



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

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**Date:** June 21, 2017  
**To:** Interested Person  
**From:** Tammy Boren-King, Land Use Services  
 503-823-5765 / [Tammy.Boren-King@portlandoregon.gov](mailto:Tammy.Boren-King@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 17-170726 AD**

**GENERAL INFORMATION**

**Applicant:** Nathan Arnold | Faster Permits  
 14334 NW Eagleridge Lane | Portland, OR 97229  
 503-438-8113 | [Nathan@Fasterpermits.Com](mailto:Nathan@Fasterpermits.Com)

**Owner:** BTS Homes Inc | 237 NE Chkalov Dr #112  
 Vancouver, Wa 98684-5054

**Site Address:** 3079 SE FRANKLIN ST

**Legal Description:** LOT 2, PARTITION PLAT 2016-88  
**Tax Account No.:** R649673500  
**State ID No.:** 1S1E12BD 17104  
**Quarter Section:** 3333

**Neighborhood:** Richmond, contact Matt Otis at [matt.otis@gmail.com](mailto:matt.otis@gmail.com)  
**Business District:** Greater Brooklyn, contact David Weislogel at 503-872-9320.  
**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010.

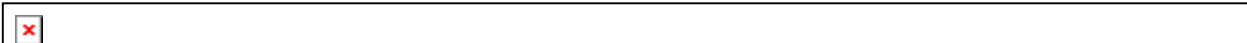
**Plan District:** None  
**Other Designations:** None

**Zoning:** R2.5 Single Dwelling Residential 2,500

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

**Proposal:**

The applicant proposes to build a new two-and-a-half story house at the northwest corner of SE 31<sup>st</sup> Ave. and SE Franklin St. On a corner lot, the zoning code defines the shorter lot line as the front lot line (33.910). The lot line facing SE 31<sup>st</sup> Ave. is 6 inches shorter than the lot line



facing SE Franklin St. This means the lot line facing SE 31<sup>st</sup> is the front lot line, which requires a 10 foot minimum building setback. The lot line facing SE Franklin is the side lot line, which requires a 5 foot minimum building setback. The applicant proposes to have a 10 foot building setback facing SE Franklin and a 5 foot building setback facing SE 31<sup>st</sup>. Ave. This does not meet the minimum front building setback requirement of 33.110.220 and Table 110-3. The applicant, therefore, is requesting an adjustment to reduce the minimum front building setback from SE 31<sup>st</sup> Ave. from 10 feet to 5 feet.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33.805.040.

## ANALYSIS

**Site and Vicinity:** The site is located on the northwest corner of the intersection of SE 31<sup>st</sup> Avenue and SE Franklin St. The 2,475 square foot flat lot was created through a partition plat in 2016 and is currently vacant.

The lot to the north of the site is developed with a home and attached garage. The south wall of the house on the lot to the north is approximately 15 feet from the proposed location of the north wall of the house on subject site. The house on the site to the north is set back approximately 10 feet from SE 31<sup>st</sup> Ave. The lot to the west of the site is also developed with a house and attached garage. The east wall of the house on the lot to the west is approximately 15 feet from the proposed location of the east wall of the house on subject site. The house on the site to the west is set back approximately 22 feet from SE Franklin St.

Development in the surrounding vicinity is predominately single-dwelling residential.

**Zoning:** The site is zoned R2.5 (Residential 2,500). The R2.5 zone is a single-dwelling zone. These zones are intended to preserve land for housing and to provide housing opportunities for individual households. The development standards are intended to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation and recreational opportunities.

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

LU 16-155528-LDP- A 2016 approval with conditions of a two-parcel partition which separated the subject lot from the lot to the north.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **May 25, 2017**. The following Bureaus have responded with no issues or concerns regarding the requested adjustment:

- Bureau of Environmental Services (Exhibit E1)
- Bureau of Transportation Engineering (Exhibit E2)
- Water Bureau (Exhibit E3)
- Fire Bureau (Exhibit E4)
- Site Development Section of BDS (Exhibit E5)
- Life Safety Section of BDS (Exhibit E7)

**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 review body finds that the applicant has shown that approval criteria A. through F. below have been met.

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

**Findings:** The applicant requests one adjustment to reduce the front setback on the west side of the lot from 10 feet to 5. The purpose for the setback regulations for single-dwelling zones is found in 33.110.220.A, which states:

*Purpose: The building setback regulations 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: This adjustment request is to reduce the minimum front setback along SE 31<sup>st</sup> Ave. Because this reduced setback is along a street having a right-of-way width of approximately 60 feet, there will be no impact on light and air reaching adjacent properties.

Additionally, the proposal would place the proposed house equidistant from the two neighboring houses to the west and north. The proposal will meet or exceed the minimum building setback on the north and west which will maintain approximately 15 feet of separation between the structures. The Fire Bureau reviewer had no concerns about the requested Adjustments and access to the structures for fire fighting would be available from all sides. Fifteen feet of separation provides for light, air, and separation for fire protection for adjacent properties to the north and west.

Reflect general building scale and placement: The proposed two-story house is oriented to SE Franklin St., making the south side read as the front of the structure. Both the pedestrian and vehicular access to the site are proposed from SE Franklin St. The two-story house to the north is a modern style house with a small entry. The three two-story houses to the west of the site are more traditional style homes with peaked roofs and wide porches. The design of the proposed house mimics the three houses to the west on Franklin St. Allowing the proposed house to orient itself to SE Franklin St. will allow it to be more compatible with the existing

development than if it were oriented the same direction as the more modern style house to the north.

The proposal is attempting to mimic the existing setback pattern to extent practicable on this site. The adjacent house to the north facing SE 31<sup>st</sup> Ave. is closer to the street than the adjacent houses facing SE Franklin St. Allowing the proposed house to be closer to SE 31<sup>st</sup> Ave. allows it to also be set back further from SE Franklin St. This makes the proposed home more compatible with the other houses on SE Franklin St. than if the house were proposed to be 5 feet from SE Franklin as is allowed by right per 33.110.220.

Promote a reasonable physical relationship between residences: As noted above, the proposed house would be 15 feet from the houses on adjacent properties to the north and west. If both the proposed and neighboring houses only met the minimum 5-foot side or rear setback a total of 10 feet would separate the houses. The proposed setback adjustment will allow the proposed house to be closer to SE 31<sup>st</sup> Ave. than allowed by right but will not allow the proposed house to be any closer to the neighboring residences than allowed by right. Therefore, despite being located within the front setback adjacent to SE 31<sup>st</sup> Ave., the request would maintain a reasonable physical relationship between residences. The approximate 60 foot width of the SE 31<sup>st</sup> Ave. right-of-way ensures an adequate physical relationship will be maintained between the proposed house and those houses on the east side of SE 31<sup>st</sup>. Ave.

Promote options for privacy: The applicant's request is limited to an adjustment to the front setback requirement. The front setback is by nature the least private area on a site as it is the portion that interfaces with the public right-of-way. Front setbacks are intended to allow single family homes to have front yards and allow views from the house to the street. While an expectation of privacy may not exist in a front yard, it is still a common gathering place outside of the public right-of-way making it a private space, just not a secluded one. The applicant's proposal is to provide a 10 foot setback from the side lot line adjacent to SE Franklin St. Because the Adjustment request is limited to the setback along a street lot line, there will be no impacts on privacy for adjacent homes. The nearest home to the east will be approximately 70 feet from the proposed house. With a condition of approval requiring the perpetual maintenance of a 10 foot setback from SE Franklin St., it will be possible to provide adequate space on site for a private front yard.

Require larger front setbacks: The required front setback is 10 feet. The applicant's proposal to maintain a 10 foot side setback from SE Franklin St. allows the proposal to retain one street facing setback as large as the required front setback. The house will be oriented to SE Franklin Street, similar in orientation to the houses to the west along the same frontage, thereby allowing the 10 foot side setback to function as a front setback and promote a visually pleasing front yard. The proposed house is oriented to SE Franklin St., making the south side read as the front of the structure. With a condition of approval requiring perpetual maintenance of a 10 foot setback from the south property line, this purpose will be met.

Provide adequate flexibility: There is an existing 10 foot wide sewer easement along the west property line. This restricts the applicant's ability to provide a home on the site that provides a front yard facing SE Franklin St. while also meeting the zoning code requirement for a 10 foot setback from SE 31<sup>st</sup>. Ave. Allowing the adjustment to reduce the setback along SE 31<sup>st</sup>. Ave. provides needed flexibility accommodate the sewer easement and to allow the building to be more compatible with the existing development facing SE Franklin St.

Provide room for a car: The requested front setback adjustment will not affect the required garage entrance setback. Proposed development will still be required to meet the required garage entrance setback.

With the conditions of approval requiring the maintenance of a minimum 10 foot setback from the south property line, the proposal meets the purpose of the setback requirements 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

**Findings:** Section 33.910 defines the front lot line as the shortest of the lot lines that abut a street. If two or more lot lines are of equal length, the applicant can choose which lot line is to be the front. The proposed site has 50 feet of frontage on SE 31<sup>st</sup>. Ave. and 49.5 feet of frontage on SE. Franklin St. Since the lot is six inches shorter on one side, the applicant does not have the right to select which side is treated as the front under the zoning code. Given the insignificant difference in length between the two street lot lines, allowing the applicant to choose to orient the house with the shorter frontage as the front lot line will have no discernible impact to the neighborhoods in this case.

For these reasons, and those described in detail in approval criterion A above, the proposal does not significantly detract from the livability or appearance of the residential area. 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:** The applicant is requesting only one adjustment. 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 Historic or Conservation district. As there are no scenic or historic resource designations 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:** With conditions of approval described above regarding the maintenance of a minimum 10 foot building setback from SE. Franklin St., there will be no discernible impacts resulting from the Adjustment. 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 designed on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on 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

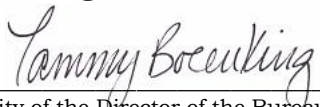
The applicant proposes an Adjustment to reduce the front setback along SE 31<sup>st</sup>. Ave. from 10 feet to 5 feet. With conditions of approval requiring the street side setback along SE Franklin St. to be increased from 5 feet to 10 feet, the proposal meets the applicable approval criteria and should be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the front setback on the west side from 10 feet to 5 feet per the approved site plan, Exhibit C-1, signed and dated 6/16/2017, 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 17-170726 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. A minimum 10-foot side building setback is required from the south property line. This 10-foot side building setback shall be maintained over time.

**Staff Planner: Tammy Boren-King**

Decision rendered by:  on June 16, 2017.  
By authority of the Director of the Bureau of Development Services

**Decision mailed: June 21, 2017**

**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 May 12, 2017, and was determined to be complete on May 18, 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 May 12, 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: Sept. 15, 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 July 5, 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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **July 6, 2017** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

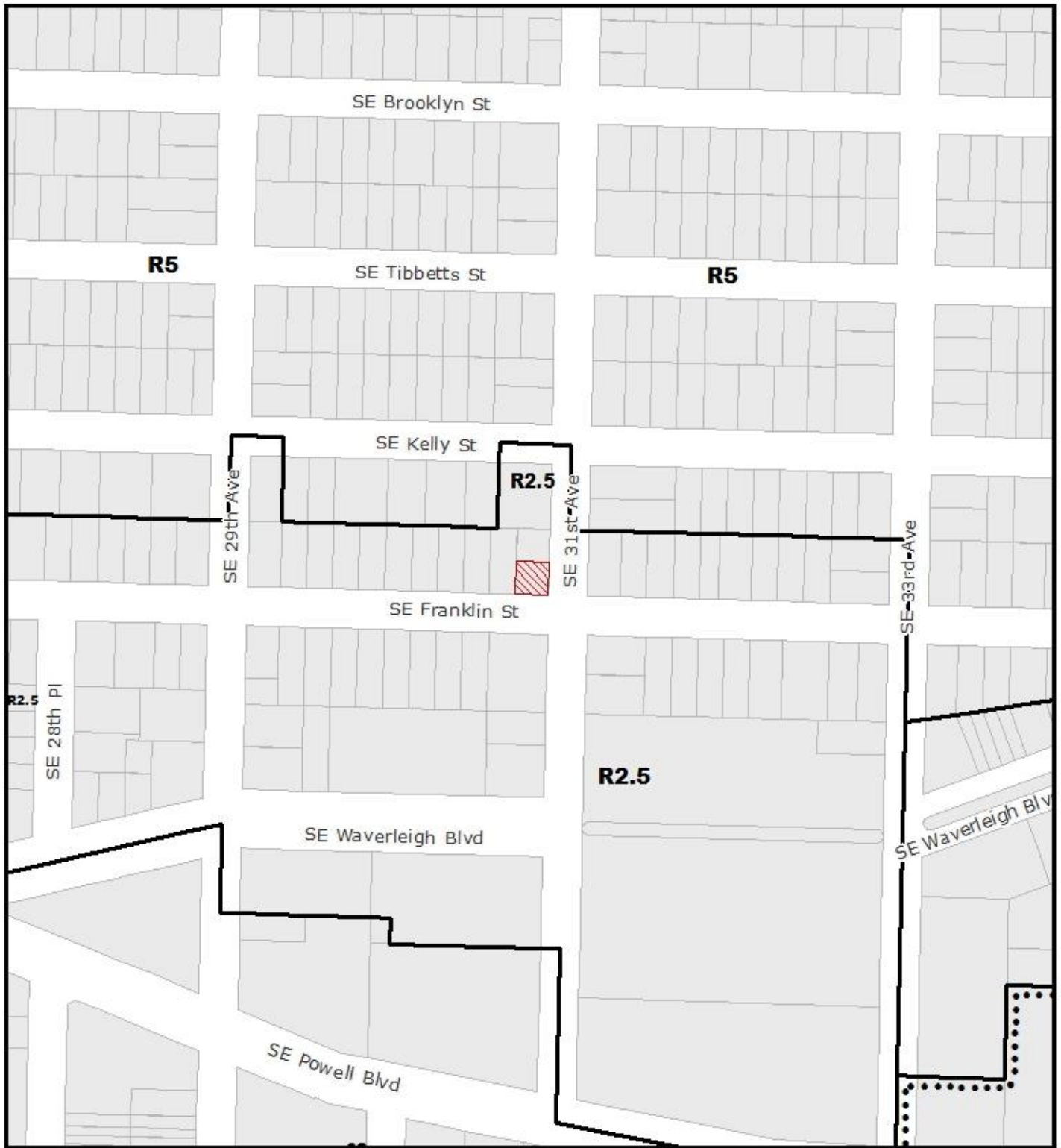
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Full sized building plans
  - 3. Reduced size (8.5 x 11 inch) building plans
- 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 Review Section of BDS
- F. Correspondence: None
- G. Other:
  - 1. Original LU Application

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**





# ZONING



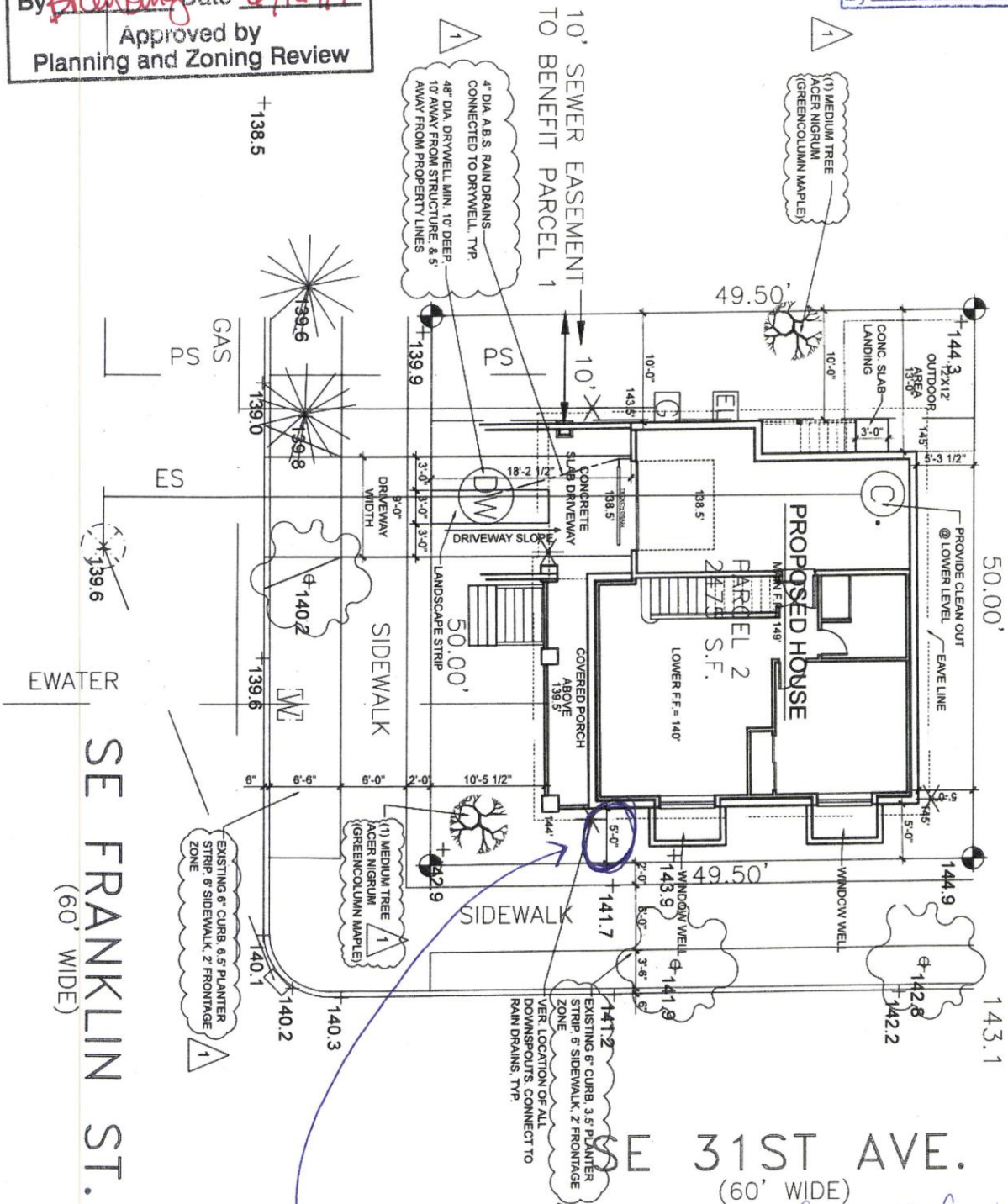
File No.	LU 17-170726 AD
1/4 Section	3333
Scale	1 inch = 200 feet
State ID	1S1E12BD 17104
Exhibit	B May 16, 2017

City of Portland  
Bureau of  
Development Services

By *Jamima Stuenkel* Date *6/16/17*

Approved by  
Planning and Zoning Review

RECEIVED  
MAY 19 2017  
By \_\_\_\_\_



Adjustment to reduce the front setback from 10 feet to 5 feet. The front is the property line adjacent to SE 31st Ave.

CASE NO. 17-170726-AD  
EXHIBIT C1