



## CITY OF PORTLAND

Office of City Auditor Mary Hull Caballero

### Hearings Office

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Portland, OR 97201

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## DECISION OF THE HEARINGS OFFICER ON APPEAL OF ADMINISTRATIVE DECISION

### I. GENERAL INFORMATION

**File No.:** LU 14-148742 CU  
(Hearings Office 4140031)

**Applicant:** Guillermo Maciel  
536 SE 55th Avenue  
Portland, OR 97215-1816

**Owners:** Jodie Emmett and Guillermo Maciel  
536 SE 55th Avenue  
Portland, OR 97215-1816

**Appellant:** Robert C. Gillis  
526 SE 55<sup>th</sup> Avenue  
Portland, Oregon 97215

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Representative:** Amanda Rhoads

**Site Address:** 536 SE 55<sup>th</sup> Avenue

**Legal Description:** TL 1300 0.25 ACRES, SECTION 06 1S 2E

**Tax Account No.:** R992061500

**State ID No.:** 1S2E06AB 01300

**Quarter Section:** 3136

**Neighborhood:** Mt. Tabor

**Business District:** Belmont Business Association

**District Coalition:** Southeast Uplift

**Plan District:** None

**Zoning:** R5 – Single-Dwelling Residential 5,000

**Land Use Review:** Type II, CU – Conditional Use Review

**BDS Administrative Decision:** Approval with conditions

**Public Hearing:** The hearing was opened at 1:30 p.m. on February 9, 2015 in the 3<sup>rd</sup> floor hearing room, 1900 S.W. 4<sup>th</sup> Avenue, Portland, Oregon and was closed at 4:59 p.m. The record was held open until 4:30 p.m. on February 18, 2015 for new evidence from anyone. The record was held open until 4:30 p.m. on February 25, 2015 for rebuttal from Appellant and Applicant only. The record closed at 4:31 p.m. on February 25, 2015.

**Testified at the Hearing:**

Amanda Rhoads

Joel Chiang

Robert Gillis

Steven Miller

Sonia Huntley

Sarah Devita-McBride

Guillermo Maciel

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of Portland City Code (“PCC”) Title 33.

**Appeal:** The City of Portland’s BDS issued a decision of approval (Exhibit H.3) on an application by Mr. Guillermo Maciel (“Applicant”). The application was for a PCC 33.212 bed and breakfast use to be located at 536 SE 55<sup>th</sup> Avenue, Portland, Oregon (the “Subject Property”).

Mr. Robert C. Gillis (“Appellant”) submitted a Type II Appeal Form (Exhibit H.2) contesting the validity of the Exhibit H.3 BDS approval.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Applicant, in the “Approval Criteria Statement” (Exhibit A.1) addressed PCC 33.212.020 A as follows:

“I am the owner and primary resident of the house at 536 SE 55<sup>th</sup> Ave. Portland, OR. 97215, which I intend to operate as a bed and breakfast. I intend to rent 4 bedrooms to overnight guests. We will have non-resident visitors and employees to assist with landscaping needs and cleaning services.”

Applicant, in Exhibit A.1, addressed PCC 33.212.040 A by stating:

"I occupy this household as my primary residence."

Applicant, in Exhibit A.5, in an email to neighbors and the BDS Staff planner, stated the following:

"We will have a tenant who keeps an eye on things when we are not able to be present. Sarah is an MBA graduate with a full-time job and life-long roots in Portland. She is there to help us in the management of operations when we aren't available. Yet, we want to be clear this is our primary residence. All of our possessions and the majority of our consulting business continue to be in Portland."

Applicant testified at the Hearing that he and his family "left in August...took a family vacation" and that he "made a choice not to return because of the reaction of neighbors." Applicant, at the Hearing, represented that Sarah Devita-McBride ("Devita-McBride") occupies a portion of the residence at the Subject Property. Devita-McBride testified, at the Hearing, that she has been a "permanent resident" at the Subject Property since August of 2014.

On August 21, 2014, BDS Staff mailed to properties, within the required notice area, a document titled "Notice of a Type II Proposal in Your Neighborhood" (Exhibit D.2). The Notice (Exhibit D.2) stated, in the Proposal section:

"The applicant requests Conditional Use approval to operate a bed and breakfast (B&B) facility in the existing house on this site. No exterior alterations to the house are proposed. The B&B will have four guest rooms with no more than 10 guests per night, and the property owners will reside in the house and operate the facility."

BDS Staff, in a "Notice of a Type II Decision on a Proposal in Your Neighborhood" (Exhibit H.3) stated, in the Proposal section, that "A B&B operator will live onsite."

The Portland Police Bureau, in a September 5, 2014 memorandum to the BDS Staff planner, stated the following:

"The applicants will host and operate the facility....the applicant has noted that there would be no outside employees, food or alcohol service, nor commercial events on the site."

Huntley, in Exhibit H.12, stated that Applicant no longer resided at the residence at the Subject Property and as such, the proposal "does not meet the criteria of an accessory to residential use."

Based upon the evidence set-forth above the Hearings Officer must determine whether, or not, it makes any difference if the Applicant resides at the residence on the Subject Property? As will be demonstrated in the findings below, the answer is yes, it does make a difference.

PCC 33.212.020 A states, in relevant part, the following:

“A bed and breakfast facility is one where an individual or family resides in a house and rents bedrooms to overnight guests.”

PCC 33.212.040 A states, in relevant part, the following:

“A bed and breakfast facility must be accessory to a Household Living use on the site. This means that the individual or family who operate the facility must occupy the house as their primary residence.”

The Hearings Officer takes note of PCC 33.700.070 A, which states that “literal readings of the code language will be used.” The Hearings Officer finds the literal reading of PCC 33.212.040 A is that the operator of a B&B property, under PCC 33.212, is required to occupy the residence as his/her/their primary residence.

The word “occupy,” while not defined in PCC 33.212 or PCC 33.910, is defined by the Merriam-Webster Online Dictionary (<http://www.merriam-webster.com/dictionary/occupy>) as “to live in (a house, apartment, etc.)” PCC 33.910 defines “operator” as “a person undertaking a development, the proprietor of a use or development, or the owner of the land underlying the development.” The only portion of the PCC 33.910 definition of “operator” that applies to this case is “the proprietor of a use.”<sup>1</sup> PCC 33.910 does not define “proprietor.” The Merriam-Webster Dictionary (<http://www.merriam-webster.com/dictionary/proprietor>) definition of “proprietor” is “a person who has the legal right or exclusive title to something: owner.”

The Hearings Officer finds Applicant is the owner of the Subject Property and is the “operator” or “proprietor” of the proposed B&B. The Hearings Officer finds Applicant’s original proposal (Applicant occupying the residence) did meet the requirements of PCC 33.212.020 A (definition of B&B) and PCC 33.212.040 A (description of “accessory use”). However, the Hearings Officer finds that Applicant revised/modified the proposal where Applicant would no longer occupy the residence. The Hearings Officer makes this decision based upon Applicant’s revised/modified proposal. The Hearings Officer finds Applicant’s modified proposal does not meet the requirements of PCC 33.212.020 A and PCC 33.212.040 A.

Because the revised/modified proposal does not meet the requirements of PCC 33.212.020 A and PCC 33.212.040 A, the Hearings Officer finds that the revised/modified proposal does not qualify for review under PCC 33.212 and PCC 33.815.105. The Hearings Officer finds the revised/modified proposal must be denied.

### **III. HEARINGS OFFICER’S DECISION**

The Appellant prevailed.

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<sup>1</sup> The word “proprietor” can also be found in PCC 33.212.010. The Hearings Officer finds that the terms “operator” and “proprietor” may be used interchangeably in PCC 33.212.

**Denial** of Applicant's proposal to operate a B&B use at the Subject Property where Applicant will not occupy the house as a primary residence.

  
\_\_\_\_\_  
Gregory J. Frank, Hearings Officer

MARCH 5, 2015  
\_\_\_\_\_  
Date

<b>Application Determined Completed:</b>	August 14, 2014
<b>Report to Hearings Officer:</b>	January 30, 2015
<b>Decision Mailed:</b>	March 6, 2015
<b>Last Date to Appeal:</b>	March 27, 2015

**Appealing this decision.** The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing's Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

**EXHIBITS**  
NOT ATTACHED UNLESS INDICATED

A. Applicant's Statements

1. Original Narrative, May 19, 2014
2. Response to Incomplete Letter, August 11, 2014 (includes initial traffic study and Transportation Demand Management Plan)
3. Appendices 1 and 2, Transportation Study Pictures, August 11, 2014
4. Appendices 3 and 4, Transportation Study Pictures, August 11, 2014
5. Public letter to neighbors, September 3, 2014
6. Response to neighbor email, September 4, 2014
7. Email submitted to staff planner in response to neighbor comments, September 8, 2014
8. Response to neighbor requested to be added to the public record, September 11, 2014
9. Applicant's House Rules, submitted October 6, 2014
10. Second Traffic Study and Photos, submitted October 6, 2014

B. Zoning Map (**attached**)

C. Plans/Drawings

1. Site Plan (**attached**)
2. Basement Floor Plan (**attached**)
3. First Floor Plan (**attached**)
4. Second Floor Plan (**attached**)
5. Scaled Set of Plans

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
8. Police Bureau

F. Correspondence

1. Sonia Huntley, August 24, 2014, requesting extension
2. Traci Kent, August 29, 2014, in opposition
3. Jennifer Shay, August 29, 2014, in opposition
4. Carla Mink, August 30, 2014, in opposition
5. Stephanie Stewart, Mount Tabor Neighborhood Association Land Use Chair, September 4, 2014, with a list of neighbor concerns
6. David Stone, September 5, 2014, in opposition
7. David Bogardus, September 5, 2014, in opposition
8. Steven and Diane Miller, September 10, 2014, in opposition
9. Shirley Evans, September 10, 2014, in opposition

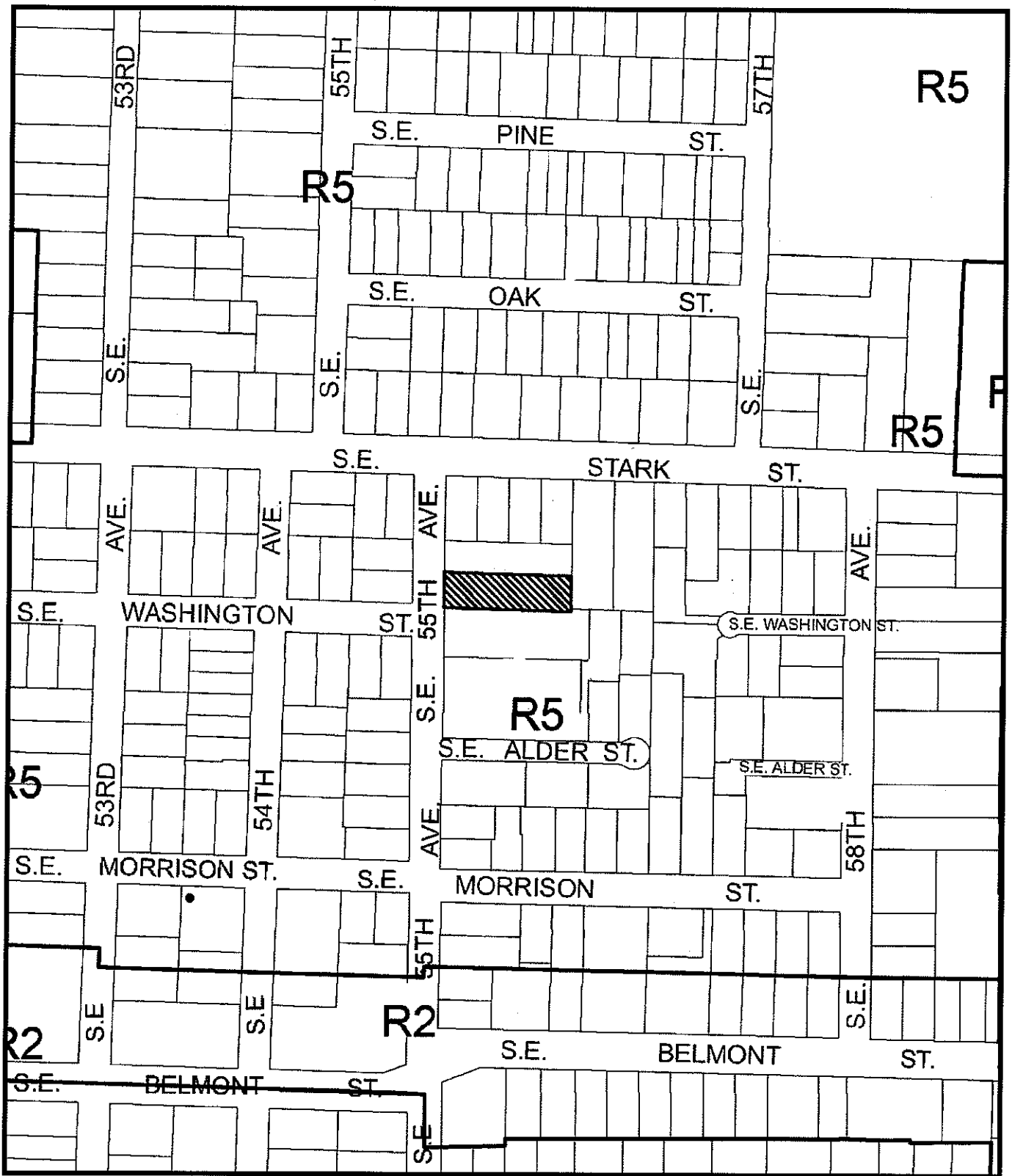
10. Claudia Meyer and Sue Hammerer, September 10, 2014, in opposition
11. Kori and Debra Jarcho, September 10, 2014, in opposition
12. Stephanie Stewart, Mount Tabor Neighborhood Association Land Use Chair, September 10, 2014, in opposition
13. Karen Lewis, September 11, 2014, in opposition
14. Lynn and Marcia Ruark, September 11, 2014, in opposition
15. Edwin (Chuck) and Dorothy Vollmer, September 11, 2014, in opposition
16. Erika and Brandon Draeger, September 11, 2014, in opposition
17. Robert Gillis, September 11, 2014, in opposition
18. Sonia Huntley, September 11, 2014, in opposition
19. Joel and Lan Chiang, September 11, 2014, in opposition
20. Sonia Huntley, September 11, 2014, email response to applicant requested to be added to the public record

G. Other

1. Original Land Use Application and Receipt
2. Incomplete Letter, June 2, 2014
3. Request for 21-Day Extension of 120-Day Review Period
4. Site Visit Photos

H. Received in the Hearings Office

1. Notice of Hearing - Rhoads, Amanda
2. Type II Decision Appeal Form & Notice of Appeal Hearing - Rhoads, Amanda
3. Notice of a Type II Decision on a Proposal in Your Neighborhood - Rhoads, Amanda
4. Large Photos - Joel Chiang
5. Overnight Visitor Log - Huntley, Sonia
  - a. Proposed Restrictions - Huntley, Sonia
  - b. Photos - Huntley, Sonia
6. PowerPoint presentation - Rhoads, Amanda
7. Record Closing - Hearings Office
8. Letter - Chiang, Joel and Lan
9. 2/17/15 Letter - Maciel, Guillermo
10. 2/17/15 Memo - Rhoads, Amanda
11. Memo - Gillis, Robert C.
12. 2/18/15 Letter from Sonia Huntley - Gillis, Robert C.
13. 2/24/15 Rebuttal Memo - Gillis, Robert C.



# ZONING



Site



Historic Landmark



File No. LU 14-148742 CU  
 1/4 Section 3136.3138.3139  
 Scale 1 inch = 200 feet  
 State\_Id 1S2E05AA 5100  
 Exhibit B (May 20, 2014)



SE STARK ST.

\*Approved\*

City of Portland - Bureau of Development Services

Planner *Ann M*

Date 10/24/14

\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

*Condition 5: additional screening  
needed for NEIGHBOR'S LOT*

EXISTING FENCE

EXISTING DRIVEWAY

EXISTING BEER PLOT

ENTRANCE #1

ENTRANCE #2

EXISTING FRONT YARD

EXISTING PORCH

EXISTING PATH

EXISTING HOUSE

*Condition B:  
new location of all  
lock boxes*

EXISTING BACK PORCH COVER

EXISTING BACK DOOR ENTRANCE

EXISTING EGRESS

EXISTING GARDENS

BACK YARD

EXISTING CHICKEN COOP & RUN

NEIGHBOR'S LOT

NEIGHBOR'S EXISTING RETAINING WALL

NEIGHBOR'S LOT

N SITE PLAN - 536 SE 55th Ave. PORTLAND, OR 97215

1" = 10'-0"

LOT AREA 0.23 ACRES

\*Approved\*

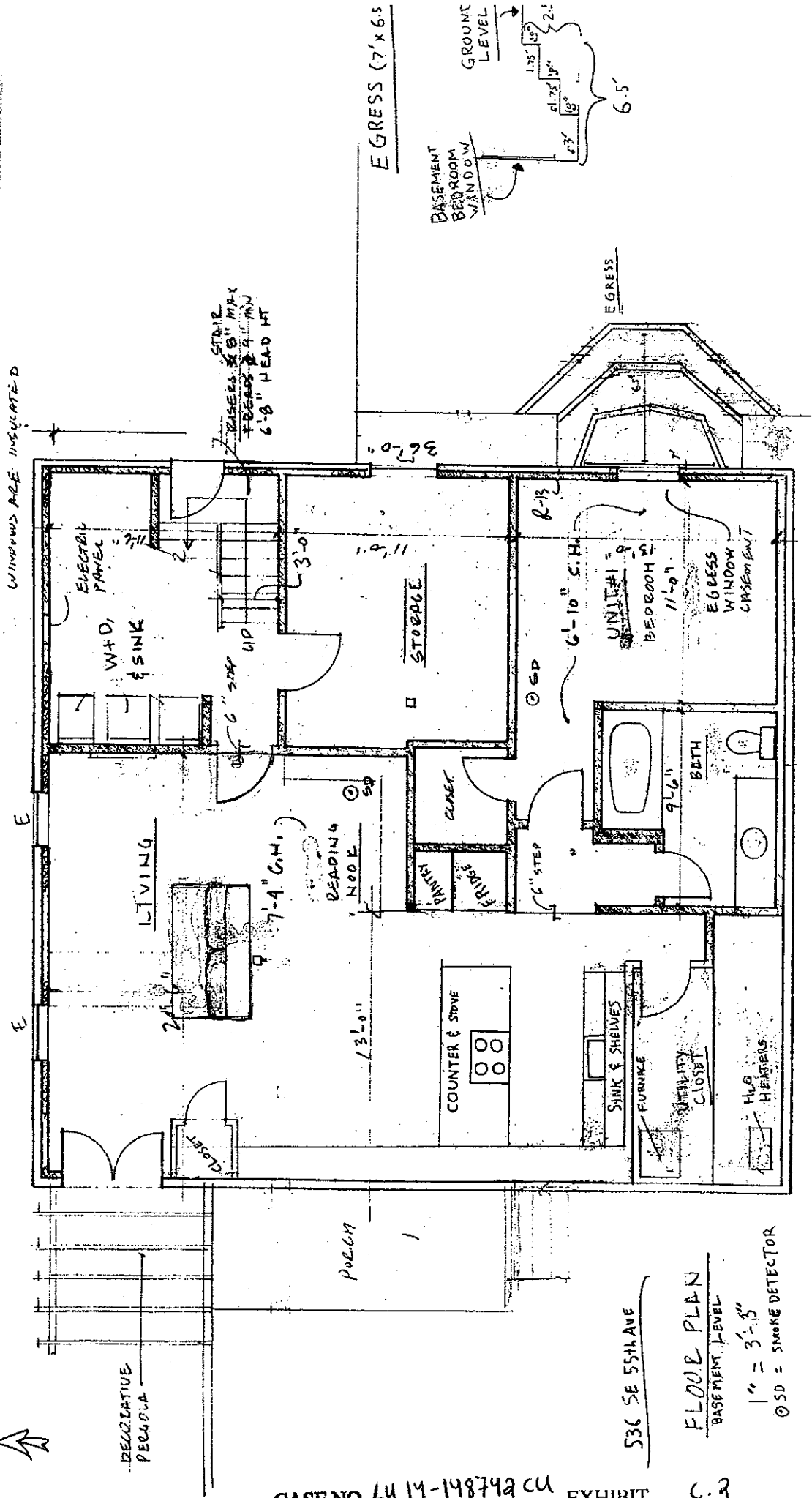
City of Portland - Bureau of Development Services

Planner *Ann W*

Date *10/24/14*

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WINDOWS ARE INSULATED



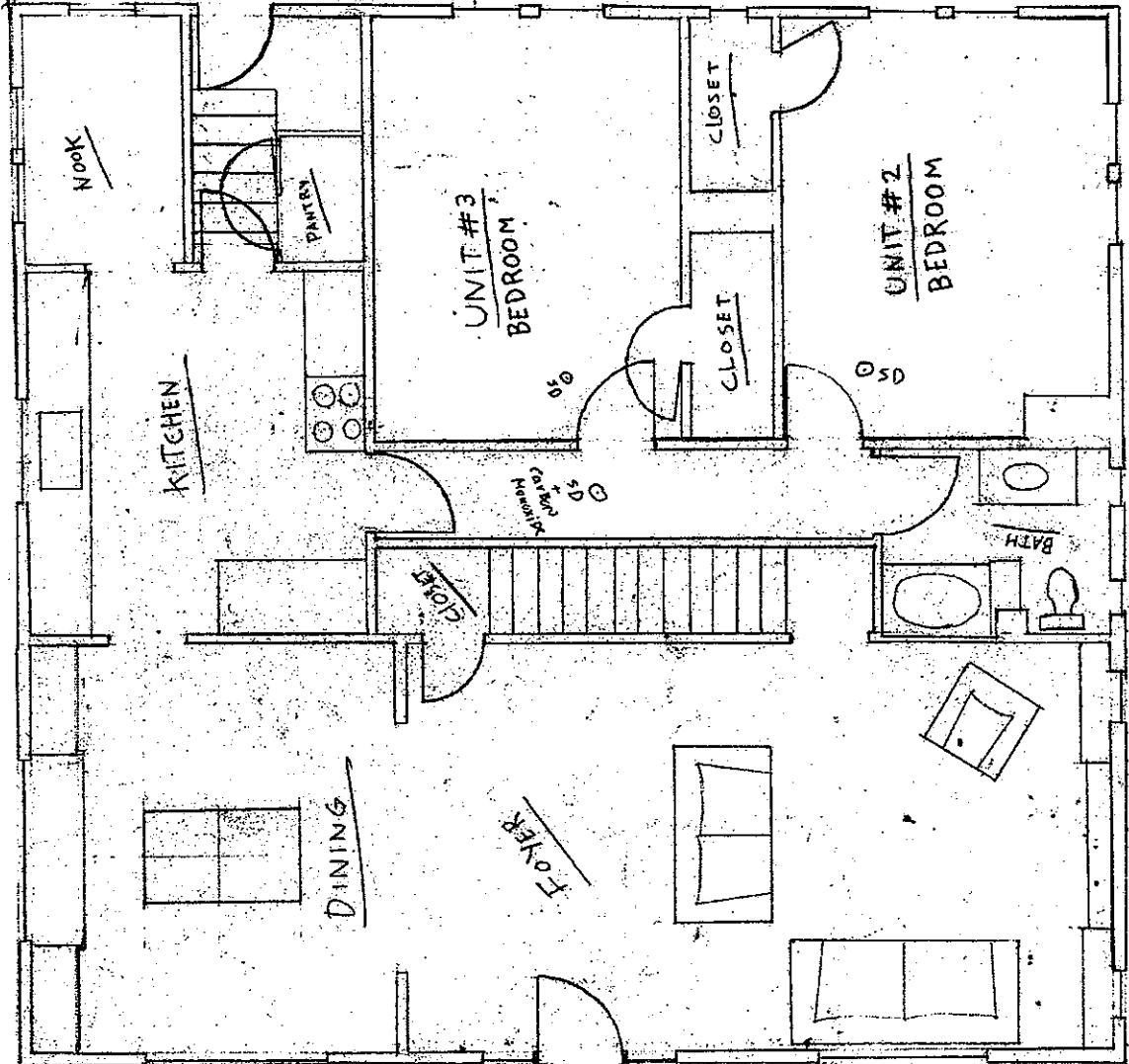
\*Approved\*

City of Portland - Bureau of Development Services

Planner Ann M Date 10/24/14

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BACK PORCH



DECORATIVE PERGOLA

DRIVEWAY



536 SE 55th Ave

FLOOR PLAN  
1st LEVEL

1" = 3'-3"

\*Approved\*

City of Portland - Bureau of Development Services

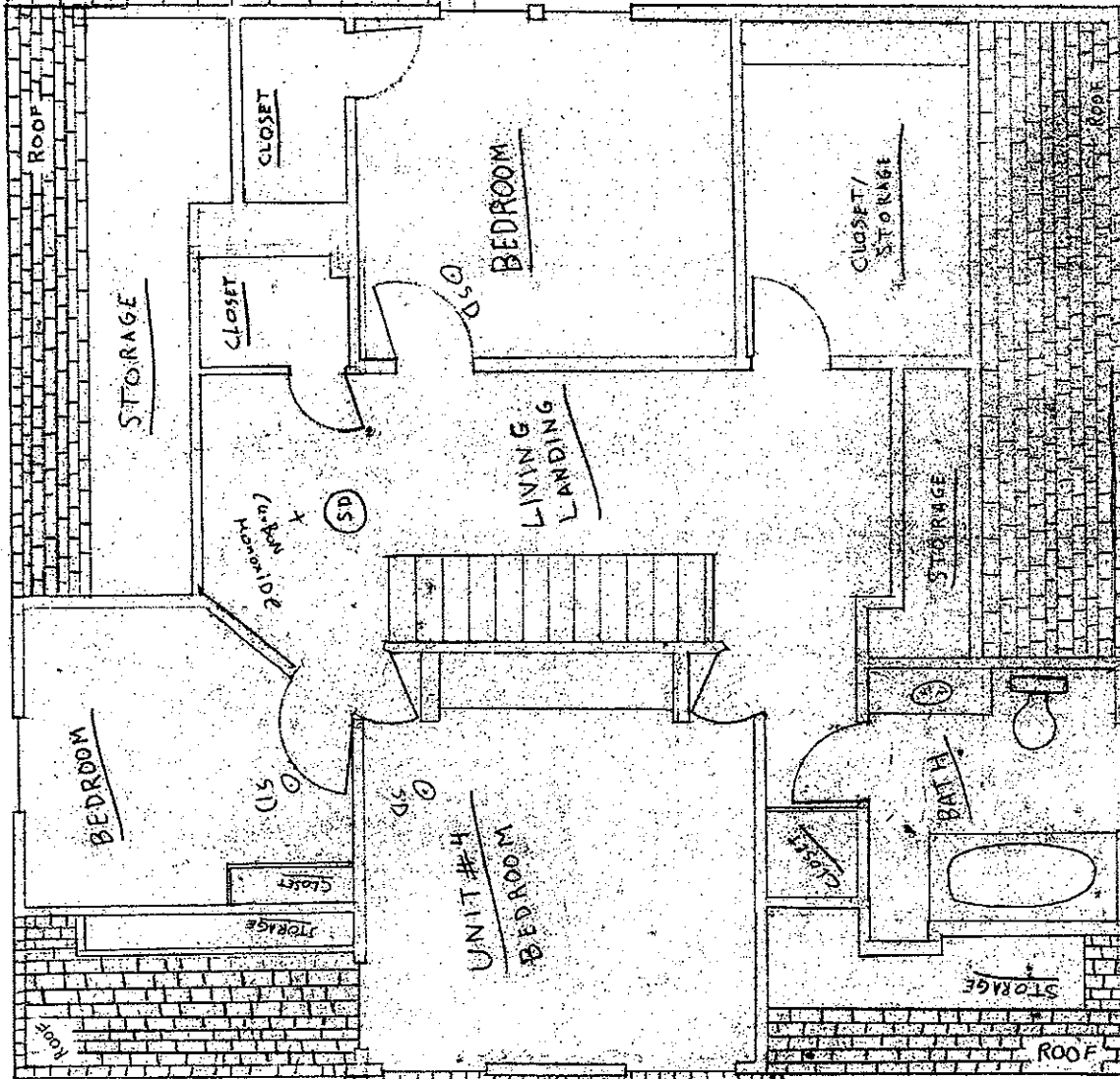
Planner

*Am M*

Date

*10/24/14*

\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



536 SE 55th Ave.

Ⓢⓓ - SMOKE DETECTOR

FLOOR PLAN:  
2nd LEVEL

1" = 3'-3"

CASE NO. LU 14-148742cu

EXHIBIT C.4