



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

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Date: April 27, 2017
To: Interested Person
From: Lauren Russell, Land Use Services
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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 17-132954 AD

GENERAL INFORMATION

Applicant: Tripp Royce | Harrison Royce Architecture
8834 SW Bohmann Pkwy
Portland, OR 97223

Owner: Bradley J Bishop TR (G Scott Brown Trust)
7429 Pardale Ave
Clayton, MO 63105

Site Address: 5352 NE CESAR E CHAVEZ BLVD

Legal Description: BLOCK 3 N 40' OF LOT 15, KILLINGSWORTH AVE ADD
Tax Account No.: R449700570
State ID No.: 1N1E24AA 04901
Quarter Section: 2534
Neighborhood: Concordia, contact Garlynn Woodsong at 503-936-9873.
Business District: None
District Coalition: Northeast Coalition of Neighborhoods, contact Jessica Rojas at 503-388-5030.

Plan District: None
Zoning: R5ah – Single-Dwelling Residential 5,000, Alternative Design Density Overlay, Aircraft Landing Overlay

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

Proposal:

The applicant proposes to build a new 262 square foot roofed structure to cover a play area in front of the existing garage along the south property line. The roofed structure would be 21'-10" long, 12 feet wide, and 10 feet high as measured to the midpoint of the gable. All sides of the proposed structure would be open. Per Zoning Code Section 33.110.250.C.2.b(3), detached covered accessory structures are allowed in the side setback if the combined length of all

structures in the setback adjacent to each property line is no more than 24 feet. The existing detached garage, located two feet from the south property line, is 20 feet long. Because the proposed roofed structure would bring the total length of all structures within the setback along the south property line to 41'-10", it is not allowed within the required building setback. Therefore, the applicant requests an Adjustment to reduce the required side setback from the south property line from 5 feet to 2 feet for the roofed, unenclosed structure.

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 4,000 square foot lot located on the east side of NE Cesar E Chavez Boulevard between NE Killingsworth Street and NE Emerson Street. The site is currently developed with a two-and-a-half-story single-dwelling residence with a detached one-story garage located at the southeast corner of the property. Adjacent properties are similarly developed with one- and two-story single-dwelling residences with one-story detached accessory structures located near or within side and rear setbacks.

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.

The Aircraft Landing (h) overlay zone provides for safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures, vegetation, and construction equipment. In Residential zones, structures are regulated by the base zone height limits rather than the height limits of the overlay zone. The overlay zone does not apply to this proposal.

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

- PC 6662C: An ordinance granting a revocable permit to allow continued parking of 210 cubic yard dump truck on an 18-foot wide concrete driveway (1978).

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed March 30, 2017. 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 responded that there are no transportation-specific approval criteria associated with the proposed and use request and that they do not object to the Adjustment (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 (Exhibit E-5); and

- Life Safety Review Section of BDS responded that a building permit has been applied for and is currently under review (Exhibit E-6).

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 from the south property line from 5 feet to 2 feet for a roofed, unenclosed structure.

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 proposed roofed structure would have 8-foot high posts within the side setback and an overall height of 10 feet as measured to the midpoint of the gabled roof. It would be located approximately 10 feet from the house on the property to the south, over 70 feet from the house on the property to the southeast, over 65 feet from the house on the property to the east, over 85 feet from the house on the property to the northeast, and approximately 40 feet from the house on the property to the north. Additionally, the structure would be open on all its sides. Therefore, the location of the roofed structure would maintain light and air. The Fire Bureau reviewer had no concerns about the requested Adjustments and access to the structure for fire fighting would be

available from the front and side. Therefore, the location of the roofed structure would also maintain separation for fire protection and access for fire fighting.

Reflect general building scale and placement: There are several neighboring properties that also have detached accessory structures near the side or rear property lines. 5405 NE 40th Avenue has an 440 square foot detached garage located near the southwest corner of the lot. 5343 NE 40th Avenue has a 484 square foot detached garage located at the southwest corner of the lot. 5335 NE 40th Avenue has an approximately 500 square foot detached garage located along the rear lot line. These structures on neighboring properties are similarly limited to one story in height. While the proposal would increase the overall length of roofed structures within the side setback, resulting in a length longer than that typically seen in the surrounding neighborhood, this increase in length would not be readily apparent when viewed from the street or adjacent property given there would be no side walls on the structure. Therefore, the size and placement of the proposed roofed structure on the subject site would reflect the general building scale and placement of development in the neighborhood.

Promote a reasonable physical relationship between residences: The proposed roofed structure would be located approximately 10 feet from the house on the property to the south, over 70 feet from the house on the property to the southeast, over 65 feet from the house on the property to the east, over 85 feet from the house on the property to the northeast, and approximately 40 feet from the house on the property to the north. Each of these distances is equal to or greater than the distance if both the roofed structure and neighboring houses only met the minimum 5-foot side or rear setback for a total of 10 feet. Therefore, despite being located within the side setback, the proposed roofed structure would maintain a reasonable physical relationship between residences.

Promote options for privacy: The proposed roofed structure would not have any walls and would not be a habitable structure. It would simply offer a covered play area in front of the existing garage. There is an existing 8-foot high fence between the subject site and the property to the south, which would screen the roofed structure from the closest house. Additionally, the applicant proposes to install 6'-5.5" high fencing along the north side and rear lot lines. Therefore, the proposed roofed structure would promote options for privacy for neighboring properties.

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

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

Provide room for a car: The applicant's proposal would not affect the on-site parking area. Therefore, there would continue to be room for a car to park without overhanging the street or sidewalk and driver visibility would remain enhanced when backing onto the street.

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 location of the proposed roofed structure would maintain light, air, and separation; reflect general building scale and placement; promote a reasonable physical relationship between residences; promote options for privacy; and provide room for a car to park on-site. 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). 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 required 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. 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 required side setback from the south property line from 5 feet to 2 feet (Zoning Code Section 33.110.220.B), per the approved site plans, Exhibits C-1 through C-2, signed and dated April 24, 2017, subject to the following condition:

- 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 17-132954 AD. No field changes allowed."

Staff Planner: Lauren Russell

Decision rendered by: Lauren Russell **on April 24, 2017.**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 27, 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 March 9, 2017, and was determined to be complete on March 24, 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 March 9, 2017.

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: July 22, 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 May 11, 2017** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th 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.

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 **May 12, 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.

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:

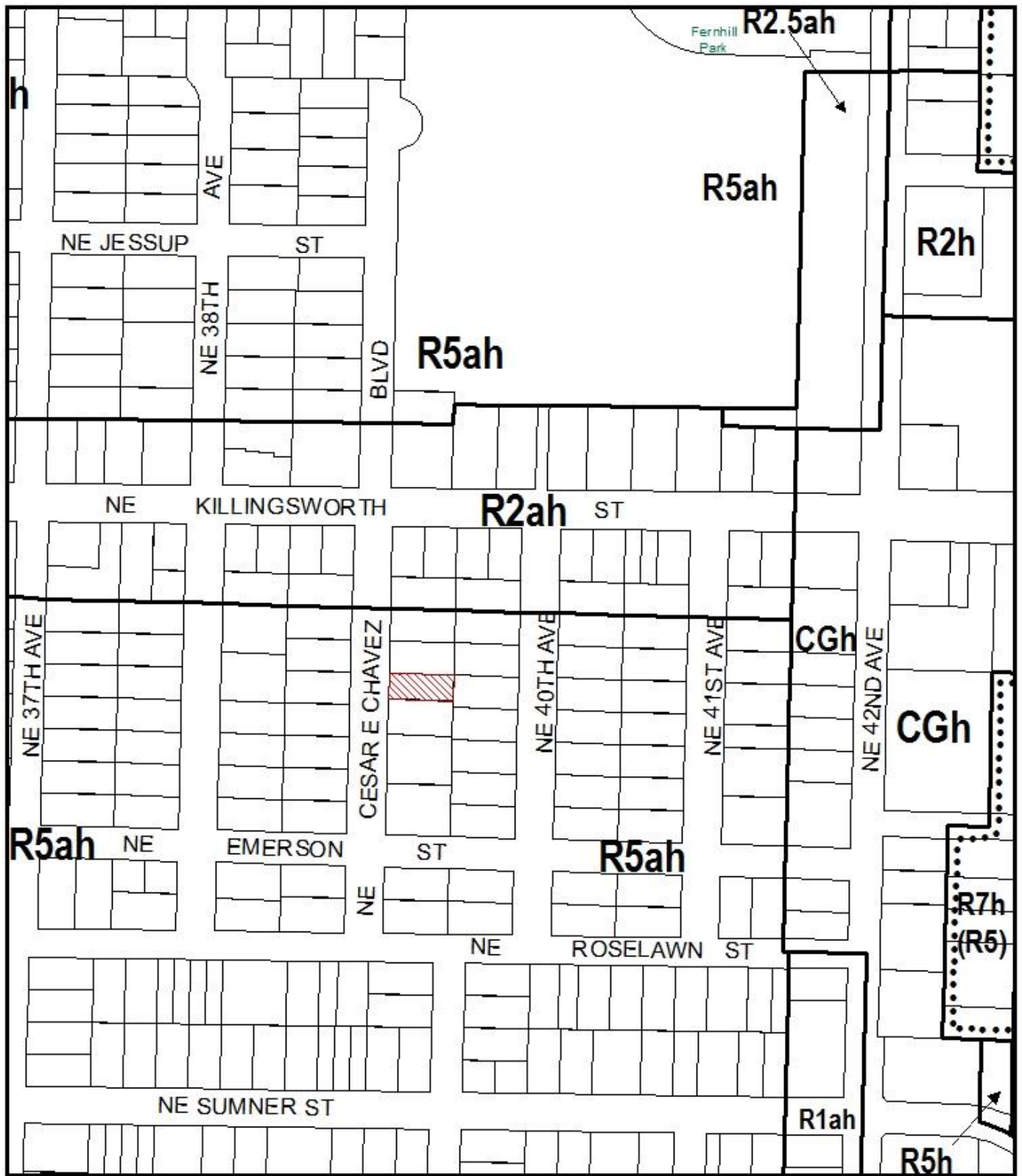
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED


- A. Applicant's Statement
 - 1. Narrative and Plans 3/9/17
 - 2. Revised Plans 3/24/17
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations (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: None Received
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter 3/23/17

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

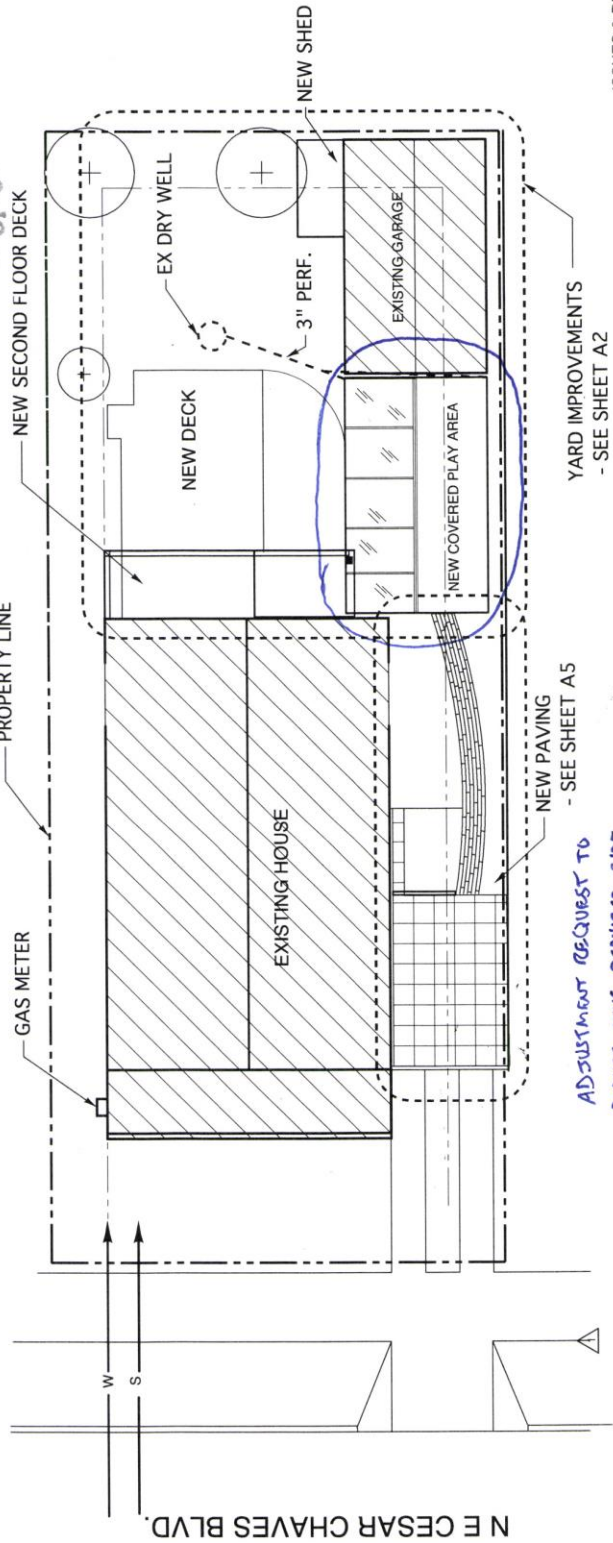
File No. LU 17-132954 AD
 1/4 Section 2534
 Scale 1 inch = 200 feet
 State_Id 1N1E24AA 4901
 Exhibit B (Mar 15, 2017)

HRA



COVERED PLAY AREA AND DECK

5352 NE Cesar Chaves Blvd., Portland, OR



ISSUES & REVISIONS

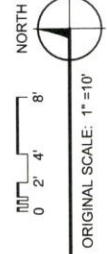
3/24 tr Zoning req.

ISSUED: February 14, 2017

CONTRACT DOCUMENTS

A1

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BUILDING COVERAGE CALCS
 EXISTING: 1390 SQ. FT.
 NEW SHED: 34 SQ. FT.
 NEW PLAY AREA: 262 SQ. FT.
 2ND FL. DECK: 132 SQ. FT.

ADJUSTMENT REQUEST TO
 REDUCE THE REQUIRED SIDE
 SETBACK FROM THE SOUTH
 PROPERTY LINE FROM 5'
 TO 2'

Approved
 City of Portland - Bureau of Development Services
 Planner Jamun Russell Date 4/24/17
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

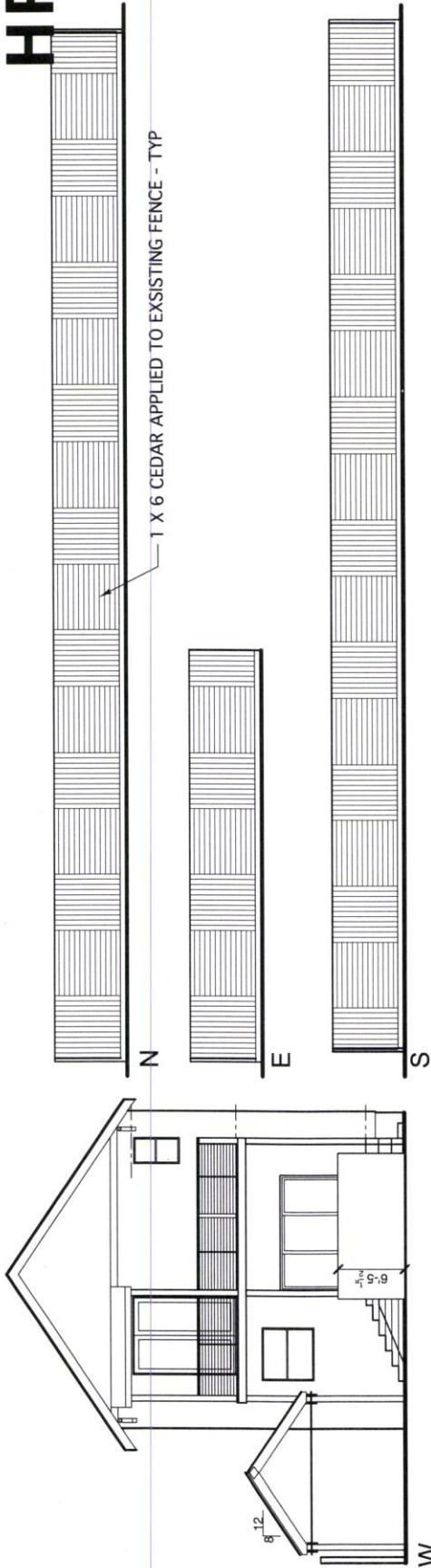
APPROVAL ONLY PERTAINS TO LOCATION OF COVERED PLAY AREA AND ITS DIMENSIONS. OTHER CHANGES ALLOWED.

01. SITE PLAN

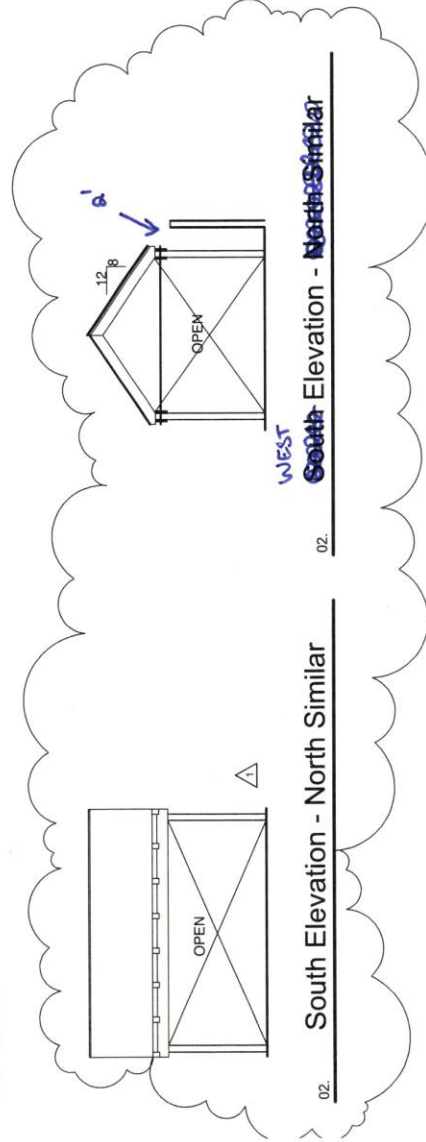
CASE NO. 17-132954 AB
 EXHIBIT C-1

HRA

COVERED PLAY AREA AND DECK
5352 NE Cesar Chaves Blvd., Portland, OR



SCALE: 1/8" = 1'-0"



ISSUES & REVISIONS
△ 3/24 tr Zoning req.

ISSUED: February 14, 2017
CONTRACT DOCUMENTS

A4.1

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Approved
 City of Portland - Bureau of Development Services
 Planner Jamison Russell Date 4/24/17
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

APPROVAL ONLY PERTAINS TO LOCATION OF COVERED PLAY AREA
 AND ITS DIMENSIONS. OTHER CHANGES ALLOWED.

CASE NO. 17-132954 AD
 EXHIBIT C-2