



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

FROM CONCEPT TO CONSTRUCTION

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

**Date:** July 1, 2014  
**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 14-131424 AD SETBACK ADJUSTMENT FOR NEW HOUSE**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Eric Rystadt / Main Street Development, Inc.  
Po Box 91096 / Portland OR 97291

**Site Address:** SW Ridgeview Lane at SW Luradel Street

**Legal Description:** LOT 3 TL 103, PARTITION PLAT 2002-122  
**Tax Account No.:** R649824870  
**State ID No.:** 1S1E28CC 00103  
**Quarter Section:** 4027  
**Neighborhood:** Marshall Park, contact John DeLance at 503-246-4382.  
**Business District:** None  
**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.  
**Plan District:** None  
**Zoning:** R10 – Residential 10,000  
**Case Type:** AD – Adjustment Review  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant is proposing to build a new single-dwelling house on a vacant lot in SW Portland. Because of an existing easement on the property, which provides for a 12-foot-wide driveway to the adjacent property to the north, the applicant proposes to build the new house closer to the southeast property line than would otherwise be allowed outright. The applicant requests an Adjustment to Zoning Code Section 33.110.220 to reduce the southeast side setback for the house from 10 feet to 5 feet, 6 inches, and to reduce the setback for the eave from 8 feet to 4 feet.

#### **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 7,353-square-foot residential lot is located in the Southwest Hills residential area between SW Boones Ferry Road and I-5. The site has frontage on SW Ridgeview Lane and slopes upward from the street. The site is undeveloped with trees, brush and lawn areas. The site has a 12-foot-wide easement for a driveway to the adjacent site to the north.

Many of the nearby houses are mid-20<sup>th</sup> century ranch-style houses on lots of 15,000 to 40,000 square feet, making the subject site one of the smallest lots in the neighborhood. A few houses were built more recently, as a result of minor partitions, property line adjustments or land divisions. The lot to the southeast is currently vacant.

The right-of-way adjacent to the street is improved with 20 feet of roadway, but no curbs or sidewalks. The edge of the right-of-way is vegetated with trees (in the range of 6 to 12 inches in diameter) and shrubs.

**Zoning:** The Residential 10,000 (R10) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 6,000 square feet, with minimum width and depth dimensions of 50 and 60 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 10,000 square feet of site area.

**Land Use History:** City records indicate the following land use reviews for the site:

The site was part of a 3-lot Minor Partition with Adjustment in 2001, separating the subject site from the two sites to the north (including the one with the existing home which retains the driveway through the subject site with an easement). The current site configuration was determined through a Property Line Adjustment in 2007 which reduced the size of the lot from 10,128 square feet to 7,353 square feet by moving the northwest property line to the south.

**Public Review:** A "Notice of Proposal in Your Neighborhood" was mailed **June 3, 2014**.

**Agency Review:** The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation
- Water Bureau
- Fire Bureau
- Site Development Review Section of BDS
- Bureau of Parks, Forestry Division
- Life Safety (Building Code) Plans Examiner

**Neighborhood Review:** One written response was received from a notified property owner in response to the proposal. The neighbor asked that the request for Adjustment be denied. The neighbor co-owns, with other neighbors, the property to the southeast of the subject site. The neighbor states that there is an easement near the shared property line for a community driveway that provides access to three nearby properties. The neighbor expressed concern that the house would sit closer to his easement than the code allows, which might raise issues with fire protection access onto the property.

**Staff response:** *The purpose of the Adjustment request is to provide more space between the proposed house and the existing easement on the subject site. The proposal moves the house over so that the space between the house and the easement to the north, and the space between the house and the property line to the south, are both about 5 feet, 6 inches.*

*While the exact location of the easement on the adjacent property was not provided, the letter indicated that the easement was located close to the property line. Approving the Adjustment enables the proposed house to retain space between itself and both easements, rather than abutting one and maintaining the 10-foot setback to the other. Further, the fact that an easement is located on the adjacent property means granting the Adjustment will not result in two houses being built close together; the easement provides at least 12 feet of division between buildings to the south. For further discussion, see the approval criteria findings below.*

## **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 statements for setback regulations in the single-dwelling zones are as follows:

#### **33.110.220 Setbacks**

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.

Each purpose statement is addressed individually below.

- *They maintain light, air, separation for fire protection, and access for fire fighting;*

**Findings:** The back wall of the proposed house will be located approximately 50 feet from the existing house on the lot to the north. To the southeast, the lot is currently

vacant. An existing easement on that lot would provide separation between buildings if a house were to be built there. There is the possibility of an easement being dissolved; however, it currently provides access to three sites with no street frontage and likely will remain. Granting the Adjustment will not impact light, air, separation for fire protection or access for fire fighting. The Fire Bureau has weighed in on the Adjustment request with no concerns.

- *They reflect the general building scale and placement of houses in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*

**Findings:** Reducing the southeast building setback 4 feet, six inches will not result in development that significantly differs in building scale or placement of houses in the neighborhood. The changes in slope, the odd lot shapes in the area, the mature vegetation and the environmental zoning on nearby properties have all resulted in an inconsistent placement of houses in the area. Further, the lot to the southeast is vacant with an easement for a driveway at or near the property line. This would maintain separation between the proposed house and any house to be built later on the adjacent lot.

- *They promote options for privacy for neighboring properties;*

**Findings:** The lot to the southeast is vacant. Allowing the proposed house to be located 4.5 feet closer to the property line will not impact privacy on any nearby houses. Further, the elevation drawing demonstrates that only two windows will be located on that side of the house, preventing views into the neighboring property. The mature vegetation and presence of larger trees also blocks views into neighboring properties.

- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*

**Findings:** The Adjustment request does not impact the front yard. The proposal maintains the minimum front setback of 20 feet for the R10 zone. This purpose statement is not relevant to the Adjustment request.

- *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*

**Findings:** The Adjustment request was necessitated by an easement that runs along the north side of the property, which includes a driveway that predated the Minor Partition that created this lot. The lot is already smaller than most lots in the neighborhood at 7,353 square feet, and the easement offers an additional constraint. While the easement itself is 12 feet across, it effectively reduces the usable land on this site by a greater amount, because a triangle of property is left as an "island" north of the easement. In effect, the easement reduces the width of the site by 40 feet at the front of the property, and by some 26 feet at the proposed front edge of the new house. Granting the Adjustment enables the house to fit the usable area of the site while leaving the same amount of space between the house and both the property line to the south and the easement to the north.

- *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.*

**Findings:** The Adjustment request does not impact the location of the garage compared to the street. The garage is proposed to be located some 28 to 33 feet from

the curving property line. This purpose statement is not relevant to the Adjustment request.

For the reasons described 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 proposal would reduce the 10-foot required setback to 5 feet, 6 inches. The adjacent lot to the southeast is vacant, with a driveway that provides access to three properties with no street frontage. The area has significant tree cover with many shrubs and bushes providing screening. It is not obvious where one property ends and another begins in the immediate area. This context means the Adjusted setback will largely go unnoticed by passers-by or even those who live in the nearby area. Granting the Adjustment will not detract from the appearance of the residential area; nor would granting the Adjustment impact privacy, access or other livability concerns of the immediate neighbors. 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:** Only one adjustment is requested. This criterion is not applicable.

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

**Findings:** City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

**Findings:** There are no discernible impacts that would result from granting the requested adjustment. This criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** 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 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

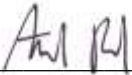
The Adjustment requested would allow a house to be built on a site with an easement that is 12 feet wide. The approval criteria are met, and therefore the Adjustment should be granted.

**ADMINISTRATIVE DECISION**

Approval of an Adjustment to Zoning Code Section 33.110.220 to reduce the southeast side setback from 10 feet to 5 feet, 6 inches for a new house, and reduce the eave setback from 8 feet to 4 feet, per the approved site plans, Exhibits C.1 through C.3, signed and dated June 27, 2014, 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 14-131424 AD."

**Staff Planner: Amanda Rhoads**

**Decision rendered by:**  on **June 27, 2014**

By authority of the Director of the Bureau of Development Services

**Decision mailed: July 1, 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 March 28, 2014, and was determined to be complete on **May 29, 2014**.

*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 March 28, 2014.

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: September 25, 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 July 15, 2014** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 2:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 2:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> 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, 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 **July 16, 2014 (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.

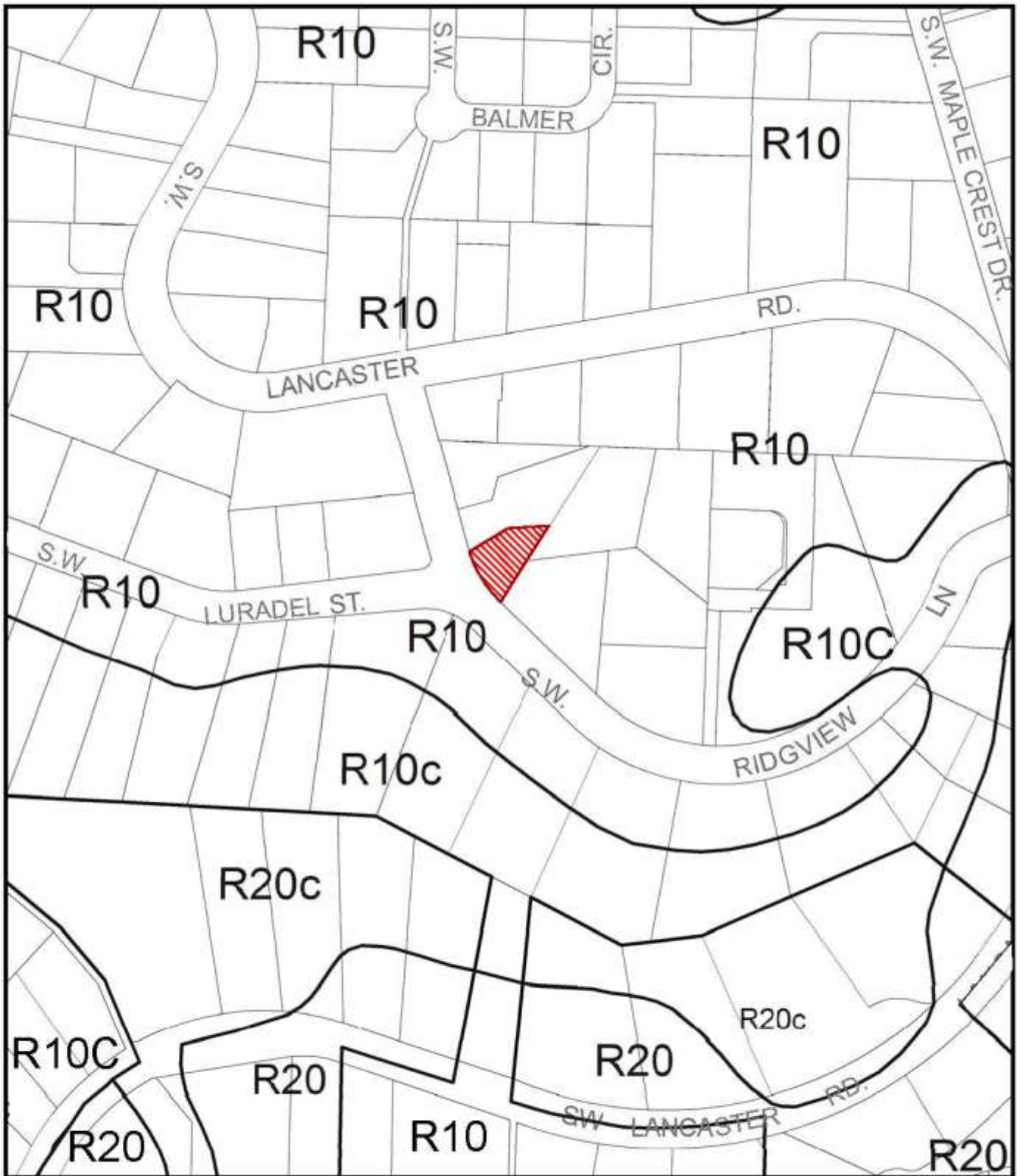
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Front/Side Elevations (attached)
  - 3. Rear/Side Elevations (attached)
  - 4. Floor plans
  - 5. Paving summary
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety (Building Code) Plans Examiner
- F. Correspondence:
  - 1. James Smith, June 24, 2014, in opposition
- G. Other:
  - 1. Original LU Application
  - 2. Incomplete Letter, April 7, 2014
  - 3. Property Line Adjustment survey of site from 2007

**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



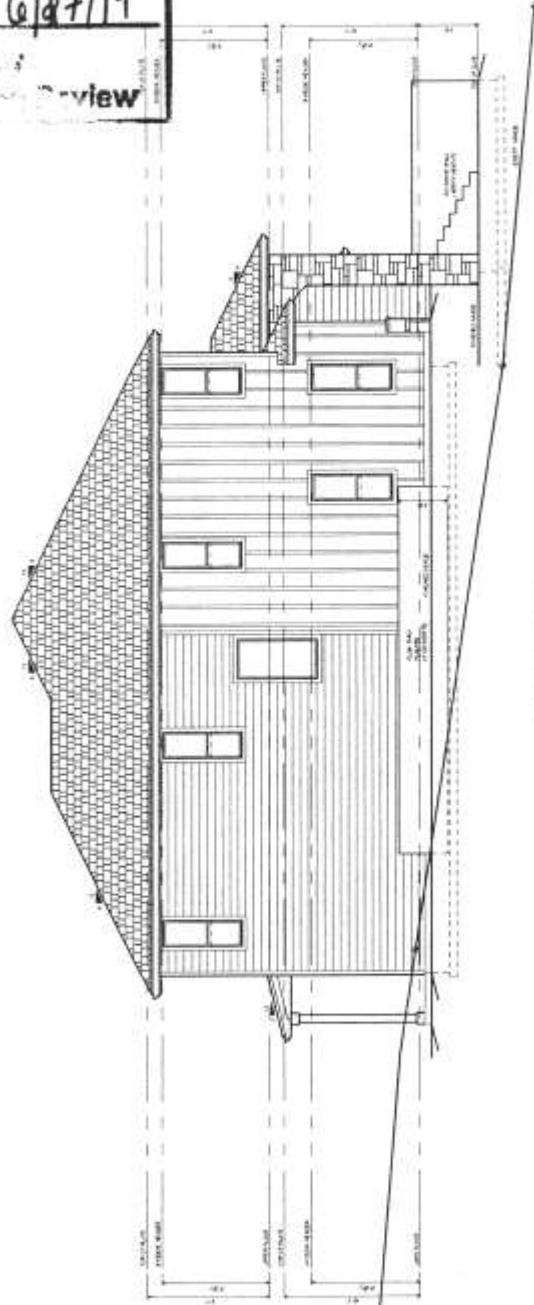
|             |                          |
|-------------|--------------------------|
| File No.    | <u>LU 14-131424 AD</u>   |
| 1/4 Section | <u>4027</u>              |
| Scale       | <u>1 inch = 200 feet</u> |
| State_Id    | <u>1S1E28CC 103</u>      |
| Exhibit     | <u>B (Apr 02, 2014)</u>  |



City of Portland  
 Bureau of  
 Development Services  
 By AM Date 6/27/14  
 Planning Department  
 for Review



FRONT ELEVATION



LEFT ELEVATION

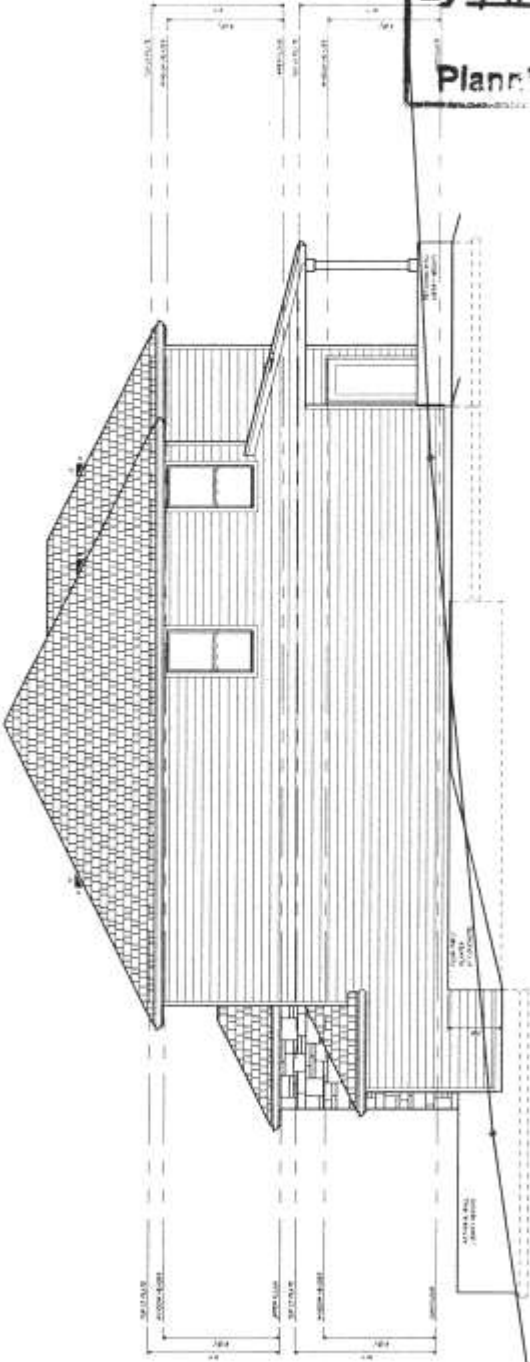
|                |            |
|----------------|------------|
| BASE FLOOR     | 1-00-00-00 |
| UPPER FLOOR    | 1-00-00-00 |
| TOTAL AREA     | 2-00-00-00 |
| LANDSCAPE AREA | 0-00-00-00 |
| NET AREA       | 2-00-00-00 |

ELEVATIONS  
 AND SECTION  
 (unless otherwise noted)

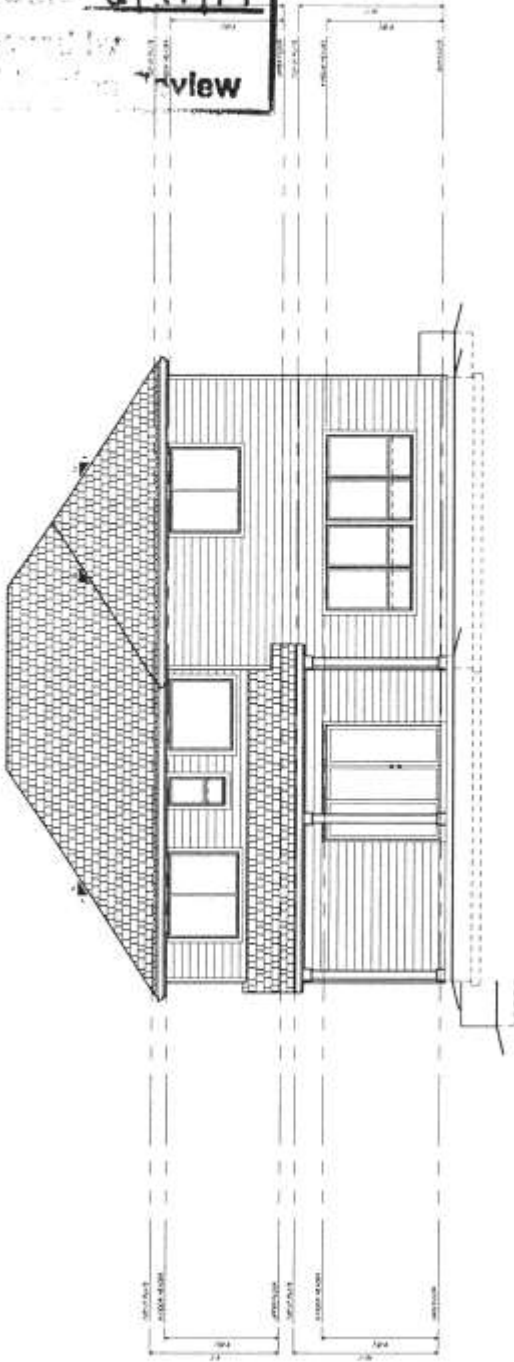
CASE NO. Lu 14-131424 AD  
 EXHIBIT C-2

DATE: 6/27/14  
BY: AM  
CITY OF PORTLAND  
DEPARTMENT OF  
PLANNING AND  
COMMUNITY DEVELOPMENT  
PLANNING DIVISION  
1225 NE OREGON STREET, SUITE 300  
PORTLAND, OREGON 97232  
PHONE: 503-993-3100  
FAX: 503-993-3101  
WWW.CITYOFPORTLAND.ORG

City of Portland  
Bureau of  
Development Services  
By *AM* Date *6/27/14*  
Approved by  
Planning Director *[Signature]* Review



RIGHT ELEVATION



REAR ELEVATION

ELEVATIONS

CASE NO. LU 14-131424 AD  
EXHIBIT C.3