding residential area. As there are no identified adverse impacts for which mitigation would be 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 environmental overlay zones mapped on 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 or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

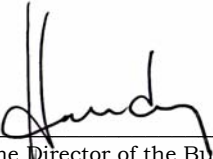
The proposal to reduce the north side setback for a shed equally meets the intent of the setback regulation, and does not have adverse impacts on the livability and appearance of the surrounding residential neighborhood. The applicant has demonstrated that the applicable approval criteria have been met. Since the approval criteria are met, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum side setback for an accessory building from five feet to four feet for the walls, and from four feet to 1.5 feet for the eaves, per the approved site plans and building elevations, Exhibits C-1 and C-2, signed and dated January 8, 2014, subject to the following condition:

- A. A zoning permit is required. As part of the zoning permit application submittal, each of the 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 13-234014 AD."

Staff Planner: Andrew Gulizia

Decision rendered by:  **on January 8, 2014.**

By authority of the Director of the Bureau of Development Services

Decision mailed: January 14, 2014

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 December 3, 2013, and was determined to be complete on December 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 December 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 extended by the applicant, **the 120 days will expire on: April 11, 2014.**

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 January 28, 2014** 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 775 Summer St NE, Suite 330, Salem, Oregon 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 **January 29, 2014**.
- 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:

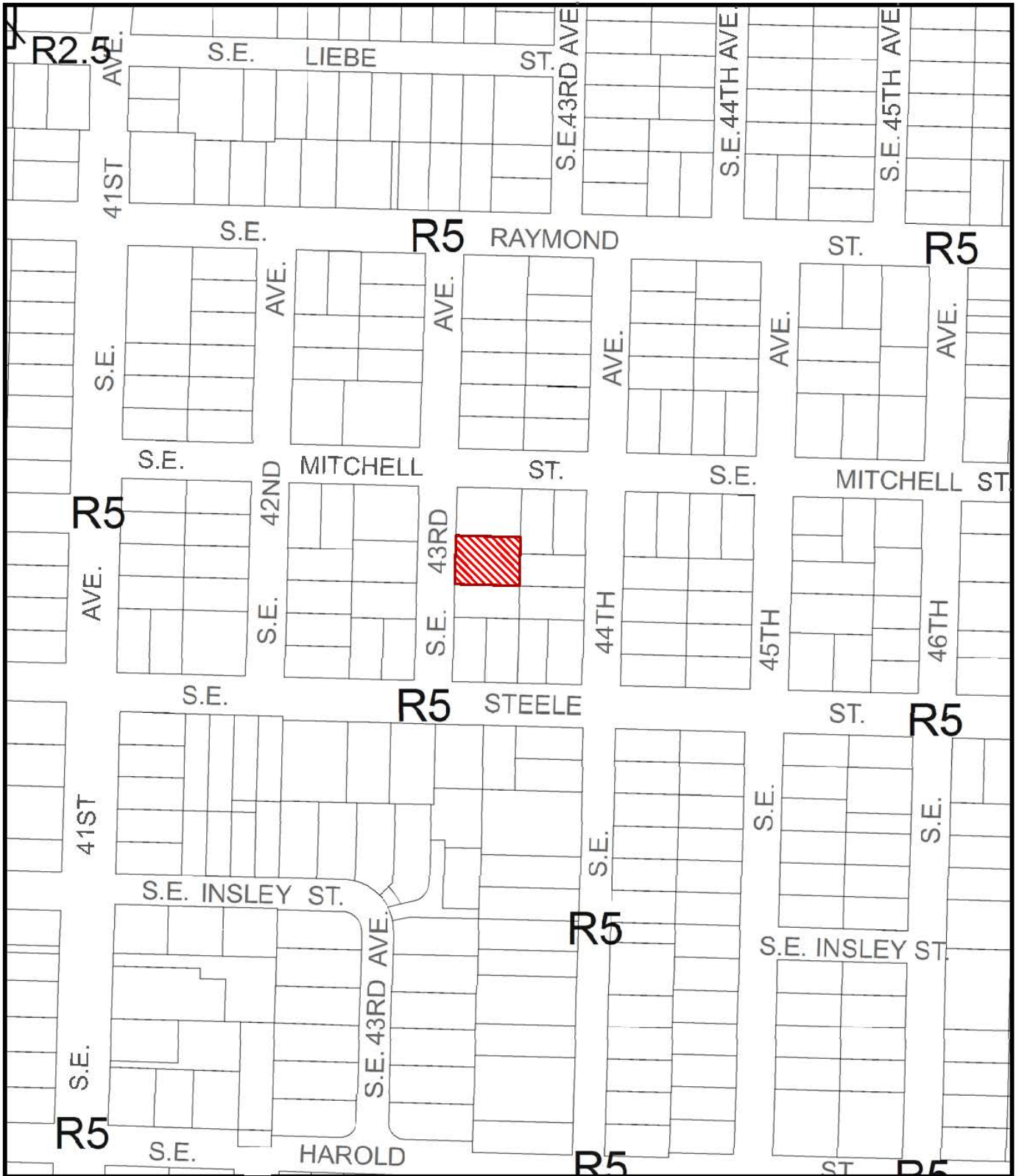
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Approval criteria responses submitted by applicant
 - 2. Photos submitted by applicant
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan (attached)
 - 2. Building elevations (attached)
 - 3. Floor plan
- 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. Life Safety Review Section of BDS
 - 7. Parks Bureau, Urban Forestry Division
- F. Correspondence – None received
- 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).



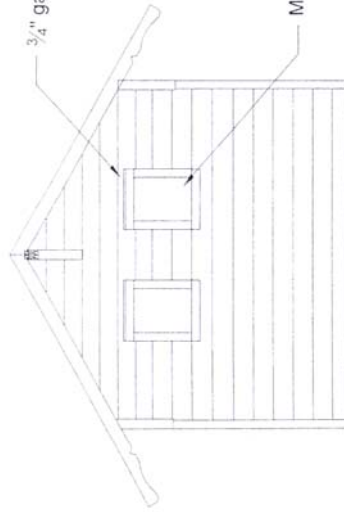
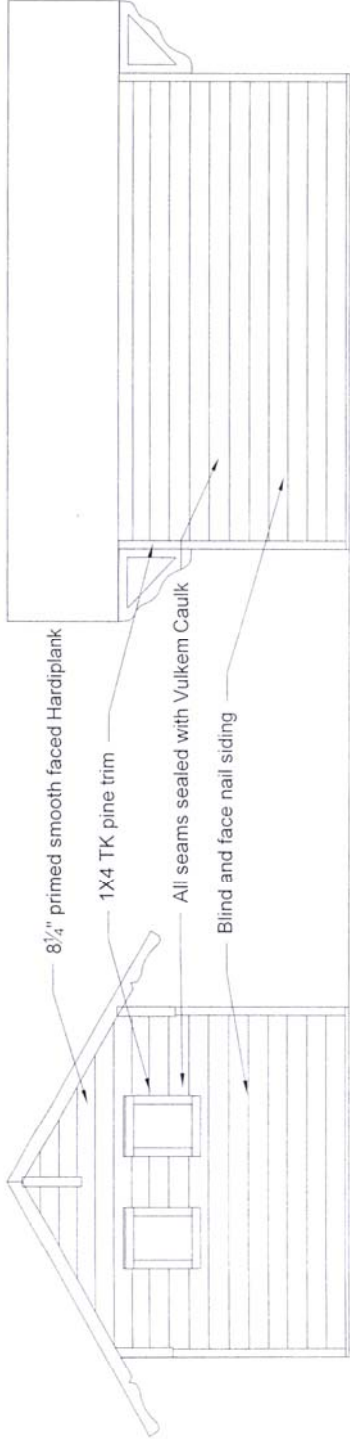
ZONING



File No. LU 13-234014 AD
 1/4 Section 3535
 Scale 1 inch = 200 feet
 State_Id 1S2E18BC 8200
 Exhibit B (Dec 09, 2013)

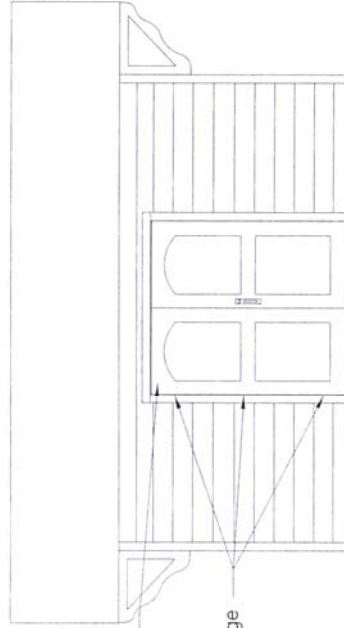
East Face

North Face



West Face

South Face



General Notes

Siding Elevation

Notes:

Siding
 3/4" CDX plywood sheathing
 30 lb tar paper
 8/4" Hardie Plank, smooth siding
 Tremco Vulkem 116 polyurethane sealant
 3/4" exterior sheet rock over plywood on north wall only.

Roofing material
 30 lb felt
 Owens Corning Oakridge w/10 mph wind - color- Quarry Gray
 Drip flashing
 6" rain gutter inset into rafter tails

Paint
 colors to match existing house



No.	Revision/Issue	Date

Heins Shed
 5220 SE 43rd Ave
 Portland, OR

Heins	5
6/18/12	
1/4" = 1'	

Approved
 City of Portland - Bureau of Development Services
 Planner AE Date 1/18/14
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.