



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

FROM CONCEPT TO CONSTRUCTION

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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** December 27, 2016  
**To:** Interested Person  
**From:** Kathleen Stokes, Land Use Services  
503-823-7843 / [Kathleen.Stokes@portlandoregon.gov](mailto:Kathleen.Stokes@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 16-189820 AD**

#### **GENERAL INFORMATION**

**Applicant:** Geraldine D Butcher  
8835 SE 42nd Ave  
Milwaukie, OR 97222

**Site Address:** 7315 SE 45<sup>th</sup> Avenue

**Legal Description:** LOT 1, PARTITION PLAT 2005-129  
**Tax Account No.:** R649855130  
**State ID No.:** 1S2E19BC 10201  
**Quarter Section:** 3735

**Neighborhood:** Woodstock, contact Terry Griffiths at 503-771-0011  
**Business District:** Woodstock Community Business Association, contact Ann Sanderson at [anndango@gmail.com](mailto:anndango@gmail.com)  
**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010

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

**Case Type:** Adjustment Review (AD)  
**Procedure:** Type II, administrative decision with appeal to Adjustment Committee.  
**Proposal:** The house on this property is located 3 feet, 9 inches (3.75 feet) from the north side property line, which abuts the access pole to a flag lot located to the rear of the subject site. The roof eave projects 2 feet, 10 inches (2.8 feet) from the building wall. The regulations of Title 33, the Portland Zoning Code, generally require buildings to be located a minimum of 5 feet from a side lot line. Roof eaves may be 4 feet from the side lot line.

When adjacent to the access pole of a flag lot, there is an exception that allows a building on the “front lot,” to be as close as 3 feet from the property line. Roof eaves may project into an allowed minimum setback for up to 20% of the setback area, but are not allowed to be closer than 2 feet from the property line. Therefore, in this case, the building wall meets the allowances for setbacks but the roof eave does not. This situation is the result of a land

division that was approved in 2004. As a condition of that approval, the roof eave was supposed to be cut back to meet the exception for buildings that are adjacent to flag lot access pole. This did not occur.

When an Adjustment to the standard setback regulations is requested, they are approved when they are found to meet the approval criteria for Adjustment Reviews. However, Adjustments to exceptions for the standard (such as the exceptions for buildings that are adjacent to flag lot access poles) may not be requested. Therefore, the applicant has requested approval of an Adjustment to Zoning Code Section 33.110.220 C.1, to reduce the minimum required setback for the roof eave from the standard requirement of 4 feet to 11 inches. A Building Code Appeal was approved for the proposal, based on a requirement to treat the underside of the eave with one-hour fire rated material.

**Relevant Approval Criteria:** Adjustment requests will be approved if the review body finds that the applicant has demonstrated that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

## ANALYSIS

**Site and Vicinity:** The site consists of Parcel 1 of a two lot land division that was approved as an 11,428 square-foot property that retained the original house. Parcel 2 of the land division was created as a flat lot that had a 12-foot wide access pole that abuts the north property line of Parcel 1. The site is located on the west side of SE 45<sup>th</sup> Avenue, between the intersections with SE Knapp Street to the north, and SE Henderson Street to the south. The site is developed with a one-story, single-dwelling residence that was constructed in 1955. The abutting flag lot was also developed with a single-dwelling residence, which was completed, through a second-story addition to a pre-existing structure, under a permit issued in 2011. The area around the site mainly consists of other single-dwelling residences that vary in size and age of construction.

**Zoning:** The site is zoned R5 (Residential 5,000, High Density Single-Dwelling). The R5 zone allows a maximum average density of one primary unit for each 5,000 square feet of site area. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing.

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

LU 04-051635 LDP AD – Approval of a two-parcel partition with a flag lot and Adjustments to increase the maximum lot size from 8,500 square feet to 11,428 square feet, increase the maximum lot coverage from 3,214 square feet to 3,558 square feet, and to reduce the minimum required building setback from the north lot line of Parcel 2 from 10 feet to 9.58 feet.

LU 04-018557 AD - Approval of Adjustment Review to allow the maximum building coverage to be increased from 4,415 square feet to 4,874 square feet.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **November 21, 2016**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services has no issues with the requested Adjustment, but noted that stormwater must be contained on the subject site (Exhibit E-1).
- Bureau of Transportation Engineering stated that there are no transportation issues related to this request (Exhibit E-2).
- Site Development Section of BDS provided a description of the physical characteristics of the site and noted requirements for building permit submittals (Exhibit E-3).

- Life Safety Plan Review Section of BDS summarized building permit submittal requirements and mentioned the previously approved appeal which requires one-hour fire-rated material on the roof eave (Exhibit E-4).

The Water Bureau and Fire Bureau each provided a response of “no concerns,” without any additional written comments (Exhibit E-5).

**Neighborhood Review:** One written response was received to the notice of this proposal (Exhibit F-1). The neighbor who owns the flag lot that abuts the applicant’s north property line sent comments that opposed approval of the requested Adjustment. In the response, this neighbor stated that Criterion 33.805.040.A was not met because the purpose of the regulation was not equally or better met by the proposed reduction in the setback for the roof eave. The neighbor stated:

*This proposal as currently under consideration will in fact create a negative impact on my property as approval will not allow, or will significantly jeopardize, the possibility that the requirements and criteria listed above can or will be met. In fact, the proposal as written does not currently address how it meets, equals, or betters the purpose of any element of the current regulation. However, I do feel that there is a possibility that the negative effects resulting from non-compliance can be somewhat mitigated without making the proposed adjustments to the current code if certain conditions are required to be met on site. I propose that specific screening requirements compliant to current code be put into place in the area in question to both protect the privacy of the abutting residences, and to mitigate the negative conditions of non-compliance that currently exists.*

*In lieu of approval of the appeal, and as a means of allowing the currently non-compliant conditions on site to continue to exist, I propose that a fence be required to be built on the applicants side of the property line, by the applicant, to the standard outlined in AD Chapter 33.248 Title 33, Planning and Zoning Landscaping and Screening 7/24/15 G. F2, fully sight-obscuring fence. As per the code, the intent of the F2 fence standard provides a tall and complete visual separation, and is intended to be used in special instances where complete screening is needed to protect abutting uses, and landscaping is not practical. The required materials used should comply as noted in the code which states: The fence must be 6 feet high and 100 percent sight-obscuring. Fences may be made of wood, metal, bricks, masonry or other permanent materials and meet the requirements listed in 33.110.255. Fences, C. Location and height, 2. Side and rear building setbacks.*

*I feel that approval to allow non-compliance to exist by meeting this condition more accurately addresses the intent of the setback regulations listed above (33.110.220) and will provide an equitable solution to the current code violation and the resulting non-compliant condition. This solution will be in place of -and will therefor (sic) prevent- any invasive alterations of the applicant's eaves, the cutting back of which was clearly a condition of approval of the Land Division ruling which separated the two properties in 2004. Requiring a fence will, in effect, do the following:*

- *Maintain separation;*
- *Promote a reasonable physical relationship between residences;*
- *Promote options for privacy for neighboring properties;*
- *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 (i.e. my driveway), and allow for architectural diversity,”*

The ability of the proposal to meet the relevant Adjustment approval criteria are discussed below.

## **ZONING CODE APPROVAL CRITERIA**

### **33.805.040 Approval Criteria**

**The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met.**

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

**Finding:** The setback regulations for buildings and garage entrances in the single-dwelling zones 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.

The building wall of the residence is 3 feet, 9 inches from the north side property line, which exceeds the minimum required three foot setback from the access pole of the abutting flag lot. Roof eaves are allowed to project into the required setback, but are generally required to be at least 2 feet from the property line. In this case, the house was built with wider, 2 foot, 10 inch roof eaves, which reflect the mid-century architectural style of the structure. The roof eave, which projects to 11 inches from the side property line, does not reduce light and air or privacy for the abutting residence because it is adjacent to a driveway access pole which is 12 feet wide and does not have any structures on it, nor could it allow any structures to be located on the pole in the future as it must always be maintained as an accessway for the flag lot. The residence on the abutting flag lot is located to the rear of the subject site and fully meets the minimum required setback.

The original requirement of the land division approval to cut back the roof eave was made so that the fire code requirements of the building code would be met. However, subsequent to that review, the applicant received approval of a building code appeal that allowed an alternative solution for fire safety through the requirement for the addition of one-hour fire rated material to the underside of the roof eave. Access for fire fighting is not prevented in any way by the roof eave, as it is attached to the legally situated wall of the residence. The neighbor's letter does not include any specifics that indicate how this pre-existing condition and the location of the wall and roof eave next to the driveway creates a negative impact.

It seems certain to staff that the addition of a fence in this location could crowd both properties and might create a fire hazard as well as a safety hazard for motorists trying to back out of the driveway, so this is not seen as a viable solution to this request. This is particularly true because the presence of the roof eave on the one-story wall next to the driveway does not appear to present any issues that would demand screening.

The proposal is not a question of siting a building to be compatible with the neighborhood, since the primary residence on the subject site predates the creation of the flag lot. The residence on the flag lot is adequately separated (by a distance of approximately 30 feet) from the residence located on the subject site. There are no topographic constraints on the site and the required outdoor recreation area is preserved for both the subject site and the neighboring flag lot. As previously noted, the wider roof eave preserves the architectural character of the primary residence on the subject site.

The existing situation, which would be allowed to remain through approval of this Adjustment, does not involve a garage entrance setback and allowing the existing development to be maintained without the addition of a six-foot tall fence as suggested by the neighbor will preserve driver visibility rather than reducing it with the hazard that would be created by the visual barrier of the tall fence.

The purpose of the regulation is equally met in this situation and, therefore, 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**

**Finding:** The residence on the subject site has existed in this location since it was constructed in 1955. The approval of a 2004 land division allowed the creation of a flag lot with the driveway on the access pole that abuts the north property line of the subject site. Despite the neighbor's claims to the contrary, maintaining the two-foot, ten-inch roof eave as it was designed and constructed in its present situation at eleven inches from the driveway will not have adverse impacts on the appearance or the livability of the residential area. The neighbor claimed it would negatively impact privacy but did not explain how a roof eave next to a driveway would have such an impact. (The wall of the residence on the subject site meets the minimum setback from this property line.) There was no further explanation of how any negative impacts might occur and staff has viewed the site and sees no such potential for impacts.

Therefore, 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**

**Finding:** Only one adjustment is being requested. Therefore, this criterion does not apply.

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

**Finding:** The City protects recognized scenic resources by the designation of the "Scenic Resource ("s") overlay zone. Historic resources are protected by landmark designation and/or designation of historic conservation districts or historic districts. This site does

not have a Scenic Resource or Historic Resource designation. Therefore this criterion does not apply.

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

**Finding:** One-hour fire rated materials will be added to the roof eave to ensure that there is adequate fire protection. No additional impacts that require mitigation have been identified.

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; or**

**Finding:** The City protects recognized environmental resources by the designation of Environmental Conservation (“c”) and Environmental Protection (“p”) overlay zones. This site does not have any environmental zoning designations. Therefore, this criterion does not apply.

## **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.

Building permits are required and are subject to compliance with the addition of one-hour fire-rating approved through the building code appeal.

## **CONCLUSIONS**

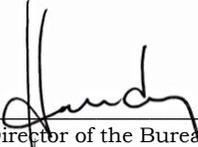
All of the relevant approval criteria have been met for the requested Adjustment to reduce the minimum setback for the roof eave. The eave is located adjacent to the driveway that forms the access pole for the abutting flag lot. The residence on the flag lot is situated approximately 30 feet to the rear of the residence on the applicant’s site. Therefore, the roof eave next to the driveway will cause no impacts on light, air or privacy. Fire safety has been ensured through an alternative approach that has been approved through a building code appeal. Instead of cutting back the eave to meet the building code, the appeal approved the addition of one-hour fire rated material to the eave. The eave, which is attached to the existing, legally situated wall does not present any issues with the relationship of residences to one another or the appearance or livability of the residential area. The Adjustment can be approved, in general compliance with the site plan and elevation drawings. Building permits are required and, as noted above, are already subject to compliance with the addition of one-hour fire-rating approved through the building code appeal.

## **ADMINISTRATIVE DECISION**

Approval of an Adjustment to Zoning Code Section 33.110.220.C.1, to reduce the minimum setback for the roof eave from the standard requirement of 4 feet to 11 inches from the north side property line, in general compliance with the approved site plan and elevation drawing, Exhibits C-1 through C-2, signed and dated December 23, 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.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-189820 AD.

**Staff Planner: Kathleen Stokes**

**Decision rendered by:**  **on December 23, 2016.**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: December 28, 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 June 16, 2016, and was determined to be complete on September 20, 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 June 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 requested that the 120-day review period be extended an additional 58 days. Unless further extended by the applicant, **the 120 days will expire on March 17, 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 January 10, 2017**, 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 **January 11, 2017** – 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
  1. Original narrative, dated June 14, 2016
  2. Revised narrative, received September 20, 2016
  3. Approval of building code appeal
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. Elevation Drawing (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. Site Development Review Section of BDS
  4. Life Safety Plan Review Section of BDS
  5. Summary of City service agency responses (including Water Bureau and Fire Bureau)
- F. Correspondence:
  1. Jeffrey Varner, 7311 SE 45th Avenue, December 11, 2016
- G. Other:
  1. Letter of Incompleteness from Kathleen Stokes to Geraldine Butcher, July 1, 2016
  2. Email from Geraldine Butcher to Kathleen Stokes regarding stopping the 120-day review clock, dated September 20, 2016
  3. Email from Geraldine Butcher to Kathleen Stokes regarding starting the 120-day review clock, dated November 17, 2016

**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

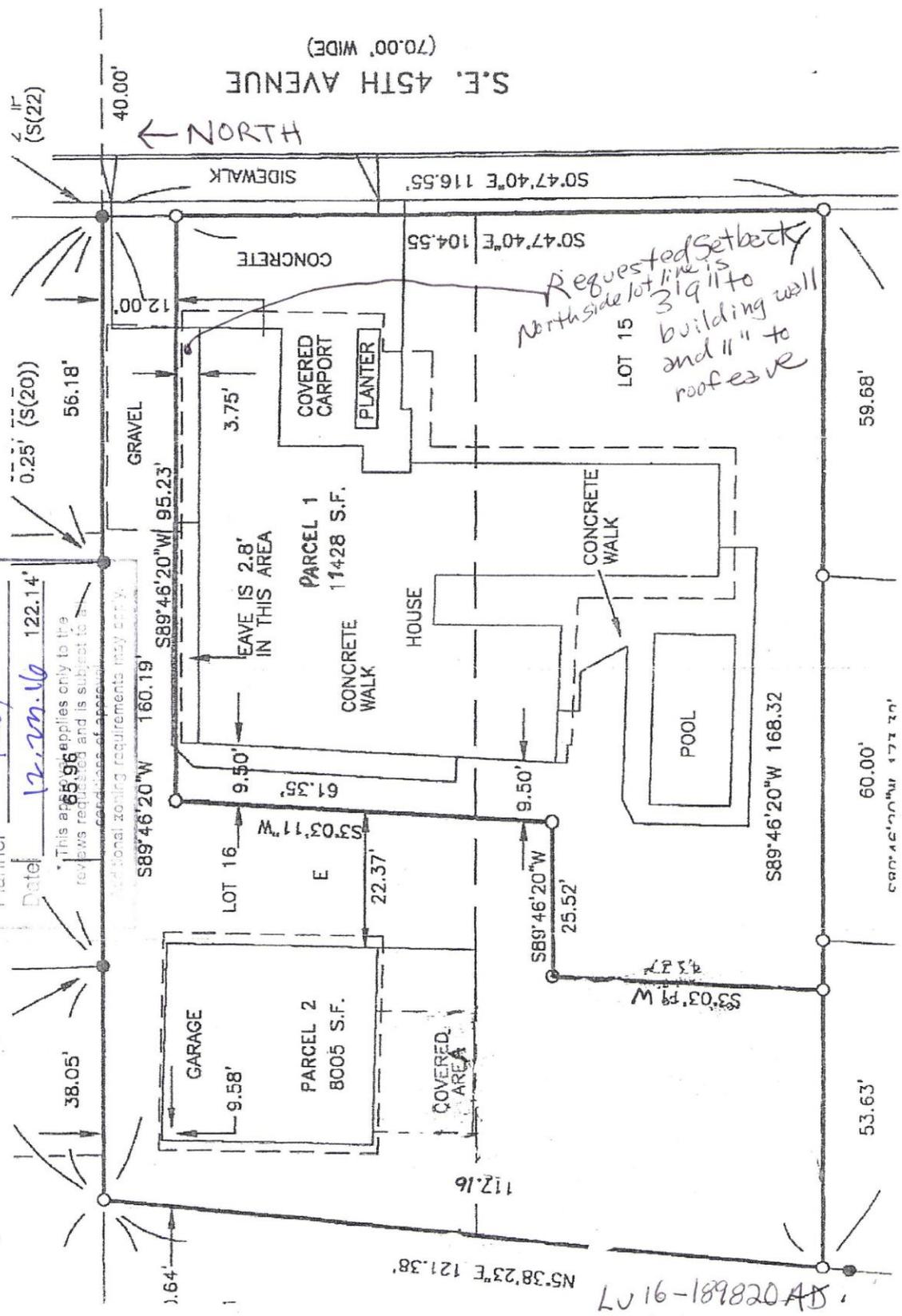
 Site



File No. LU 16-189820 AD  
 1/4 Section 3735  
 Scale 1 inch = 200 feet  
 State\_Id 1S2E19BC 10201  
 Exhibit B (Jun 16, 2016)

\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner K.G.  
 Date 12.20.16 122.14'

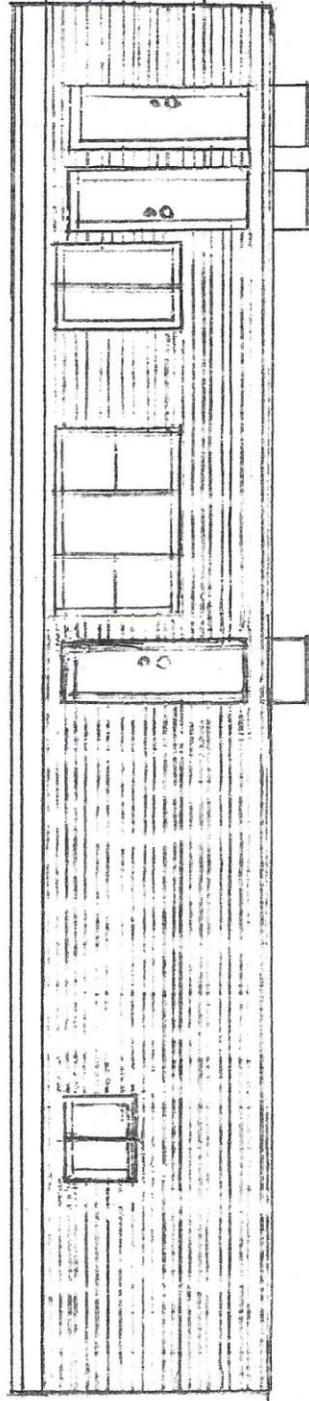
This approval applies only to the reviews required and is subject to the conditions of approval. Additional zoning requirements may apply.



LU 16-189820 AD  
 Exhibit C-1

LU#16-189820 AD

\* Approved\*  
City of Portland  
Bureau of Development Services  
Permit 19  
Date 12.23.16  
\* This approval applies only to the  
reviews requested and is subject to all  
conditions of approval.  
Additional zoning requirements may apply.



North Elevation  
Scale: 1/16" = 1'0"

LU 16-189820 AD - Exhibit C-2