



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

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Date: December 11, 2019
To: Interested Person
From: David Besley, 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 19-171413 AD

GENERAL INFORMATION

Applicant: Bill Kabeiseman
Bateman Seidel
888 SW 5th Ave, Ste 1250
Portland OR 97204
Phone: 503-972-9968
Email: billkab@batemanseidel.com

Owner: Exeter/Adeline Partners
3039 NE 15th Ave
Portland, OR 97212

Site Address: 3039 NE 15TH AVE

Legal Description: BLOCK 68 E 75' OF LOT 1&2, IRVINGTON
Tax Account No.: R420414600
State ID No.: 1N1E26AB 20700
Quarter Section: 2732

Neighborhood: Irvington, contact Dean Gisvold at deang@mcewengisvold.com
Business District: Soul District Business Association, contact at info@nnebaportland.org
District Coalition: Northeast Coalition of Neighborhoods, contact Laura Becker at 503-388-6088

Historic District: Irvington
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 is proposing an approximately 61 square foot fireplace (5 feet – 5 inches x 11 feet - 4 inches) to the north of an existing 2,486 square foot residence. The Portland Zoning Code requires a 10-foot minimum front setback in this zone (Section 33.110.220, Table 110-3). The fireplace is located 5 feet from the north (front) property line. An Adjustment is therefore required to reduce the minimum front setback from 10 feet to 5 feet for a 61 square foot fireplace.

Note: This is a corner lot in which the north lot line is considered the front lot line because the front lot line is defined as the shortest of the lot lines that abut a street (per Definitions 33.910). The house itself is oriented to the east and set back over 15 feet from the eastern (side) lot line. The fireplace has already been constructed and this Adjustment request aims to legalize the construction.

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 7,500-square-foot site is located at the southwest corner of the NE Siskiyou Street and NE 15th Avenue intersection and slopes slightly downward from west to east. It is developed with a 2,486 square foot contributing structure, historically known as the Lloyd D. and Emma M. Painter House. The house is oriented toward and accessed via NE 15th Avenue to the east. The surrounding vicinity is developed with primarily single-dwelling residences.

Zoning: The R5 zone is a single-dwelling zone that is intended to preserve land for housing, and to provide housing opportunities for individual households. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

The Historic Resource Protection overlay is comprised of Historic and Conservation Districts – in this case Irvington Historic District - as well as Historic and Conservation Landmarks and protects certain historic resources in the region and preserves significant parts of the region's heritage. The regulations implement Portland's Comprehensive Plan policies that address historic preservation. These policies recognize the role historic resources have in promoting the education and enjoyment of those living in and visiting the region. The regulations foster pride among the region's citizens in their city and its heritage. Historic preservation beautifies the city, promotes the city's economic health, and helps to preserve and enhance the value of historic properties.

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

- LU 16-251860 HRM: Historic Resource Review approval of exterior alterations to the 1922 resource historically known as the Lloyd D. and Emma M. Painter House, a "contributing" resource in the Irvington Historic District, with the condition that the proposed concrete patio and stairs on the west elevation do not exceed 30 inches (2-1/2 feet) maximum, in height.
- 80-037204 (Ref File VZ 518-80): Approval for a "variance" to increase the height of a fence from the permitted 3.5' to 6' in the front yard.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **October 31, 2019**. The following Bureaus have responded with the following information:

- The Portland Bureau of Transportation (PBOT) responded with no concerns and provided information regarding the City's Transportation System Plan (Exhibit E-1);

- The Bureau of Environmental Services responded with no concerns and provided stormwater management information (Exhibit E-2); and
- The Water Bureau responded with no concerns and noted that they have no review criteria for the proposed action (Exhibit E-3).

The following Bureaus have responded with no concerns (Exhibit E-4):

- The Fire Bureau;
- Life Safety section of the Bureau of Development Services (BDS); and
- Site Development Section of BDS.

Neighborhood Review: Written responses (Exhibits F.1 - F.11) were received from 11 property owners in response to the proposal, including 5 letters of support and 6 letters of opposition. A summary of concerns expressed in the letters of opposition follows:

- The fireplace is large, tall, brightly lit, and thus out of character in this area.
- Smoke from the fireplace affects the health of neighboring residents and a redwood tree on site.
- The appearance and function of the fireplace have negative impacts on livability.

Staff Response: The concerns expressed about the smoke and tree health are irrelevant to the Adjustment request because the function of the detached uncovered vertical structure (the fireplace) is unrelated to the the Adjustment request (to reduce the setback from 10 feet to 5 feet). Relevant concerns are addressed in the Zoning Code Approval Criteria findings below.

Applicant Response: The applicant included a response to the letters of opposition (Exhibit A.2) including a clarification regarding the lighting concern that, while there is some pathway lighting on the north side of the house, there is no lighting on the fireplace structure itself.

ZONING CODE APPROVAL CRITERIA

33.805.040 Adjustment 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

1. **Findings:** The applicant has requested an Adjustment to reduce the minimum front setback from 10 feet to 5 feet for a 61 square foot fireplace. The relevant purpose statements and associated findings are found below:

33.110.220 Setbacks

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 noted above, the subject site is a corner lot in which the north lot line is considered the front lot line because the front lot line is defined as the shortest of the lot lines that abut a street (per Definitions 33.910). The house itself is oriented toward and accessed via NE 15th Avenue to the east and set back approximately 20 feet from the eastern (side) lot line. Because of this orientation on the corner lot, the east effectively serves as the “front” and the north is effectively serves as the “side.” As such, the outdoor fireplace has the appearance of being located in the side yard, while still being outside the minimum required 5 foot “side” yard setback. In order to maintain the east frontage as the de facto front setback, a condition of approval will establish a minimum building setback of 10 feet from the east street lot line. This east setback shall be treated as a front setback when applying Title 33 regulations to the site.

The fireplace is over 25 feet from the closest neighbor to the west and over 60 feet (and across NE Siskiyou Street) from the closest neighbor to the north. These significant distances will maintain light and air, and will promote a reasonable physical relationship between residences. Requiring the east setback to serve as a front setback when applying all zoning regulations will promote an open, visually pleasing yard to the east – which, as noted above, is effectively the front yard in this context. Finally, because the fireplace is not a habitable structure, privacy will not be impacted by the setback Adjustment request.

With the condition of approval, 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: As noted above, because the house is oriented toward and accessed from the east (side) rather than the north (front), because of the significant distance from the fireplace to the closest neighbors, and because a condition will treat the east setback as a front setback for future development, granting the Adjustment review will not detract from the livability or appearance of the residential area.

As conditioned, 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 being requested; therefore, this criterion is not applicable.

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

Findings: While the site is within the Irvington Historic District, the detached fireplace structure is exempt from Historic Resource Review as it does not require a building permit (Zoning Code Section 33.445.320.B.2).

As previously noted, the house on this property is a contributing resource in this Historic District. The location of the fireplace structure to the north of the house preserves the prominence of and views toward the home’s “front” façade that faces NE 15th Avenue. Locating the fireplace structure north of the house effectively is placing it to the side of the house, thereby better preserving the historic integrity of the house.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: As noted above, a condition will require that the east setback be maintained as a front setback, thereby preserving an open front yard appearance. If the applicant

were to meet the setback requirement from the north (front) lot line, it would preserve a 750 square foot area (10-foot setback along a 75-foot stretch of property). By approving the setback Adjustment request and requiring that the east setback serve as the front setback, a 1,000 square feet area (10-foot conditioned setback along a 100-foot stretch of the property) of the site will be preserved, which is a substantially larger front setback than would otherwise be required. Impacts resulting from the reduced setback request are therefore mitigated to the extent practical.

As conditioned, 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 Map with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). No environmental zoning is applied to the site; therefore, 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 is requesting an Adjustment to reduce the minimum front setback from 10 feet to 5 feet for a 61 square foot fireplace. The house itself is oriented toward and accessed via NE 15th Avenue to the east and set back approximately 20 feet from the eastern (side) lot line. Because of this orientation on the corner lot, the east effectively serves as the “front” and the north (while technically the front) effectively serves as the “side.” In order to maintain this frontage and appearance to the east, a condition of approval will require the establishment of a front setback from the east street lot line

The fireplace is over 25 feet from the closest neighbor to the west and over 60 feet (and across NE Siskiyou Street) from the closest neighbor to the north. These significant distances will maintain light and air, and will promote a reasonable physical relationship between residences. The proposal will promote an open, visually pleasing yard between the front of the house and NE 15th Avenue. Finally, because the fireplace is not a habitable structure, privacy will not be impacted by the setback. For the reasons stated above, granting the Adjustment review will therefore not detract from the livability or appearance of the residential area. As conditioned, the proposal meets the applicable approval criteria and should therefore be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum front setback from 10 feet to 5 feet for a 61 square foot fireplace (Section 33.110.220, Table 110-3) per the approved site plans, Exhibits C-1 through C-3, signed and dated December 3, 2019, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) 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 19-171413 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. A minimum building setback of 10 feet is established from the east street lot line. This east setback shall be treated as a front setback when applying Title 33 regulations to the site.

Staff Planner: David Besley



Decision rendered by: _____ **on December 3, 2019.**

By authority of the Director of the Bureau of Development Services

Decision mailed: December 11, 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 May 29, 2019 and was determined to be complete on October 28, 2019.

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 May 29, 2019.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: February 25, 2020.**

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 plan 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 December 26, 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 **December 26, 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.

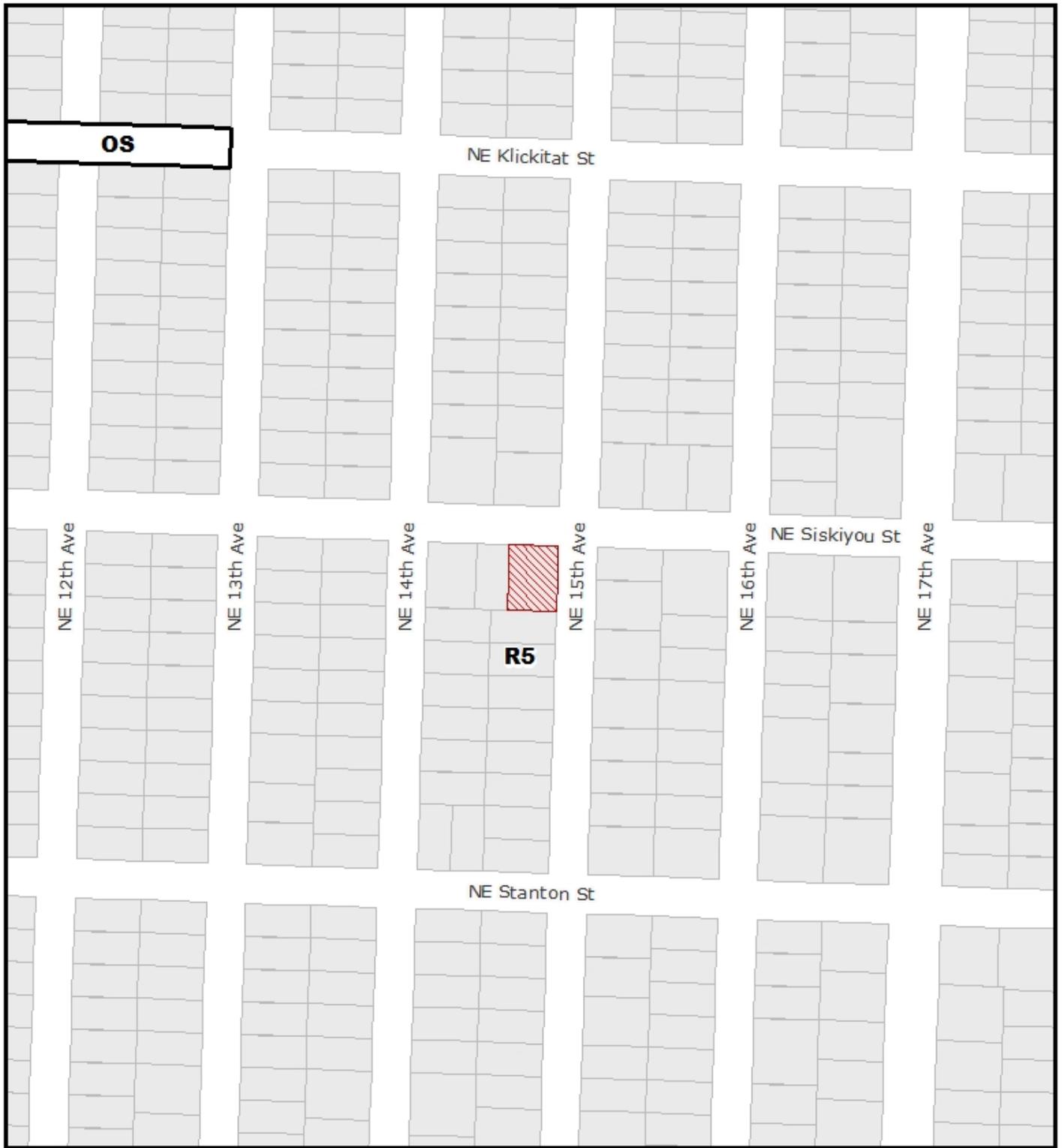
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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 Submittal
 - 1. Applicant's Statement
 - 2. Applicant's response to neighbor comments
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. South Elevation Drawing
 - 3. East Elevation Drawing
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Transportation Engineering and Development Review
 - 2. Bureau of Environmental Services
 - 3. Water Bureau
 - 4. Agencies responding with no concerns
- F. Correspondence:
 - 1. Ruthann Hartley, November 12, 2019, Letter of opposition
 - 2a-c. Jacki and Donald Hoyt, November 13, 2019, Three letters of opposition
 - 3. H.J. Dickson, November 19, 2019, Letter of support
 - 4. Craig and Kathy Lesley, November 19, 2019, Letter of opposition
 - 5. Tom and Victoria O'Keefe, November 14, 2019, Letter of support
 - 6. Georgene and Dan Rice, November 15, 2019, Letter of support
 - 7. Judith and Simon Trutt, November 15, 2019, Letter of opposition
 - 8. Jenny Jaksich, November 20, 2019, Letter of support
 - 9. Tom and Barbara Cooney, November 20, 2019, Letter of opposition
 - 10. Christy Zener, November 20, 2019, Letter of support
 - 11. Dean Gisvold, November 21, 2019, Letter of opposition
- G. Other:
 - 1. Original LU Application and Receipt
 - 2. Incomplete letter from staff to applicant, sent June 11, 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



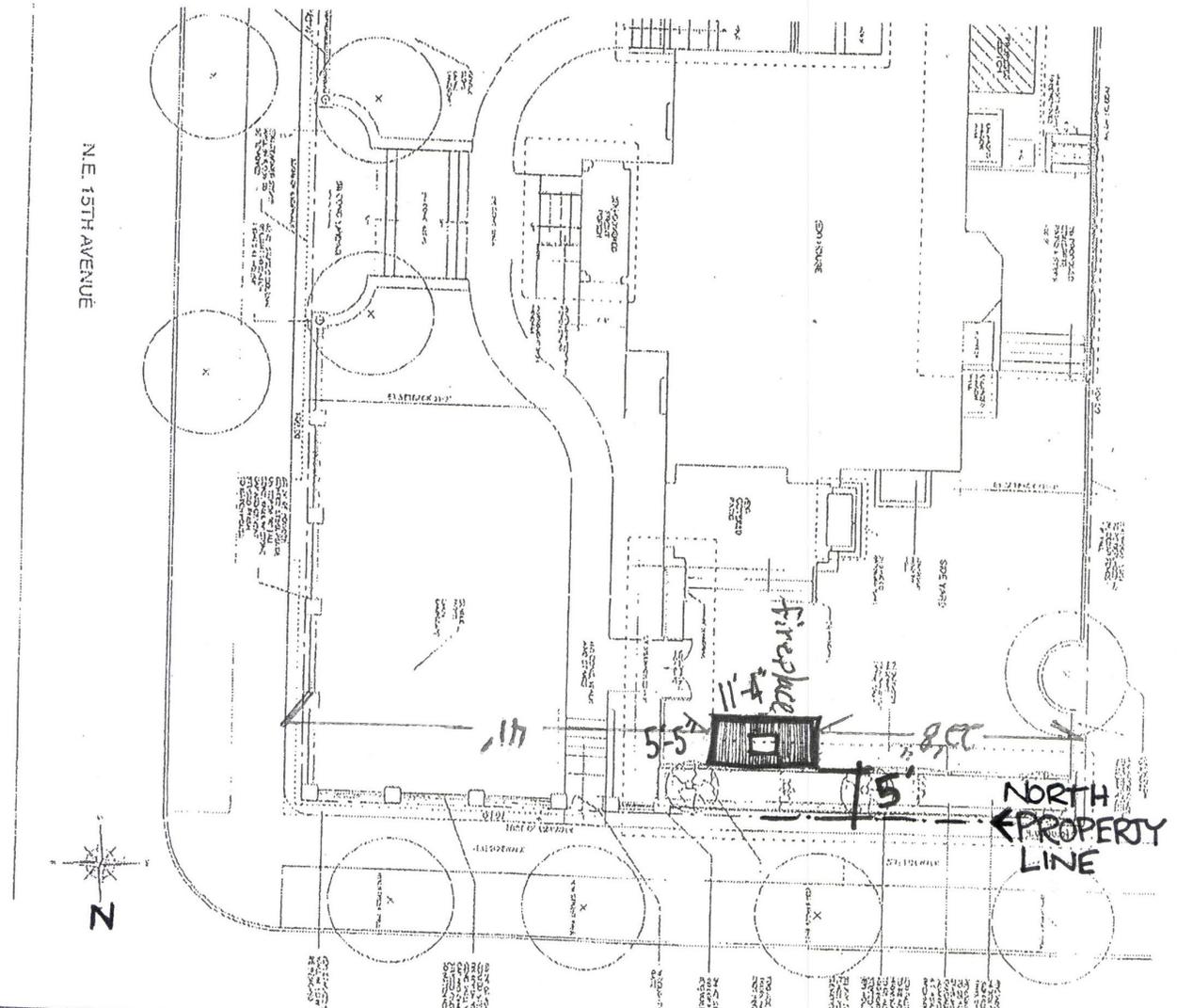
THIS SITE LIES WITHIN THE:
IRVINGTON HISTORIC DISTRICT



File No.	LU 19-171413 AD
1/4 Section	2732
Scale	1 inch = 200 feet
State ID	1N1E26AB 20700
Exhibit	B May 31, 2019

Adjustment requested to reduce the minimum front ^{North} setback from 10' to 5' for a 61 sqft. fireplace

LU 19-171413 AD



Approved
City of Portland
 Bureau of Development Services
 Planner D. Berley
 Date 12.3.19
 * This approval applies only to the reviews requested and is subject to all conditions of approval.
 Additional zoning requirements may apply.

N.E. SISKIYOU STREET

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IRVINGTO,
 3039 NE 15th
 PORTLAND, OR

DATE: 12/3/19
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 APPROVED BY: [Signature]
 A1.0

LU 19-171413 AD
 CASE NO. [Handwritten]
 EXHIBIT C-1