

# Development Services

## From Concept to Construction

Phone: 503-823-7300 Email: [bds@portlandoregon.gov](mailto:bds@portlandoregon.gov) 1900 SW 4th Ave, Portland, OR 97201

More Contact Info (<http://www.portlandoregon.gov/bds/article/519984>)



### APPEAL SUMMARY

**Status:** Decision Rendered

<b>Appeal ID:</b> 18783	<b>Project Address:</b> 6133 SE Tenino St
<b>Hearing Date:</b> 12/19/18	<b>Appellant Name:</b> Michael Manwell
<b>Case No.:</b> B-008	<b>Appellant Phone:</b> 5038308593
<b>Appeal Type:</b> Building	<b>Plans Examiner/Inspector:</b> Preliminary
<b>Project Type:</b> residential	<b>Stories:</b> 1 <b>Occupancy:</b> single family <b>Construction Type:</b> wood frame
<b>Building/Business Name:</b>	<b>Fire Sprinklers:</b> No
<b>Appeal Involves:</b> other: Appeal to ORS R302.1	<b>LUR or Permit Application No.:</b> 18-144155-LU
<b>Plan Submitted Option:</b> pdf [File 1]	<b>Proposed use:</b> Exiting Single Family

### APPEAL INFORMATION SHEET

#### Appeal item 1

<b>Code Section</b>	ORSC SECTION 302.1 EAVES AND EXTERIOR WALLS
<b>Requires</b>	<p>The code requires a 3.00 foot setback to residential buildings from New Parcel Lines and 2.00 foot setbacks to roofs and eaves.</p> <p>The minimum is not able to be met so are requesting approval of a no-build easement.</p>
<b>Proposed Design</b>	Proposal is to provide a no-build easement on the adjoining Parcel
<b>Reason for alternative</b>	The reason for the code is to require fire safety between structures. The no build easement makes sure no structures are built within the no build easement insuring fire safety clearance.

### APPEAL DECISION

**Omission of fire rated construction within 3 feet of the property line with no build easement: Granted provided the no build easement is a minimum of 5 feet wide.**

**Appellant must contact Nancy Thorington (503-823-7023) for more information prior to writing the no build easement.**

**The unrecorded easement must be reviewed and approved by BDS prior to recording. A copy of the recorded easement must then be provided to BDS prior to plan review approval.**

**The easement must include language that prohibits the construction of fences and eaves in the easement.**

The Administrative Appeal Board finds with the conditions noted, that the information submitted by the appellant demonstrates that the approved modifications or alternate methods are consistent with the intent of the code; do

not lessen health, safety, accessibility, life, fire safety or structural requirements; and that special conditions unique to this project make strict application of those code sections impractical.

Pursuant to City Code Chapter 24.10, you may appeal this decision to the Building Code Board of Appeal within 180 calendar days of the date this decision is published. For information on the appeals process and costs, including forms, appeal fee, payment methods and fee waivers, go to [www.portlandoregon.gov/bds/appealsinfo](http://www.portlandoregon.gov/bds/appealsinfo), call (503) 823-7300 or come in to the Development Services Center.

AFTER RECORDING RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## COVENANT FOR FUTURE NO-BUILD EASEMENT AND AGREEMENT NOT TO BUILD

**18-144155-LPD AD**

### RECITALS

- A. DK HOMES LLC, is the record owner of the parcels described in Section 1 below.
- B. Declarant has submitted an application to the City of Portland for ORSC SECTION 302.1 – **EAVES AND EXTERIOR WALL PROTECTION**
- C. In exchange for the promises under this Covenant for Future No-Build Easement and Agreement Not to Build (“Agreement”), Declarant has requested that the City approve an alternative method of meeting the Building Code requirements described above.
- D. Declarant further desires to burden Parcel 2 with a covenant that will immediately create a no-build easement in perpetuity to benefit Parcel 1, effective upon the date when Parcel 1 and Parcel 2 are no longer under common ownership.
- E. Declarant has agreed not to build any new or additional structures within the No-Build Easement Area described below.
- F. Declarant has further agreed to record this Agreement, to provide record notice of the terms of this Agreement, and to bind subsequent transferees of Parcels 1 and 2 to the terms of this Agreement.

NOW, THEREFORE, the Declarant agrees as follows:

### AGREEMENT

1. LEGAL DESCRIPTION. The properties that are subject to this Agreement are as follows:

- a. The property to be burdened by the No-Build Easement is:

Parcel 2, as more fully described in Exhibit “A” attached hereto.

- b. The property to be benefitted by the No-Build Easement is:

Parcel 1, as more fully described in Exhibit “A” attached hereto.

- c. The No-Build Easement Area is as follows:

A 5.00 foot by 77.72 foot No-Build Easement, as shown and described more fully in Exhibits “B” and “C” attached hereto (the “No-Build Easement Area”).

2. NO-BUILD EASEMENT AREA RESTRICTIONS. No new or additional above-ground structure, including, but not limited to, a dwelling unit, garage, shed, fence, eave or any other

above-ground building or structure, shall be erected, constructed, or placed upon any portion of the No-Build Easement Area.

3. COVENANT FOR NO-BUILD EASEMENT. Declarant, Declarant's successors and assigns, covenant that, if Declarant or subsequent owners or assigns transfer ownership of Parcel 1 and/or Parcel 2 so that the parcels are no longer under common ownership, the subsequent owners and users of Parcel 2 shall immediately be burdened by a No-Build Easement on Parcel 2. Subsequent owner(s) of the parcels described in Section 1 above shall abide by the No-Build Easement Area restrictions described in Section 2 of this Agreement.

4. TERM AND BINDING EFFECT. This Agreement shall be effective as of the date of the signature(s) below and shall continue in perpetuity. All terms and provisions herein are intended to and shall be covenants running with the land and/or equitable servitudes for the benefit of Parcel 1 and burdening Parcel 2 and shall be binding on Declarant, Declarant's heirs, executors, administrators, successors, and assigns and all current and future owners of the parcels described in Section 1 above and all persons claiming title, possession, or ownership of or to such properties.

5. DEFINITIONS. Building Code means the State of Oregon Building Code as defined in Oregon Revised Statutes Chapter 455, as amended from time-to-time and as adopted by the City of Portland.

6. MODIFICATION AND TERMINATION. The Declarant(s) and subsequent owners and assigns may not modify, withdraw from, terminate, or dissolve this Agreement without the written approval of the City of Portland. If this Agreement is a condition of approval of a property division, the City of Portland may require such condition to be modified before permitting this Agreement to be terminated or dissolved or permitting a party to withdraw from this Agreement.

7. GOVERNING LAW AND VENUE. This Agreement shall be construed in accordance with the laws of the State of Oregon. Any action arising out of or relating to this Agreement shall be commenced in the Circuit Court for Multnomah County, Oregon, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division. Any arbitration or other form of alternative dispute resolution arising out of this Agreement shall take place in an appropriate forum within Portland, Oregon.

8. COPY TO BUREAU OF DEVELOPMENT SERVICES. Upon recording, Declarant shall provide a copy of this Agreement to the Bureau of Development Services.

9. NOTICES. Any notice under this Agreement shall be made in writing and sent to the City of Portland at the address below and to each owner via first class mail, in care of the street address of the owner's lot, or in the event the owner does not reside on said property, in care of the current property tax notification address of the property; provided, however, that an owner can change the notification address by written notice to each other owner and the City of Portland. City of Portland: Bureau of Development Services 1900 SW Fourth Avenue, Suite 5000 Portland, OR 97201

10. INDEMNIFICATION. The Declarant, Declarant's successors and assigns shall indemnify, defend, and hold harmless the City of Portland, its officers, agents, officials, and employees against any and all claims, demands, actions, and suits, including attorneys' fees and costs brought against any of them arising out of or resulting from the terms of this Agreement.

11. CONSIDERATION. Declarant has requested that the City allow Declarant to keep the openings and to not protect the exterior wall and eave with the required fire resistance rating on the existing structure on Parcel 1 where the wall is less than 3.00 feet from the property line between Parcel 1 and Parcel 2 on the properties described in Section 2 of this Agreement.

Such properties do not comply with the following sections of the 2017 Oregon Residential Specialty Code: "Section 302.1 and Table 302.1, which require one-hour fire resistant rated walls on residential structures less than 3.00 feet from a property line and prohibit openings in exterior walls that are less than 3.00 feet from the property line. In exchange for the promises under this Agreement, Declarant acknowledges that this Agreement is executed as an alternate method of complying with these sections of the Building Code. The parties agree that the City of Portland is an intended third party beneficiary of this Agreement.

12. AUTHORITY TO EXECUTE AGREEMENT. The Declarant expressly represents and warrants that the persons executing this Agreement are duly authorized to do so. This Agreement may be executed in counterparts, and each counterpart shall have the same binding legal effect as if it were a single document containing all signatures.

13. SEVERABILITY. Each provision of this Agreement shall be independent and severable. The invalidity or partial invalidity of any provision thereof shall not affect any of the remaining portions of that or any other provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the date set forth below.

DECLARANT:

\_\_\_\_\_  
DATE: \_\_\_\_\_

By: Damir Karin

Title: Manager, DK Homes LLC

ADDRESS:

\_\_\_\_\_  
(mailing address)

STATE OF OREGON )

)

County of Multnomah )

Personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
John Goodwin and acknowledged the foregoing instrument to be his/her voluntary act and deed.

By: \_\_\_\_\_  
Notary Public for Oregon

My Commission Expires: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Building Official or Designee (signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
(printed name)

**Michael Manwell  
Land Surveying, LLC**

2847 SE 18TH CIRCLE  
GRESHAM, OREGON 97080  
(503) 661-5270

**EXHIBIT A  
LEGAL DESCRIPTIONS OF PARCELS**

**PARCEL 1**

DECEMBER 13, 2018

BEING A PORTION OF LOT 8, BLOCK 20, OF "DARLINGTON PLAT NO.3", BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 8; THENCE N 00°02'55"W ALONG THE EAST LINE OF SAID LOT 8, A DISTANCE OF 3.00 FEET; THENCE S 89°57'35"W, A DISTANCE OF 12.00 FEET TO THE POINT OF BEGINNING; THENCE S 89°57'35"W, A DISTANCE OF 38.84 FEET; THENCE N 00°02'15"E, A DISTANCE OF 77.72 FEET; THENCE N 89°57'35"E, A DISTANCE OF 38.73 FEET; THENCE S 00°02'55"E, A DISTANCE OF 77.72 FEET TO THE POINT OF BEGINNING.

CONTAINS 3,015 SQUARE FEET.

**PARCEL 2**

DECEMBER 13, 2018

BEING A PORTION OF LOT 8, BLOCK 20, OF "DARLINGTON PLAT NO.3", BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 8; THENCE N 00°02'55"W ALONG THE EAST LINE OF SAID LOT 8, A DISTANCE OF 3.00 FEET TO THE POINT OF BEGINNING; THENCE S 89°57'35"W, A DISTANCE OF 12.00 FEET; THENCE N 00°02'55"W, A DISTANCE OF 77.72 FEET; THENCE S 89°57'35"W, A DISTANCE OF 38.73 FEET; THENCE N 01°02'15"E, A DISTANCE OF 19.28; THENCE S 89°57'35"W, A DISTANCE OF 49.50 FEET TO A POINT ON THE WEST LINE OF SAID LOT 8; THENCE N 00°02'15"E ALONG SAID WEST LINE OF LOT 8, A DISTANCE OF 64.83 FEET; THENCE N 89°57'30"W, A DISTANCE OF 100.10 FEET TO A POINT ON THE EAST LINE OF SAID LOT 8; THENCE S 00°02'55"E ALONG SAID EAST LINE OF LOT 8, A DISTANCE OF 161.84 FEET TO THE POINT OF BEGINNING.

CONTAINS 8,404 SQUARE FEET.



**Michael Manwell  
Land Surveying, LLC**

2847 SE 18TH CIRCLE  
GRESHAM, OREGON 97080  
(503) 661-5270

**EXHIBIT B  
LEGAL DESCRIPTION NO-BUILD EASEMENT**

DECEMBER 12, 2018

BEING A PORTION OF LOT 8, BLOCK 20, OF "DARLINGTON PLAT NO. 3", BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 8; THENCE N 00°02'55"W ALONG THE EAST LINE OF SAID LOT 8, A DISTANCE OF 3.00'; THENCE S 89°57'35"W, A DISTANCE OF 12.00 FEET TO THE POINT OF BEGINNING; THENCE N 00°02'55"W, A DISTANCE OF 77.72 FEET; THENCE N 89°57'35"E, A DISTANCE OF 5.00 FEET; THENCE S 00°02'55"E, A DISTANCE OF 77.72 FEET; THENCE S 89°57'35"W, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 389 SQUARE FEET.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Michael Manwell*

OREGON  
FEBRUARY 8, 2000  
MICHAEL L. MANWELL  
57148

RENEWES: 12-31-20

