



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
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Date: July 2, 2014
To: Interested Person
From: Amanda Rhoads, 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 14-157817 AD

GENERAL INFORMATION

Applicant/Owner: Anne amd Amdrew Usher
3338 NW Franklin Ct
Portland, OR 97210-1924

Site Address: 3338 NW FRANKLIN CT
Legal Description: BLOCK 27 LOT 7, WILLAMETTE HTS ADD
Tax Account No.: R913404260
State ID No.: 1N1E29CD 12200
Quarter Section: 2825
Neighborhood: Northwest District, contact John Bradley at 503-313-7574.
Business District: None
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.
Plan District: Northwest Hills - Forest Park
Zoning: R5 – Residential 5,000
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicants propose to build a new detached, 344-square-foot, one-car garage with a rooftop deck at the front of the property. The garage would be located 2 feet, 6 inches from the front property line and would be built into the hill in front of the house. The deck would be accessed from the existing front porch of the house.

The proposed rooftop deck has a front setback requirement of 10 feet. Since the property has an average slope greater than 20%, Zoning Code Section 33.110.220.D.4.b would allow the garage to be located 5 feet from the property line as long as the height in the area of the reduced setback is lowered one foot for every foot of reduced setback. However, the garage is closer to the street lot line than 5 feet, so the garage does not qualify to use this exception.

The applicants request an Adjustment to the front setback standard of 33.110.220.B to allow the garage setback to be reduced from 18 feet to 2 feet, 6 inches; and the rooftop deck front setback to be reduced from 10 feet to 2 feet, 6 inches.

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 5,600 square foot site slopes up from the street with an average slope of 21.7 percent.. It is developed with a 2,756-square-foot single-dwelling residence and currently provides no on-site parking. The surrounding vicinity is developed with large single-dwelling residences on similarly sized or larger lots.

The lots on the south side of NW Franklin Court all slope up from the street. A number of nearby sites on the south side of the street have one-car garages built close to the sidewalk on NW Franklin Ct. Several of those also have terraces, or decks, above the garage.

Zoning: The Residential 5,000 (R5) 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 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 5,000 square feet of site area.

The Northwest Hills Plan District protects sites with sensitive and highly valued resources and functional values. The portions of the plan district that include the Balch Creek Watershed and the Forest Park subdistrict contain unique, high quality resources and functional values that require additional protection beyond that of the Environmental overlay zone. The Linnton Hillside subarea within the Forest Park subdistrict contains a residential area that is constrained by natural conditions and limited existing infrastructure. The development standards for this subarea are intended to protect the public health and safety by limiting the potential number of new housing units consistent with these constraints. The plan district also promotes the orderly development of the Skyline subdistrict while assuring that adequate services are available to support development. The transfer of development rights option reduces development pressure on protected sites while containing safeguards to protect receiving sites. The site is within the Forest Park Subarea of this plan district.

Land Use History: City records indicate that no prior land use reviews have been conducted on the site.

Public Review: A "Notice of Proposal in Your Neighborhood" was mailed **June 4, 2014**.

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

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

Neighborhood Review: No written responses were 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:

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 applicant requests to reduce the minimum front building setback for the deck from 10 feet to 2 feet, 6 inches feet and the garage entrance setback from 18 feet to 2 feet, 6 inches. The proposed garage is one-story in height with a rooftop deck.

The south side of NW Franklin Ct. is steeply sloped, with mature trees and vegetation. The garage will not negatively impact the availability of light, air or privacy as it will largely be built into the hill and is lower than the houses on the south side of the street. As for fire protection and fire access, both the Life Safety (Building Code) Plans Examiner and the Fire Bureau reviewer examined the proposal and replied with no concerns.

- *They reflect the general building scale and placement of houses in the City's neighborhoods;*

Findings: The applicant provided documentation showing that the two residential lots closest to the site both have single-car detached garages which are located in front of the houses with setbacks of less than 5 feet. In addition, the documentation also shows similar situations for several other nearby sites. A site visit by staff confirmed that this is a common typology in the immediate area on steeply sloping lots.

Based on this information, the proposed location of the garage within the front setback and with a reduced garage entrance setback is compatible with the neighborhood and reflects the general building scale and placement of structures in the vicinity.

- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*

Findings: The new garage will create additional outdoor living space. This area will connect to the existing front porch and function as an extension of that front porch. In the immediate area, decks or “terraces” above garages close to the street are common, as Exhibit C.6 demonstrates. Therefore, the development continues the existing physical relationship between residences already established for the neighborhood.

The deck above the garage does move outdoor living space closer to the property line than the current front porch. This does not raise privacy issues, however, based on the context. NW Franklin Ct. is a 60-foot right-of-way, creating more space than many residential streets in the R5 zone have between lots. The garage is proposed for the center of the lot. The property adjacent to the subject site to the west (owned in part by the owners of the subject site) is vacant, and the property to the east has heavy foliage in the front yard, as well as a garage close to the street. Neighboring properties continue to have options for privacy due to the substantial amount of separation between the garage and other residences.

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

Findings: The single-car garage allows for two-thirds of the width of the property to be landscaped. Most of the steep slope on the site is concentrated on the northern third of the property, so that the slope from the street looks much steeper than 21.7 percent. The site, and the neighboring sites, do not have usable front yard space because of the steep slope. The proposal creates a 13-foot by 13-foot level surface for recreational purposes. The proposal better meets this purpose statement than current conditions.

- *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 proposal makes the best use of the steep slope of the site in a way that is common for the neighborhood.

- *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 Bureau of Transportation stated the following in response to the proposal: “The purpose of the garage entrance setback is to provide adequate space for a vehicle to park in front of the garage and not block the sidewalk. With the proposed 2.5-ft garage entrance setback, a car will not likely block the sidewalk

since the vehicle would extend past the sidewalk into the roadway. PBOT supports the requested adjustment over the allowed 5-ft setback.” In other words, although the reduced garage entrance setback does not provide enough room for a vehicle to park in front of the garage, the setback is reduced to the point where a driver would not attempt to park a car in the driveway as to block the sidewalk.

Based on this information, 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: From the discussion above, it is clear that the proposal fits in with the neighborhood context. The new garage will align with new steps up to the existing front porch, creating a visually pleasing placement that fits the existing home. The exterior materials of the garage, concrete with a skim coat and paint, will match other garages in the immediate area. The proposal detracts from neither the livability nor appearance of the area. 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: 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: Transom windows above the garage door and a guardrail that is greater than 50 percent open will help create a lighter feel along the street edge by reducing bulk and a blank façade. Exterior lights will also help illuminate the sidewalk area to create a safer pedestrian environment. A trash enclosure will hide trash cans instead of leaving them by the sidewalk. With these design choices, 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

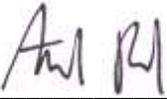
The proposal creates a modest single-car garage close to the street in an area where these garages are common. The deck above is a design element that makes the most of a steeply-sloped front yard and has antecedents in the neighborhood. The approval criteria can be met and therefore this project should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to the front setback standard of 33.110.220.B to allow the garage setback to be reduced from 18 feet to 2 feet, 6 inches; and the rooftop deck front setback to be reduced from 10 feet to 2 feet, 6 inches, per the approved site plans, Exhibits C.1 through C.3, signed and dated June 30, 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 14-157817 AD."

Staff Planner: Amanda Rhoads

Decision rendered by:  **on June 30, 2014**
By authority of the Director of the Bureau of Development Services

Decision mailed: July 2, 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 May 16, 2014, and was determined to be complete on **May 30, 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 May 16, 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 26, 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 16, 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 5th 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 **July 17, 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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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:

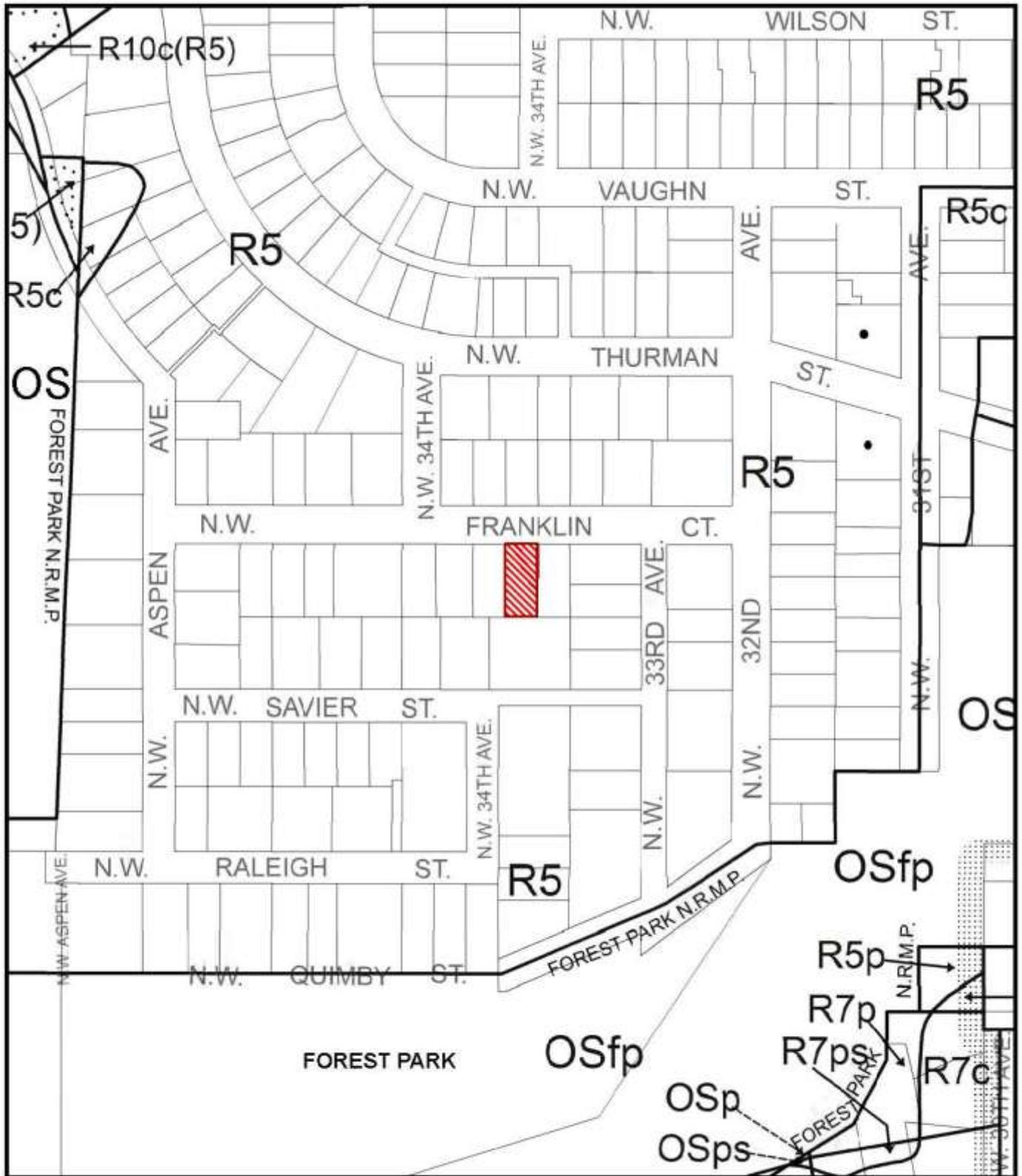
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation Drawings (attached)
 - 3. Floor Plan (attached)
 - 4. Section Drawing
 - 5. Existing Site and Elevation
 - 6. Context Images and Vicinity Map
- 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: 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



Site



Historic Landmark



This site lies within the:
NORTHWEST HILLS PLAN DISTRICT

File No.	LU 14-157817 AD
1/4 Section	2825
Scale	1 inch = 200 feet
State_Id	1N1E29CD 12200
Exhibit	B (May 20, 2014)



USHER GARAGE
ZONING ADJUSTMENT

238 N. HAYDEN ST.
PORTLAND, OR 97208

12/5/2014
sheet 1 of 2



REVISIONS
DATE
3/13/2014

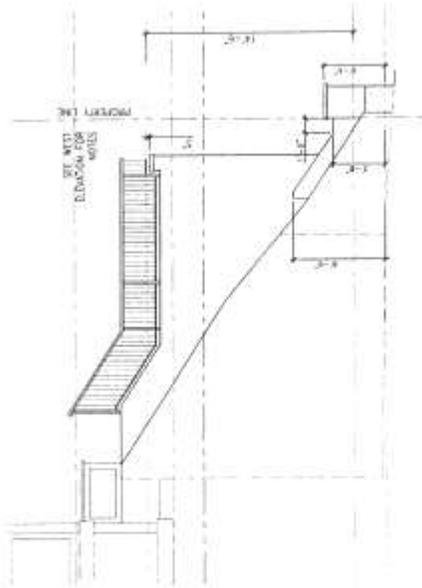
20141000

SHEET TITLE
PROJECT
ELEVATIONS
SCALE
AS NOTED

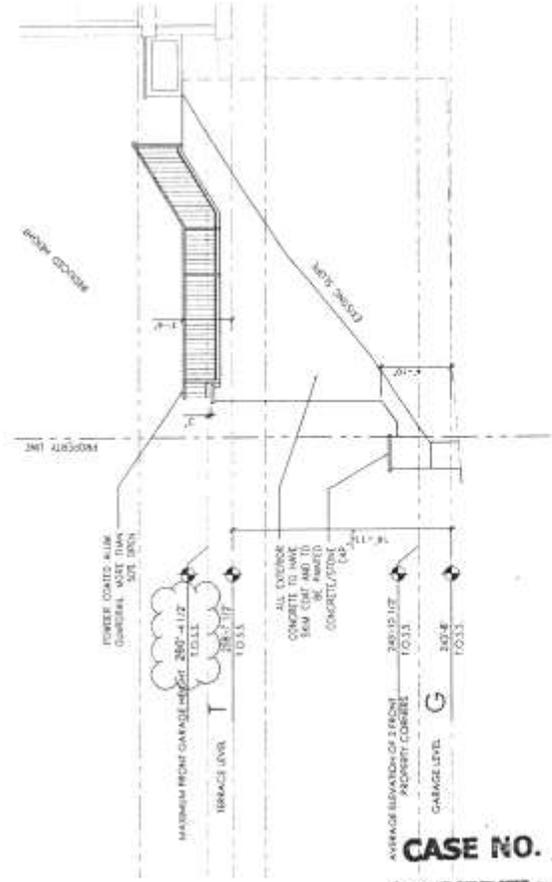
A.3

Approved
City of Portland
 Bureau of Development Services
 Planner And M
 Date 6/30/14

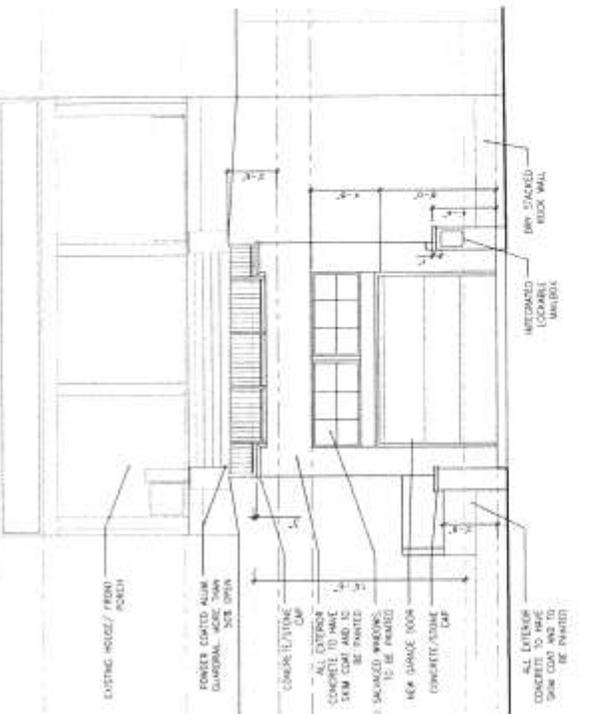
* This approval applies only to the review requested and is subject to all conditions of approval.



1 EAST ELEVATION
1/8" = 1'-0"



2 WEST ELEVATION
1/8" = 1'-0"



3 NORTH ELEVATION
1/8" = 1'-0"

CASE NO. LU 14-157817 AD
 EXHIBIT C.2

