



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

Ted Wheeler, Mayor
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Date: April 4, 2019
To: Interested Person
From: Amanda Rhoads, Land Use Services
 503-823-7837 / 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 18-243837 AD
SIDE SETBACK ADJUSTMENT FOR EXISTING HOUSE

GENERAL INFORMATION

Applicant/Owner: David and Jan Halsey | 51 Garibaldi St
 Lake Oswego, OR 97035

Representative: Nicholas Halsey | 6532 SW 32nd Ave
 Portland, OR 97239 | (503) 752-5481 | halseyns@gmail.com

Site Address: 3114 SW NEBRASKA ST

Legal Description: BLOCK 8 LOT 6&7, GLENELYN
Tax Account No.: R323501710
State ID No.: 1S1E17DC 04400
Quarter Section: 3626
Neighborhood: Hayhurst, contact at contact-hayhurst@swni.org
Business District: None
District Coalition: Southwest Neighborhoods Inc., contact Sylvia Bogert at 503-823-4592.
Plan District: None
Zoning: R5 - Single-Dwelling Residential 5,000
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant intends, through a separate review, to confirm the underlying lots and adjust the common property line in order to develop previously platted Lot 7 with a new single-dwelling residence (PR 18-183474 LC PLA). The common property line between Lots 6 and 7 passes through the existing single-dwelling residence and would be adjusted 14 feet to the west, which would leave the existing single-dwelling residence on previously platted Lot 6. Per Zoning Code Section 33.110.220.B and Table 110-3, the minimum side building setback is 5 feet. Eaves are allowed to encroach 1 foot into the side setback. Because the existing single-dwelling residence would extend into the setback of the to-be-adjusted common property line, the applicant

requests an Adjustment to reduce the required side setback from 5 feet to 2'-6" for the building wall, and from 4 feet to 1'-6" for the eave.

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 site is a 10,000-square-foot lot developed with a 1,289-square-foot house constructed in 1915 with unfinished basement. The site is between SW Bertha Blvd and SW Vermont St, less than 1,000 feet from the Portland Jewish Academy. The site is in a band of single-dwelling zoning but is near to multi-dwelling and commercial areas to the north, east, and southeast.

Zoning: The Residential 5,000 (R5) 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 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 5,000 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 19, 2018**. The following Bureaus have responded with no issues or concerns regarding the Adjustment Review specifically:

- Bureau of Environmental Services (Exhibit E.1);
- Bureau of Transportation (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4); and
- Site Development Section of BDS (Exhibit E.5).

The Life Safety Plans Examiner responded with a requirement for either a recorded "no-build" easement or modifying the existing structure to meet building code requirements for fire ratings (Exhibit E.6.a). After the easement was recorded, the Plans Examiner updated her comments to reflect no concerns with the Adjustment Review Exhibit E.6.b).

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 west side setback from 5 feet to 2 feet, 6 inches for the building wall, and from 4 feet to 1 foot, 6 inches for the roof eaves, to accommodate the existing house.

The purpose of the setback requirement in the R5 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.*

As part of the review of this Adjustment request, a Life Safety Plans Examiner stated that, in order to approve the request to establish the lot line, the existing building must be shown to comply with the requirement that exterior walls that are parallel to, and less than three feet to a property line have a one-hour fire-rated wall with no openings, such as windows, doors, or vents allowed (Exhibit E.6). The applicant has applied for and received a building code appeal to keep the existing wall with openings, if the applicant records a "no-build" easement on Lot 7 that has been reviewed and approved by BDS (Exhibit A.4). The easement will ensure 10-foot separation between the existing structure on Lot 6 and any future construction on Lot 7, with 9-foot separation to the eaves.

With the recording of a covenant for a future "no-build" easement that is in the record as Exhibit A.6 and shown as to location in Exhibit C.1, the Life Safety Plans Examiner has no concerns regarding building code and fire issues. With the easement in place, there will be separation between structures commensurate with the minimum 5-foot setbacks. The proposed 10-foot separation between the homes is the same as the separation that would result if both houses met the minimum 5-foot setback from the common lot line. The fact that the relocated lot line will not be in the *middle* of the separation between the homes will make little difference concerning the purposes of the setback standard.

With the 10-foot separation between homes, the applicant's proposal will maintain light, air, fire safety, and privacy consistent with the purposes of the setback standard. The separation between the homes will promote a physical relationship and placement that appears typical for the neighborhood. The setback Adjustment will not affect the front setback for either lot, and will not prevent either lot from meeting the required

outdoor area standard. The setback Adjustment will not result in cars overhanging the street or sidewalk adjacent to either lot.

For the reasons stated above, the proposal equally meets the purpose of the setback regulations. 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 site is located in a single-dwelling residential zone, the applicant must demonstrate that the proposal will not significantly detract from the livability or appearance of the surrounding residential area. As discussed in the findings for approval criterion A, for the sake of consistency with the purposes of the applicable standards, the “no-build” easement will require a 10-foot separation between houses on this site. Staff finds that with this recorded covenant for a future “no-build” easement (Exhibit A.6), the proposed Adjustments will not result in significant negative impacts to neighborhood livability or appearance. The new house on Lot 7 will maintain a typical separation from the existing house on Lot 6. 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: There are no discernible impacts that would result from granting the requested adjustment with the existing “no-build” easement in place. 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). 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

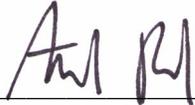
The proposed setback reductions equally meet the intent of the setback regulations, and will not have adverse impacts on the livability and appearance of the surrounding residential neighborhood. The applicant has demonstrated that the applicable approval criteria have been met. Since the approval criteria are met, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.220.B and Table 110-3 to reduce the the west side building setback from 5 feet to 2 feet, 6 inches for the existing house wall, and from 4 feet to 1 foot, 6 inches for the existing house eave, per the approved site plans, Exhibits C.1 through C.2, signed and dated April 2, 2019, subject to the following conditions:

- A. As part of the building permit application submittal, 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.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 18-243837 AD."

Staff Planner: Amanda Rhoads

Decision rendered by:  **on April 2, 2019**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 4, 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 September 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 September 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 requested that the 120-day review period be extended by 45 days (Exhibit A.5). 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 18, 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 18, 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:

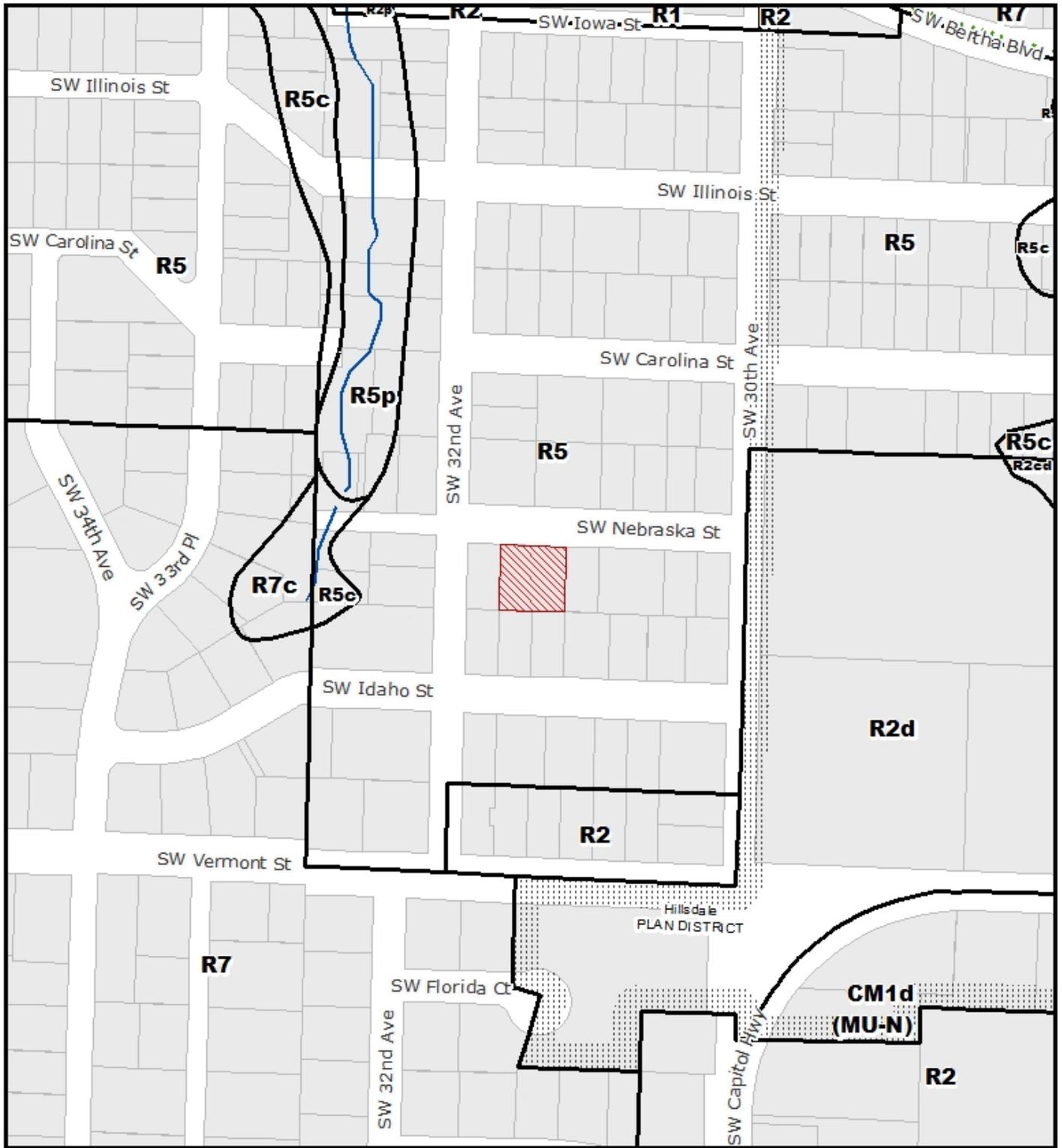
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Applicant Narrative, dated September 25, 2018
 2. PLA Supplemental Plan
 3. Future development option on newly confirmed lot
 4. Building Code Appeal 18697, received December 17, 2018
 5. Request for 45-Day Extension of 120-Day Review Period, March 21, 2019
 6. Covenant for Future No-Build Easement and Agreement Not To Build, dated March 26, 2019
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. North and Partial West Existing Elevation
- 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
 - a. Original Response, January 7, 2019
 - b. Revised Response after recording of covenant for future "no-build" easement, March 28, 2019
- F. Correspondence: none received
- G. Other:
 1. Original Land Use Application
 2. Incomplete Letter, October 10, 2019

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



Stream

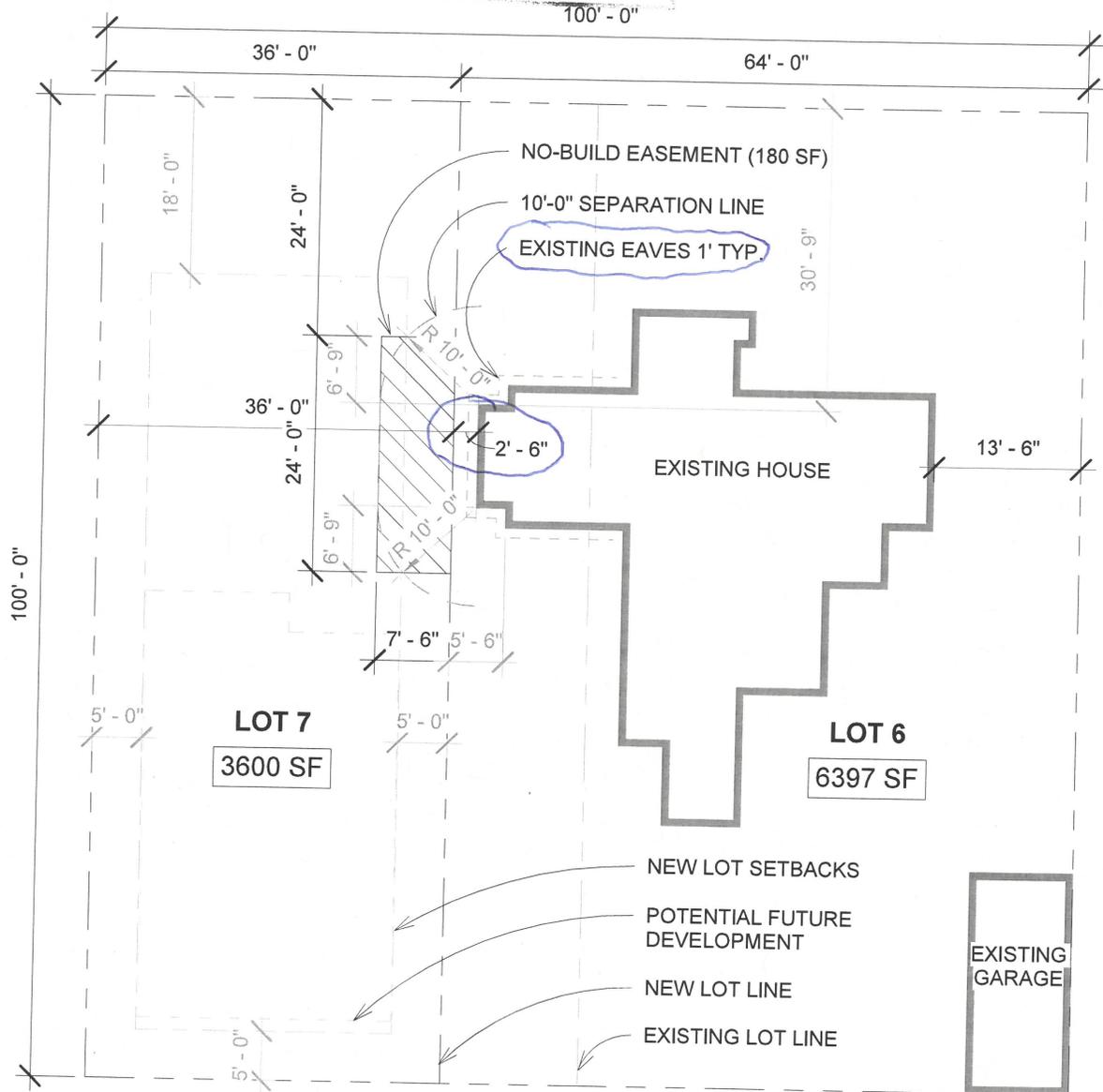


Recreational Trails

File No.	LU 18-243837 AD
1/4 Section	3626
Scale	1 inch = 200 feet
State ID	1S1E17DC 4400
Exhibit	B Oct 01, 2018

Approved
 City of Portland - Bureau of Development Services
 Date *April 2, 2019*
 This approval applies only to the reviews requested and the conditions of approval. Additional zoning requirements may apply.

NEBRASKA ST.



Proposal - Setback Adjustment and No-build Easement

① 1/16" = 1'-0" ADJUSTMENT REQUEST TO REDUCE THE SIDE SETBACK FROM 5' TO 2'-6" FOR THE GUIDING WALL AND FROM 4' TO 1'-6" FOR THE EAVE.



Nick Halsey

<http://nick.halsey.co/>

3114 SW Nebraska St.
 Portland, OR 97239

Halsey Resources

LOT LINE PROPOSAL

Project number	2018.01
Date	12/12/2018
Drawn by	NH
Checked by	NH

A032

Scale 1/16" = 1'-0"

CASE NO. *18-243831 AD*

EXHIBIT *C-1*

12/15/2018 9:21:11 AM