



City of Portland, Oregon
Bureau of Development Services
Land Use Services

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Date: June 15, 2009
To: Interested Person
From: Susan McKinney, Land Use Services
503-823-7809 / smckinney@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 09-123784 AD

GENERAL INFORMATION

Applicant: John M Mayhew
4927 NE 14th Ave
Portland, OR 97211

Site Address: 4928 NE 14TH AVE

Legal Description: LOT 4 BLOCK 6, ALBINA HTS
Tax Account No.: R010200810
State ID No.: 1N1E23BD 00200
Quarter Section: 2531

Neighborhood: King, contact Maureen Mimiaga at 503-381-4805.
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321.
District Coalition: Northeast Coalition of Neighborhoods, contact Lauren McCartney at 503-823-4135.

Zoning: R5ah, Single-dwelling Residential 5,000 with Alternative Design Density and Aircraft Landing Overlay Zones

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

Proposal:

The applicant is requesting an Adjustment in order to construct an on-site parking pad that is located within the front building setback. The parking pad will be 19 feet deep and 9 feet wide, and begins at the front property line. The applicant proposes a pervious parking surface consisting of permeable pavers. Existing landscaping in the area will be preserved, and additional landscaping will be installed to help screen and soften the effect of a parked vehicle.

Zoning Code Section 33.266.120, Parking and Loading; Development Standards for Houses and Duplexes, states that required parking spaces are not allowed within the first 10 feet from a

front lot line or in a required front setback, whichever is greater. The R5 zone requires a front building setback of 10 feet. Therefore, approval of an Adjustment to Zoning Code **Section 33.266.120.C.1.a, Parking area location**, is required to allow the parking pad to be located zero feet from the front lot line

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are found in 33.805.040 A-F.

ANALYSIS

Site and Vicinity: The site is located just south of the Alberta Arts commercial district, separated from Alberta Street by one commercially-zoned property. The site is a 3,900 square foot property developed with a detached single dwelling residence that was built in the early 20th century. The entrance to the house is above the street, approached via two sets of stairs that accommodate the slight rising up from the sidewalk. Currently there is no on-site parking available. There is a chain link fence on the north and south sides of the property, with hedge landscaping obscuring a good portion of the fence on the south side. There is no landscaping along the north property line.

Properties to the south, east and west are generally developed with single dwelling residences of varying sizes and ages. To the north, Alberta Street is developed with a mix of residential and commercial uses. Currently there is a commercial building directly north of the site, with a paved parking area on the west side. Building permits have been submitted for the Alberta property for a mixed-use development containing 6 to 9 live-work units and 2 retail spaces. No on-site parking will be provided, nor is it required. Diagonal to the site, at the southwest corner of the intersection is a commercial building with parking to the rear.

Most all of the properties along NE 14th, between NE Alberta and NE Going have on-site parking of some sort; either parking pads or driveways that extend beyond the front setback that may or may not access a garage. Some of the parking pads appear to be less than 28 feet deep and therefore are providing parking within the front setback. Generally these pads are not directly in front of the house, and instead are more off to the side, but there are two examples of parking pads in front of the house on NE 14th and NE Going. (Note: These parking pads may or may not be legal due to nonconforming status.)

Northeast 14th Avenue is designated a Local Service Street for all modes. Because the applicant's property is located within 500 feet of a peak hour transit street (bus route #72 on NE Alberta), no on-site parking is required. NE Alberta Street is designated a Neighborhood Collector Traffic street, a Community Transit street, a Local Bikeway, a City Walkway and a Truck Access route.

Zoning: The site is zoned R5ah, a single dwelling residential zone that allows a maximum density of 1 unit per 5,000 square feet. The Alternative Design Density Overlay (a) and Airport Landing Overlay (h) zones are not relevant to this proposal. Zoning in the area generally matches the development. Across the street to the west is a large area of R2.5 zoning, which allows single dwellings and attached housing. To the north, a commercial corridor runs along NE Alberta.

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 **May 14, 2009**. The following Bureaus have responded with no issues or concerns:

Bureau of Environmental Services, Water Bureau, Fire Bureau, Site Development Section of BDS, Bureau of Transportation, Bureau of Parks-Forestry Division, Life Safety Section of BDS.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 14, 2009. A written response in opposition was received from the Sabin Community Association. In summary, the respondent stated:

- that houses in this area do not have parking pads in the front building setback, therefore the proposal would detract from the appearance of the neighborhood;
- that there appears to be room on the south side of the house for a parking pad that would allow on-site parking to extend beyond the front setback;
- that residences in this area do not have off street parking; and
- that there is plenty of on-street parking in front of this property.

The response also indicated that for the reasons stated above that denial of the application would not create any undue hardship.

Staff comment: Regarding the second bullet, the Adjustment process allows property owners to pursue alternative ways to develop their property without meeting the development standards of the Zoning Code. Regarding respondent's last comment, there is no approval criterion that requires a showing of hardship in order to approve an Adjustment. The remaining points will be addressed in the findings below.

ZONING CODE APPROVAL CRITERIA

Title 33.805.010 Purpose

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 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 purpose statement associated with the standard found at **33.266.120 Development Standards for Houses and Duplexes** states: *The size and placement of vehicle parking areas are regulated in order to enhance the appearance of neighborhoods.*

Parking within the front setback can potentially create negative visual impacts, depending on the facts of the situation. In this case, however, the proposed 9' by 19' parking pad will be consistent with the purpose statement above and as shown below in B, will not detract from the appearance of the residential area. The most significant reason for this is that the main level of the house is located above the grade and is accessed via a stairway containing approximately 7 steps. This means that most vehicles parked in the proposed parking space will be lower than the porch and front windows that are 6 feet above the grade. Therefore, views out the windows or from the porch will not be blocked by a parked vehicle, nor will views of the windows and porch be blocked from the street. In addition, the applicant proposes tall evergreen shrubs to the north of the parking pad and a variety of evergreen ground cover and 2- to 3-foot tall evergreen shrubs on the south side to aid in softening and screening the parking pad from different visual perspectives. This additional landscaping will act to enhance the appearance of the neighborhood, as will the use of pervious pavers for the parking pad

which will allow ground cover to grow through while still providing the necessary structural strength for a parked vehicle. 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 in a residential zone. The proposal to develop a 9' by 19' parking pad that will provide parking for a vehicle within the 10-foot front building setback will not significantly detract from the livability or appearance of the residential area for the following reasons:

As discussed in the Site and Vicinity section above, most all of the properties on NE 14th between Alberta and Going have some sort of off-street parking; either on parking pads or on driveways that extend beyond the houses that may or may not access garages. And, there are examples of parking pads that are located within the front setback in this residential area in general and on this street in particular. While this fact could argue against this proposal because most people could park their cars off the street and free-up on-street parking, the proximity of the subject site to an active commercial corridor with little on-site parking speaks in its favor. In addition, future development of the adjacent property to the north with 6-9 live-work units and 2 retail spaces with no on-site parking will most likely further encumber the ability for those without on-site parking on this street to find a parking space near to home.

The applicant is proposing a parking pad constructed of permeable pavers that will allow ground cover to grow through, and landscaping on both sides of the pad (tall evergreen on the north and shorter evergreen shrubs and groundcover on the south). Existing landscaping under the windows will either be retained and added to, or that area will be replanted. The existing and proposed landscaping and use of permeable pavers will soften and screen the parking pad, reducing the potential for visual impacts. And, because it is not unusual for parking pads to be located within the front setback in this area, the proposal will not significantly detract from the appearance of the residential area.

Finally, the proposed parking pad exceeds in length the required dimension of 18 feet by one foot. The 19-foot long pad will accommodate most vehicles that would park there; ranging from a 10-foot Mini Cooper to a 15-foot Toyota Camry to an 18.4-foot Ford Expedition. Because there is one foot between the sidewalk and the property line the average length vehicle could be parked such to allow approximately 5 feet between the vehicle and the sidewalk. This will not have a significant impact on the appearance or livability of the neighborhood.

Because approval is based on the use of permeable pavers and the installation of landscaping to the north and south of the parking pad, decision language is warranted that requires construction of the parking pad in substantial conformance with submitted plans. With such language 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;

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 City designated or historic resources on this site. This criterion is not applicable.

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

Findings: The applicant has proposed the use of permeable pavers and landscaping to aid in softening and screening the proposed parking pad. With construction as proposed, no impacts are expected as a result of approving this Adjustment. With decision language requiring construction of the parking pad in substantial conformance with submitted plans, 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: 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 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 proposed a 9' by 19' parking pad located within the 10-foot front building setback. Because parking for houses and duplexes is not allowed within the front building setback, this land use review was necessary. Because it is not unusual to find parking pads within the front setback in this neighborhood, because the applicant has proposed design features that will soften and screen the parking, and with decision language requiring construction with permeable pavers and the installation of landscaping, the request meets all of the approval criteria and should be approved.

ADMINISTRATIVE DECISION


Approval of

an **Adjustment to 33.266.120.C.1.a, Parking area location**, in order to develop a 9' by 19' parking pad within the front building setback **constructed of permeable pavers and with screening landscaping on the north and south sides of the parking pad**

in substantial conformance with the approved site plans, Exhibits C-1 and C-2, signed and dated June 9, 2009, subject to the following condition:

- A. As part of the zoning 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 09-123784 AD."

Staff Planner: Susan McKinney

Decision rendered by:  on June 9, 2009
By authority of the Director of the Bureau of Development Services

Decision mailed: June 15, 2009

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 April 23, 2009, and was determined to be complete on May 11, 2009.

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 April 23, 2009.

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 September 9, 2009.**

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 June 29, 2009** 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.

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 **June 30, 2009 – (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:

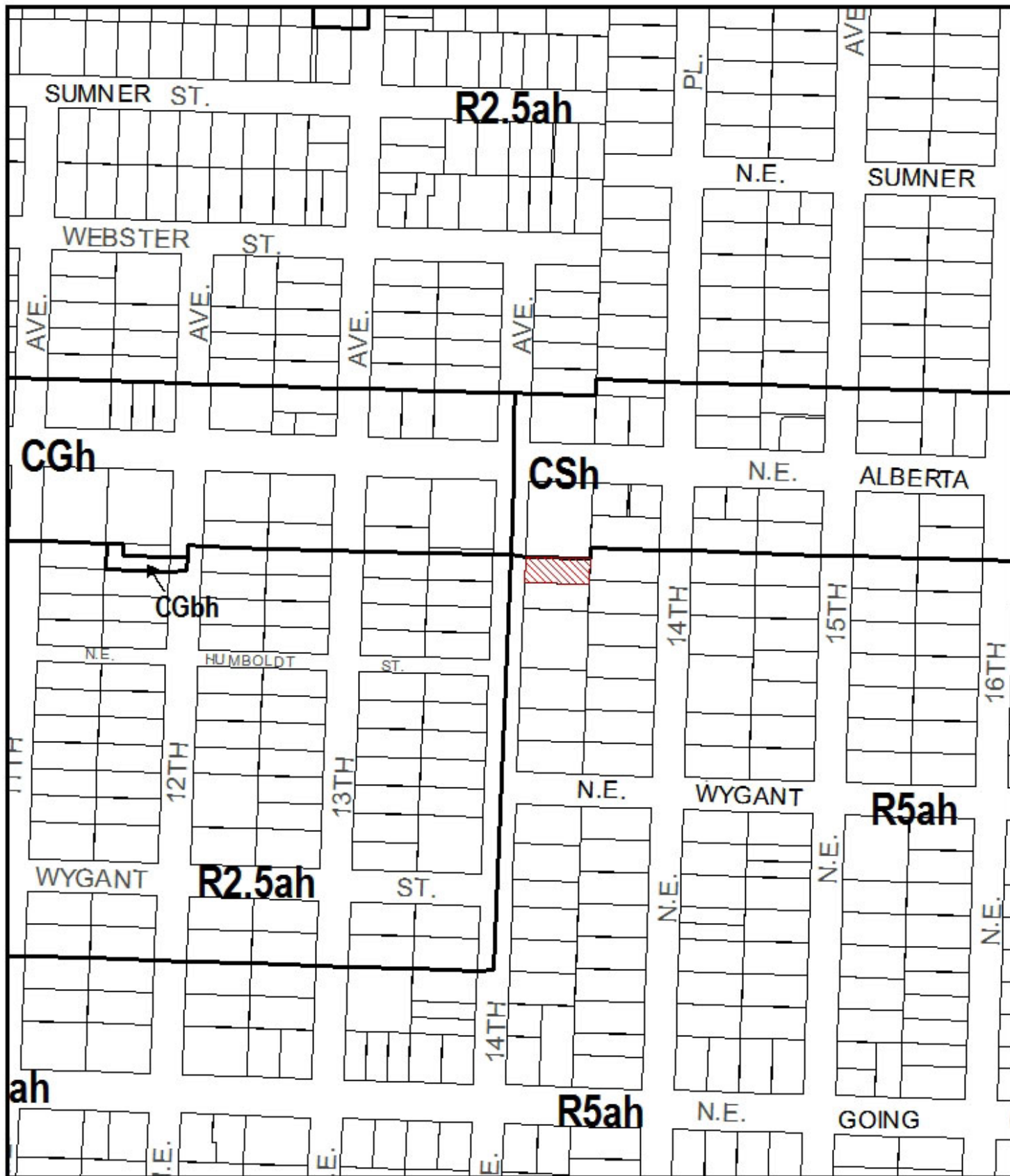
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Modified Site Plan (attached)
 - 2. Landscape Plan (attached)
 - 3. Conceptual Landscape and Street View Rendering (attached)
 - 4. Site Plan submitted with application
- 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 Section of BDS
- F. Correspondence:
 - 1. David Sweet of Sabin Community Association, May 29, 2009, in opposition
 - 2. Maureen Mimiaga, King NA, June 4, 2009, requesting extension of timeline
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete Letter
 - 4. E-mail from applicant, June 8, 2009 at 7:21 pm
 - 5. E-mail from applicant, June 9, 2009 containing 6 photos
 - 6. E-mail chain with applicant, last date/time June 8, 2009 at 5:53 pm, with clarifications
 - 7. E-mail from applicant, dated June 8, 2009 at 5:45 pm, re: permeable pavers

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-7300 (TTY 503-823-6868).



ZONING



File No.	<u>LU 09-123784 AD</u>
1/4 Section	<u>2531,2532</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N1E23BD 200</u>
Exhibit	<u>B</u> (Apr 29,2009)

Approved

City of Portland - Bureau of Development Services

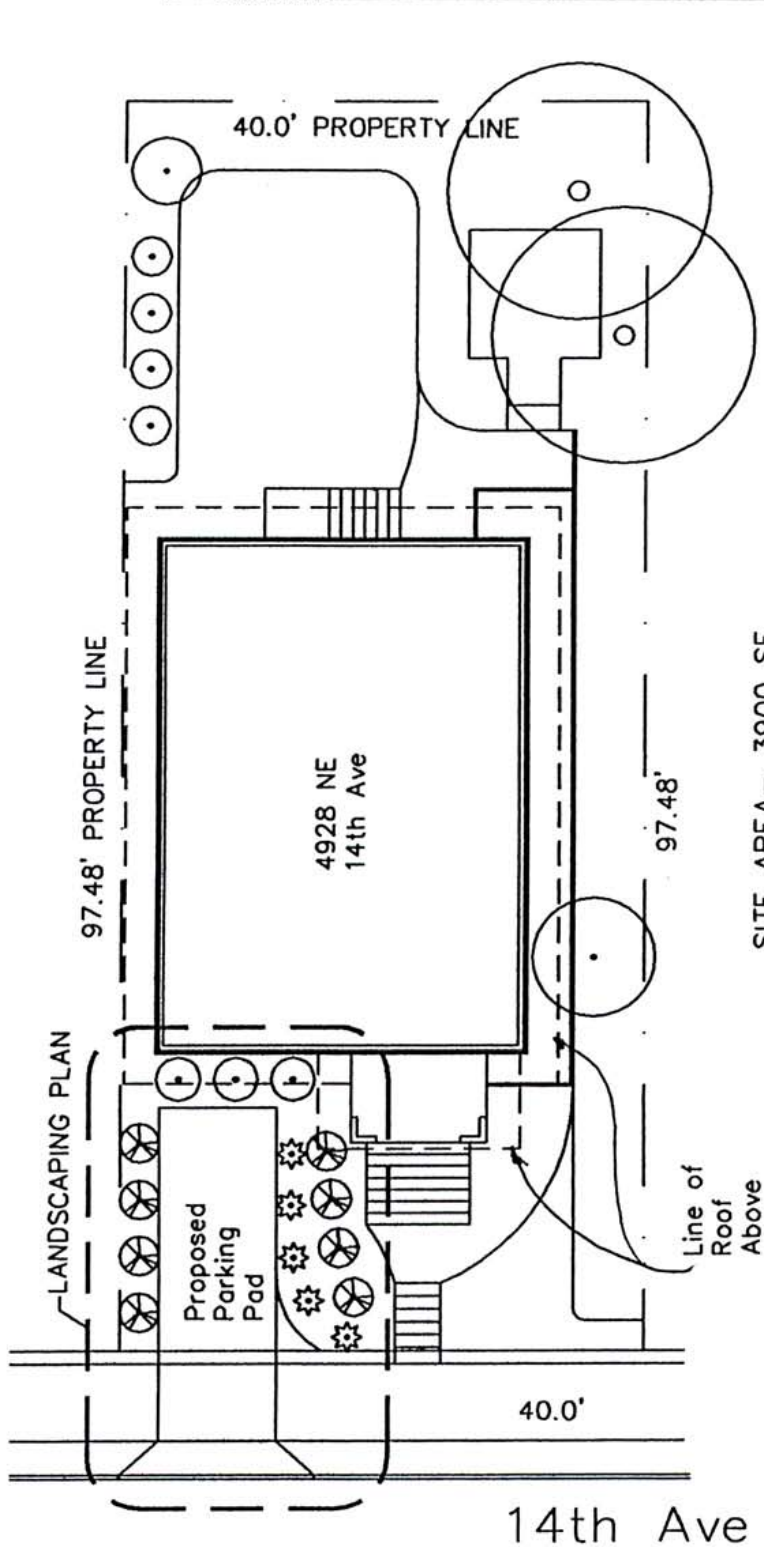
Planner

James K. M. Lanning

Date

6/9/09

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



SITE AREA- 3900 SF

BUILDING FOOTPRINT AREA INCLUDING IMPERVIOUS PORCH-
1209 SF

EXISTING IMPERVIOUS AREA INCLUDING BUILDING AREA & ROOF
OVERHANG- 1581 SF

EXISTING LANDSCAPING IMPERVIOUS AREA- 22 SF

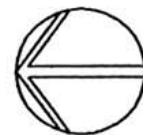
EXISTING TOTAL IMPERVIOUS AREA- 1603 SF PROPOSED

PROPOSED PARKING PAD-
189 SF PERVIOUS

PROPOSED TOTAL IMPERVIOUS AREA- 1603 SF = 42% SITE
AREA

SITE PLAN

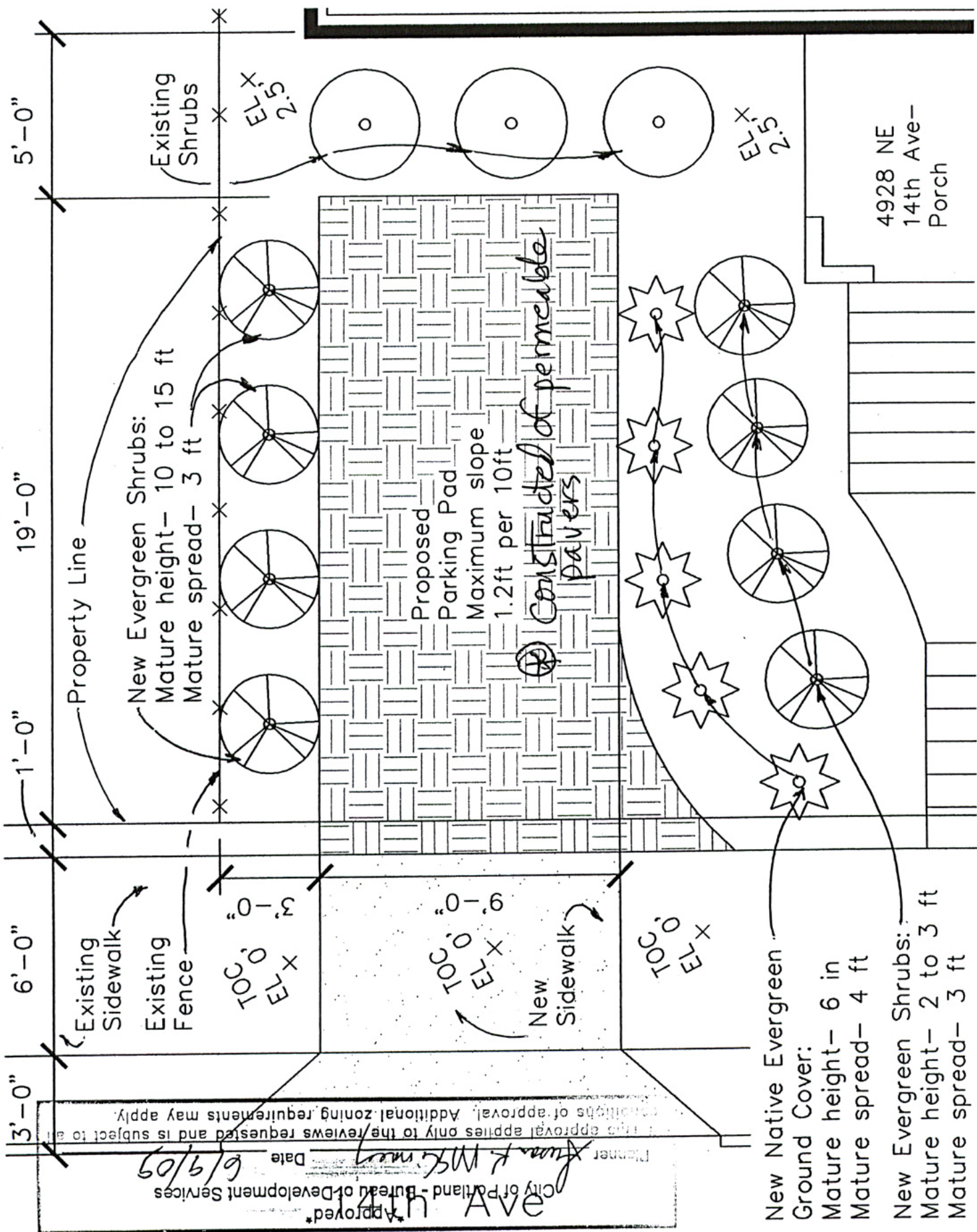
SCALE: 1/16" = 1'-0"



North

LU 09-123784 AD

Exhibit C.1

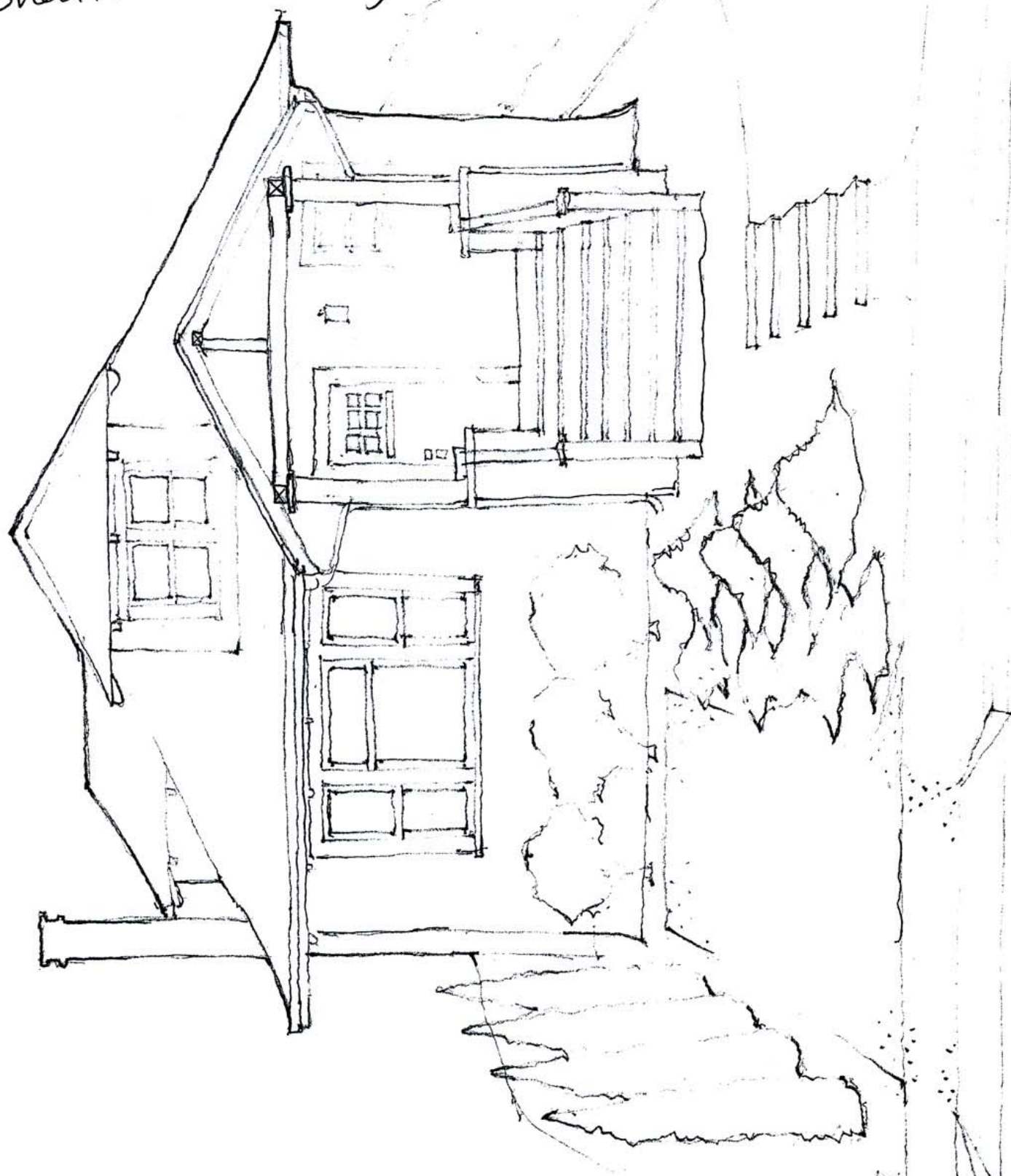


PLAN - LANDSCAPING
SCALE: 1/4" = 1'-0"

LU 09-123784 AD

Exhibit C.2

Conceptual landscaping and
street view rendering.



4928 NE AVE

LU 09-123784 AD
Exhibit C.3