



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

Ted Wheeler, Mayor
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: May 1, 2018
To: Interested Person
From: Leah Dawkins, Land Use Services
503-823-7830 / Leah.Dawkins@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 18-121595 TV

GENERAL INFORMATION

Applicant/Owner: Peter Nesterenko
PO Box 30034 / Portland, OR 97294
(503) 453-7005

Arborist: Mark Bourgeois, Arbor Pro, Inc.
PO Box 2267 / Lake Oswego, OR 97035

Surveyor: Joe Ferguson, Ferguson Land Surveying
646 SE 106th Ave / Portland, OR 97216

Site Address: 11417 NE MORRIS ST

Legal Description: LOT 2, PARTITION PLAT 2016-95
Tax Account No.: R649673780
State ID No.: 1N2E27AC 03102
Quarter Section: 2742

Neighborhood: Parkrose Heights, contact Tom Badrick at tbadrick@aol.com.
Business District: Gateway Area Business Association, contact Paul Wild at paul.wild@mhcc.edu
District Coalition: East Portland Neighborhood Office, contact Victor Salinas at 503-823-6694.

Zoning: R7h- Single Dwelling Residential with "h" Aircraft Landing Zone Overlay

Case Type: TV- Tree Violation Review
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant is proposing to mitigate for the removal of two trees on the site that were required to be preserved through an approved tree preservation plan. The original plan was approved through the land division review that created the lots, land use case file number LU 14-196666 LDP AD. The trees in question were a 9-inch Cherry tree and a 9-inch Pear tree. The trees were removed from Parcel 2. To mitigate for the removal of the two trees, the applicant has proposed to preserve two other existing trees on the site, one 12-inch Blue spruce tree and

one 13-inch Blue spruce tree. This will provide 25 inches of mitigation to compensate for the 18 inches of tree diameter removed from the site.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are: **33.853.040.C-Corrections to Violations.**

FACTS

Site and Vicinity: The subject property is relatively flat. The site has three trees and landscaping shrubs. There is a new residential structure currently being reviewed for building permits proposed for the site. Surrounding development is primarily ranch style single family dwellings on larger lots. The street grid consists of long blocks along east-west streets and limited connectivity from north to south.

Zoning: The R7 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The Aircraft Landing ("h") overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. On this site the base zone (R5) height limit of 30 feet applies and cannot be exceeded without a future adjustment review.

Land Use History: City records indicate the following prior land use review for this site:

- **LU 14-19666 LDP AD:** Approval of a Preliminary Plan for a 2-parcel partition. An adjustment to maximum lot size from 12,000 square feet to 17,830 square feet was approved for Parcel 2. Four trees were required to be preserved as part of the Land Division Conditions of Approval. Two of those trees were removed from Parcel 2 and are the subject of this tree violation review. One of these trees remains on Parcel 2 and one remains on Parcel 1.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **July 20, 2017**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Portland Bureau of Transportation
- Fire Bureau
- Water Bureau
- Site Development Section of BDS
- Life Safety Section of BDS
- Urban Forestry

Neighborhood Review: A "Notice of Proposal in Your Neighborhood" was mailed on March 23, 2018. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR TREE REVIEW

33.853.040 Approval Criteria

- C. Corrections to violations. For corrections to violations of tree protection and tree preservation regulations of this Title, or violations of tree preservation requirements of a land use review, the applicant must show the review body that all of the following approval criteria are met:**

1. Mitigation Plan;

- a. The applicant's mitigation plan meets the purpose of the regulation that was violated. Where the violation is of a tree preservation requirement of a**

land use review, the mitigation plan meets the purpose of the regulation that required the preservation plan; and

- b. **The mitigation plan includes replacement of trees cut, or the preservation and protection of additional trees on the site not originally proposed for preservation. If replacement of trees is proposed, the plan must at a minimum meet the requirements of Table 853-1. If additional trees on the site are proposed for preservation and protection, the applicant must submit an arborist's assessment indicating the suitability of the trees for preservation, recommendations for protection methods, and any remedial treatment that may be necessary to ensure the long term viability of the trees. The total diameter of additional trees preserved must exceed the total diameter of trees cut.**

Table 853-1 Tree Replacement for Violation	
Size of tree removed (inches in diameter)	Number of Trees to be Planted
Up to 12	3 trees
More than 12 to up to 20	5 trees
More than 20 to up to 25	7 trees
More than 25 to up to 30	10 trees
More than 30	15 trees

- 2. **Replacement trees must be planted as follows:**
 - a. **On the site where the violation occurred;**
 - b. **If it is not possible to plant the trees on the site where the violation occurred, then the trees may be planted on other property owned by the applicant within the City of Portland. This includes property owned by a Homeowners' Association to which the applicant belongs;**
 - c. **If it is not possible to plant the trees as described in 2.a or b, then a payment in lieu of planting may be made to the Tree Planting and Preservation Fund**
- 3. **Replacement trees must meet the requirements of Section 33.248.030, Plant Materials, unless the mitigation plan calls for different planting specifications to address concerns about plant survival or impacts on the site.**

Findings: This review is for violation of a tree preservation plan in accordance with Chapter 33.630, Tree Preservation. The purpose of the regulation that required the preservation plan is as follows:

33.630.010 Purpose

The land division process provides the flexibility and opportunity to promote creative site design that considers multiple objectives, including integration of trees. The regulations of this chapter require that trees be considered early in the design process with the goal of preserving high value trees and mitigating for the loss of trees. Desired benefits of trees include:

- *Protecting public health through the absorption of air pollutants, contamination, and capturing carbon dioxide;*
- *Buffering from noise, wind, and storms;*
- *Providing visual screening and summer cooling;*
- *Reducing energy demand and urban heat island impacts;*
- *Filtering stormwater and reducing stormwater runoff;*
- *Reducing erosion, siltation, and flooding;*
- *Stabilizing slopes;*
- *Enhancing property values;*

- *Providing fish and wildlife habitat, including support for native species biodiversity through the preservation and planting of native trees;*
- *Providing food for people and wildlife; and*
- *Contributing to the beauty of the City, its natural heritage, and the character of its neighborhoods.*

The applicant proposes to mitigate for the removal of two 9-inch fruit trees, trees #17 and #18 on the original arborist report submitted for LU 14-196666 LDP AD by preserving two other trees on the subject site. The trees are spruce trees that are 12 inches and 13 inches in diameter. No tree planting is proposed as part of the mitigation. Therefore criteria C.2 and C.3 do not apply. There is currently a building permit under review for the site (17-240247 RS) in order to build a new single-family residence.

The original land division site, which included this and one other parcel, had a total of 133 inches of non-exempt tree diameter. The applicant originally proposed to protect 48 inches of tree diameter, or 36 percent of the total non-exempt tree diameter, on Parcels 1 and 2. Parcel 2, the site currently in question, contained 28 inches of the tree diameter that was required to be preserved. The applicant was required to preserve a total of four trees on the site, but did not remove all the trees which were not required for preservation. The original proposal complied with one of the available options for Tree Preservation at the time of the land division.

The mitigation proposal will preserve a total of 36 inches of tree diameter on Parcel 2. This will increase the preserved tree diameter across the original land division site to 56 percent. The mitigation will continue to meet the purpose of the 33.630, Tree Preservation, by maintaining existing larger trees on the site. This will aid in stormwater management, provide wildlife habitat, provide cooling, and contribute to the beauty of the site and the surrounding neighborhood. Because the mitigation trees are larger than the trees originally required for preservation, the applicant is able to preserve a higher percentage of tree diameter across the original land division site. Criterion 1.a. is met.

The applicant has submitted an arborist report addendum (Exhibit A.3) indicating that the spruce trees proposed for preservation are “all in average condition and should remain viable and safe with proper maintenance.” The applicant indicated on the submitted site plan (Exhibit C.1) and on the revised building permit plan 17-240247 RS (Exhibit C.2) that appropriate tree preservation fencing will be provided during construction. The applicant will also be required to plant additional trees to meet the tree density requirements of Title 11 in association with the building permit. Criterion 1.b. is met.

In order to ensure that future owners of the parcel are aware of the tree preservation requirements, the applicant must record a revised Acknowledgement of Tree Preservation Land Use Conditions to be associated with the approved final plat, prior to the approval of the final building permit for the dwelling currently under construction. The acknowledgement must identify that any further development on this site must be carried out in conformance with the revised tree preservation plan (Exhibit C.1).

With the condition noted above, the mitigation plan meets the criteria and should be approved.

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 requirements of Title 11 can be met, and 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

As part of a 2-parcel land division (LU 14-196666 LDP AD) that created the subject site, two 9-inch fruit trees were required to be preserved on this lot. The trees were damaged and subsequently removed without review. To address the violation, the applicant will be required

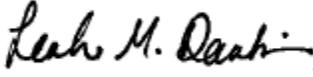
to preserve a 12-inch spruce tree and a 13-inch spruce tree on the subject site. A condition to provide an updated Acknowledgement of Tree Preservation will amend tree-related conditions of LU 14-196666 LDP AD. All other conditions of LU 14-196666 LDP AD continue to apply.

ADMINISTRATIVE DECISION

Approval of a Tree Violation Review to correct a violation resulting from the removal of two 9-inch diameter fruit trees required to be preserved as part of LU 14-196666 LDP AD, per the approved site plan (Exhibit C.1) and replacing condition D.1 with the following condition:

- A. Developments on Parcel 1 and 2 shall be in conformance with the revised Tree Preservation Plan (Exhibit C.1), the applicant's arborist reports (Exhibits A.2 and A.3) and the applicant's arborist report from LU 14-196666 LDP AD (Exhibit A.7) for all other trees required to be preserved by this prior case. Specifically, trees numbered 3, 8, 9, and 20 are required to be preserved, with standard root protection zones indicated on Exhibit C.1. Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground.
- B. Prior to final inspection of building permit 17-240247 RS, the applicant shall execute a revised Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to the subject site, removes trees #17 and #18 from required preservation and adds Trees #8 and #9 to required preservation. A copy of the revised Approved Tree Preservation Plan (Exhibit C.1) must be included as an Exhibit to the Acknowledgement.

Staff Planner: Leah Dawkins

Decision rendered by:  **on April 24, 2018**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 1, 2018

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 February 13, 2018, and was determined to be complete on March 21, 2018.

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 February 13, 2018.

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 19, 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 Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 15, 2018** 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 Hearings Officer 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 Hearings Officer 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 **May 16, 2018** 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:

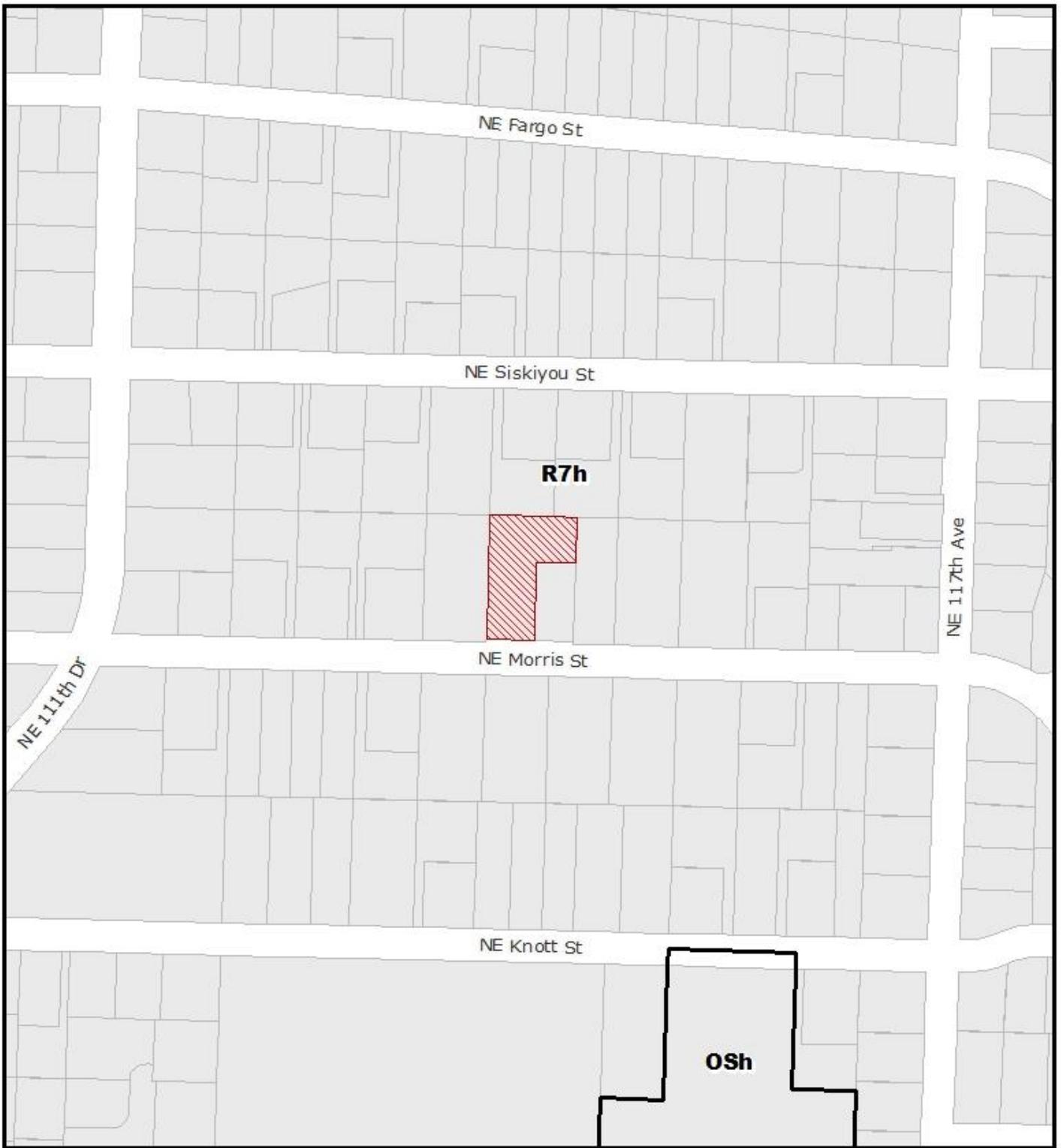
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant Narrative
 - 2. Arborist Report
 - 3. Arborist Report Addendum
 - 4. Correction Notice
 - 5. Site Plan submitted by Arborist
 - 6. Land Division Site Plan
 - 7. Arborist Report from LU 14-19666 LDP
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Tree Preservation Plan (attached)
 - 2. Tree Preservation Residential Permit Revision
- 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. Bureau of Parks, Forestry Division
 - 7. Life Safety
- F. Correspondence: None Submitted
- G. Other:
 - 1. Original LU Application
 - 2. Incompleteness Letter

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 
NORTH

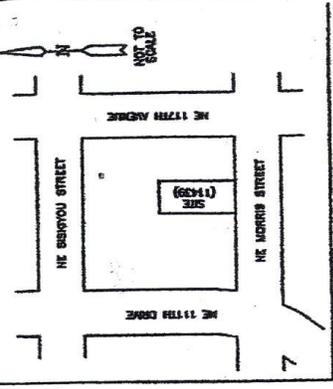
 Site

File No.	LU 18-121595 TV
1/4 Section	2742
Scale	1 inch = 200 feet
State ID	1N2E27AC 3102
Exhibit	B Feb 14, 2018

Site Plan

11439 NE MORRIS ST
 PHA 97880
 Peter Nesterenko
 Submitter By:
 Arko Plc Inc.
 503-473-8733

VICINITY MAP



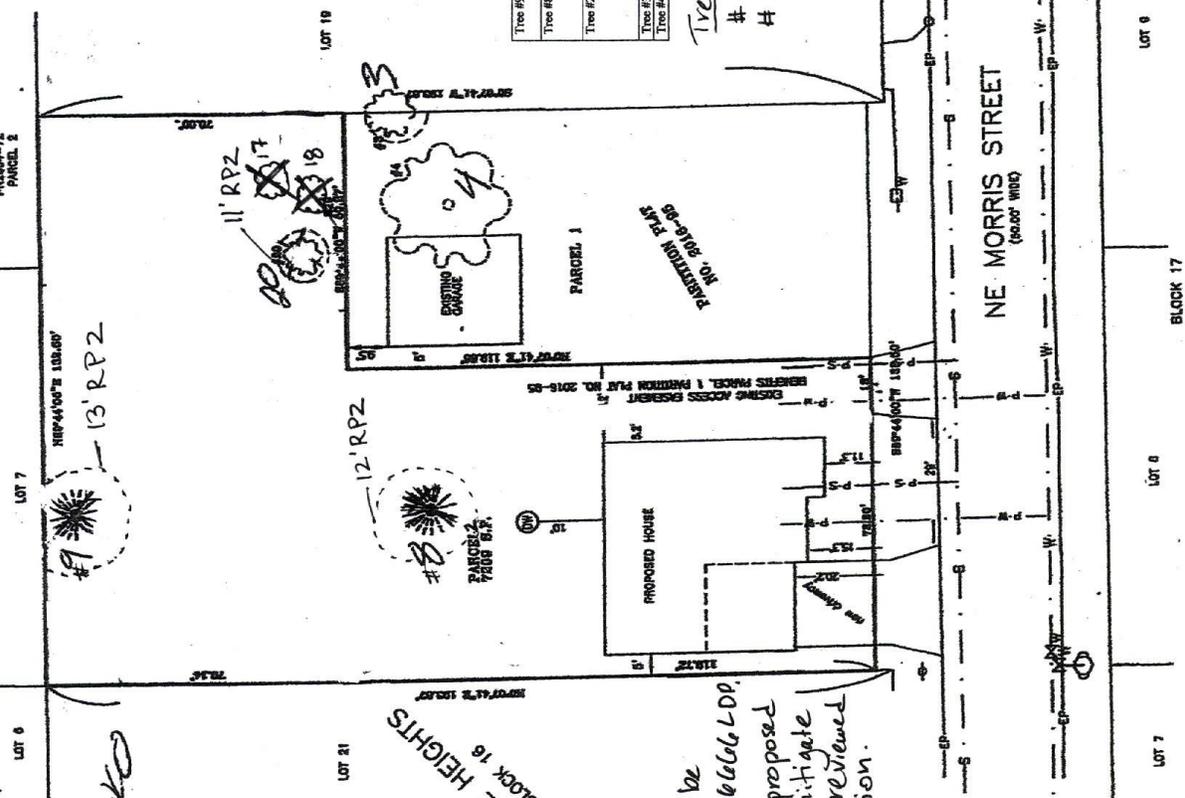
- SYMBOLS**
- ☐ = POWER POLE
 - ☐ = GUY ANCHOR
 - ☐ = WATER METER
 - ☐ = GAS METER
 - ☐ = ELECTRIC METER
 - ☐ = WATER VALVE
 - ☐ = GAS VALVE
 - ☐ = MANHOLE
 - ☐ = CATCH BASIN
 - ☐ = FIRE HYDRANT
 - ☐ = DOWN SPOUTS
 - ☐ = WATER LINE
 - ☐ = GAS LINE
 - ☐ = ELECTRIC LINE
 - ☐ = SANITARY SEWER
 - ☐ = CONCRETE
 - ☐ = ROOT PROTECTION ZONE
 - ☐ = PROPOSED DRYWELL

Staff Note

Tree # 20 required to be preserved per LU 14-196666 LDP.
 Trees # 8 and # 9 proposed for preservation to mitigate for removal of trees reviewed through this violation.

Tree #9	Colorado Blue Spruce	Picea pungens	13" DBH	Average condition
Tree #8	Colorado Blue Spruce <td>Picea pungens <td>12" DBH <td>Below average condition. Crown dom. Poor.</td> </td></td>	Picea pungens <td>12" DBH <td>Below average condition. Crown dom. Poor.</td> </td>	12" DBH <td>Below average condition. Crown dom. Poor.</td>	Below average condition. Crown dom. Poor.
Tree #20	Pear <td>Pyrus sp. <td>11" DBH <td>Fair condition. Broken tops, have been pruned out.</td> </td></td>	Pyrus sp. <td>11" DBH <td>Fair condition. Broken tops, have been pruned out.</td> </td>	11" DBH <td>Fair condition. Broken tops, have been pruned out.</td>	Fair condition. Broken tops, have been pruned out.
Tree #3	Cherry <td>Prunus sp. <td>8"</td> <td>Preserve</td> </td>	Prunus sp. <td>8"</td> <td>Preserve</td>	8"	Preserve
Tree #4	Pin Oak <td>Quercus palustris <td>30"</td> <td>Preserve</td> </td>	Quercus palustris <td>30"</td> <td>Preserve</td>	30"	Preserve

Trees Removed
 # 17 9" Cherry
 # 18 9" Pear



REGISTERED PROFESSIONAL LAND SURVEYOR
DRAFT
 OREGON
 JULY 28, 1980
 JOE H. FERGUSON
 2448
 RENEWAL DATE 12/31/17

Site Plan

PARCEL 2 OF PARTITION PLAT NO. 2016-05, BLOCK 18, PARKROSE HEIGHTS IN THE NE 1/4, SECTION 27, T.1N, R.2E, W.4M, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON

Ferguson Land Surveying, Inc.
 646 SE 106TH AVE, PORTLAND, OR 97216
 Phone (503) 408-0601 Fax (503) 408-0602

DATE: MARCH 7, 2017

JOB NO. 17-024
 DRAFTED 3.7.17

REVISIONS

SHEET 1 OF 1

LU 18-121595-TV
 CASE NO. 18-121595
 EXHIBIT C.1