



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** May 3, 2016  
**To:** Interested Person  
**From:** Sheila Frugoli, Land Use Services  
503-823-7817 / [Sheila.Frugoli@portlandoregon.gov](mailto:Sheila.Frugoli@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 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 16-136036 AD**

**GENERAL INFORMATION**

**Applicant:** Amy Griffith, Designer  
Broken Box Designs LLC  
1123 SE 34th Ave  
Portland, OR 97214

**Owners:** Beata Moreno and Michael Alexander  
1800 SE 44<sup>th</sup> Ave  
Portland, OR 97215

**Site Address:** 4031 SE HAWTHORNE BLVD

**Legal Description:** BLOCK 16 S 94' OF LOT 6, SUNNYSIDE ADD  
**Tax Account No.:** R810501790  
**State ID No.:** 1S1E01AD 25400  
**Quarter Section:** 3134

**Neighborhood:** Sunnyside, contact Daniel Rutzick at [drutzick@gmail.com](mailto:drutzick@gmail.com)  
**Business District:** Midway, contact David Day at 503-760-7572.  
**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010.

**Plan District:** None  
**Zoning:** CS – Storefront Commercial

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

**Proposal:** The property owners are proposing to construct a new detached building behind the existing commercial building. The new detached building will be used as a residence and may include some commercial floor area as well. The existing commercial building was originally constructed as a residence but has housed commercial uses for a number of years. The

applicant is requesting an Adjustment to waive the required 10-foot maximum building setback (33.130.215.C).

This building setback requirement is applied in the CS, Storefront Commercial zone and along transit streets and is intended to push buildings close to the street property line to create an urban, storefront character.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are 33.805.040.A-F, Adjustments.

## ANALYSIS

**Site and Vicinity:** The 4,029 square foot site is developed with a 2-story bungalow-style house that has been converted into commercial space. The structure sits back from SE Hawthorne Blvd approximately 15 feet. The site has existing driveway with curb cut off SE Hawthorne. The eastern abutting site is developed with a similar structure, a former home that has been converted into a commercial use. The site has a curb cut off SE 41<sup>st</sup> Avenue with a graveled parking area. SE Hawthorne Blvd is lined with commercial buildings. Directly across the street from the subject site is the New Season's grocery store. The northern half of the block and blocks to the north are residentially-zoned. Most of the sites are developed with single-dwelling residences. The subject site does not abut a residentially-zoned property.

**Zoning:** The site is zoned CS, Storefront Commercial. The Storefront Commercial zone is intended to preserve and enhance older commercial areas that have a storefront character, which is predominantly built-up, with buildings close to and oriented to the sidewalk, especially at corners. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged. The zone allows retail, office and residential uses.

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

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **April 1, 2016**. The Fire Bureau has responded with no issues or concerns (Exhibit E.4). The following Bureaus submitted memos that noted no concerns regarding the Adjustment request, but submitted comments that identify development-related requirements that will apply at Building Permit review.

- Bureau of Environmental Services (Exhibit E.1)
- Portland Bureau of Transportation (Exhibit E.2)
- Water Bureau (Exhibit E.3)
- BDS, Site Development (Exhibit E.6)
- BDS, Life Safety Plan Review (Exhibit E.5).

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the mailed "Notice of Proposal".

## ZONING CODE APPROVAL CRITERIA

### 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 for the transit street setback is found in Section 33.130.215.A., which states:

*The setback requirements along transit streets and in Pedestrian Districts create an environment that is inviting to pedestrians and transit users.*

The applicant is requesting an Adjustment to waive the transit street setback in order to construct a new structure that will include a dwelling unit and possible commercial space. The detached building will be located behind the primary building on the site, approximately 70 feet from the front property line.

The building will be connected, via an internal pedestrian connection, to the primary building and SE Hawthorne public sidewalk.

Although constrained, a building addition in the approximate 15-foot deep front setback of the existing building would be possible. However, the addition would necessitate significant design changes and the PBOT required 3-foot dedication and widening of the pedestrian corridor, will shrink the available site area (Exhibit E.2). The structure which was originally constructed as a single-dwelling residence provides a “historical reference” to the early land use and development pattern along SE Hawthorne. Staff agrees with the applicant’s statement that the “building is impeccably maintained”. Retaining the attractive structure as a reference to the past, at least for the interim, will provide interest for pedestrians and transit users.

For these reasons, 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:** As stated above, the site is located within the Storefront Commercial zone. The PBOT stated it has no concerns about the proposal (Exhibit E.2).

The Zoning Code defines “desired character” as:

*The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.*

The Storefront Commercial zone is intended for built-up, pedestrian-oriented, commercial corridors. The site is located within the Sunnyside Neighborhood. The Sunnyside Neighborhood Plan (adopted September 1999) includes the following relevant policies:

*Policy 2, Economic Development: Ensure the health of the business districts; they are vital to the success of the neighborhood and key components of its character.*

*Policy 8, Transportation: Provide for the safe movement of people and goods, while preserving, enhancing, and reclaiming the neighborhood’s livability.*

The primary building on the site, although set back, has a prominent entrance and attractive landscaping that welcomes pedestrians. A pedestrian connection from the public sidewalk to the proposed new building will be required. The CS zone allows full coverage of the site and applies a height limit of 45 feet. The proposed new 2-story structure will not overwhelm the property or tower above nearby structures. There will remain sufficient room to address stormwater management requirements and provide bicycle parking. Given this, the new building will not adversely impact the neighborhood’s character and livability. 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:** As explained under criterion A and B, there will be no negative impacts that require mitigation. This criterion, therefore, does not apply.

- 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:** 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

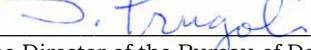
As explained in the findings in this report, the request to waive the maximum building setback to construct an additional structure at the rear of the property meets the Adjustment approval criteria and therefore should be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to waive the required 10-foot maximum building setback (33.130.215.C) for a new building that will be located behind the existing primary building, per the approved site plan, Exhibits C.1 signed and dated April 29, 2016, subject to the following condition:

- A. As part of the building permit application submittal, each of the required site plans must reflect the information approved by this land use review as indicated in Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal approved in Case File # LU 16-136036 AD."

**Staff Planner: Sheila Frugoli**

**Decision rendered by:**  **on April 29, 2016**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: May 3, 2016**

**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 16, 2016, and was determined to be complete on March 30, 2016.

*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 16, 2016.

*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.

**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 Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 17, 2016** 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 Hearings Officer 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 Hearings Officer 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 **May 18, 2016 – (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:

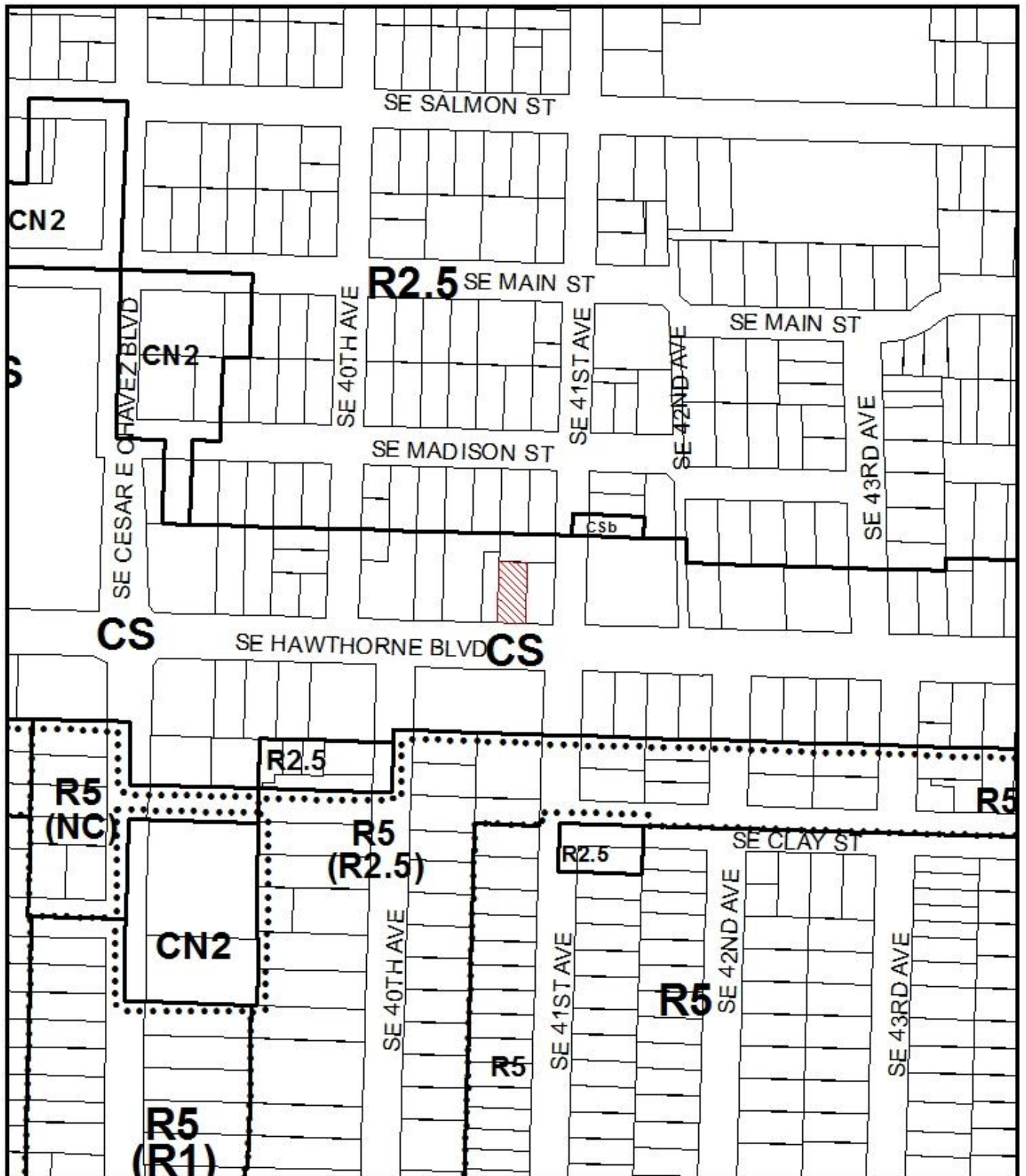
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Proposed Elevations
  - 3. Proposed Floor Plans
  - 4. Code Notes, Sections and Electrical Plans
  - 5. Photos of Front Facade
- 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. Life Safety Plan Review Section of BDS
  - 6. Site Development Review Section of BDS
- F. Correspondence: NONE
- 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

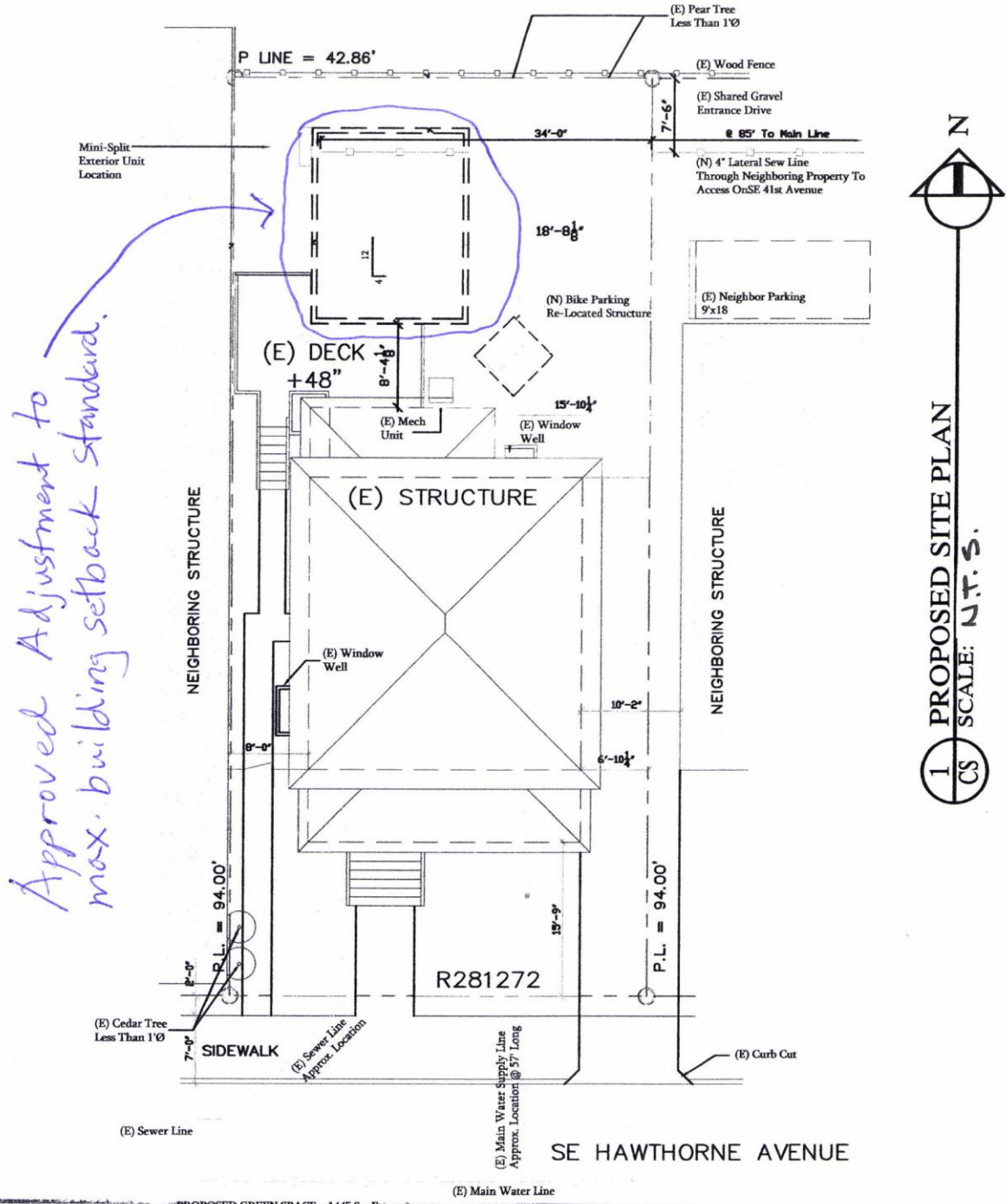
 Site



File No. LU 16-136036 AD  
 1/4 Section 3134  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E01AD 25400  
 Exhibit B (Mar 18, 2016)



- NOTES:
1. BEFORE ANY SITE EXCAVATION, CALL AND LOCATE ALL EXISTING UTILITIES.
  2. SUBCONTRACTOR TO SPECIFY EXACT LOCATION OF NEW UTILITIES AND STUBS.
  3. SLOPE GRADE AWAY FROM HOUSE.
  4. ALL SITE DRAINAGE DEVELOPMENT SYSTEMS PER SUB CONTRACTOR BY APPROVAL OF HOME OWNERS.



*Approved Adjustment to max. building setback standard.*

1 PROPOSED SITE PLAN  
 CS SCALE: N.T.S.

PROPOSED GREEN SPACE = 1445 Sq. Ft.  
 \*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner S. Krugol Date April 29, 2016  
 \* This approval is based on the reviews conducted and is subject to all conditions of the applicable code and regulations that may apply.

LU 16-136036 AD  
 Exhibit C.1