



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

1900 SW Fourth Ave. Suite 5000  
Portland, Oregon 97201  
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FAX: 503-823-5630  
[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** September 25, 2008  
**To:** Interested Person  
**From:** Stephanie Beckman, Land Use Services  
503-823-7056 / [BeckmanS@ci.portland.or.us](mailto:BeckmanS@ci.portland.or.us)

## **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 reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

### **CASE FILE NUMBER: LU 08-139755 AD**

#### **GENERAL INFORMATION**

**Applicant:** Ronald K. Petersen  
20385 NE Lakeside Drive  
Fairview, OR 97204

**Representatives:** Ron Naff 503-639-8045  
Naff Design Support Services  
8021 SW Viola Street  
Tigard, OR 97224

Spencer Vail 503-281-8245  
Planning Consultant  
4505 NE 24<sup>th</sup> Ave  
Portland, OR 97211

**Owner:** Paula C Shaffer  
3725 NE Liberty Ter  
Portland, OR 97211-7840

**Site Address:** 3514 NE 45TH AVE  
**Legal Description:** TL 14000 0.12 ACRES, SECTION 19 1 N 2 E  
**Tax Account No.:** R942190620  
**State ID No.:** 1N2E19CC 14000 **Quarter Section:** 2635  
**Neighborhood:** Beaumont-Wilshire, contact David Whitaker at 503-281-2176.  
**Business District:** Beaumont Business Association, contact Yvonne Townsend at 503-493-1390.  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.  
**Zoning:** CSh – Storefront Commercial with an Aircraft Landing (h) overlay zone  
**Case Type:** AD - Adjustment  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

**Proposal:**  
The applicant requests an Adjustment to reduce the north side building setback adjacent to the residential zone from the required 8-feet to 5-feet to accommodate the proposed duplex. The setback is required under 33.130.215 and Table 130-4 of the Zoning Code. A proposed site plan, building elevation and landscape plan is attached.

An associated land division application (see land use case file LU 08-139765 LDP) is being reviewed, in which the applicant proposes to divide the site to create two lots. The existing

structures will be removed from the northern lot (Parcel 2) and it will be developed with a duplex (a residential structure containing two dwelling units).

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:

**33.805.040, Adjustment Approval Criteria.**

## **ANALYSIS**

**Site and Vicinity:** The site is a corner lot located at the intersection of NE Fremont street and NE 45<sup>th</sup> avenue. Currently, the site has an existing tavern located on the southern portion of the site, and a single story residence located on the northern portion of the site.

**Zoning:** The CS zone is intended to preserve and enhance older commercial areas that have a storefront character. The zone allows a full range of retail, service and business uses with a local and regional market area. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged.

The Aircraft Landing (“h”) overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The allowed height limit for buildings and vegetation on the site per the “h” overlay is 280-feet above the lowest base point at Portland International Airport for the northern portion of the site where the new structure is proposed. The airport low base point is at an elevation of 18.3 feet. Therefore, the topographical elevation of the site PLUS the proposed building cannot exceed 298.3-feet. The highest ground elevation on the site is approximately 255.8-feet. Therefore, buildings and vegetation on the site cannot exceed approximately 42.5-feet in height. The height limit for this zone is 45 feet, therefore the ‘h’ overlay will restrict the allowed height on the northern portion of the site. The current proposal is for a two-story residential structure that is approximately 22 feet in height. Therefore, no issue are identified.

**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 **August 29, 2008**. The Bureaus have responded with no issues or concerns:

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on **August 29, 2008**. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## **ZONING CODE APPROVAL CRITERIA**

### **33.805.010 Purpose of 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 to provide certainty and rapid processing for land use applications.**

### **33.805.040 Approval Criteria**

**Adjustment requests will equally be approved if the review body finds that the applicant has shown that approval criteria A. through F. or approval criteria I., 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 requests one adjustment to reduce the north side setback adjacent to the residential zone from the required 8-feet to 5-feet to accommodate the proposed duplex. When abutting a residential zone, the setback is based on the height of the wall of the structure. In this case, the height of the wall is approximately 17.5 feet and therefore fall in the category for walls 16 to 30 feet, which require an 8 foot setback (as opposed to 5 feet).

The purpose of the setback regulation is listed below, with the relevant portion regarding setback adjacent to residential zones in bold:

**33.130.215 Setbacks Purpose**

The required building setbacks promote streetscapes that are consistent with the desired character of the different commercial zones. The CN1, CM, CS, and CX setbacks promote buildings close to the sidewalk to reinforce a pedestrian orientation and built-up streetscape. **The setback requirements for areas that abut residential zones promote commercial development that will maintain light, air, and the potential for privacy for adjacent residential zones.** The setback requirements along transit streets and in Pedestrian Districts create an environment that is inviting to pedestrians and transit users.

As noted in the purpose statement, the increased setback adjacent to residential zones is intended to provide adequate separation and privacy between commercial and residential uses. In this case, residential development (a duplex) is proposed with a 5-foot setback, which would be acceptable if the property was zoned residential. The scale and height of the proposed two-story residential structure is modest and will not overwhelm the adjacent duplex. The duplex to the north is setback from the street approximately 34 feet, creating additional separation between the development on the two properties. The required 5-foot landscape buffer will provide an additional buffer between the two properties. Given the scale of the residential development proposed and differentiated front setbacks and landscape buffer provided, there will be adequate light, air and potential for privacy provided by the proposed 5 foot side setback. 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**

**Findings:** The site is a corner lot located at the intersection on NE Fremont Street and NE 45<sup>th</sup> Avenue. The commercial building and tavern use will be maintained on the corner of NE Fremont and NE 45<sup>th</sup>. The proposed new duplex development will replace an existing house to be removed and will be located on its own lot with frontage only on NE 45<sup>th</sup> once the site is divided (see land use case file LU 08-139765 LDP). NE 45<sup>th</sup> Avenue is designated as a local service street for all modes in the Transportation System Plan. This street classification provides for local circulation.

The CS zone is intended to preserve and enhance older commercial areas that have a storefront character. The zone allows a full range of retail, service and business uses with a local and regional market area. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged.

The proposed residential development will be consistent with the local service street classification as it will provide a minor increase in demand for transportation services. The proposed duplex is an allowed use in the CS zone. It does not specifically contribute to the commercial character of the area, but it will not detract from it either. The proposal includes a

prominent front porch located close to the street and a setback garage which will contribute to the urban character of area.

The request is to reduce the north side setback adjacent to a residential (R5) zone. Because a modest two-story residential structure is proposed, with typical residential materials (horizontal siding and windows with trim), and landscaping, there will be little impact to the livability or appearance of the adjacent residential zone. To further enhance the livability and appearance of the area, the applicant should be required to install a varied landscape buffer including at least 3 different shrub species as noted on the approved plans. In addition, the proposed ground cover (vinca minor) is listed as a nuisance species in the Portland Plant List and therefore cannot be used in a required landscaping area. This species will need to be substituted on the permit plans. With the requirements noted above, this criteria 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 does not apply.

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

**Findings:** The site does not contain any scenic resources and/or any historic resources, therefore this criterion does not apply

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

**Findings:** As described above under criterion “A” and “B”, the reduced setback will have minimal impacts because of the modest scale of the residential development proposed, the traditional materials, the required landscape buffer and the staggered setback with the adjacent development. With the requirement to vary the landscaping within the required buffer as noted on the plans, no additional mitigation is necessary. 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; or**

**Findings:** The site is not located within an environmental zone, therefore this criterion does not apply.

## **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 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 proposes an adjustment to reduce the north side setback abutting a residential zone for a proposed duplex. No significant impacts have been identified with the request and the proposal can be approved. A land division proposal is also being reviewed to divide the site into two lots. The proposed duplex would be located on proposed Parcel 2 (see land use case file LU 08-139765 LDP).

## **ADMINISTRATIVE DECISION**

Approval of an Adjustment to 33.130.215.B to reduce the north side building setback adjacent to the residential zone from the required 8-feet to 5-feet, per the approved site plan and elevations, Exhibits C.1 through C.2, signed and dated September 23, 2008, 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 08-139755 AD. No field changes allowed."

Decision rendered by: S. Beckman on September 23, 2008  
By authority of the Director of the Bureau of Development Services

**Decision mailed: September 25, 2008**

**Staff Planner: Stephanie Beckman**

**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 June 23, 2008, and was determined to be complete on August 21, 2008.

*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 June 23, 2008.

*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.

**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 October 9, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **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. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-7967 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 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, 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 must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed,* The final decision may be recorded on or after **October 10, 2008 – (the day following the last day to appeal).**
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034

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
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation Drawings (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. Bureau of Parks, Forestry Division
  - 7. Life & Safety
- F. Correspondence from interested parties: None
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Incomplete letter

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).**



# ZONING



Site



NORTH

|             |                          |
|-------------|--------------------------|
| File No.    | <u>LU 08-139755 AD</u>   |
| 1/4 Section | <u>2635</u>              |
| Scale       | <u>1 inch = 200 feet</u> |
| State_Id    | <u>1N2E19CC 14000</u>    |
| Exhibit     | <u>B</u> (Jun 24,2008)   |



SHEET 4

CASE NO. LV08-139124

EXHIBIT REVISIONS

|   |     |    |
|---|-----|----|
| 0 | 24  | 08 |
| 0 | 31  | 08 |
| 0 | 219 | 02 |
| 0 | 31  | 08 |
| 0 | 312 | 08 |
| 0 | 612 | 08 |
| 0 | 717 | 08 |
| 0 | 81  | 08 |

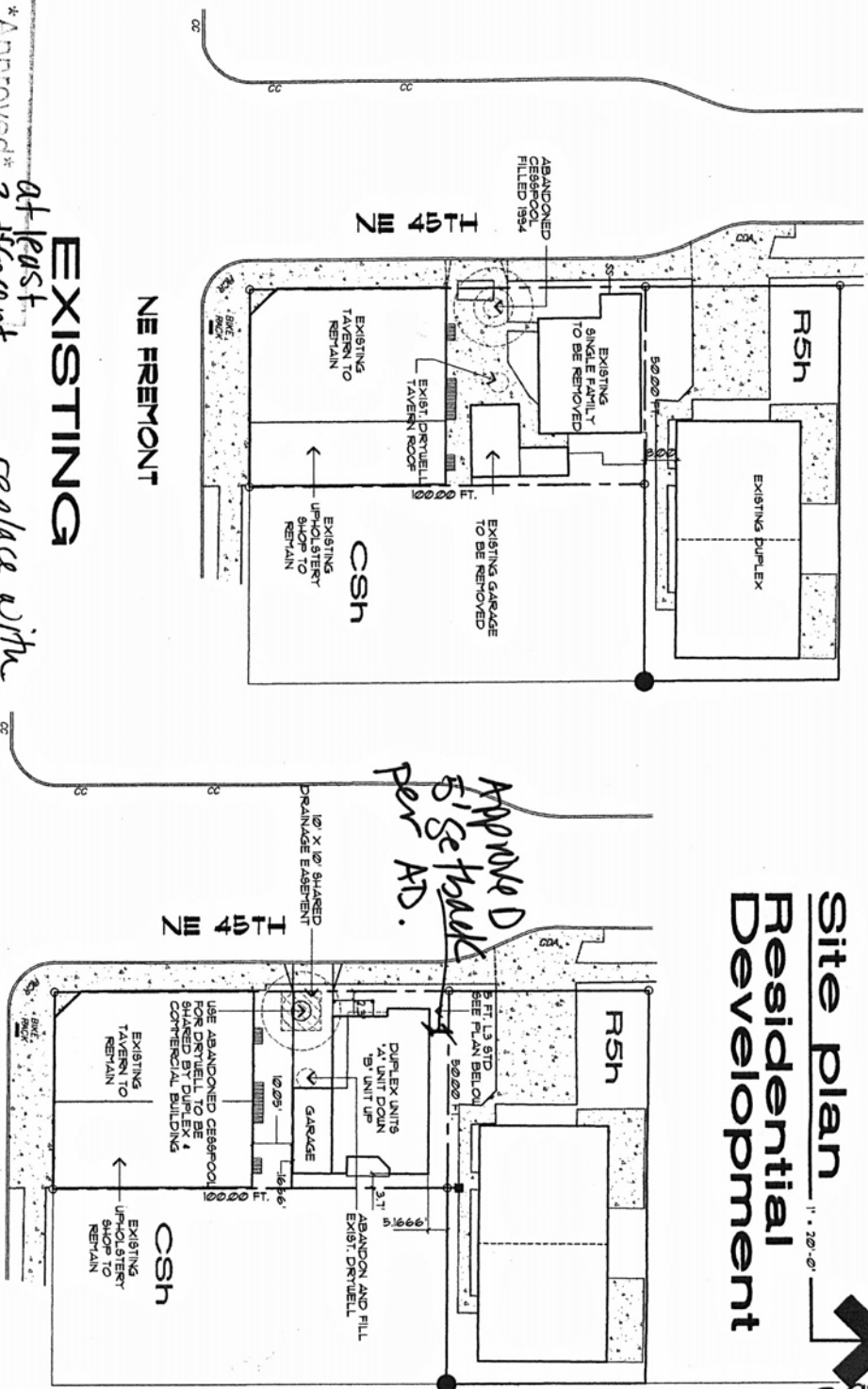
## RESIDENTIAL DEVELOPMENT

FOR

**RON & KATHY PETERSEN**

**ROWELL**  
engineering and design, inc.  
10510 SE Washington St  
Ph 503 254 6292 - Fax 503 254 6761

**Naff Design**  
Support Services, Inc.  
8021 5th Viola Street  
Tigard, Oregon 97224  
Ph 503 635 8045 Fax 503 654 3514



## EXISTING

at least 3 different species reg. allowed species

Bureau of Development Sciences  
(20) 36° - 48° ARBORVITAE  
PHYLLA OCCIDENTALIS PYRAMIDALIS

(20) 36' - 48' ARBORVITAE  
HYUA OCCIDENTALIS PYR

(4) 2' C  
ACER

(4) 2' CAL. PYRAMIDAL NORWAY MAPLES  
'ACER PLANOIDEES COLUMNARE'

# ZIMMER

# PROPOSED

## UNIT SUMMARY

|            |   |     |         |                  |
|------------|---|-----|---------|------------------|
| 1 'A' UNIT | • | 989 | SQ. FT. | 2 BEDROOM 2 BATH |
| 1 'B' UNIT | • | 934 | SQ. FT. | 2 BEDROOM 2 BATH |

| UNIT     | 934 | 60 FT. | 2 BEDROOM | 2 BATH |
|----------|-----|--------|-----------|--------|
| 'B' UNIT | 934 | 60 FT. | 2 BEDROOM | 2 BATH |

**PROPOSED "L3"  
LANDSCAPE PLAN**

1. 10-10

plant species  
may be subs. killed provided shrub reg. not

\* This approval applies only to the reviews requested and is subject to conditions of approval.

Planner 8/26/22  
Date 9/23/22



PROPOSED  
DUPLIX UNIT

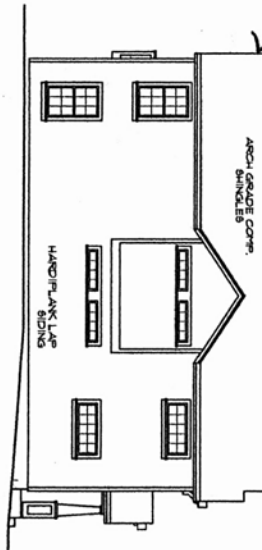
\* This approval applies only to the reviews requested and is subject to conditions of approval.

**RECEIVED**  
AUG 21 2008

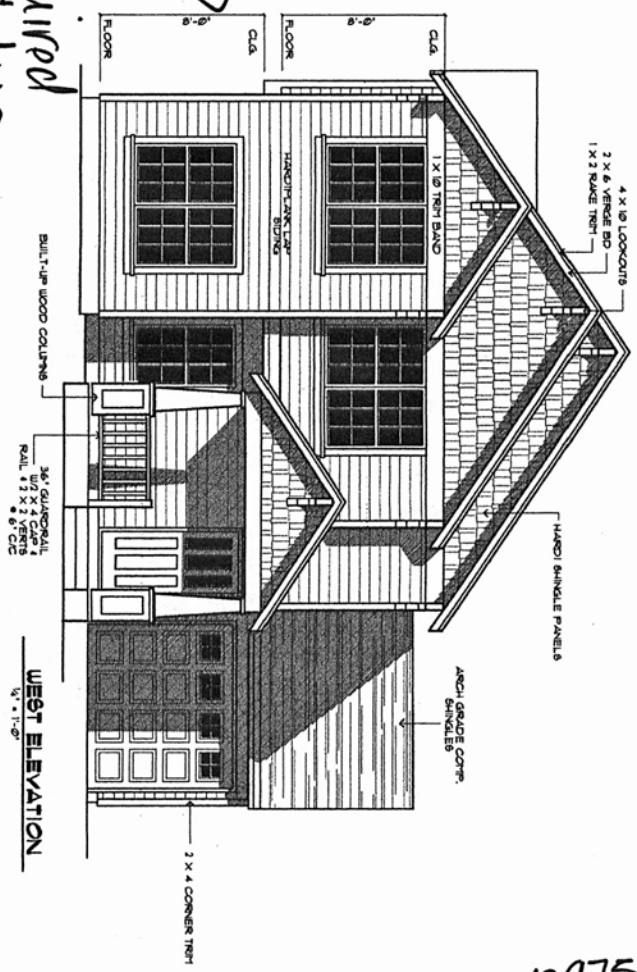
Approved\*  
City of Portland  
Bureau of Development Services  
Planner Stetman  
Date 9/23/08  
\* This approval applies only to the reviews requested and is subject to all conditions of approval.  
Additional zoning requirements may apply.

min. 4" trim required  
on all windows & doors  
front & no. side elevations.

NORTH ELEVATION  
1/4" = 1'-0"

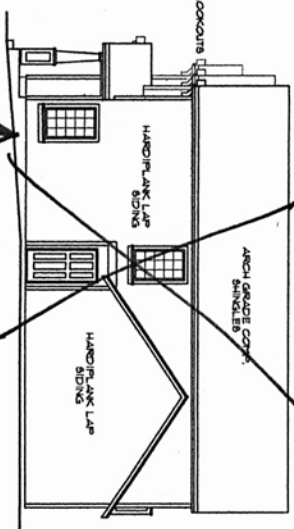


ELEVATIONS

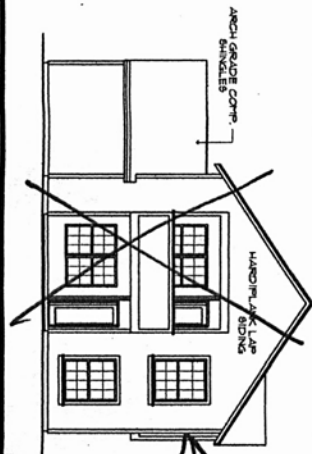


WEST ELEVATION  
1/4" = 1'-0"

SOUTH ELEVATION  
1/4" = 1'-0"



Not subject to  
two review  
←  
EAST ELEVATION  
1/4" = 1'-0"



CASE NO. LU08-139755  
EXHIBIT C2

**Naff Design**  
Support Services, Inc.  
8021 SW Viola Street  
Tigard, Oregon 97224  
Ph: 503 639 8045 Fax: 684 1514

**DUPLEX APARTMENT**  
FOR  
**MR. AND MRS. PETERSEN**

REVISIONS

|          |
|----------|
| 27/1/08  |
| 27/5/08  |
| 28/7/08  |
| 27/7/08  |
| 28/11/08 |

**A1**  
SHEET \*