



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

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Date: March 18, 2019
To: Interested Person
From: Don Kienholz, 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 18-258483 AD

GENERAL INFORMATION

Applicant/Owner: Brett Grantham | Greenworks Contractors LLC
10121 SE Sunnyside Rd #300 | Clackamas, OR 97015

Representative: Anne Marie Skinner | PBS Engineering
4412 SW Corbett Ave | Portland, OR 97239
(503) 417-7684 | annemarie.skinner@pbsusa.com

Site Address: 2715 NE 92nd Ave (ROCKY BUTTE ADD, BLOCK C, LOT 7)

Legal Description: BLOCK C LOT 7, ROCKY BUTTE ADD; BLOCK C LOT 8 TL 5400, ROCKY BUTTE ADD

Tax Account No.: R716600420, R716600480

State ID No.: 1N2E28BD 05500, 1N2E28BD 05400

Quarter Section: 2739

Neighborhood: Madison South, contact Kimberly Botter at mkbotter@msn.com

Business District: Parkrose Business Association, contact parkrosebusinessassociation@gmail.com

District Coalition: Central Northeast Neighbors, contact Sandra Lefrancois at 503- 823-2780.

Plan District: None

Zoning: R5h – Single-Dwelling Residential 5,000, Aircraft Landing Zone

Case Type: AD – Adjustment Review

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

Proposal:

The applicant proposes to construct a new three-story single-dwelling residence with an attached one-car garage on the vacant parcel that was created through land division case LU 16-231069 LDP. The site slopes down from the road so it will appear as a two-story house as viewed from NE 92nd Avenue. A modification was approved as part of the land division to reduce the front setback for the future house on the vacant parcel from 10 feet to 5 feet to improve tree

preservation. At the time of the land division approval, no garage was proposed so no modification was requested or approved to reduce the garage entrance setback as well as the front setback. Per Zoning Code Section 33.110.220 and Table 110-3, the minimum garage entrance setback is 18 feet. Because the proposed garage entrance would not meet this setback, the applicant requests an Adjustment to reduce the required garage entrance setback from the NE 92nd Avenue lot line from 18 feet to 5 feet.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A through F of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The subject site is a 6,185 square foot lot located on the west side of NE 92nd Avenue between NE Hill Way and NE Russell Street. The site is currently vacant, slopes steeply down from the street, and is very wooded with large trees. Adjacent properties are developed with one to two-story single-dwelling residences, many with attached garages. Rocky Butte is located just east of the site. The #24 bus line runs along this portion of NE 92nd Avenue.

Zoning: The R5 designation is one of the City's single-dwelling residential zones, which are intended to preserve land for housing and provide housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The Aircraft Landing (h) overlay zone provides for safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures, vegetation, and construction equipment. In Residential zones, structures are regulated by the base zone height limits rather than the height limits of the overlay zone, which in this location is over 300 feet.

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

- LU 16-231069 LDP: Approval of a preliminary plan for a two-parcel partition that will result in two standard lots and approval of a modification to reduce the front setback for the house on Parcel 2 from 10 feet to 5 feet in order to afford improved tree preservation.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed December 20, 2019. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services responded with no objections to the requested Adjustment and provided information about stormwater management that will be required at the time of the building permit (Exhibit E-1);
- Bureau of Transportation Engineering and Development Review responded with no objections to the requested Adjustment and provided information about driveway regulations that will need to be met at the time of building permit (Exhibits E-2.1 and E-2.2);
- 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 the requested Adjustment and provided information about building permit requirements (Exhibit E-6).

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified neighbors in response to the Notice of Proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

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

Findings: The applicant is requesting an Adjustment to reduce to reduce the required garage entrance setback from the NE 92nd Avenue property line from 18 feet to 5 feet.

The purpose of the setback requirement in the R2.5 zone is stated in Zoning Code Section 33.110.220.A:

Purpose. *The setback regulations for buildings and garage entrances serve several purposes:*

- *They maintain light, air, separation for fire protection, and access for fire-fighting;*
- *They reflect the general building scale and placement of houses in the city's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

Maintain light, air, and separation: The proposed attached garage would be 5 feet from the side lot line and over 61 feet from the rear lot line. It also would meet the 5-foot front building setback that was approved through the 2016 land division. Because the building setbacks would be met, the location of the attached garage would maintain light, air, and separation for fire protection and access for fire-fighting.

Reflect general building scale and placement: The subject property, like the majority of those along NE 92nd Ave, are at the toe of Rocky Butte and have significant slope on site. The code defines steeply sloped as averaging 20% along the entire depth of the property. The subject site has steep slope adjacent to the street but towards the back of the property it flattens out quickly, and therefore does not meet the definition of 'steeply sloped.' Although in practical terms, development adjacent to the road is hindered by the slope. If the lot met the definition of 'steeply sloped', then by right they could have the garage entrance 5-feet from the front property line.

As noted earlier, it is steep enough that the third level of the house will not be seen from the street as it is subterranean on the east side and daylights on the west. In order to be developed, the house must be close enough to the street to provide an at-grade entrance, and as designed, this is accomplished. Because there is a garage, it also must be closer to the street than the development standard allows in order to access the street at-grade.

The subject property is one of the last lots on the street to be developed, likely because development cannot meet the development standards by right in part because of the slope and because of accessing the site. The area is developed with mostly mid-century homes, a development pattern that included garages being attached and along the same plain as the front façade of the house or slightly in front of the front façade. Additionally, because of the slope of properties along NE 92nd, many of the homes and their garages are closer than the 18-foot garage entrance standard would allow. Finally, the subject site had to dedicate 5-feet of frontage along NE 92nd Ave that other properties have not, and thus incurred an addition constraint to meeting the garage entrance setback that the other properties do not share.

Based on these characteristics of the area along NE 92nd Avenue and the existing homes, there is an existing pattern of garages located close to street property lines. Therefore, the reduced 5-foot garage setback would reflect the general building scale and placement of development in the neighborhood.

Promote a reasonable physical relationship between residences: The proposed Adjustment is for the garage entrance to the adjacent street lot line. The garage meets all other development standards and will not be located closer than allowed to other dwellings on either side of the site. As such, it will continue to promote a reasonable physical relationship between the other residences.

Promote options for privacy: The proposed attached garage would be 5 feet from the side lot line and over 61 feet from the rear lot line. It also would meet the 5-foot front building setback that was approved through the 2016 land division. Because the building setbacks would be met, the proposed attached garage would promote options for privacy for neighboring properties.

Require larger front setbacks: The applicant's proposal would not affect the front setback. A reduced five-foot front setback for the house was approved through the 2016 land division in order to better preserve trees. The Adjustment being reviewed herein is merely to allow the garage to be placed at the same front setback as was allowed for the house.

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

Enhance driver visibility: The Portland Bureau of Transportation reviewed the proposal (Exhibit E-2) and had no concerns with the reduced setback. As part of their overall review, PBOT did review and approve a Driveway Design Exception (PW 16-239117) that removed the requirement for standard improvements along NE 92nd Ave and will ensure an unobstructed vision clearance for vehicles backing out of the new driveway and garage.

Based on these reasons, the proposed Adjustment equally meets the intent of the regulation and this criterion is met.

- B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and (update language for new CI zones)**

Findings: Because the subject site is located in a single-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. As discussed in the findings for Approval Criterion A, the location of the proposed attached garage 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. Additionally, it will reflect the existing building pattern along NE 92nd Avenue. For these reasons, the proposal would not significantly detract from neighborhood livability or appearance. This criterion is met.

C. If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Because only one Adjustment is being requested, this criterion is not applicable.

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

Findings: City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. Because no scenic or historic resource designations are mapped on the subject site, this criterion is not applicable.

E. Any impacts resulting from the Adjustment are mitigated to the extent practical; and

Findings: As discussed in the findings for Approval Criteria A and B, the proposal would equally meet the purposes of the setback regulation and have no adverse impacts on the livability or appearance of the residential area. 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 the subject site, this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all 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 applicant has demonstrated that reducing the garage entrance setback from 18-feet down to 5-feet (33.110.220 and Table 110-3) equally meets the purpose of the setback development standard. The reduction will not adversely impact the livability or appearance of the nearby area; will resemble the existing and historic development pattern; and will not compromise safety. Additionally, the proposal will not be sited in a scenic, historic or environmentally significant area. As the application has met the approval criteria, the proposal must be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the required garage entrance setback from the NE 92nd Avenue lot line from 18 feet to 5 feet (Zoning Code Section 33.110.220), granted per the approved site plan and elevations, Exhibits C-1 through C-2, signed and dated March 13, 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 18-258483 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

Staff Planner: Don Kienholz

Decision rendered by:  **on March 13, 2019.**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 18, 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 October 26, 2018, and was determined to be complete on December 17, 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 October 26, 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 extended the statutory 120-day review period by 45-days. Unless further extended by the applicant, **the 120 days will expire on: May 31, 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 April 1, 2019** 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 **April 1, 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.

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

- All conditions imposed herein;

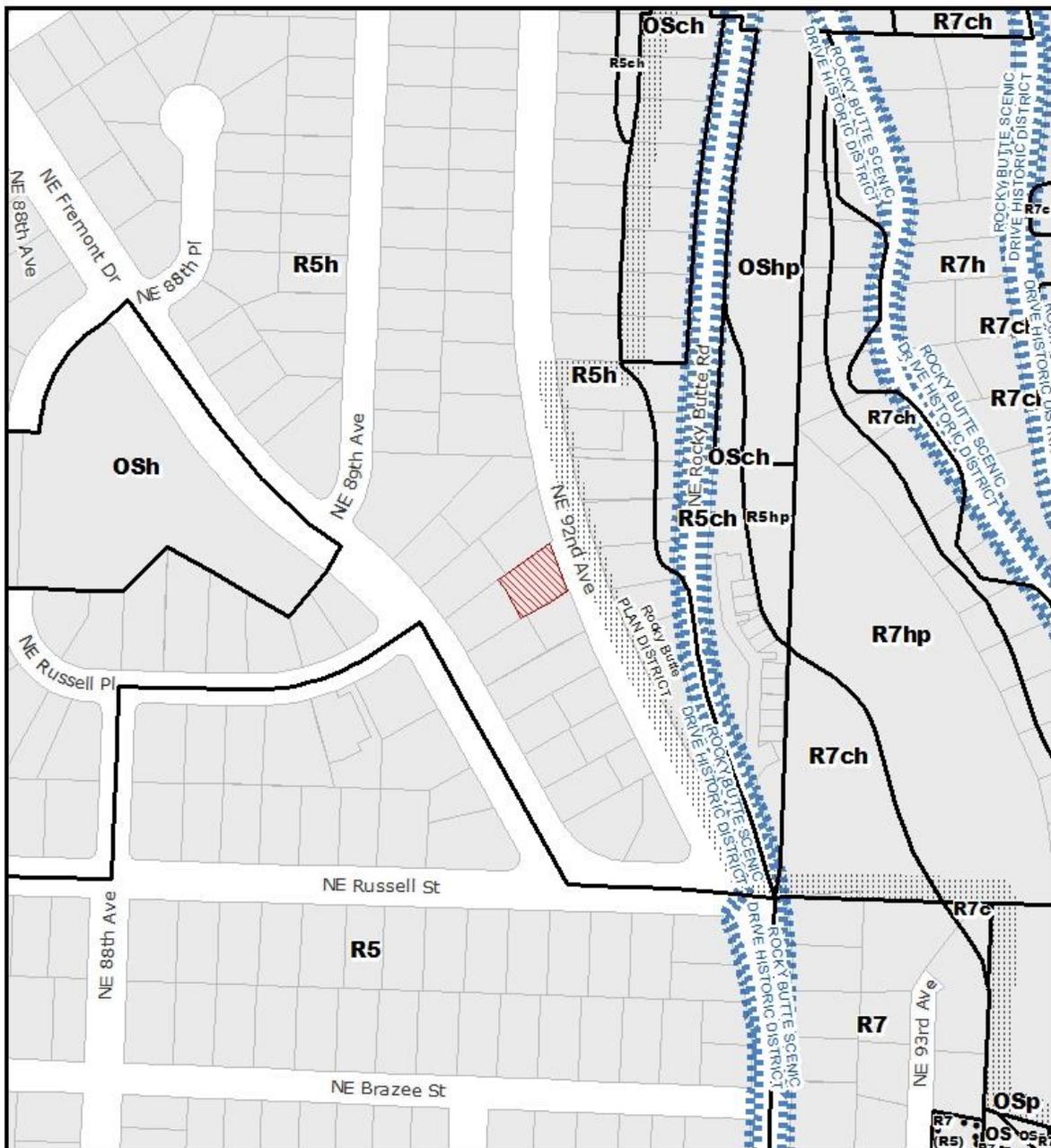
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Narrative and Drawings submitted 10/26/18
 2. Revised Site Plan and Elevation Drawings received 11/19/18
 3. Revised Building Elevations received 11/20/18
 4. Approved Driveway Design Exception received 12/17/18
 5. Applicant's 45-Day Extension to the Statutory 120-Day Timeline to Issue a Final Decision
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Elevations (attached)
- D. Notification Information:
 1. Mailing List
 2. Mailed Notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of BDS
 6. Life Safety Section of BDS
- F. Correspondence: none received
- G. Other:
 1. Original LU Application
 2. Incomplete Letter mailed 11/9/18

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

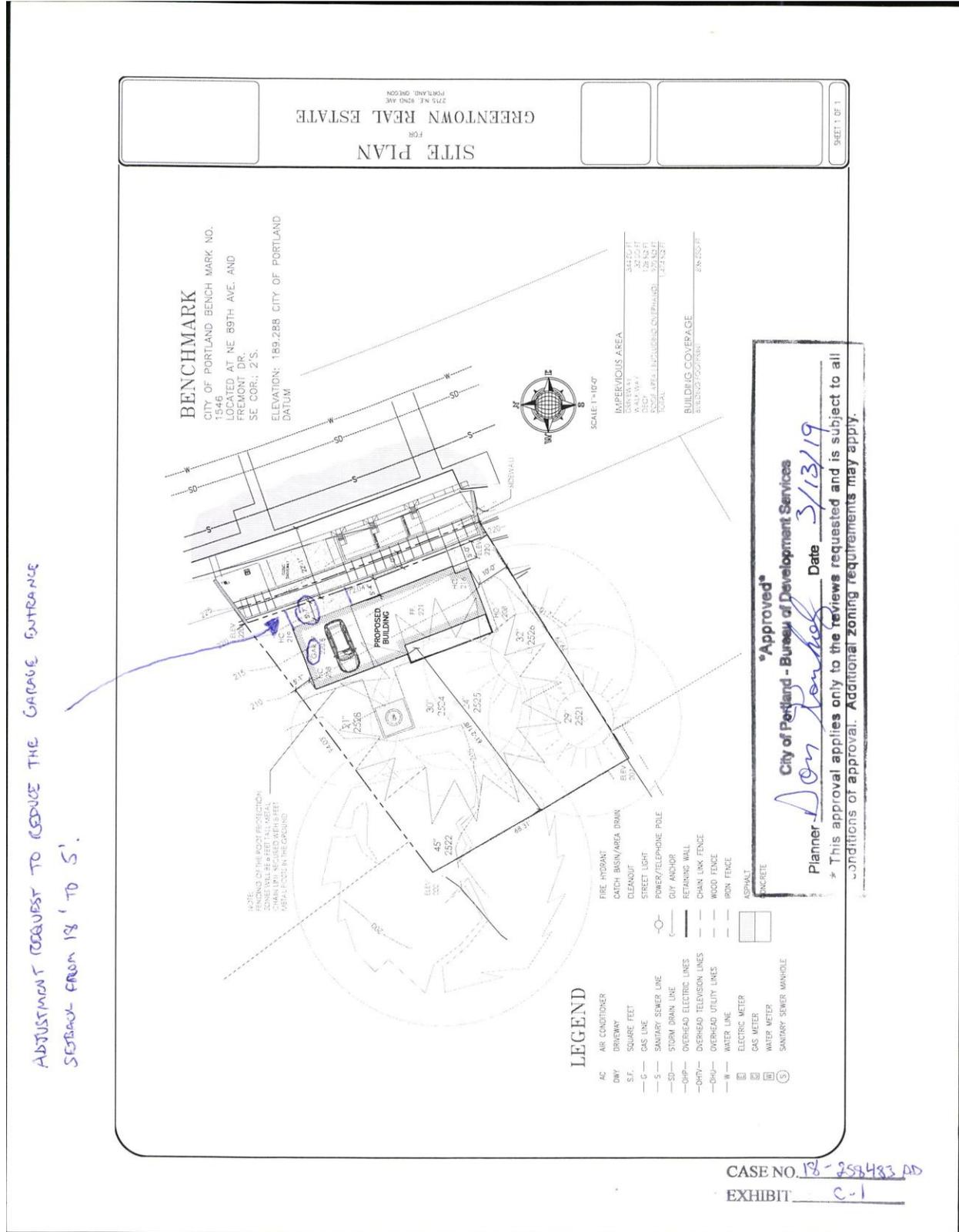


ZONING



 Site

File No.	LU 18-258483 AD
1/4 Section	2739
Scale	1 inch = 200 feet
State ID	1N2E28BD 5500
Exhibit	B Oct 31, 2018



ADJUSTMENT REQUEST TO REDUCE THE GARAGE ENTRANCE SETBACK FROM 18' TO 5'.

CASE NO. *18-258483 AD*
 EXHIBIT *C-1*

Using Additional Measures Section 17.1

1. BUILDING COMPONENTS

2. ENERGY EFFICIENT LIGHTING

3. ENERGY EFFICIENT WATER HEATING

4. ENERGY EFFICIENT APPLIANCES

5. ENERGY EFFICIENT WINDOWS

6. ENERGY EFFICIENT ROOFING

7. ENERGY EFFICIENT MECHANICAL SYSTEMS

8. ENERGY EFFICIENT PLUMBING

9. ENERGY EFFICIENT ELECTRICAL SYSTEMS

10. ENERGY EFFICIENT INTERIORS

11. ENERGY EFFICIENT EXTERIORS

12. ENERGY EFFICIENT TRANSPORTATION

13. ENERGY EFFICIENT COMMUNICATIONS

14. ENERGY EFFICIENT SECURITY

15. ENERGY EFFICIENT SAFETY

16. ENERGY EFFICIENT HEALTH CARE

17. ENERGY EFFICIENT EDUCATION

18. ENERGY EFFICIENT GOVERNMENT

19. ENERGY EFFICIENT RECREATION

20. ENERGY EFFICIENT CULTURAL

21. ENERGY EFFICIENT RELIGIOUS

22. ENERGY EFFICIENT COMMERCIAL

23. ENERGY EFFICIENT INDUSTRIAL

24. ENERGY EFFICIENT AGRICULTURE

25. ENERGY EFFICIENT FORESTRY

26. ENERGY EFFICIENT MINING

27. ENERGY EFFICIENT ENERGY PRODUCTION

28. ENERGY EFFICIENT ENERGY STORAGE

29. ENERGY EFFICIENT ENERGY DISTRIBUTION

30. ENERGY EFFICIENT ENERGY CONSUMPTION

Front Elevation

METAL RAILING POST CONNECTION

ATTIC

ROOM

CRAWL SPACE

Greenworks Const.

Portland, Oregon

1

4

Right Elevation

City of Portland - Bureau of Development Services

Planner *Don Gordon* Date *3/13/19*

* Approved

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

CASE NO. 18-258483 AD

EXHIBIT C-2