



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
Paul L. Scarlett, Director
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www.portlandoregon.gov/bds

Date: August 22, 2013
To: Interested Person
From: Douglas Hardy, Land Use Services
503-823-7816 / Douglas.Hardy@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The 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 13-164765 AD

GENERAL INFORMATION

Applicant: Dave Spitzer / DMS Architects
2106 NE MLK Boulevard / Portland, OR 97212
503-335-9040

Property-Owner: Mike Gemmet / Running Waters Properties
P.O. Box 13679 / Portland, OR 97213

Site Address: 3001 NE 37th Avenue

Legal Description: Block 46, Lot 5 TL 13700, Beaumont
Tax Account No.: R060807010
State ID No.: 1N1E25AB 13700 **Quarter Section:** 2734
Neighborhood: Beaumont-Wilshire, contact Michael Rounds at 503-936-0740
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156
Zoning: R5h Single-Dwelling Residential 5,000 with an Aircraft Landing Zone overlay

Case Type: Adjustment (AD)
Procedure: Type II, Administrative decision with appeal to Adjustment Committee

PROPOSAL

The applicant proposes demolishing the existing one-car garage on the west side of the lot and building a new one-car garage with rooftop patio. The new garage will be approximately 23 feet in depth and 16 feet in width, and built into the slope of the lot. The garage entrance will be set back five feet from the lot line along NE Morris Street, and 21 feet from the curb line.

In the R5 zone, garage entrances are required to be set back a minimum of 18 feet from a street lot line. The applicant is therefore requesting an Adjustment to reduce the minimum required garage entrance setback from 18 feet to five feet.

RELEVANT APPROVAL CRITERIA

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The 5,000 square foot site is located at the northwest corner of NE Morris Street and NE 37th Avenue in the Beaumont-Wilshire neighborhood. The site, which slopes upwards from NE Morris Street, is currently developed with a one and one-half story house, and a semi-attached one-car garage accessed from NE Morris Street. The entrance of the existing garage is set back approximately 24 feet from the property line along NE Morris Street.

The surrounding area is also developed with single-dwelling residences ranging from one to two stories in height. In the flatter area of the neighborhood, generally south of NE Morris Street, garages are typically detached and placed in the rear corner of the site. North of NE Morris Street, where the topography is steeper, there is greater variation in building setbacks, with some examples of garages being closer than 18 feet from the street lot line.

Zoning: The subject site and surrounding neighborhood within a one to two block radius are located in a Single-Dwelling Residential 5,000 (R5) zone, with an Aircraft Landing (“h”) overlay zone.

The use regulations of the Single-Dwelling zones are intended to create, maintain and promote single-dwelling neighborhoods. The development standards of the Single Dwelling-zones work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. The development standards are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.

The Aircraft Landing overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures, vegetation and construction equipment. In residential zones, structures are regulated by the base zone height limits rather than the height limits of the “h” overlay.

Land Use History: City records indicate there are no prior land use reviews for the subject site.

Agency Review: A Notice of Proposal was mailed July 22, 2013. The following City service bureaus have responded with no issues or concerns regarding the requested land use review:

- Bureau of Environmental Services (Exhibit E.1);
- Portland Water Bureau (Exhibit E.2);
- Portland Fire and Rescue Bureau (Exhibit E.3);
- Bureau of Development Services (BDS) Site Development Section (Exhibit E.4); and
- Portland Parks and Recreation Urban Forestry Division (Exhibit E.5).

The Portland Bureau of Transportation (PBOT) reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services (Exhibit E.6). PBOT has no objections to the proposed Adjustment request to the garage entrance setback area with the exception of one recommended condition of approval that requires the retaining wall at the west edge of the driveway to be pulled back to increase visibility for drivers backing out of the garage.

Neighborhood Review: 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

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 applicant is requesting an Adjustment that reduces the minimum required garage entrance setback from 18 feet to five feet. The purpose for requiring minimum building setbacks in the Single-Dwelling zones, as stated in Zoning Code Section 33.110.220.A, is as follows:

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.*

The proposal equally meets the stated intent of the minimum building setback based on the following findings:

- Regarding the purpose of the regulation to maintain light and air, the reduced setback is only from the south street lot line along NE Morris Street. The 60 foot width of this public right-of-way, in combination with the proposed five foot setback, will place the proposed garage 65 feet from the closest property south of the site. This substantial horizontal distance, combined with the limited height of the proposed garage, will maintain light and air for the closest property to the south.

Likewise, the setback reduction will have no impact on the amount of light and air reaching the adjacent property west of the subject site. This is due to a proposed setback of between 16 and 18 feet that will exist between the proposed garage and the rear (west) lot line. This setback will be 11 to 13 feet deeper than the minimum required setback from the rear lot line for an attached garage. Furthermore, as the garage will be built into the sloping bank of the site, the garage wall as viewed from the west will be only approximately seven feet in height. The reduced height and deep rear setback ensure that light and air will be retained for the adjacent property west of the site.

The requested setback reduction will have no impact on the property to the north as the garage will be set back 21 feet from the north side lot line, far in excess of the minimum required five foot setback. The garage will be set back from the closest property to the east by more than 120 feet, thereby having no impact of light and air reaching this site.

- As for the intent of the setback regulation to maintain separation for fire protection and access for fire fighting, the structure will be directly accessible from NE Morris Street, as well as through the 16 to 18 foot setback proposed between the garage and the rear (west) property line. As the requested setback reduction is only from the street lot line, there are no issues related to providing minimum spacing between structures for the purpose of fire protection.
- The subject site is at the base of an area that is characterized by sloped sites (part of the Alameda Ridge). The upward slope of the surrounding area generally begins on the north side of NE Morris Street. There are several examples north of the site where garages (as well as houses) are located closer to the street lot line than the minimum required setbacks. While the subject site is not considered a steeply sloping lot (i.e., with a grade of 20 percent or greater), there is enough of a slope that the garage can be built into the bank of the slope, thereby considerably reducing the scale of the garage. As such, the proposal reflects the general building scale and placement of houses in the surrounding neighborhood.
- Regarding the intent of the regulation to promote a reasonable physical relationship between residences and promote options for privacy, as noted above, the reduced setback is only along the south street lot line. As such, the width of the right-of-way (60 feet) provides substantial horizontal separation between the proposed garage and the closest residence to the south. The setbacks between the proposed garage and remaining property lines substantially exceed the minimums required in the R5 zone.
- Because the reduced setback affects only the side setback, the Adjustment request has no impact on the intent of the regulation to preserve large, open front yards.
- The Adjustment request directly addresses the intent of the setback regulation that encourages adequate flexibility so that development can fit the topography of the site. Rather than placing the garage farther back on the site, which would place the floor of the structure at an elevation that is approximately seven feet higher than the elevation of the sidewalk along NE Morris Street, thereby arguably increasing the prominence of the garage, the applicant proposes building the garage into the bank of the slope, which reduces the visual height and mass of the structure.
- The proposed garage will be placed five feet from the site's NE Morris Street property line. Though a conventional passenger vehicle could park in front of the garage and extend into the public right-of-way, PBOT finds that this is unlikely to occur given the following:
 - Parking in front of the garage would result in the vehicle extending out into the street, creating conflicts and impacts with other motorists along the street; and
 - The adjacent NE Morris Street and NE 37th Avenue are paved and improved with curbs and sidewalks, making it more likely that additional vehicles or guest vehicles will park along the site's street frontages and not across the sidewalk, in front of the proposed garage.

Additionally, the applicant notes that locating the garage entrance closer to the street encourages the homeowners to park a car in the garage, more so than is the existing case. The steepness of the driveway leading to the existing garage at the back of the site discourages its use by the homeowners.

With regards to preserving visibility between a driver backing out of the proposed garage and pedestrians and vehicles in the adjacent right-of-way, the applicant has cut back the three and one-half foot tall retaining wall that runs along the south street lot line on the east side of the driveway. This maintains visibility between a driver backing out of

the garage and those in the public right-of way that are traveling westbound. However, the same height retaining wall on the west side of the driveway is flush with the driveway and does not provide adequate visibility between a driver backing out of the garage and those traveling eastbound on NE Morris Street. A condition of approval will require that the retaining wall located west of the driveway be relocated five feet west from its current location. With this condition, visibility will be maintained.

Based on these findings and with the condition of approval, the Adjustment request equally meets the intent of the minimum setback standard, and 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: Because the site is located in a residential zone, the applicant must demonstrate that the proposal will not significantly detract from the livability or appearance of the residential area. The only potential livability issues associated with such a setback reduction would relate to safety of motorists and pedestrians when a vehicle is backing out of the garage into the public right-of-way, and privacy for adjacent neighbors. As noted above, with a condition of approval, visibility between a driver backing out of the garage and those traveling on NE Morris Street will be maintained. As for privacy, because the requested setback reduction is only between the garage entrance and the street lot line, the width of the NE Morris Street right-of way (60 feet) (in addition to the five foot proposed setback for the garage and the minimum required five foot side setback for development on the closest lot to the south) provides substantial separation between properties that allows options for privacy to be maintained. While the garage will be built with a rooftop patio, the patio will be set back five feet from the side and rear lot lines, thereby meeting the minimum required setbacks for this use.

Regarding the potential for the Adjustment request to detract from the appearance of the area, the design, scale and placement of the garage ensure there will be no such impacts. While the Adjustment request will reduce the garage entrance setback from the required 18 feet to five feet, the setback reduction will not be less than the five foot side setback that is required for other buildings in this zone. As such, the garage wall facing NE Morris Street will be no closer to the street lot line than the side wall of a house along this street.

Additionally, the scale of the garage is diminished by constructing it into the bank of the slope, with the height of the garage substantially lower than the height of the house on the site. Given the slope of the site, the top of the parapet on the proposed garage will be only one and one-half foot higher than the elevation of the front door step of the house. The diminutive scale of the proposed garage in comparison to the house on the site, and the location of the garage outside the side setback results in development that is compatible with the appearance of the surrounding residential area.

With the condition of approval requiring the retaining wall along the west side of the driveway to be relocated, the proposal will neither significantly detract from the livability of the surrounding residential area, nor adversely impact the appearance of the 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: As only one Adjustment is requested, this criterion is not applicable.

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

Findings: City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no such designations on the subject site, this criterion is not applicable.

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

Findings: The only identified impact associated with the requested adjustment is maintaining adequate visibility between a driver backing out of the garage and persons traveling along the adjacent NE Morris Street. For those traveling westbound on NE Morris Street, the applicant has maintained visibility by pulling the retaining wall along the street lot line away from the east edge of the driveway. A similar retaining wall on the west side of the driveway has not been pulled back from the edge of the driveway, which impairs visibility between the driver backing out and those traveling eastbound on NE Morris Street. This impact has been addressed through a condition that requires the retaining wall on the west side of the driveway to be pulled back five feet from its current location, as illustrated in Exhibit C.2

Because the proposal is consistent with these approval criteria, there are no identified adverse impacts for which mitigation would be required and this criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on site, 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 via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant has demonstrated that the request to reduce the minimum required garage entrance setback meets the applicable approval criteria. The proposal equally meets the stated intent of the minimum required setback regulation, and does not adversely impact the livability or appearance of the surrounding residential area

ADMINISTRATIVE DECISION

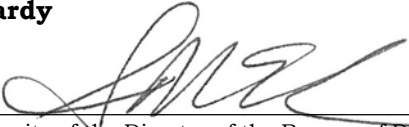
Approval of an Adjustment to reduce the minimum required garage entrance setback (Zoning Code Section 33.110.220.B) from 18 feet to five feet, per the approved site plans (Exhibits C.1 and C.2) and building elevations/sections (C.3 and C.4), signed and dated August 19, 2013, and subject to the following condition:

- A. As part of the building permit application submittal, the following development-related condition (B) must be noted on each of the four 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 13-164765 AD." All requirements must be

graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. The retaining wall on the west side of the driveway shall be relocated five feet back from its current location as identified in Exhibit C.2.

Staff Planner: Douglas Hardy

Decision rendered by:  **on August 19, 2013.**
By authority of the Director of the Bureau of Development Services

Decision mailed: August 22, 2013

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 6, 2013, and was determined to be complete on July 22, 2013.

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 6, 2013.

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 November 19, 2013.**

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 September 5, 2013**, at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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. 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 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 **September 6, 2013**.
- 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.

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

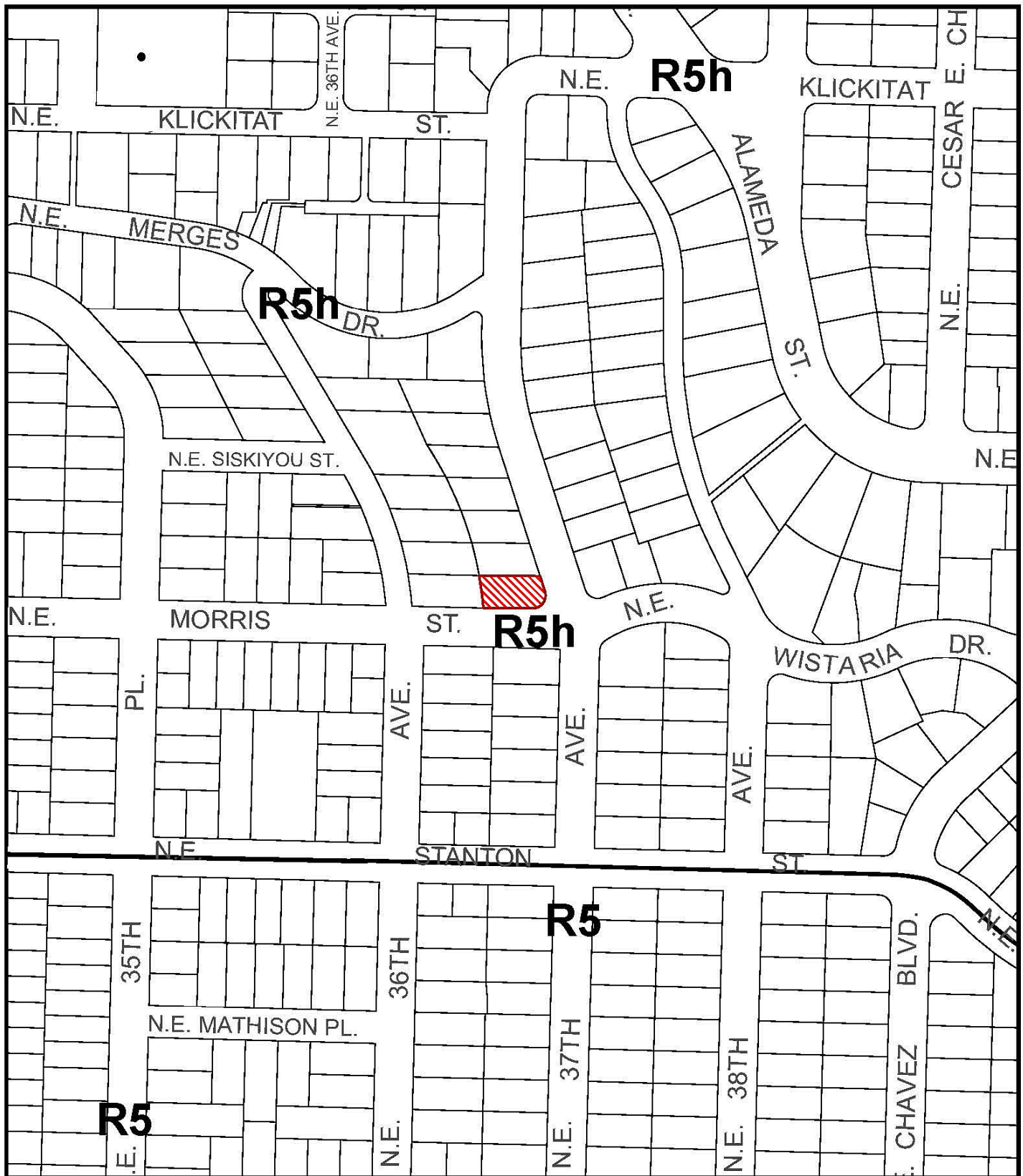
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Written Response to Approval Criteria
 - 2. Supplemental findings, dated July 15, 2013
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Lower Level Plan (attached)
 - 2. First Floor Plan (attached)
 - 3. South Building Elevation (attached)
 - 4. Building Section (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Bureau of Transportation
 - 3. Portland Water Bureau
 - 4. Portland Fire and Rescue Bureau
 - 5. BDS Site Development Review
 - 6. Portland Parks and Recreation Urban Forestry Division
- F. Correspondence (none)
- G. Other:
 - 1. Original LU Application
 - 2. Letter of Incompleteness

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING



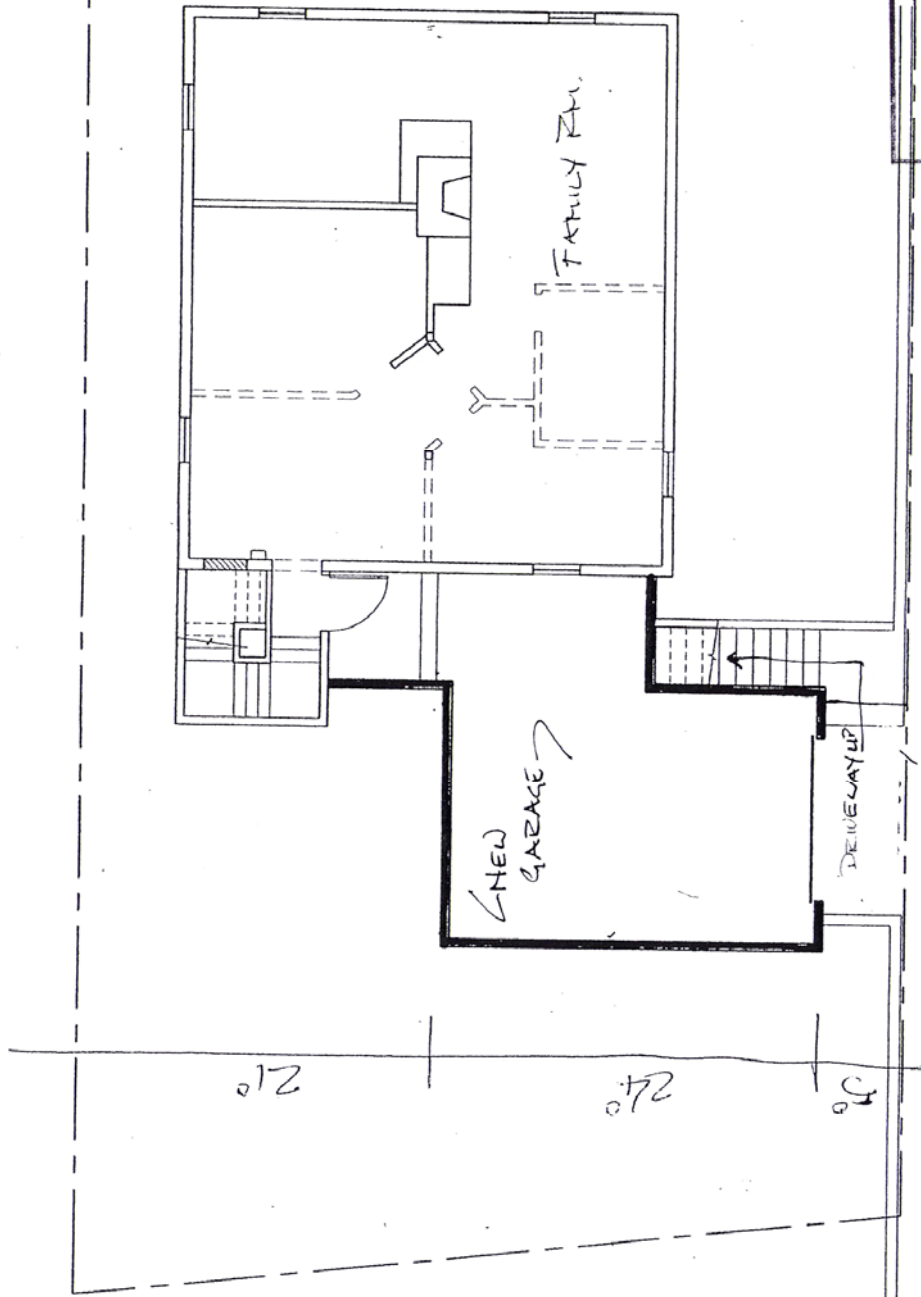
Site



NORTH

File No. LU 13-164765 AD
1/4 Section 2734
Scale 1 inch = 200 feet
State_Id 1N1E25AB 13700
Exhibit B (Jun 07, 2013)

WLE 3H



Approved

City of Portland

Bureau of Development Services

Planner

Date

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

EAST
CURB
CUT

NE MORRIS ST. 1/8"=1'-0"

LOWER LEVEL PLAN

CASE NO. 13-164765ND
EXHIBIT C-1

Approved

City of Portland

Bureau of Development Services

Planner

Date

[Signature]

8.19.13

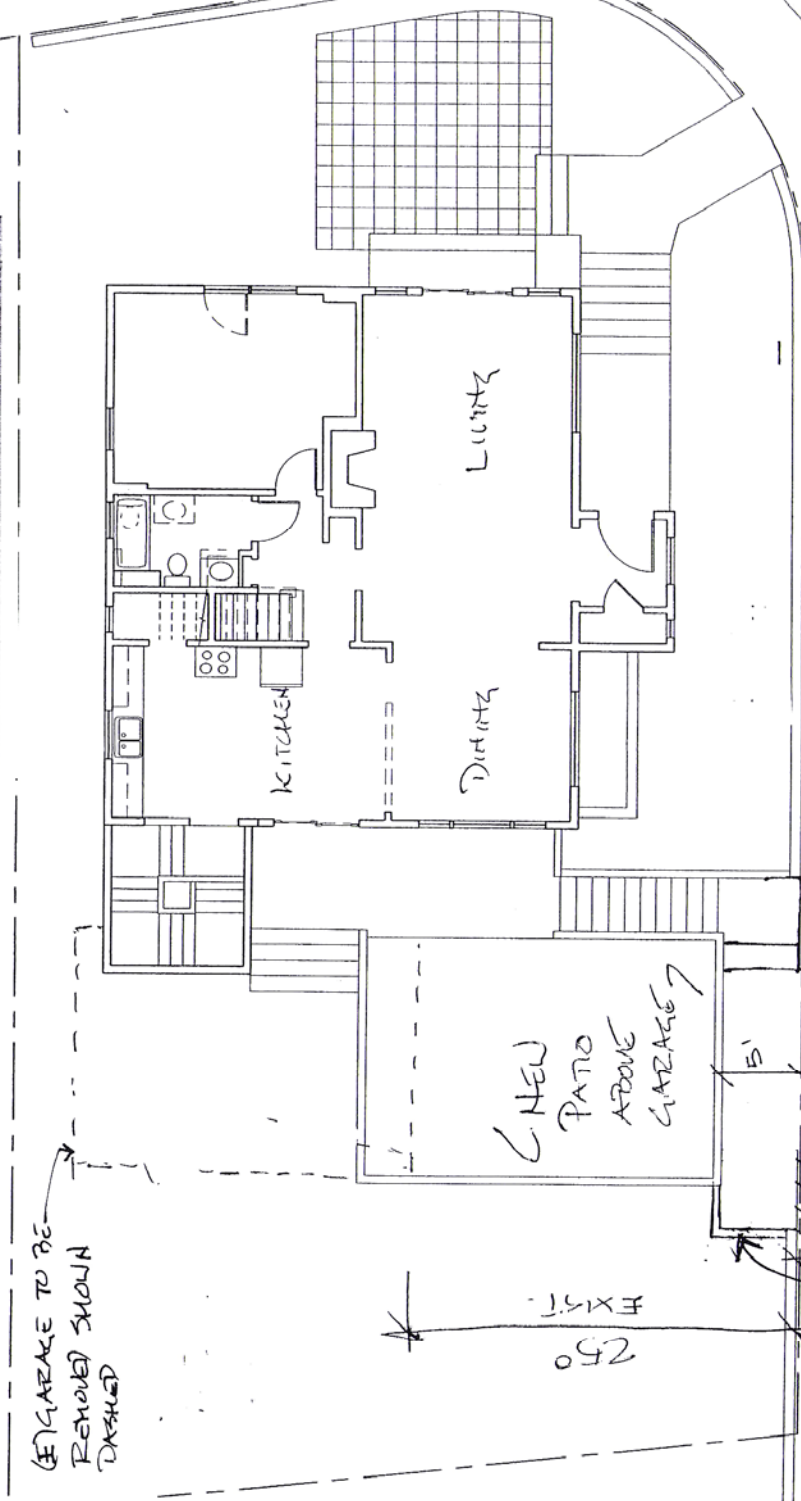
RECEIVED

JUL 18 2013

JUL 18 2013

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

(E) GARAGE TO BE REMOVED SHOWN DASHED



HE 377H

CASE NO. 17-164765AD
EXHIBIT C2

NE MORRIS ST.
1/2" = 1'

1ST FLOOR PLAN

CASE NO. 17-164765AD
EXHIBIT C-2

* Approved*
City of Portland
Bureau of Development Services
Planner [Signature]
Date 8.19.13

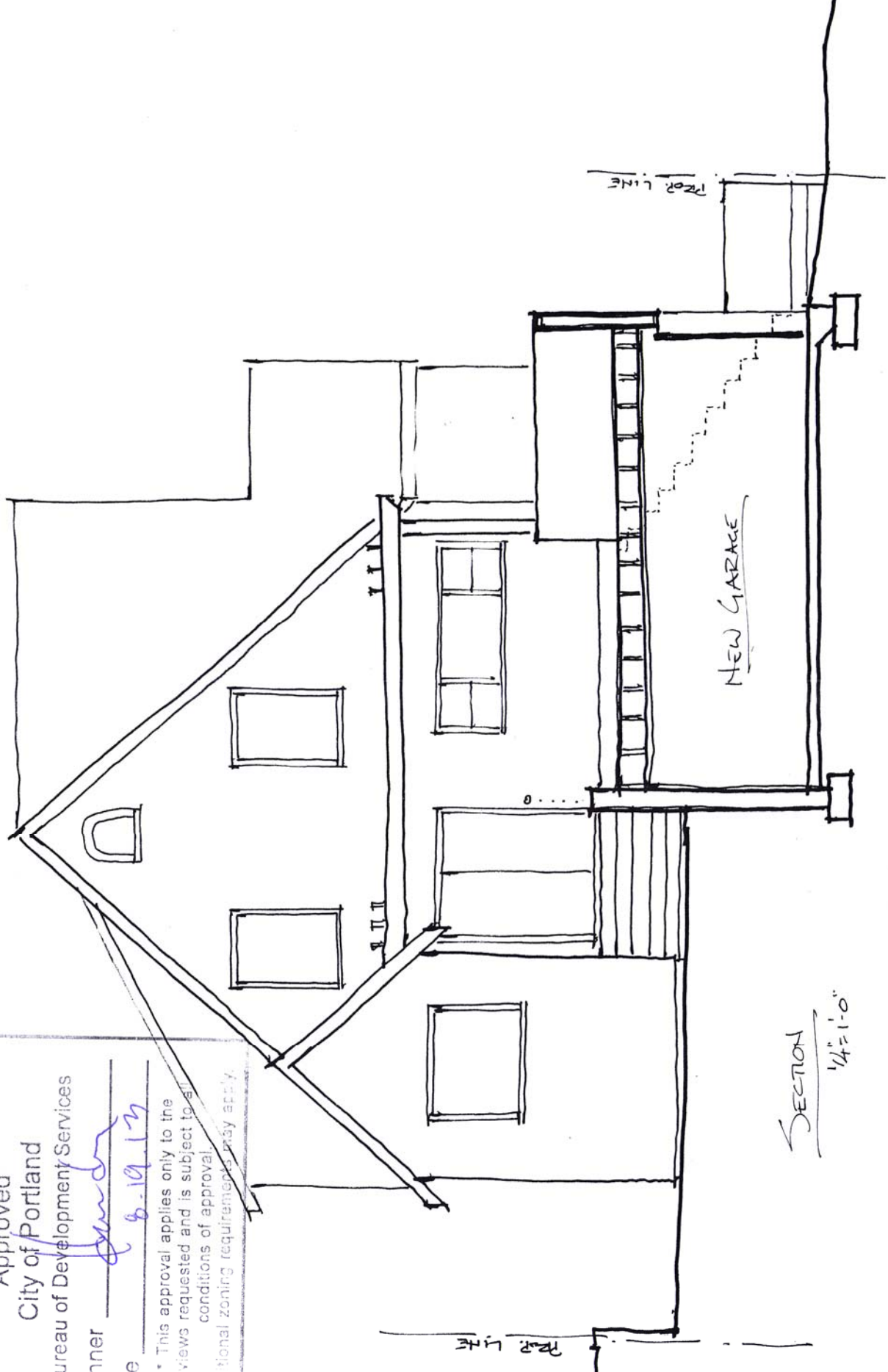
* This approval applies only to the
reviews requested and is subject to all
conditions of approval.
Additional zoning requirements may apply.



FRONT ELEVATION
1/8" = 1'-0"

CASE NO. 12-164765A
EXHIBIT C-3

* Approved*
 City of Portland
 Bureau of Development Services
 Planner [Signature]
 Date 8-19-13
 * This approval applies only to the reviews requested and is subject to all conditions of approval.
 Additional zoning requirements may apply.



CASE NO. 13-164765AD
 EXHIBIT C-4