



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

Ted Wheeler, Mayor  
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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** January 30, 2019  
**To:** Interested Person  
**From:** Amanda Rhoads, Land Use Services  
503-823-7837 / [Amanda.Rhoads@portlandoregon.gov](mailto:Amanda.Rhoads@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 18-265300 AD**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Viktor Nesterenko  
1135 NE 114th Ave  
Portland, OR 97220

**Site Address:** 2702 NE 108TH AVE

**Legal Description:** BLOCK 11 S 94' OF LOT 1, PARKROSE HTS  
**Tax Account No.:** R647903070  
**State ID No.:** 1N2E27BD 08700  
**Quarter Section:** 2741  
**Neighborhood:** Parkrose Heights, contact Tom Badrick at [badrickt@gmail.com](mailto:badrickt@gmail.com).  
**Business District:** Gateway Area Business Association, contact at [info@gabanet.com](mailto:info@gabanet.com)  
**District Coalition:** East Portland Community Office, contact Victor Salinas at 503-823-6694.

**Plan District:** None  
**Zoning:** R7 – Single-Dwelling Residential 7,000  
**Case Type:** AD – Adjustment Review  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant proposes a major remodel to the house. The wall proposed to be retained, the south wall of an addition to the original house, appears to have not been permitted, and so is treated as new for the purposes of this review. The applicant proposes to use this wall, which is located between 1.81 and 1.91 feet from the south property line, to form a wall for a new, two-car garage that will be attached to the house. To locate this wall in the required building setback, the applicant requests an Adjustment to Zoning Code Section 33.110.220.B and Table 110-3 to reduce the south side setback for the primary structure from 5 feet to between 1.81 and 1.91 feet, as shown on the attached plans.

**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 9,400-square-foot lot is currently developed with a 744-square-foot house that was constructed in 1948 and added onto in the 1960s. The site has what appears to be an unpaved driveway but, currently, no garage. NE 108<sup>th</sup> Ave is largely without sidewalk paving on both sides of the street. Lots tend to be varying sizes, and the housing stock is a mix from the 1940s to the present. The site is two to three blocks west of the Knott Creek School, Knott City Park, and Sacramento Elementary School. The site is a half mile north of the Gateway Plan District area and a half mile east of the I-205 Interstate.

**Zoning:** The Residential 7,000 (R7) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 4,200 square feet, with a minimum width and depth dimensions of 40 feet and 55 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 7,000 square feet of site area.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **December 18, 2018**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services responded with no objections to the requested Adjustment (Exhibit E.1);
- Bureau of Transportation responded with no concerns (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 with no objections to the approval of this proposal and indicated that a separate building permit application had been submitted for the work proposed (Exhibit E.6).

**Neighborhood Review:** No written responses were received from either the Neighborhood Association or notified residents in response to the 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 has requested an Adjustment to reduce the south side setback from 5 feet to between 1.8 and 1.9 feet to accommodate an attached garage. The wall in the setback will be retained from an existing 26.7-foot-long wall that, while already located in the setback, was not originally permitted. Therefore, this Adjustment treats the wall as new.

The purpose of the setback requirement in the R7 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 attached garage is the only part of the new structure that would be located within the required building setback. The applicant changed the proposal by lowering the height of the garage to 10 feet, consistent with the maximum wall height allowed in setbacks for structures like garages when they are detached from the main house. Further, the applicant changed the proposal to remove the proposed cover over the rear door and the cover over the front garage door to reduce the overall length of the garage in the setback.

While this garage is not detached, limiting its height to 10 feet and reducing its length to 26.5 feet makes the proposal more in line with what can be allowed outright for detached structures in required setbacks. Approving this Adjustment would result in the continuation of a condition that has persisted at the site for several decades, and would maintain the existing separation from the subject site and the development to the south. On that neighboring site, there is a side yard that is approximately 17 feet deep, and the garage and driveway on the adjacent property will further separate the proposed garage from the living area of the neighboring property (see Exhibit A.6). This separation will ensure adequate air and light flow and access for fire fighting, which is available from the front and side.

Reflect general building scale and placement; Promote a reasonable physical relationship between residences: As noted above, detached garages are allowed in required setbacks under certain circumstances. Placing them close to the side and rear of lots is common in Portland neighborhoods. With 5-foot side and rear setbacks in the R7 zone, the separation of the proposed garage, albeit attached to the primary house, will result in a condition where the structure on the subject site and the structure to the south will maintain a separation that exceeds the minimum building code distance of 6 feet, and exceeds the separation required by the 5-foot setbacks; i.e., the two attached garages will be a distance of at least 19 feet (approximately 17 feet on the neighboring property and just under 2 feet on the subject site), instead of the minimum of 10 feet for the primary structures (or down to 0 feet for certain detached structures).

With a condition of approval that limits the height of the garage to 10 feet, commensurate with the maximum height of accessory structures allowed within building setbacks, the size and placement of the garage extending just over 3 feet into the required side setback reflects the general building scale and placement of development in the neighborhood, and maintains a reasonable physical relationship between residences.

Promote options for privacy: No windows or doors are located on the garage wall that is within the side setback. The garage is not living space; locating it within the setback will not promote activities closer to the neighboring property or create new views. The living space of the house is located outside of the required side setback. In order to prevent any future privacy concerns, a condition of approval will prohibit the placement of a rooftop deck above the garage. With this condition, options for privacy will be retained by neighboring properties.

Require larger front setbacks; Provide room for a car: The applicant's proposal would not affect the front setback. The garage door location exceeds the minimum garage entrance setback requirement of 18 feet, ensuring there is room for a car to park in front of the garage door without overhanging the street.

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

Based on these reasons, and with the conditions of approval that the garage height is limited to 10 feet, and that no rooftop deck will be allowed to be constructed on top of the garage, the proposed Adjustments equally meet the intent of the regulation and this criterion is met.

- B.** If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 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 garage maintains light, air, and separation; reflects the general building scale and placement; promotes a reasonable physical relationship between residences; and promotes options for privacy. For these reasons, the proposal does not significantly detract from neighborhood livability or appearance. With the conditions of approval that the garage height is limited to 10 feet, and that no rooftop deck will be allowed to be constructed on top of the garage, 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:** Only one adjustment is requested. This criterion is not applicable.

- D.** City-designated scenic resources and historic resources are preserved; and

**Findings:** City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, 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, with the conditions of approval that the garage height is limited to 10 feet, and that no rooftop deck will be allowed to be constructed on top of the garage, the proposal equally meets the purposes of the setback regulation and has no adverse impacts on the livability or appearance of the residential area. Therefore, with the imposition of the two conditions of approval preventing impacts from the proposal, this criterion can be 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). As the site is not within an environmental zone, 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 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**

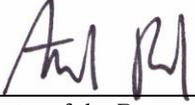
The proposal to reduce the required south side setback can equally meet the intent of the regulations and will not have any adverse impacts on the livability and appearance of the surrounding residential neighborhood with the conditions of approval that the garage height is limited to 10 feet, and that no rooftop deck will be allowed to be constructed on top of the garage. Because the approval criteria are met, the proposal should be approved with conditions.

## **ADMINISTRATIVE DECISION**

Approval of an Adjustment to Zoning Code Section 33.110.220.B and Table 110-3 to reduce the south side setback for the primary structure from 5 feet to between 1.81 and 1.91 feet, per the approved site plans, Exhibits C.1 through C.6, signed and dated January 28, 2019, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through C) 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 18-265300 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The height of the garage is limited to 10 feet.
- C. No rooftop deck will be allowed on top of the garage.

**Staff Planner: Amanda Rhoads**

Decision rendered by:  on January 28, 2019  
By authority of the Director of the Bureau of Development Services

**Decision mailed: January 30, 2019**

**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 November 13, 2018, and was determined to be complete on December 14, 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 November 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: April 13, 2019.**

**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 February 13, 2019** 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 **February 13, 2019** 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.

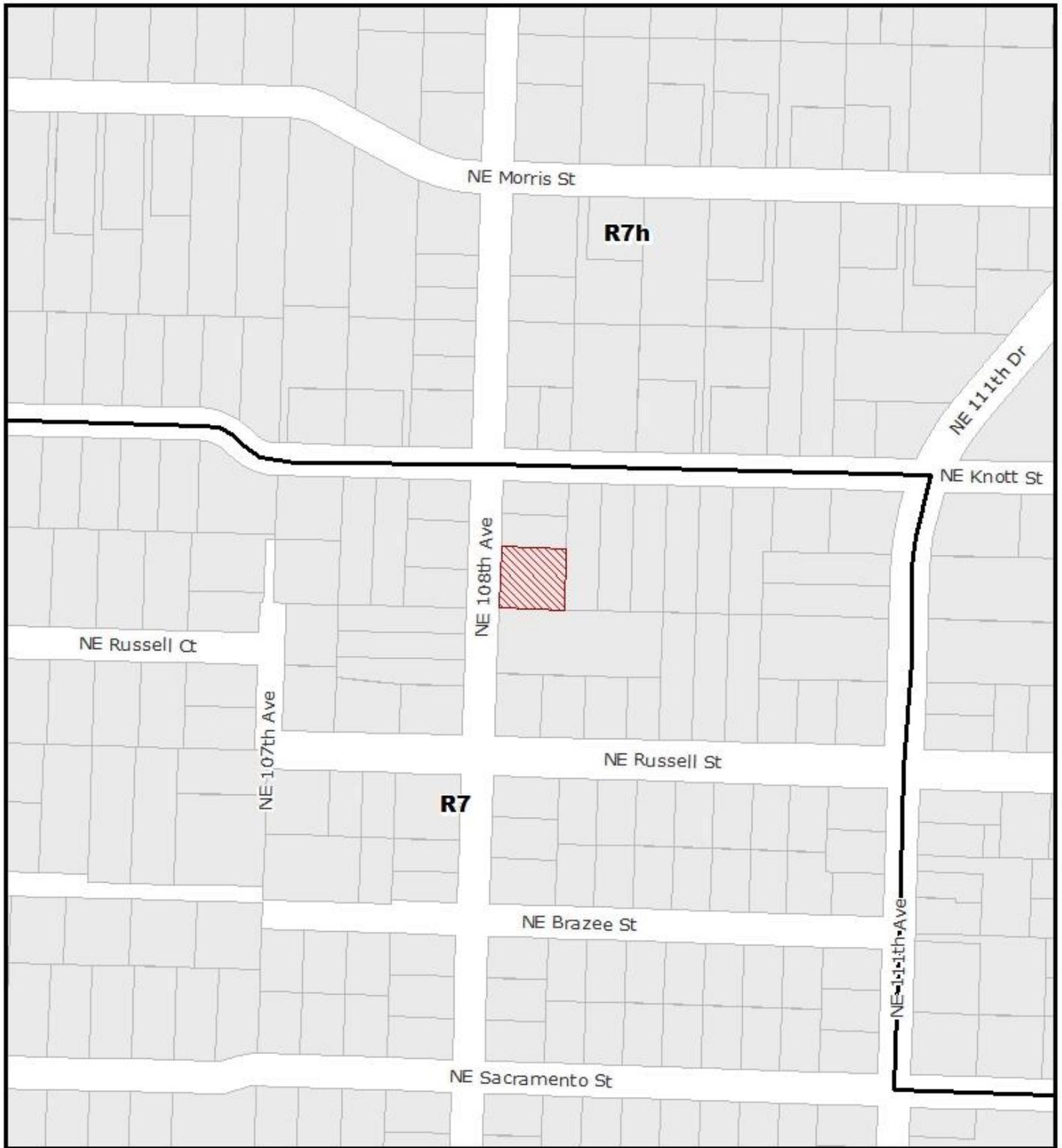
**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Applicant Narrative

2. Original Plan Set (superseded by A.7 and the C Exhibits)
  3. Property Survey
  4. Response to Incomplete Letter, received December 3, 2018
  5. Existing South Elevation and Floor Plan
  6. Existing Site Plan with Neighboring Site Building Outlines
  7. Updated Plans
- B. Zoning Map (attached)
- C. Plans/Drawings:
1. Site Plan (attached)
  2. West Elevation (attached)
  3. South Elevation (attached)
  4. East Elevation
  5. North Elevation
  6. Full-Sized, Scaled Site Plan and Elevations
- D. Notification information:
1. Mailing list
  2. Mailed notice
- E. Agency Responses:
1. Bureau of Environmental Services
  2. Bureau of Transportation
  3. Water Bureau
  4. Fire Bureau
  5. Site Development Review Section of BDS
  6. Life Safety (Building Code) Plans Examiner
- F. Correspondence: none received
- G. Other:
1. Original Land Use Application and Receipt
  2. Incomplete Letter, November 20, 2018
  3. Planner Email, December 4, 2018

**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.	<u>LU 18-265300 AD</u>
1/4 Section	<u>2741</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1N2E27BD 8700</u>
Exhibit	<u>B</u> <u>Nov 16, 2018</u>

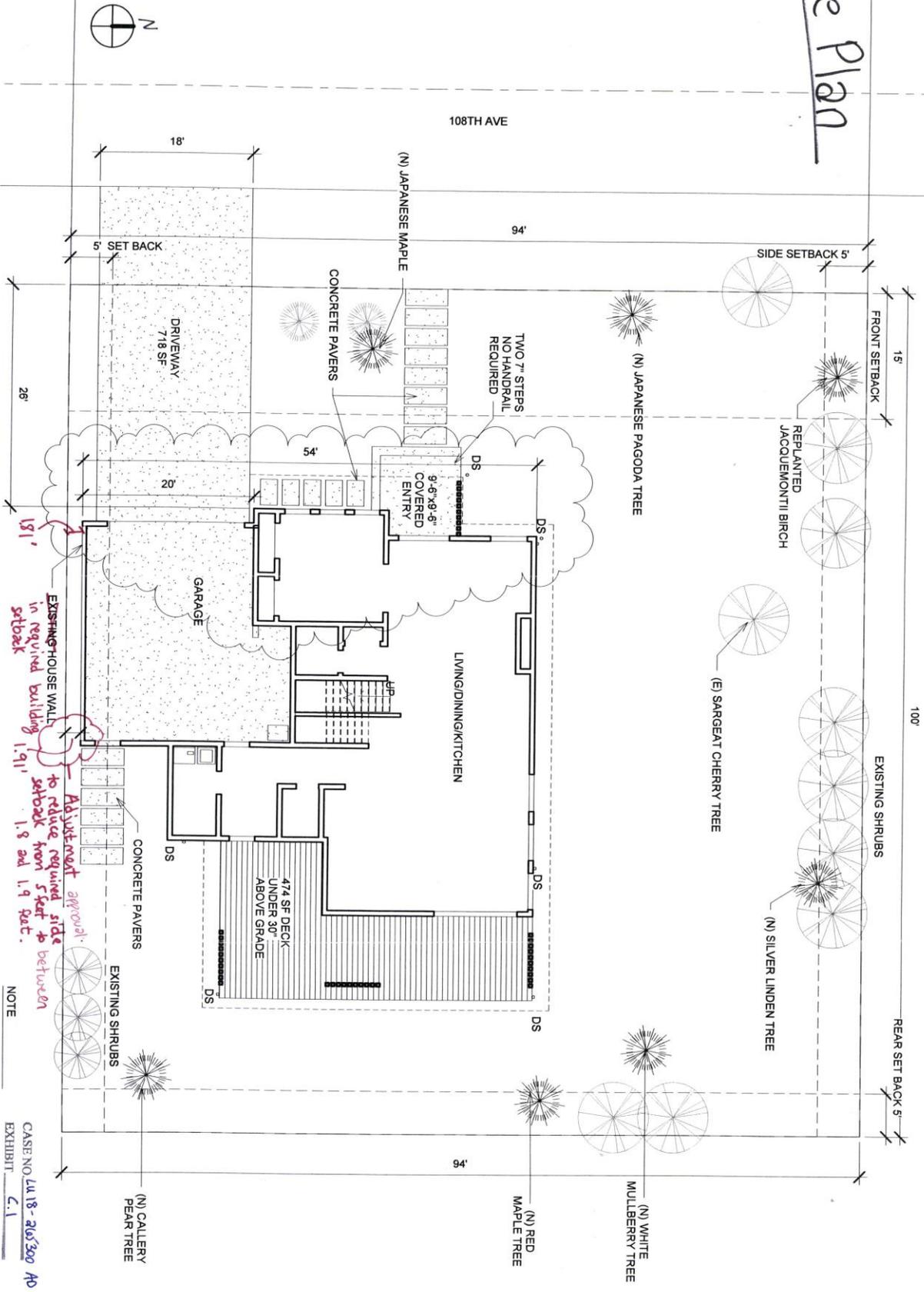
\*Approved\*

City of Portland - Bureau of Development Services

Planner Am M Date 1/28/2019

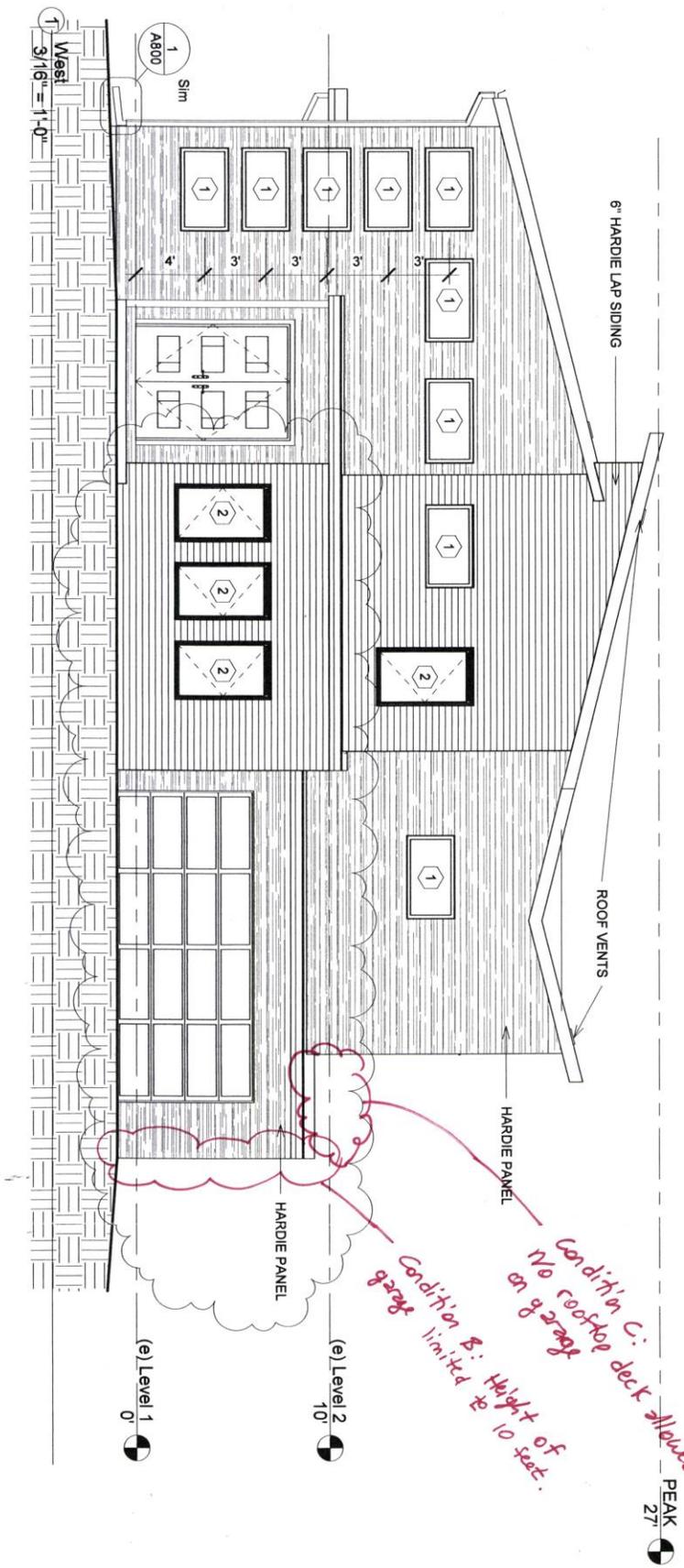
\* This approval applies only to the reviews requested and is subject to all other rules of approval. Additional zoning requirements may apply.

# Site Plan



NOTE

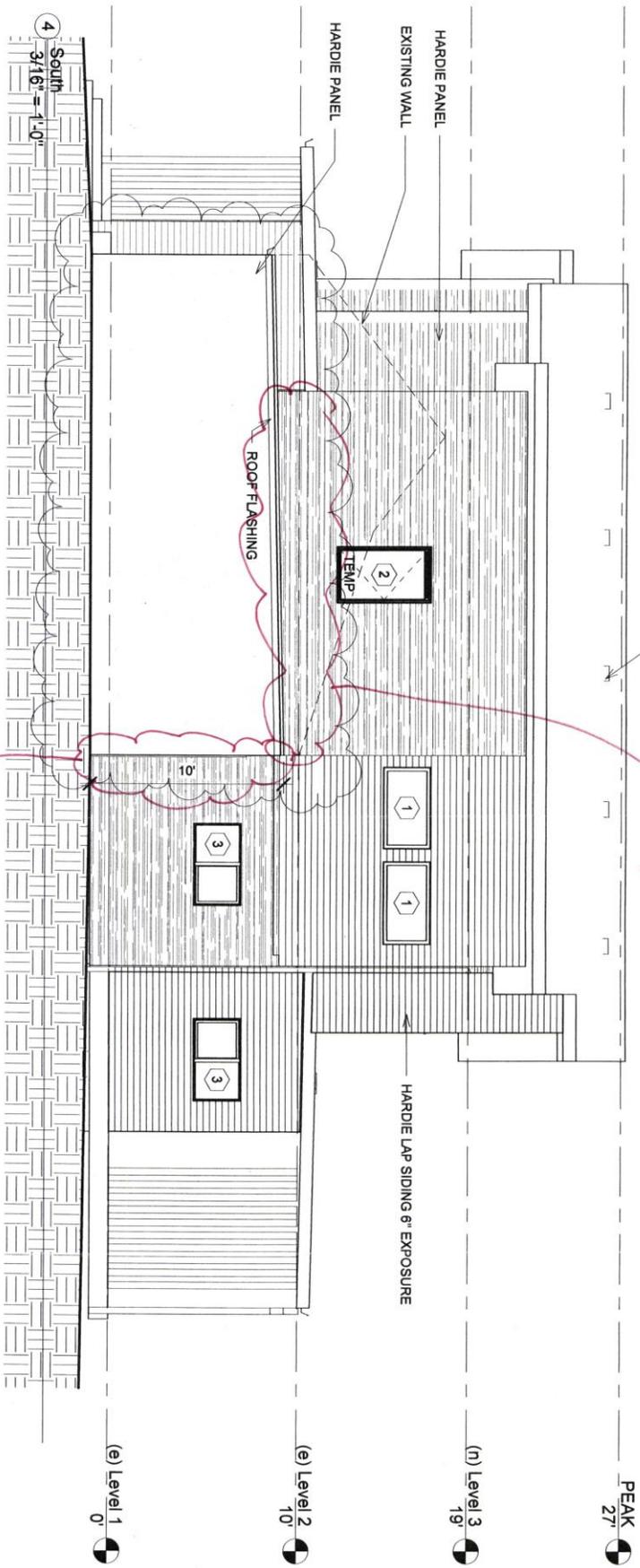
CASE NO. LA 18-210320 AD  
EXHIBIT C-1



\*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner: FM M  
 Date: 5th 28th 2019  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

*Condition C: No rooftop deck allowed*  
*Condition B: Height of g-2228 limited to 10 feet.*

CASE NO. 1415-205302740  
 EXHIBIT C.2



Condition C: No roofing deck allowed on garage.

Condition B: Height of garage limited to 10 feet.

Approved\*  
 City of Portland - Bureau of Development Services  
 Planner Ad  
 Date Jan 29, 2019  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.