



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

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Date: November 14, 2017
To: Interested Person
From: Marguerite Feuersanger, 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 17-246215 AD

GENERAL INFORMATION

Applicant: Matthew McCune | McCune Design
 2812 NE 8th Ave | Portland, OR 97212

Owners: Adam Lane and A’Nova Ettien
 1734 NE Halsey Street | Portland, OR 97232

Site Address: 1734 NE Halsey Street

Legal Description: BLOCK 196, E 1/2 OF LOT 7&8, HOLLADAYS ADD; HOLLADAYS ADD, BLOCK 196, STRIP E OF & ADJ-E 1/2 OF LOT 7&8

Tax Account No.: R396213410, R396213420

State ID No.: 1N1E35AB 04000, 1N1E35AB 03900

Quarter Section: 2932

Neighborhood: Sullivan’s Gulch, contact Kathy Hansen at 503-221-4845

Business District: None

District Coalition: Northeast Coalition of Neighborhoods, contact Jessica Rojas at 503-388-5030.

Zoning: R2 – Multi-Dwelling Residential 2,000

Case Type: AD – Adjustment Review

Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

PROPOSAL:

The applicant proposes to construct a one-story detached art studio with a roof top deck located at the southeast corner of the site. An existing garage, located in the same location as the new art studio, will be demolished. The new art studio footprint measures 19 feet by 20 feet, and is approximately 15 feet tall, measured to the top of the rooftop privacy fence. Per Zoning Code Section 33.120.220, Setbacks, new buildings must be set back at least 5 feet from side and rear property lines. Because the proposed art studio is set back less than 5 feet from the side and rear property line, two Adjustments are requested:

1. Reduce the required side (east) building setback from 5 feet to 2 feet (no eave); and
2. Reduce the required rear (south) building setback from 5 feet to 1 foot – 6 inches (no eave).

NOTES:

- The site is made up of two tax account parcels, R182299 and R182300, and measures 52 feet in width and 100 feet in depth. The applicant received approval of Adjustment requests to reduce the side and rear setbacks (Land Use Case File #17-140674 AD). After this approval, an error was discovered in the site plan dimensions. The applicant has reapplied for Adjustment reviews to correct this site plan error.
- The rooftop deck will be set back at least 5 feet from the side and rear property lines.

ANALYSIS

Site and Vicinity: The subject site is a 5,200 square-foot site located on the south side of NE Halsey Street between NE 17th Avenue and NE 19th Avenue. The site is currently developed with a one-and-a-half story single-dwelling residence and a one-story detached garage located at the southeast corner of the property. The properties to the west and south are developed with duplexes; the properties to the north, east, and southwest are developed with single-dwelling residences; and the property to the southeast is developed with a 10-unit condominium complex. Lloyd Center shopping mall is located two blocks to the west.

Zoning: The R2 zone is one of the City's multi-dwelling residential zones, which are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing. The development standards work together to create desirable residential areas by promoting aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

Land Use History: City records indicate there is one prior land use review for this site.

17-140674 AD Approval of an Adjustment to reduce the required side setback from the east property line from 5 feet to 3 feet-6 inches and required rear setback from the south property line from 5 feet to 1 foot-6 inches for a one-story accessory structure with a rooftop deck.

Staff comment: The above Adjustment review was approved on May 17, 2017; it involves the same project as the subject proposal. Since that time, the applicant discovered an error in the approved site plan. To correct the error, the applicant has reapplied for an Adjustment to reduce the side setback from the east property to 2 feet (part of this proposal).

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed April 19, 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 responded that there are no transportation-specific approval criteria associated with the proposed land 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 the existing building permit plans (17-205831 RS) must be revised to correctly depict the site and to be consistent with this land use review decision. Also, the property owner must consolidate the site's two tax accounts, or complete a "no-build" easement. The proposed art studio is located over this shared tax account line, in conflict with Building Code regulations (Exhibit E-6). The owner provided a Multnomah County tax lot consolidation request (Exhibit G-2). A condition is needed to ensure that this request is completed prior to approval of the revised building plans.

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 the following two Adjustments for a new detached art studio:

- Reduce the required side setback from the east property line from 5 feet to 2 feet; and
- Reduce the required rear setback from the south property line from 5 feet to 1 foot-6 inches.

Detached covered accessory structures, such as the proposed art studio, that do not meet the exception of Section 33.120.280, must meet minimum building setbacks of Section 33.120.220. The purpose of the setback requirement in the R2 zone is stated in Section 33.120.220.A:

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 multi-dwelling development in the city's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *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;*
- *Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users; 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 art studio has 10-foot high walls within the side and rear setbacks and an overall height of 15 feet as measured to the top of the rooftop privacy screen. The art studio will be located at least 15 feet from the closest structure on adjacent properties. The Fire Bureau reviewer had no concerns about the requested Adjustments and access to the structure for fire-fighting is available from the front and side of the new structure. Therefore, separation for fire protection and access for fire-fighting is maintained for the proposal.

Reflect general building scale and placement: Several neighboring properties contain existing detached accessory structures that are located near the side or rear property lines:

- 1414 NE 17th Avenue has a 240 square-foot detached garage located near the side property line;
- 1825 NE Clackamas Street has a 770-square foot detached garage with carport located at the northwest corner of the lot; and
- 1733 NE Halsey Street has a 468-square foot detached garage located near the side property line.

These structures on neighboring properties are similarly limited to one story in height. Therefore, the size and placement of the proposed art studio reflects the general building scale and placement of development in the neighborhood, and promotes a reasonable physical relationship between residences. It's important to note that without the rooftop deck, the proposed art studio would be exempt from minimum side and rear setbacks per Section 33.120.280. To limit potential impacts on neighboring properties, the rooftop deck is set back at least 5 feet from the affected side and rear property lines.

Promote a reasonable physical relationship between residences: The proposed art studio would be located over 40 feet from the duplex on the property to the west, approximately 50 feet from the house on the property to the southwest, approximately 30 feet from the duplex on the property to the south, approximately 15 feet from the condominium complex on the property to the southeast, and approximately 26 feet from the house on the property to the south. Therefore, despite being located within the side and rear setbacks, the location of the proposed art studio maintains a reasonable physical relationship between residences.

Promote options for privacy: The proposed art studio includes a rooftop deck, though this deck is set back 5 feet from the rear property line and 5 feet–6 inches from the side property line, in conformance with the R2 building setback standard. The partial hip roof located within the side and rear setbacks provides 3 feet of screening and the privacy screen atop the roof would provide an additional 2 feet of screening. Five feet of screening helps to block views from the rooftop deck into the yards of the properties located to the east and south and prevents views from neighboring properties into the rooftop deck. Therefore, the proposed art studio with a rooftop deck and screening provides options for privacy for neighboring properties.

Setback requirements along transit streets: Adjacent to the site, NE Halsey Street is not classified as a transit street.

Provide adequate flexibility to site a building to be compatible with the neighborhood: As stated above, the proposed art studio reflects the general building scale and placement of development in the neighborhood and is therefore compatible with the neighborhood. Additionally, the proposed art studio location and massing fits with the topography of the site, provides additional outdoor area, and allows for architectural diversity.

Provide room for a car: The applicant's proposal would not affect the vehicle parking area on the site. Vehicle parking is provided on an existing driveway, more than 28 feet in length, and therefore long enough to avoid parked vehicles within the 10-foot front setback or vehicles overhanging the street or sidewalk. Driver visibility remains unchanged with the proposed Adjustment.

Based on the information above, the proposed Adjustments equally meet the intent of the setback regulation. 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 within a multi-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 art studio 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: Two Adjustments have been requested. The overall purpose of the R2 zone is to preserve land for urban housing and provide opportunities for multi-dwelling housing. The proposed detached art studio located within the side and rear setbacks does not change the site's potential for future urban housing and maintains opportunities for multi-dwelling housing. The development standards of the R2 zone work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. Except for the requested Adjustments to the side and rear setbacks, the proposal will meet all remaining development standards of the R2 zone, such as maximum height, maximum building coverage and minimum outdoor area. As stated in Approval Criteria A and B above, the proposal equally meets the purpose of the minimum building setback standards. Taken together, these features promote a desirable residential area. Therefore, the requested Adjustments maintain consistency with the purpose of the R2 zone. This criterion is met.

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 does not apply.

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 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.

Note about location of property lines

Because the art studio is proposed near property lines, at the time of inspection for the building permit you may be required to expose your existing property corner pins. The pins need to be readily viewable from front to back of the property and from side to side with a string line set between the corner pins for reference. If you are unable to expose the existing property corner

pins or have string lines set, it may be necessary to provide a Hub and Tack Survey to document the distance from the closest point of the foundation forms prior to pouring the concrete to the property line(s) for the inspector to review. This may be necessary to demonstrate compliance with the required or approved building setbacks.

CONCLUSIONS

The proposal to reduce the side and rear setbacks equally meets the intent of the development standards and does not have significant adverse impacts on the livability and appearance of the surrounding residential neighborhood. The proposed detached art studio will replace an existing detached garage, located generally in the same location on the site. Its walls are limited to 10 feet in height, and the rooftop deck is setback more than 5 feet from property lines. The overall height of the art studio will not exceed 15 feet. The applicant has demonstrated that the applicable approval criteria have been met, and the Adjustment request must be approved.

ADMINISTRATIVE DECISION

Approval of a detached accessory art studio with a rooftop deck, including the following Adjustment review approvals:

1. Reduce the required side (east) building setback from 5 feet to 2 feet with no eave (Section 33.120.220); and
2. Reduce the required rear (south) building setback from 5 feet to 1 foot – 6 inches with no eave (Section 33.120.220).

The above approvals are granted per the approved site plans, Exhibits C-1 through C-3, signed and dated November 9, 2017, subject to the following condition:

- A. As part of the building permit application submittal (may be a Revision to the existing permit #17-205831 RS) each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 – C-3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 17-246215 AD. No field changes allowed."
- B. The existing tax account #R182300 must be consolidated into tax account #R182299. The applicant will provide documentation of the completed consolidation at the time of building permit plan submittal.

Staff Planner: Marguerite Feuersanger

Decision rendered by:  **on November 9, 2017.**

By authority of the Director of the Bureau of Development Services

Decision mailed: November 14, 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 September 25, 2017, and was determined to be complete on October 12, 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 September 25, 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 February 9, 2018.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on November 28, 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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **November 28, 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.

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:

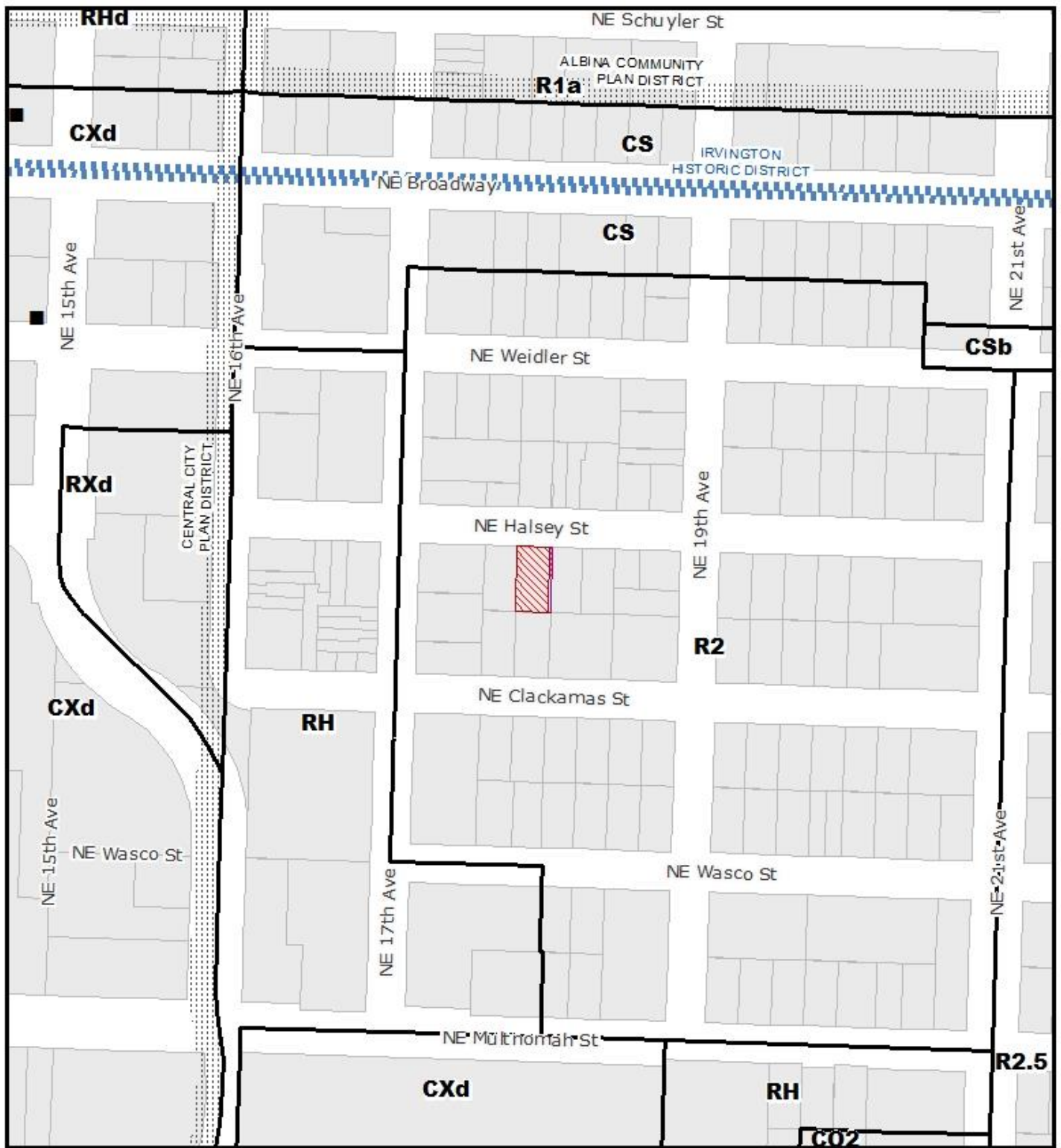
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Art Studio Floor Plan, South and East Elevations
 - 3. Roof Deck Plan, North and West Elevations
- 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 Plans Examiner of BDS
- F. None
- G. Other:
 - 1. Original LU Application
 - 2. Request for Tax Account Consolidation, November 8, 2017

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



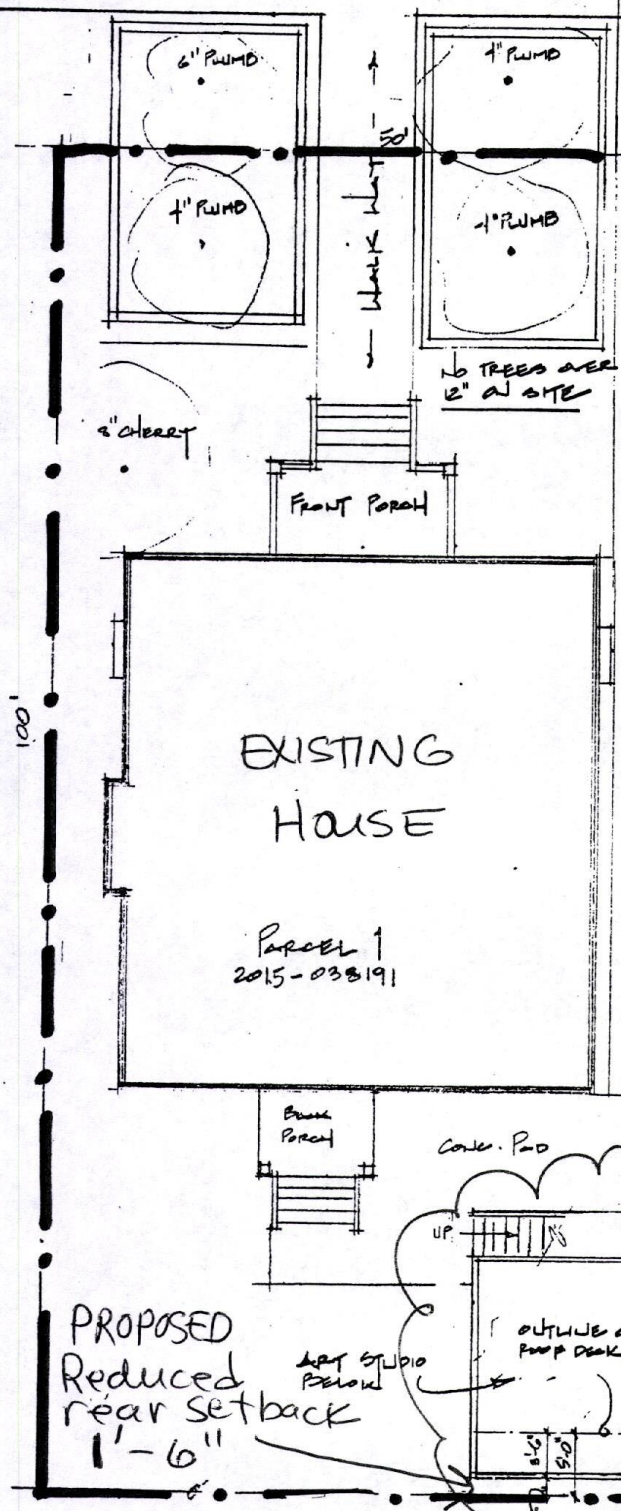
-  Site
-  Also Owned Parcels
-  Historic Landmark

File No.	LU 17-246215 AD
1/4 Section	2932
Scale	1 inch = 200 feet
State ID	1N1E35AB 4000
Exhibit	B Sep 27, 2017

← NE HALSLEY →
 ← SIDE WALK →

Approved
City of Portland
 Bureau of Development Services
 Planner: *[Signature]*
 Date: 2.52 *11/9/2017*
 *This approval applies only to the reviews performed and is subject to all conditions of approval.
 Additional zoning requirements may apply.

McCune Design LLC
 Matthew McCune
 2812 NE 8th Ave. Portland, OR 97212
 503-789-5086 matthew@mcuncedesign.com



NO TREES OVER 6" @ SITE
 2" cherry
 FRONT PORCH
 BACK PORCH
 CONG. RESIDENT
 100'
 100'
 EAST PROPERTY LINE
 PROPOSED ART STUDIO WITH ROOFTOP DECK
 PROPOSED Reduced 2-foot Side Setback

SITE
 5200 S.F.
 52' x 100'

PARCELS 11-2016-038191 - TO BE CONSOLIDATED

① SITE PLAN
 Not to Scale
 0 5 10 20 FEET

EXHIBIT C-1
 17-24625 AD

Lane/Ettien Residence
 Garage Replacement
 1734 NE Halsley St. Portland, OR 97232
 971-235-6221

A-1 Site Plan

Oct 12, 2017