



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

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**Date:** December 22, 2014  
**To:** Interested Person  
**From:** Sylvia Cate, Land Use Services  
503-823-7771 / [Sylvia.Cate@portlandoregon.gov](mailto:Sylvia.Cate@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 mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, 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 14-198501 AD**

#### **GENERAL INFORMATION**

**Applicant:** Jennifer Farmer / Dozer Construction LLC  
126 NE Alberta St. Suite 206 / Portland, OR 97211

**Owner:** Dozer Construction LLC  
5212 NE 28th Ave / Portland, OR 97211-6234

**Site Address:** Southeast corner of the intersection of NE 19<sup>th</sup> & NE Killingsworth

**Legal Description:** BLOCK 7 LOT 1&2 TL 3200, VERNON; EXC PT IN ST-W 42' OF LOT 1 BLOCK 7 W 42' OF N 31' OF LOT 2 BLOCK 7, VERNON; EXC PT IN ST-W 42' OF LOT 1 BLOCK 7 W 42' OF N 31' OF LOT 2 BLOCK 7, VERNON; BLOCK 7 LOT 2 TL 3201, VERNON

**Tax Account No.:** R860701310, R860701310, R860701310, R860701320

**State ID No.:** 1N1E23AA 03200, 1N1E23AA 03200, 1N1E23AA 03200, 1N1E23AA 03201

**Quarter Section:** 2532

**Neighborhood:** Vernon, contact Mitch Snyder at 503-319-4183.

**Business District:** North-Northeast Business Assoc, contact Joice Taylor at 503-841-5032.

**District Coalition:** Northeast Coalition of Neighborhoods, contact Claire Adamsick at 503-388-9030.

**Zoning:** R1ah, Multi-Dwelling Residential 1,000 with Alternative Design Density 'a' overlay and Aircraft Landing 'h' overlay

**Case Type:** AD, Adjustment

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

#### **Proposal:**

The applicant proposes to construct two townhomes on the two subject lots, as shown on the attached zoning map, site plan and elevations. The two attached homes will have a shed-style roof and the main entrances to each row home will face west, toward NE 19<sup>th</sup> Avenue. In the R1

zone the maximum height is 45 feet, except on the portion of a site within 10 feet of a front property line, where the maximum height is 25 feet. Therefore, the applicant is requesting an Adjustment to allow a portion of the roof and building to be 34 feet in height within the front setback. As shown on the attached plans, the shaded portion of the building over the 25 height limit occurs in the 'back' 5 feet of the 10 foot limited height area.

The applicant is also requesting an Adjustment to waive the requirement to provide one on-site parking space for the row home occupying Tract 1.

**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 site is comprised of two lots, 1037 square feet and 1162 square feet in size located at the southeast corner of the intersection of NE 19<sup>th</sup> and NE Killingsworth. Previously, these lots were a part of The Redeemer Lutheran Church ownership, but are no longer part of that ownership. On the north side of NE Killingsworth Street is Alberta Park, a 16-acre Portland public park and Portland Fire Station #14. The west side of NE 19<sup>th</sup> Avenue is developed with single-dwelling residences. Immediately south of the site are the Alberta Park Apartments. The site is within the R1 zone as is the half block it is on, as well as two half-blocks to the west along NE Killingsworth. Directly north and across NE Killingsworth is Open Space. To the east are lands zoned R2.5. NE Killingsworth is designated as a District Collector and Major Transit Priority Street. NE 19<sup>th</sup> is designated as a Local Service street.

**Zoning:** The site is zoned R1ah. The R1 zone is a medium density multi-dwelling zone. It allows approximately 43 units per acre. Density may be as high as 65 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one to four story buildings and a higher percentage of building coverage than in the R2 zone. The major type of new housing development will be multi-dwelling structures (condominiums and apartments), duplexes, townhouses, and rowhouses. Generally, R1 zoning will be applied near Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.

The purpose of the Alternative Design Density Overlay Zone is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements.

The Aircraft Landing overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation.

Neither the 'a' or the 'h' overlay zone regulations impact the Adjustment request.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

A "Notice of Proposal in Your Neighborhood" was mailed **November 10, 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:** One written response was received before the close of the comment period from the Vernon Neighborhood Association. The letter notes that the VNA board is not opposed to granting both Adjustments, but requests consideration of landscaping with trees or large shrubs along the Killingsworth frontage for Tract 2 to help soften the scale of the buildings. The letter also notes that two neighbors had contacted VNA with concerns: one neighbor has objections to the height increase. Another neighbor objected to both adjustments.

## ZONING CODE APPROVAL CRITERIA

### 33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

### 33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

**Findings:** The purpose of the height regulations is found at 33.120.215.A. which states:

Purpose: the height standards serve several purposes:

- They promote a reasonable building scale and relationship of one residence to another;
- They promote options for privacy for neighboring properties; and
- They reflect the general building scale of multi-dwelling development in the City's neighborhoods.

In the R1 zone the maximum height is 45 feet, except on the portion of a site within 10 feet of a front property line, where the maximum height is 25 feet. While the proposed townhomes comply with the overall height limit, the shed style roof causes the building to not meet the 25 foot height limit within the 10 foot area behind the front property line. Elevations attached to the decision depict the relatively small portion of the building that exceeds 25 feet in the last 6 feet of the 10 foot area. The existing development in the surrounding area is quite mixed: including single dwelling houses, apartments, a large City-owned park and a church to the east. With this mixture of development in the immediate area, the proposal will result in a reasonable building scale and relationship with the multi-dwelling buildings in the R1 zone, which are also taller than the single dwelling homes located within the R1 zone.

There are no anticipated impacts on privacy as only a small portion of the building exceeds the height limit with in the first ten feet from the front lot line. There are no outdoor balconies in this portion of the building that would provide views down into adjacent backyards and homes. The overall scale of the proposed townhomes is

consistent with multi dwelling development typically found in the R1 zone. For these reasons, this criterion is met for the Adjustment to height.

The purpose for minimum required parking spaces is found at 33.266.110.A., which states:

The purpose of required parking spaces is to provide enough on-site parking to accommodate the majority of traffic generated by the range of uses which might locate at the site over time. Sites that are located in close proximity to transit, have good street connectivity, and good pedestrian facilities may need little or no off-street parking.

Portland Bureau of Transportation responded with the following comments:

*Given that providing one on-site parking space would eliminate one on-street parking space for construction of a driveway, there will be no net change to the area parking supply as a result of granting the requested adjustment to eliminate the requirement for one on-site parking space*

For these reasons, this criterion for the parking Adjustment 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 site lies within the R1, Multi-Dwelling residential zone. The proposal will result in two town homes with distinctive shed style roof forms. In the R1 zone, the height limit is 45 feet; the overall height of the proposed building is 34 feet. A small portion of the building exceeds the 25 foot height limit within the 10 foot area behind the front property line. The result will be a well integrated development that will have no significant impacts on the appearance of the residential area. However, staff notes that a portion of the parking strip between the curb and the sidewalk at the corner of NE 19<sup>th</sup> & NE Killingsworth has several bicycle racks installed. While the City forester has responded that street trees are required, it is likely that there will be limitations to the number of street trees that can be installed. Additionally, the Vernon Neighborhood Association, in their response, requested consideration of additional landscaping along the NE Killingsworth frontage of Tract 2 to soften the appearance of the building. The applicant has suggested that trees planted on Tract 2 might impact the foundation of the building overtime given the limited dimensions between the lot line and the foundation. However, the applicant also notes that shrubs that do not have invasive root systems would be appropriate to install. Therefore, with a condition of approval that the applicant plants shrubs only, meeting the L2 shrub standard, along the 34 foot long facade facing NE Killingsworth on Tract 2, this criterion is met for the height Adjustment.

The request to waive one parking space for Tract 2 will result in no net change to the on-street parking supply. For these reasons, 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:** The overall purpose of the R1 zone is to provide opportunities for multi-dwelling residential development. Two Adjustments are requested; one for height and one to waive parking on Tract 2. However neither Adjustment compounds the other; the cumulative effect of the two adjustments results in a well integrated development of two townhomes, a residential use consistent with the purpose of the R1 zone. This criterion is met.

**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 adjustments. 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 to increase the height of the building above the 25 foot limit in the first ten feet from the front property line meets all of the applicable approval criteria, with one condition of approval. The proposal to waive one on-site parking space for Tract 2 meets all of the applicable approval criteria. Therefore, the proposal should be approved.

## ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to 33.120.215, height, to allow both town homes to exceed the 25 foot height limit within the first 10 feet behind the front property line; and
  - An Adjustment to 33.266.110, minimum parking, to waive the one space parking requirement for Tract 2, per the approved site plans, Exhibits C-1 through C-2, signed and dated December 18, 2014, subject to the following conditions:
- A. As part of the building permit application submittal, the following development-related conditions (B) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 14-198501 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
  - B. The applicant will install shrubs only, meeting the L2 shrub standard, along the 34 foot long facade facing NE Killingworth on Tract 2, as indicated on the approved site plan, Exhibit C-1.

**Staff Planner: Sylvia Cate**

**Decision rendered by:**  **on December 18, 2014**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: December 22, 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 October 16, 2014, and was determined to be complete on **November 4, 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 October 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: March 4, 2015**

**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 5, 2015** 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 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 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 **January 6, 2015 – (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.

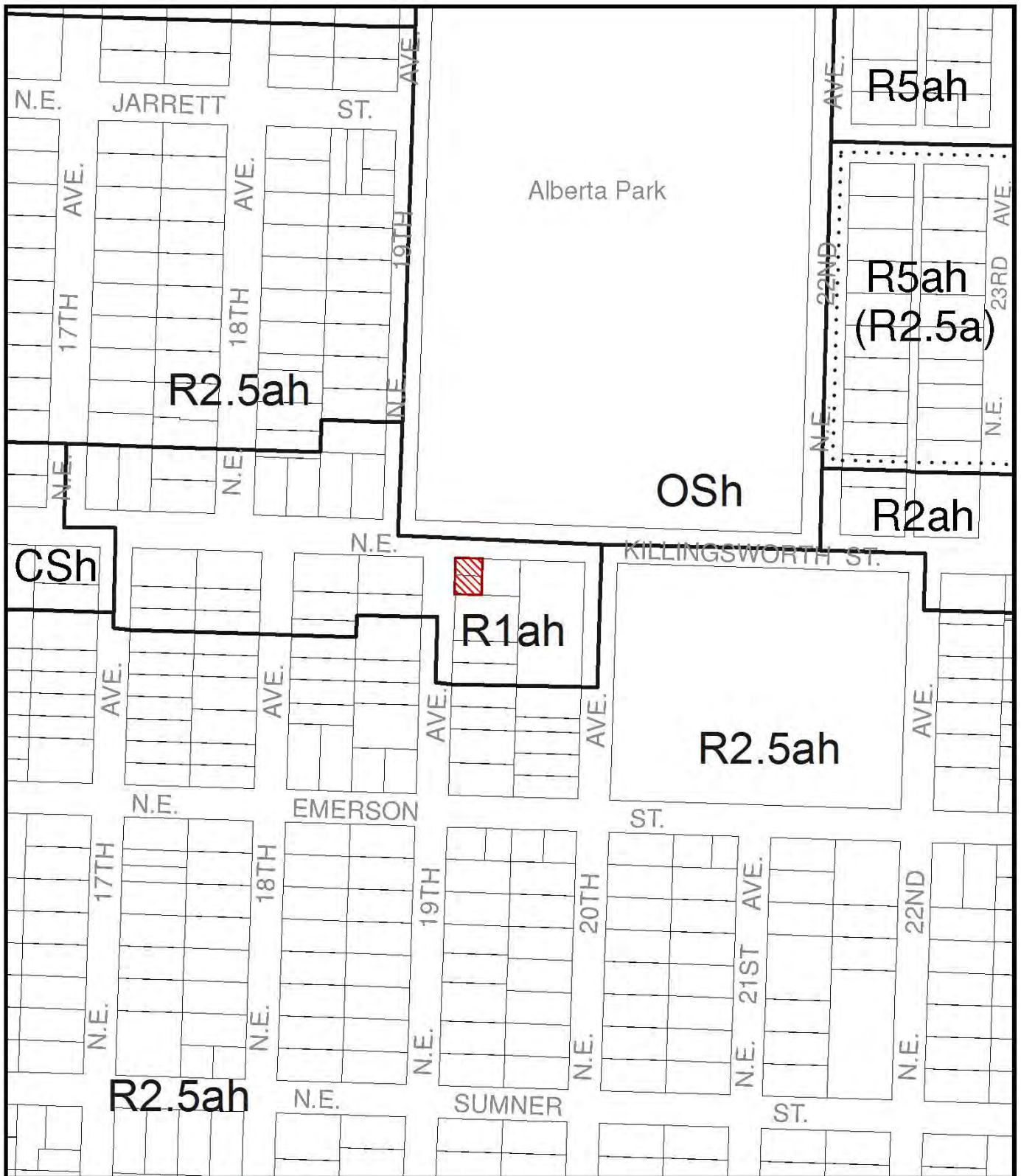
**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevations
- 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. Bureau of Parks, Forestry Division
- F. Correspondence:
  - 1. Mitch Snyder, Land Use Chair for Vernon Neighborhood Association, December 1, 2014; no concerns from the Neighborhood Association, but also relayed concerns they had received from nearby neighbors
- 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).**





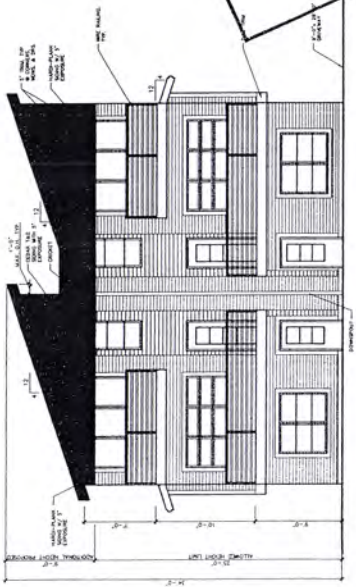
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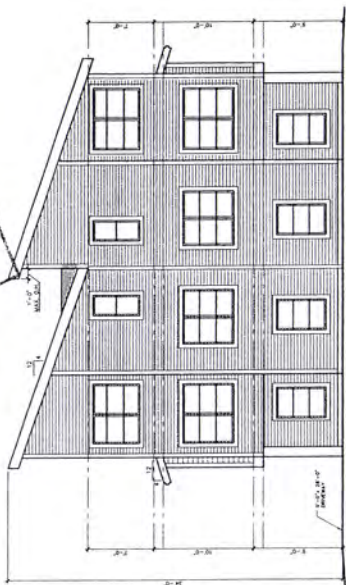
File No. LU 14-198501 AD  
 1/4 Section 2532  
 Scale 1 inch = 200 feet  
 State\_Id 1N1E23AA 3201  
 Exhibit B (Oct 20,2014)



Additional zoning requirements may apply.  
\* The approval of this plan is subject to all reviews, conditions or special.  
Date: 12.19.2014  
Planner: [Signature]  
Bureau of Development Services  
City of Portland  
Approved\*



WEST ELEVATION  
SHEET C-2



EAST ELEVATION  
SHEET C-2



NORTH/SOUTH ELEVATION  
SHEET C-2