



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

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**Date:** March 6, 2017  
**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 16-268259 AD**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Doug Sorenson  
Bellajour LLC  
PO Box 66406  
Portland, OR 97290

**Site Address:** 810 NE 77TH AVE

**Legal Description:** BLOCK 16 LOT 6&7, HIBBARDS ADD & RPLT  
**Tax Account No.:** R381800480  
**State ID No.:** 1N2E32AD 09200  
**Quarter Section:** 2938  
**Neighborhood:** Montavilla, contact Nick Mira at [nick@propelstudio.com](mailto:nick@propelstudio.com)  
**Business District:** Eighty-Second Ave of Roses Business Association, contact Nancy Chapin at [nchapin@tsgpdx.com](mailto:nchapin@tsgpdx.com)  
**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010.  
**Zoning:** R5a – Single-Dwelling Residential 5,000, Alternate Design Density Overlay  
**Case Type:** AD – Adjustment Review  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant intends, through a separate review, to confirm the underlying lots and adjust the common property line in order to develop previously platted Lot 7 with a new single-dwelling residence. The common property line between Lots 6 and 7 passes through the existing single-dwelling residence and would be adjusted 14 feet to the north, which would leave the existing single-dwelling residence on previously platted Lot 6. Per Zoning Code Section 33.110.220.B and Table 110-3, the minimum side building setback is 5 feet. Eaves are allowed to encroach 1 foot into the side setback. Because the existing single-dwelling residence would extend into the setback of the to-be-adjusted common property line, the applicant requests an Adjustment to

reduce the required side setback from 5 feet to 4 feet for the building wall and from 4 feet to 2 feet for the eave.

**Relevant Approval Criteria:**

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

## ANALYSIS

**Site and Vicinity:** The subject site is a 10,000 square foot lot located on the northeast corner of the intersection of NE 77<sup>th</sup> Avenue and NE Oregon Street. The site is currently developed with a one-story single-dwelling residence facing NE 77<sup>th</sup> Avenue and a detached one-story garage with a driveway entrance on NE Oregon Street. Adjacent properties are similarly developed with one- to two-story single-dwelling residences and accessory detached structures.

**Zoning:** The R5 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 Alternative Design Density (a) overlay zone is an optional overlay zone that provides opportunities for increased density in limited situations, provided that additional design compatibility requirements are met for the project. The overlay zone does not apply to this proposal.

**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 January 10, 2017. The following Bureaus have responded with no issues or concerns regarding the requested Adjustment:

- Bureau of Environmental Services (BES) responded that 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 responded that there are no transportation-related approval criteria associated with the proposed land use request and that if the scope of work remains the same at the time of the anticipated building permit, there will be no transportation-related requirements (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 with no concerns and (Exhibit E-5).

Life Safety Plan Review Section of BDS indicated that the roof eave setback would need approval through a Building Code Appeal. Two options were suggested for approval:

- Install one-hour fire-rated material to the underside of the eave that is fewer than three feet from the property line; or
- Provide a "no-build" easement on the property adjacent to the existing structure that would provide a distance of 6'-0" clear between the existing structure and any new structure, measured between the eaves (Exhibit E-6).

*Staff note: The applicant chose to pursue the second option. On February 15, 2017, the applicant was granted the appeal for a non-rated eave projection within 3-feet of the property line in conjunction with the applicant obtaining a "no-build" easement for Lot 7 that prohibits development within 6-feet of the common property line, including the construction of eaves.*

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

## 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 required side setback for the existing house on Lot 6 from the north property line from 5 feet to 3 feet for the building wall and from 4 feet to 2 feet for the eave.

The purpose of the setback requirement in the R5 zone is stated in Zoning Code Section 33.110.220.A:

**Purpose.** *The setback regulations for buildings and garage entrances 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.*

Maintain light, air, and separation: The Fire Bureau reviewer had no concerns about the requested Adjustment and access to the structure for fire fighting would be available from the front, side, and rear. The Life Safety reviewer stated that because the scope of work proposed includes the establishment of an interior lot line within 3-feet of existing, non-fire-rated construction on the site, the proposal does not meet Oregon Residential Specialty Code section R302.1. In order to resolve the building code requirement, the applicant could either modify the existing structure to meet building code requirements for fire rating or leave the structure as is and instead utilize a "no-build" easement along the lot line and obtain a building code appeal.

The applicant chose to pursue the easement and appeal. On February 15, 2017, the applicant was granted the appeal for a non-rated eave projection within 3-feet of the property line in conjunction with the applicant obtaining a "no-build" easement for Lot 7

that prohibits development within 6-feet of the common property line, including the construction of eaves. Additionally, the applicant must have the easement reviewed and approved by the Bureau of Development Services prior to recording it with Multnomah County. At the time of this decision, the applicant has not yet recorded the easement. Therefore in order to find that the proposal equally meets the fire safety purpose statement of the 5-foot setback standard, a condition of approval will require that the applicant receive approval of the easement from the Bureau of Development Services and then record the easement with Multnomah County before the applicant can receive approval for the lot confirmation and property line adjustment. With this condition of approval, the location of the existing house would maintain separation for fire protection and access for fire fighting.

The existing house has approximately 8'-9" high walls and an overall height of 11 feet as measured to the midpoint of the roof peak. It is located at least 50 feet from the houses on the 3 properties to the east. Because of the "no-build" easement, the house that will be built on newly-created Lot 7 to the north will be set back at least 6 feet from the common lot line so there will be at least 10 feet between the new and old house. Therefore, the location of the existing house would maintain light and air.

Reflect general building scale and placement: The 6-foot "no-build" easement on Lot 7 would maintain a minimum 10-foot separation between the existing house and the new house. There are several nearby properties that also have only about 10 feet between two houses across a shared property line. There appears to only be about 8 feet between the houses located at 748 NE 76<sup>th</sup> Avenue and 806 NE 76<sup>th</sup> Avenue, 7 feet between the houses located at 812 NE 76<sup>th</sup> Avenue and 820 NE 76<sup>th</sup> Avenue, and 9 feet between 836 NE 78<sup>th</sup> Avenue and 842 NE 78<sup>th</sup> Avenue. Therefore, the placement of the existing house on Lot 6 would reflect the general building scale and placement of development in the neighborhood.

Promote a reasonable physical relationship between residences: With the 6-foot "no-build" easement on Lot 7, the minimum distance between the new house on Lot 7 and the existing house on Lot 6 would be 10 feet. This distance is equal to the combined 10-foot minimum setback between houses that is typically required in the R5 zone. Therefore, despite being located within the side setback, the existing house would maintain a reasonable physical relationship between residences.

Promote options for privacy: The north side of existing house that faces the common property line contains one door, one window, and a portion of a bay window on the front façade of the house. These openings would be located 4 feet from the common property line and at least 10 feet from the new house on Lot 7 due to the 6-foot wide "no-build" easement. This distance equals if both the new and existing houses only met the minimum 5-foot side setback for a total of 10 feet. Therefore despite being located within the side setback, the existing house would promote options for privacy for the neighboring property.

Require larger front setbacks: The applicant's proposal would not affect the front setback.

Provide adequate flexibility: As stated above, the location of the existing house would reflect the general building scale and placement of development in the neighborhood so it is therefore compatible with the neighborhood. Additionally, it fits with the topography of the site, maintains the required 250 square feet of outdoor area that fits a 12-foot by 12-foot square within it, and allows for architectural diversity.

Provide room for a car: The applicant's proposal would not affect the existing on-site parking area.

Based on these reasons and with the condition of approval that the applicant receive approval of the easement from the Bureau of Development Services and then record the easement with Multnomah County before the applicant can receive approval for the lot confirmation and property line adjustment, the proposed Adjustment equally meets the purpose 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 location of the existing house would maintain light, air, and separation with the condition of approval that the applicant receive approval of a “no-build” easement from the Bureau of Development Services and then record the easement with Multnomah County before the applicant can receive approval for the lot confirmation and property line adjustment. Additionally, the proposal would reflect general building scale and placement, promote a reasonable physical relationship between residences, and promote options for privacy. For these reasons and with the condition of approval, 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 condition of approval that the applicant receive approval of a 6-foot wide “no-build” easement from the Bureau of Development Services and then record the easement with Multnomah County before the applicant can receive approval for the lot confirmation and property line adjustment would mitigate for the potential negative impact on the separation for fire protection. With this condition of approval, 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). Because no environmental overlay zone is mapped on subject site, this criterion is not applicable.

## **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## **CONCLUSIONS**

The proposal to reduce the side 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, with the condition of approval that the applicant receive approval of a “no-build” easement on Lot 7 from the Bureau of Development Services and then record the easement with Multnomah County before the applicant can receive approval for the lot confirmation and property line adjustment. 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 of an Adjustment to reduce the side setback from the north property line on Lot 6 from 5 feet to 4 feet for the building wall (Zoning Code Section 33.110.220.B) and from 4 feet to 2 feet for the eave (Zoning Code Section 33.110.220.C.1(a)), in general compliance with the approved site plan and elevation drawing, Exhibits C-1 through C-2, signed and dated March 1, 2017, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 16-268259 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Prior to approval of a lot confirmation and property line adjustment, the applicant is required to record a covenant for a 6-foot wide “no-build” easement along the entire south property line of the reconfigured Lot 7. The covenant for the “no-build” easement must be approved by the Bureau of Development Services. Per Building Code Appeal #14622, the applicant shall contact Nancy Thorington (503-823-7023) for more information.

**Staff Planner: Lauren Russell**

Decision rendered by:  on March 1, 2017.  
By authority of the Director of the Bureau of Development Services

**Decision mailed: March 6, 2017**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. 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 November 2, 2016, and was determined to be complete on January 5, 2017.

*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 November 2, 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: May 5, 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 March 20, 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 **March 21, 2017**.
- 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 503-823-7617.

**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, or
- In situations involving only the creation of lots, the land division has been recorded.

**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.

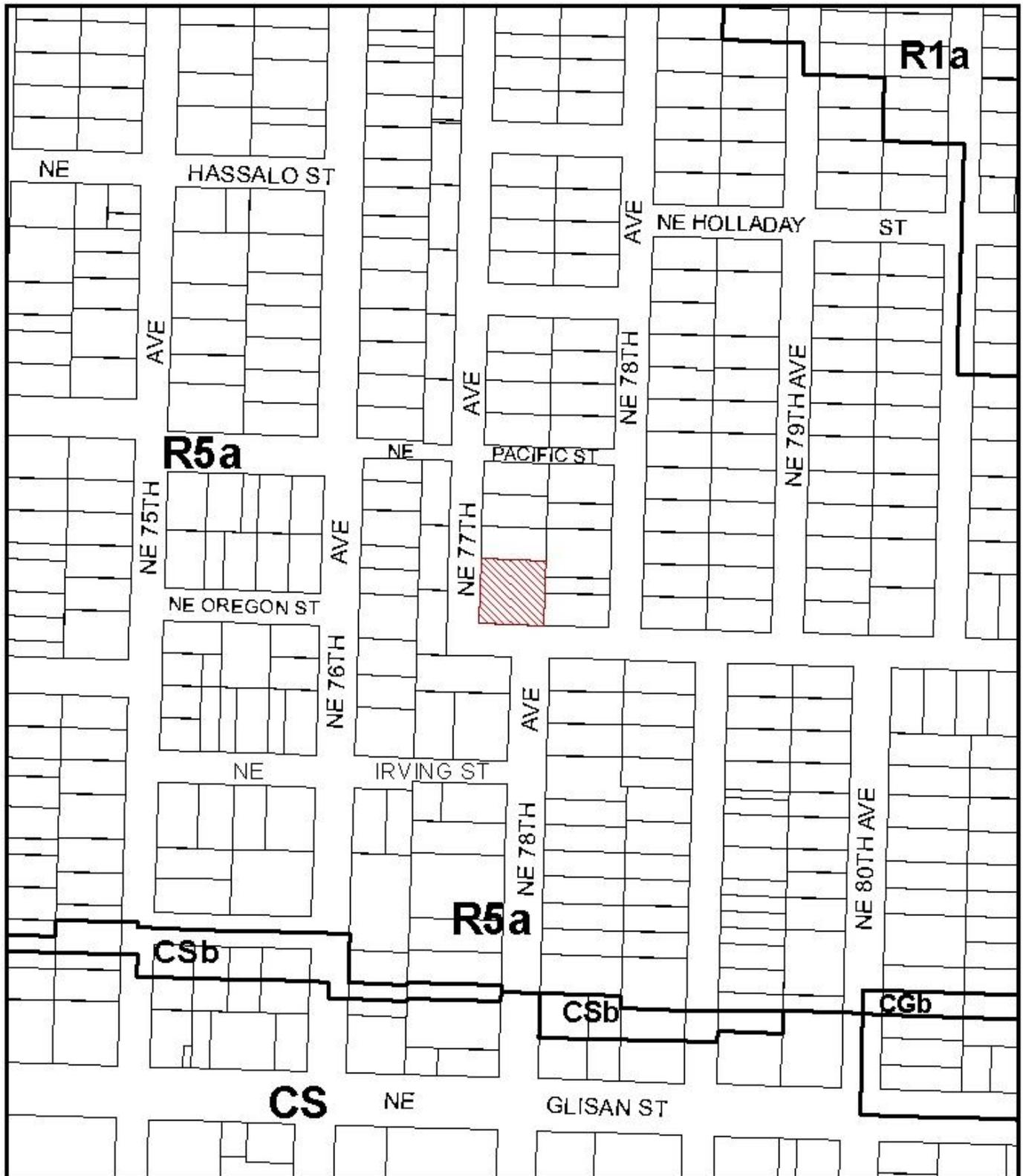
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Narrative and Plans 11/2/16
  2. Revised Plans 12/28/16
- 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. Water Bureau
  4. Fire Bureau
  5. Site Development Review Section of BDS
  6. Life Safety Plan Review Section of BDS
- F. Correspondence: none received
- G. Other:
  1. Original LU Application

2. Incomplete Letter
3. Building Code Appeal #14622

**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



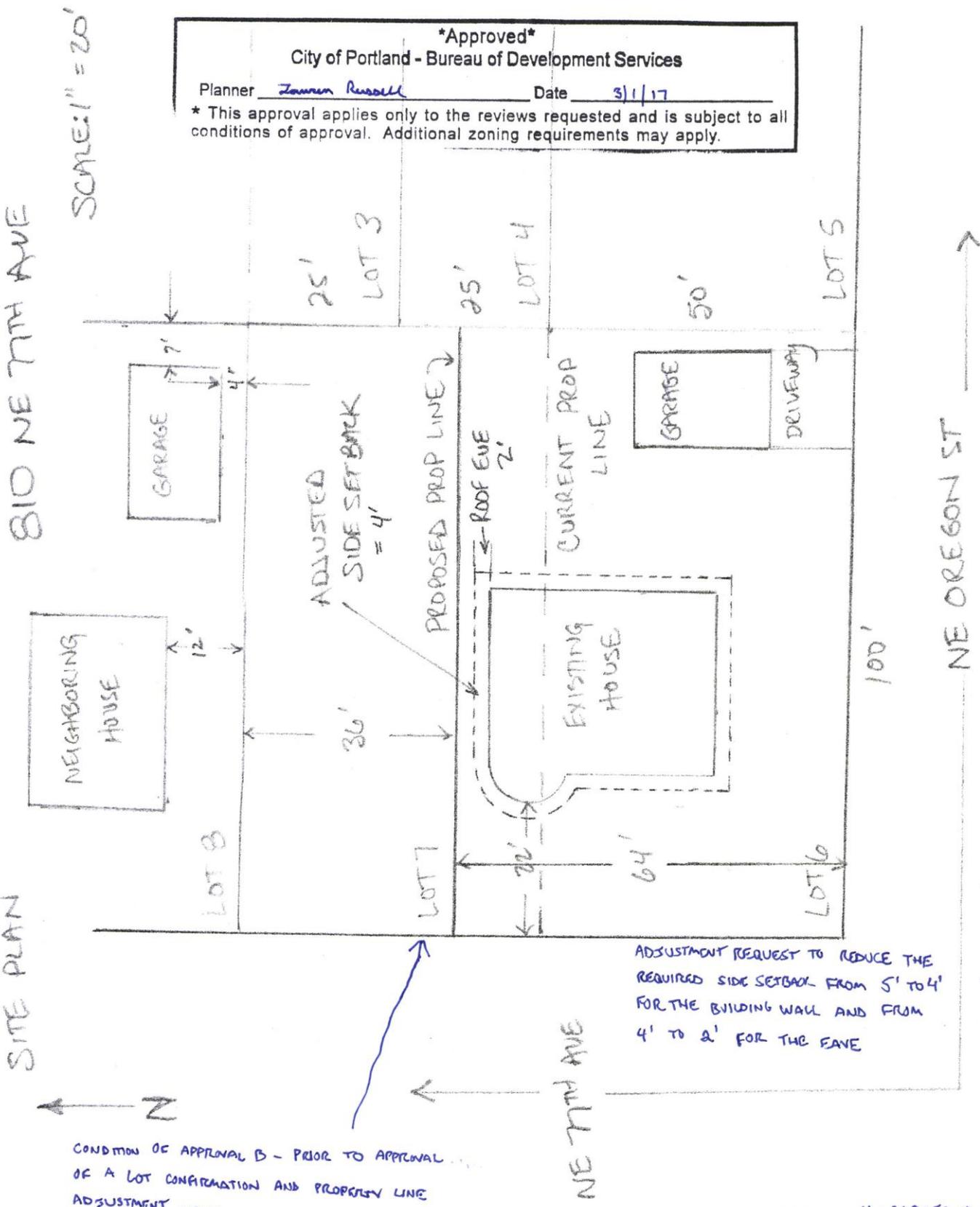
 Site

File No. LU 16-268259 AD  
 1/4 Section 2938  
 Scale 1 inch = 200 feet  
 State\_Id 1N2E32AD 9200  
 Exhibit B (Nov 07, 2016)

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

Planner Zauren Russell Date 3/1/17

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



ADJUSTMENT REQUEST TO REDUCE THE REQUIRED SIDE SETBACK FROM 5' TO 4' FOR THE BUILDING WALL AND FROM 4' TO 2' FOR THE EAVE

CONDITION OF APPROVAL B - PRIOR TO APPROVAL OF A LOT CONFIRMATION AND PROPERTY LINE ADJUSTMENT, THE APPLICANT IS REQUIRED TO RECORD A COVENANT FOR A 6' WIDE NO-BUILD EASEMENT ALONG THE ENTIRE SOUTH PROPERTY LINE OF THE RECONFIGURED LOT 7.

CASE NO. 16-268259 AD  
 EXHIBIT C-1

810 NE 77<sup>th</sup> AVE.  
 PORTLAND, OR. 97213

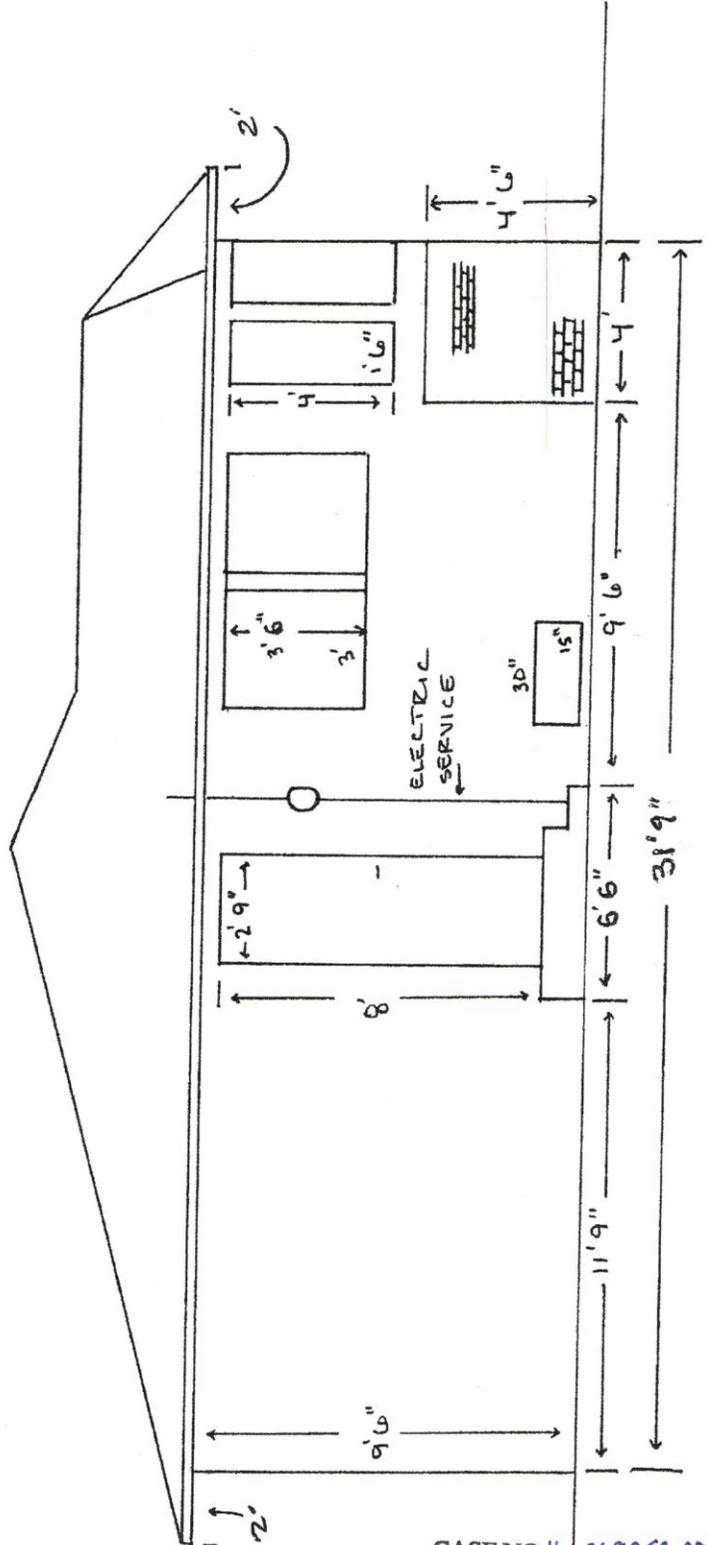
NORTH FACE ELEVATION

FOR APPLICATION NO.

2016-268259-000-00-LU

40 SCALE  
 1" = 4'

\*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner Zawana Russell Date 3/1/17  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



CASE NO. 16-268259 AD  
 EXHIBIT C-2