



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

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** October 26, 2016  
**To:** Interested Person  
**From:** Lauren Russell, Land Use Services  
503-823-7817 / [Lauren.Russell@portlandoregon.gov](mailto:Lauren.Russell@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 16-222864 AD**

#### **GENERAL INFORMATION**

**Owner/Applicant:** Erin J Leichy,  
3720 SW Vacuna St  
Portland, OR 97219

**Site Address:** 3720 SW VACUNA ST

**Legal Description:** LOT 1, PARTITION PLAT 2001-17  
**Tax Account No.:** R649810650  
**State ID No.:** 1S1E32BD 04701  
**Quarter Section:** 4125  
**Neighborhood:** West Portland Park, contact Vick Johnson at [cvmmjohns@comcast.net](mailto:cvmmjohns@comcast.net).  
**Business District:** None  
**District Coalition:** Southwest Neighborhoods Inc., contact Sylvia Bogert at 503-823-4592.  
**Plan District:** None  
**Other Designations:** None  
**Zoning:** R7c – Single-Dwelling Residential 7,000, Environmental Conservation overlay zone

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

#### **Proposal:**

The applicant proposes to convert an existing tool shed located at the front lot line into a 270 square foot detached accessory dwelling unit (ADU). There are no proposed changes to the north façade of the shed as viewed from SW Vacuna Street. The only change to the east façade of the shed as viewed from SW 37<sup>th</sup> Avenue is the addition of a window. In the Environmental Conservation overlay zone, the front setback can be reduced to any distance between the base zone minimum and zero (Zoning Code Section 33.430.140.N); however, per Zoning Code Section 33.205.040.C.4, detached ADUs must be set back 40 feet from the front lot line or be located behind the rear wall of the house, attached house, or manufactured home. Because the ADU is

proposed to be located within the existing shed located at the front lot line, the applicant requests an Adjustment to reduce the ADU front lot line setback from 40 feet to 0 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 subject site is a 9,981 square foot lot located on the south side of SW Vacuna Street between SW 37<sup>th</sup> Avenue and SW 39<sup>th</sup> Avenue. The lot slopes down from SW Vacuna Street toward the southeast corner, which is within the creek bed of a seasonal creek just south of the property. The site is currently developed with a two-story single dwelling residence with attached garage on the lower level, that reads as a one-story residence from the street, and tool shed. The adjacent properties are similarly developed with mainly two-story single-dwelling residences and accessory structures.

**Zoning:** The R7 designation is one of the City's single-dwelling residential zones, which are intended to preserve land for housing and provide housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The Environmental Conservation (c) overlay zone conserves important resources and functional values in areas where the resources and functional values can be protected while allowing environmentally sensitive urban development. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources.

**Land Use History:** City records indicate that prior land use reviews include the following:

- LU 08-145984 EN: Approval of an environmental review for correction of a zoning code violation in the Environmental Conservation overlay zone that includes retaining the partially constructed retaining wall system and garden area south of the house, retaining the garden shed in the northeast corner of the site, and installing remediation planting.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed September 28, 2016. The following Bureaus have responded with no issues or concerns regarding the requested Adjustment:

- Bureau of Environmental Services responded that the pollution reduction and flow control requirements of the Stormwater Management Manual are not triggered; however, a safe stormwater disposal location that does not impact adjacent properties or structures must be shown at the time of building permit submittal (Exhibit E-1);
- Bureau of Transportation Engineering that there are no transportation-related approval criteria associated with the proposed land use request, if the scope remains the same at the time of permit Engineering will have no requirements, and the applicant is advised that all pertinent Title 17 requirements must be met (Exhibit E-2);
- Water Bureau responded with no concerns (Exhibit E-3);
- Fire Bureau responded with no concerns (Exhibit E-4);
- Site Development Section of BDS responded that Site Development takes no exception to the request for an Adjustment to the front setback and that a residential permit must be obtained and receive inspection approval for the conversion of the existing tool shed to an accessory dwelling unit (Exhibit E-5); and

- Life Safety Review Section of BDS responded that a separate building permit is required to enclose the existing porch and convert the shed to habitable space, heated space within the dwelling unit must meet the insulation requirements of the Oregon Residential Specialty Code, and exterior walls fewer than 3 feet to a property line must be one-hour fire-rated with no openings (Exhibit E-6).

**Neighborhood Review:** One written response has been received from a notified property owner in response to the proposal. The notified property owner sent an email in support of the proposal and said that they have no concerns about the project.

## 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 applicant has demonstrated 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 applicant is requesting an Adjustment to reduce the ADU front lot line setback from 40 feet to 0 feet.

The purpose of the ADU development standards is stated in Zoning Code Section 33.205.040.A:

**Purpose.** *Standards for creating accessory dwelling units address the following purposes:*

- *Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;*
- *Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;*
- *Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and*
- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

The 270 square foot ADU would be 18 feet wide, 15 feet deep and 11.5 feet tall. Both the eco-roof and setting low into the sloping ground help the structure blend in with the site, especially when viewed from SW Vacuna Street. This building elevation is not proposed to change so no windows or doors will be added. The ADU will be much smaller than the primary dwelling unit on site, both in actual square footage and appearance. The ADU will be finished using the same siding materials and paint colors used on the primary dwelling unit, which will ensure that the ADU is compatible with the character of the site and residential area. Utilizing the existing shed respects the existing building scale and placement of structures on the lot and also minimizes any new disturbance within the Environmental Conservation overlay zone. Despite being located at the front property line, the ADU will clearly read as accessory. Based on these reasons, the proposed Adjustments equally meet the intent of the regulation and 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:** Because the subject site is located in a single-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. As discussed in the findings for Approval Criterion A, the ADU will be located within the existing shed which has an eco-roof and is built within the slope of the property, which results in a low profile structure. It will be finished to match the primary dwelling unit on the site, which will ensure it is compatible with the site and surrounding residential area. For these reasons, the proposal will not detract from neighborhood livability or appearance. 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:** Because only one Adjustment is being requested, this criterion is not applicable.

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

**Findings:** City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. Because there no scenic or historic resource designations are mapped on the subject site, this criterion is not applicable.

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

**Findings:** As discussed in the findings for Approval Criteria A and B, the proposal has no adverse impacts on the livability or appearance of the surrounding residential area for which mitigation would be required. Therefore, 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). The subject site is entirely within the Environmental Conservation overlay zone. Because the existing shed approved through LU 08-145984 EN EV will be converted into the ADU and the ADU will not extend beyond the shed’s existing concrete slab, the proposal will have few significant environmental impacts on the resource and resource values as is practicable. Therefore, this criterion is met.

## **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 reduce the ADU front lot line setback equally meets the intent of the regulations and does not have any adverse impacts on the livability and appearance of the surrounding residential neighborhood. The applicant has demonstrated that the applicable

approval criteria have been met. Because the approval criteria are met, the proposal should be approved.

## ADMINISTRATIVE DECISION

Approval to reduce the ADU front lot line setback from 40 feet to 0 feet (Zoning Code Section 33.205.040.C.4) for the existing accessory structure, per the approved site plans, Exhibits C-1 through C-3, signed and dated October 21, 2016, 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 16-222864 AD. No field changes allowed."

**Staff Planner: Lauren Russell**

**Decision rendered by:** Lauren Russell **on October 21, 2016.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: October 26, 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 August 12, 2016, and was determined to be complete on September 23, 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 August 12, 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. Unless further extended by the applicant, **the 120 days will expire on: January 21, 2017.**

**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 November 9, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 **November 10, 2016**.
- 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:

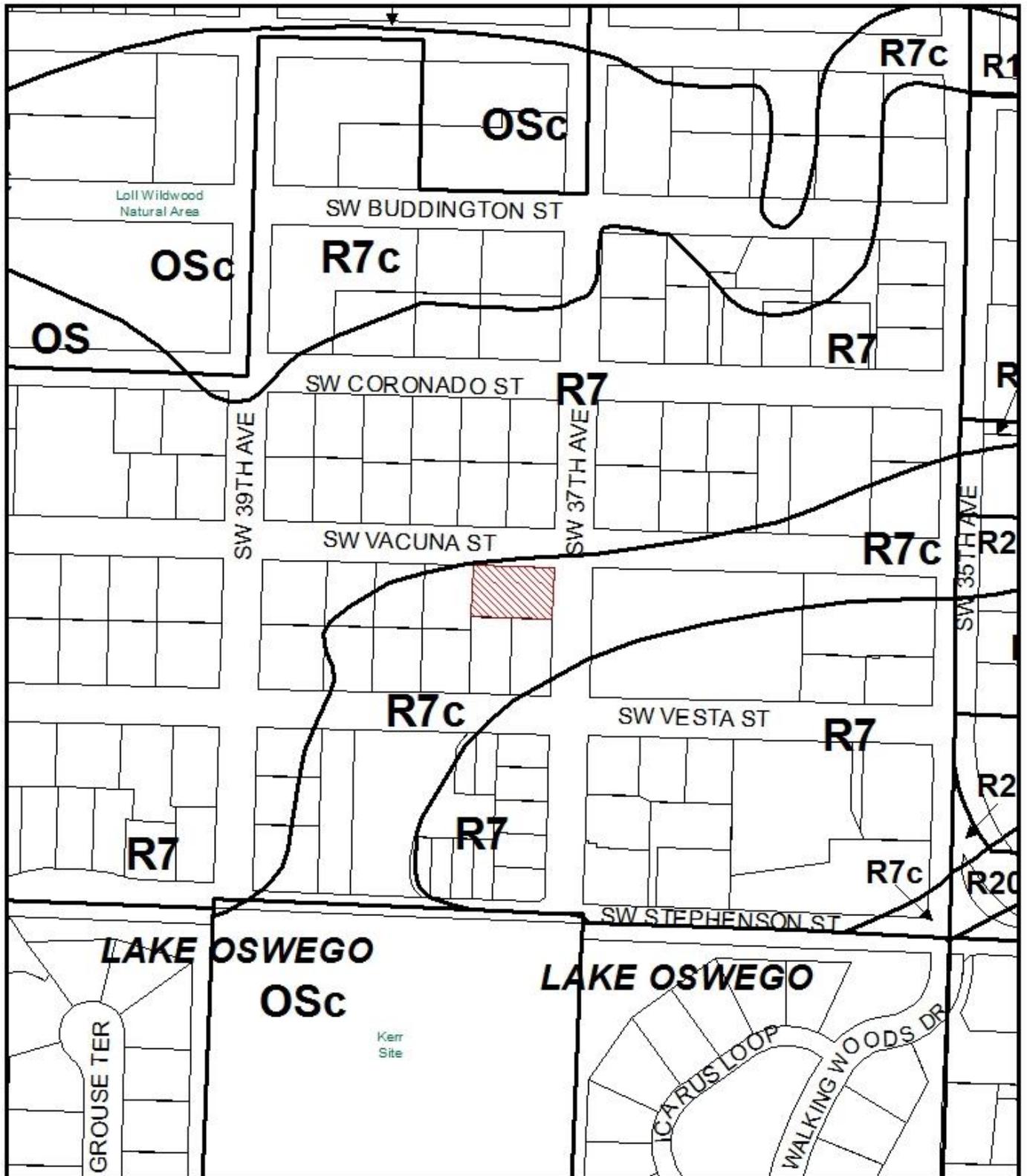
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Narrative and Plans 8/12/16
  - 2. Additional Plans 8/26/16
  - 3. Revised Plans 9/23/16
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. North Elevation (attached)
  - 3. East Elevation (attached)
- 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. Life Safety Section of BDS
- F. Correspondence:
  - 1. Chris Mellon and Jim Braley, 10/3/16, Email in Support
- G. Other:
  - 1. Original LUR Application
  - 2. Incomplete Letter 8/25/16

**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 16-222864 AD  
 1/4 Section 4125  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E32BD 4701  
 Exhibit B (Aug 17, 2016)

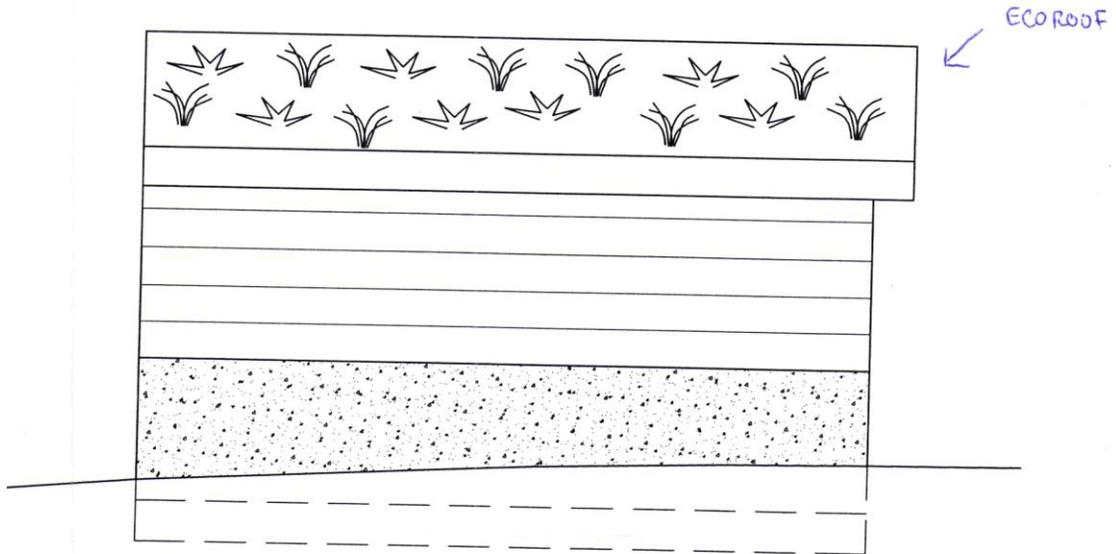


LU 16 - 222864 AD

**\*Approved\***  
City of Portland - Bureau of Development Services

Planner L Russell Date 10/21/16

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



8  
A1.02

# NORTH ELEVATION

1/4" = 1'-0"

VIEW FROM SW VACUNA ST

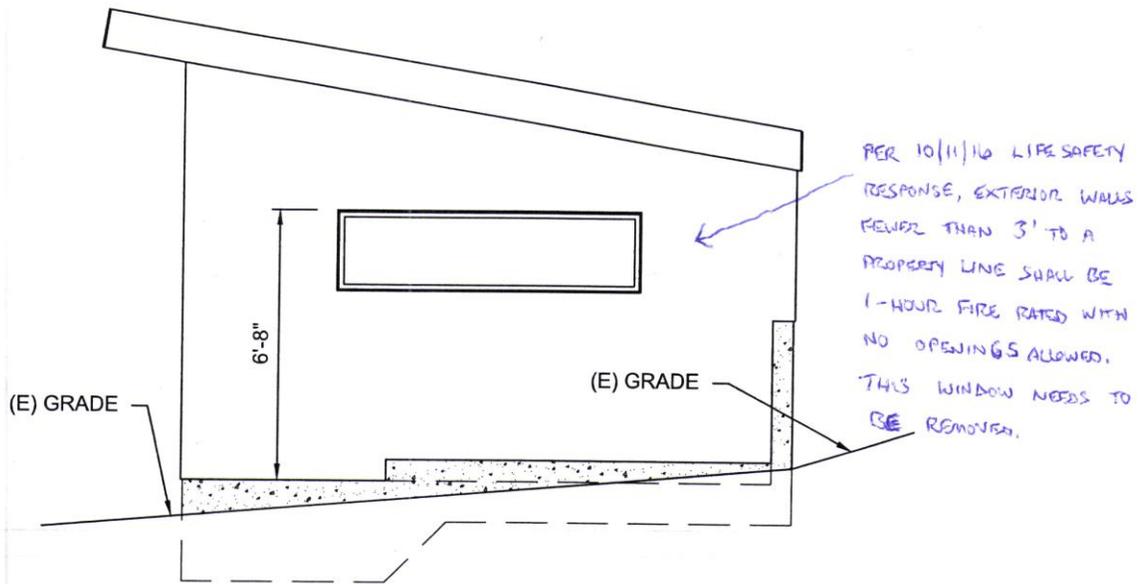
CASE NO. 16-222864 AD  
EXHIBIT C-2

LU 16-222804 AD

**\*Approved\***  
City of Portland - Bureau of Development Services

Planner Z Russell Date 10/21/16

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



7  
A1.02

### EAST ELEVATION

1/4" = 1'-0"

VIEW FROM SW 37TH AVE

CASE NO. 16-222804 AD  
EXHIBIT C-3