



City of Portland
Bureau of Development Services
Land Use Services Division

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www.portlandonline.com/bds

**NOTICE OF FINAL
FINDINGS, CONCLUSIONS AND DECISION
OF THE CITY OF PORTLAND REVIEW BODY
ON AN
APPEALED ADMINISTRATIVE DECISION
(Type II Process)**

**CASE FILE: LU 15-113930 AD
LOCATION: 4683 NW Seblar Terrace**

The administrative decision for this case, published on April 21, 2015, was appealed to the Adjustment Committee by a neighboring property owner.

A public hearing was held on June 2, 2015. The Adjustment Committee modified a condition of the administrative decision of approval and denied the appeal, upholding the approval. The original analysis, findings and conclusion have been revised by the Adjustment Committee and follow. This decision is available on line:

<http://www.portlandonline.com/bds/index.cfm?c=46429&>

GENERAL INFORMATION

Appellant: Cordelia Oswald and Jacques Bonfiglio, 503-827-4522
4671 NW Seblar Ter Portland, OR 97210-1023

Applicant: Jeff Bromwell / Urban Design Build Company, 503-351-4109
2222 NE Oregon St #203 / Portland OR 97232

Owner: Katherine Klinker, 503-432-1762
4683 NW Seblar Ter / Portland OR 97210

Site Address: 4683 NW SEBLAR TER

Legal Description: LOT 10, SEBASTIAN HEIGHTS
Tax Account No.: R750900190
State ID No.: 1N1E31DD 02000
Quarter Section: 3024
Neighborhood: Hillside, contact Peter Stark at 503-274-4331.
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.
Plan District: Northwest Hills - Skyline
Zoning: R10 – Low Density Single Dwelling Residential 10,000
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant proposes to replace the original canopy over the main entrance to the house on north side with a new enclosed entry in the same area. The new entry will shift the orientation of the entrance from north, facing the neighboring property, to east, facing the driveway. The existing canopy extends 3 feet, 3 inches into the 10-foot north side setback; the proposed enclosed entryway extends 4 feet into the side setback. Therefore, the applicant requests an Adjustment to

Zoning Code Section 33.110.220.B and Table 110-3 to reduce the required side setback from 10 feet to 6 feet for the new enclosed entry.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The 14,400-square-foot site is developed with a single dwelling constructed in 1974. The site is heavily treed and, due to topography, is an irregular shape, with access to the street taken from a thin access point with a driveway down to the wider rest of the site, set back from street and behind another property to the east. The driveway and house are on the flattest part of the property; there is a slope along the south and east portions of the site, extending down some 16-20 feet to the adjacent lot and roadway to the south. Surrounding houses were built in the 1950s through the 1990s.

Zoning: The Residential 10,000 (R10) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 6,000 square feet, with minimum width and depth dimensions of 50 and 60 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 10,000 square feet of site area.

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

Public Review: A “Notice of Proposal in Your Neighborhood” was mailed **February 24, 2015**.

Agency Review: The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1);
- Bureau of Transportation (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5); and
- Life Safety (Building Code) Plans Examiner (Exhibit E.6).

Neighborhood Review: One written response was received from notified property owners in response to the proposal. The neighbors to the north wrote with concerns especially regarding a cedar tree that straddles the property line between the subject site and their site to the north. The neighbor wrote that the tree provides screening and privacy between the two sites and should remain. “Unless the new addition in this setback area will use the existing foundation, then excavation in that vicinity would most likely be hazardous to the tree... Their addition becomes our subtraction i.e. the forfeiture on our part of the enjoyment of privacy, the aesthetic contribution of trees, and an unwelcome proximity of structure. What are setbacks for if not to prevent all of the aforementioned?”

Staff Response: *These concerns are addressed in the findings for Criterion B below. Tree protection measures are also addressed in the conditions of approval.*

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (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 providing 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 for the setback regulations is below.

33.110.220 Setbacks

Purpose: The building setback regulations 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.

- *They maintain light, air, separation for fire protection, and access for fire fighting;*

The proposal for additional work in the side setback will not significantly change the flow of air or light among residences in the area. The setback is being reduced 9 inches further from current conditions. There will be more massing in the area, with a closed entryway rather than an open canopy, and the length of the encroachment is expanding from approximately 11.5 feet long to about 20 feet. However, not all of this new length is solid as there is a 4-foot covered area approaching the new main entrance which is open beneath the roof. Given that the adjacent house is set back from the shared property line over 19 feet, the reduction of setback of 9 inches, even considering the increased massing, will not compromise air circulation or light, or jeopardize access for fire fighting or separation for fire protection.

- *They reflect the general building scale and placement of houses in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*

- *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*

As stated in the site description, nearby homes were constructed in many decades and styles, from the 1950s through the 1990s. There is no common house style or typology. The changes to topography have affected development by determining on some sites, including the subject site, the location of development (building on flat areas rather than steeply sloped areas).

Different sites have varied configurations and relationships with the street, as well. The subject site and site directly to the north have only approximately 20 feet or less of street frontage, with long driveways leading back to the homes, making them nearly invisible from the street. Other houses are more traditionally placed closer to the street. NW Seblar Terrace curves around and forms an oval; there are 4 sites between the south and north parts of the loop that are through-lots with street frontage along front and rear property lines. These conditions result in a variety of building placements in the immediate area.

Likewise, house scale varies in the immediate area, with houses around NW Seblar Terrace ranging from 1,160 square feet to 4,570 square feet, somewhat dependent on the era of construction. The house on the subject site is approximately 1,780 square feet before the proposed remodel.

Given the changes in topography and the diversity of scale and placement of houses, reducing the setback from 10 feet to 6 feet will not change the relationship of this house to the immediate area. Given the almost 20-foot distance from the subject site's north property line and the adjacent house to the north, a reasonable distance will be maintained between these two houses even after the new entry is constructed.

- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *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 "front yard" and parking areas of this non-traditionally shaped, treed site with long driveway are not at issue in this Adjustment request. These purpose statements are not relevant.

Given the local physical and design conditions in the area, and the fact that the house on the subject site has limited visibility from the street, the purpose of the regulation is equally met by the proposal. 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: As discussed above, the house has limited visibility from the street. The proposed addition into the side setback will not impact the appearance of the area. The reorientation of the main entry from the north (facing the neighbors' house) to the east (facing the street) not only brings the house closer to conformance with Zoning Code Section 33.110.230 which requires main entrances to face the street, but it also increases the privacy between the house on the subject site and the neighbor to the north.

The neighbor to the north raised concerns about the existing cedar tree which straddles the shared property line. That neighbor correctly stated that since the tree is on both

properties, neither property owner can unilaterally remove the tree without the agreement of both property owners (Portland Tree Code Section 11.30.030.E.3). The neighbor to the north is opposed to removal of the tree because of the screening and privacy benefits this large tree provides. The neighbor voiced concerns that new development in the side setback would disturb the tree's roots, leading to damage that would possibly necessitate removal.

The Portland Tree Code (Title 11) presents two options for tree protection. One is the prescriptive path of limiting development within the tree's root protection zone (RPZ). The second is a performance path, which allows an applicant to propose alternative measures to modify the prescriptive root protection zone when the prescriptive path is not practicable. The performance path requires an arborist's report recommending an adequate, alternative level of protection for the tree during construction. Given the concerns raised by the neighbor to the north; and the fact that the tree, while not required to be maintained for tree preservation onsite, must remain onsite as long as one owner does not want the tree removed; staff required the applicant to commission an arborist's report for a performance path plan for tree preservation and protection for the cedar tree in question.

This plan was submitted (Exhibit A.3) and recommends the following steps to protect the tree during the construction process:

- Have a certified arborist onsite to monitor excavation and soil compaction and be available to prune roots as necessary, mitigating root damage;
- All digging within a reduced RPZ of 12 feet radius from the trunk must be dug by hand, with an arborist onsite when digging is done to root prune anything over 3 inches;
- Deep-root fertilize the tree in spring and fall of 2015;
- Install tree protection fencing as described, to be removed only when hand digging within the reduced RPZ with an arborist present;
- Keep all equipment, materials, chemicals construction debris, heavy equipment outside of the reduced RPZ;
- A protective buffer of either 2-inch wood chips or hay, or other organic material, shall be placed 4-6 inches deep around the tree from the trunk to the protective fencing, to reduce soil compacting. This buffer shall be maintained throughout the entire construction process;
- Any roots greater than 3 inches that are encountered in the RPZ shall be cut only by a certified arborist;
- Any injury or damage to the tree should be reported to the project arborist within the same business day so that mitigation measures can be taken if needed and appropriate; and
- Project arborist must approve any grade changes proposed.

A condition of approval is necessary to ensure this protection plan is followed throughout construction, so that the tree will remain to serve as a buffer between the subject site and the neighbor to the north and provide privacy and attractiveness of the site and the abutting property to the north. With this condition, this criterion will be 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; and

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 such resources present on the site. Therefore, this criterion is not applicable.

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

Findings: With a condition of approval requiring the tree protection plan to be followed for the 50-foot tall, 24-inch diameter incense cedar straddling the north property line in the area of the proposed development, there will be no discernible impacts that would result from granting the requested adjustment. 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 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 request is for a reduction in the north side setback to reorient the main entry toward the driveway and street with a new, enclosed entryway. The reduction is only 9 inches further into the setback than the existing canopy over the entry that faces north and will be largely invisible from the street. With the condition of approval requiring that the tree preservation and protection plan submitted as Exhibit A.3 be followed, a significant tree in the area of the proposed work will be protected and maintained. This tree provides substantial screening and privacy functions. With this condition of approval, the proposal meets all relevant approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.220.B and Table 110-3 to reduce the required side setback from 10 feet to 6 feet for the new enclosed entry, per the approved site plans, Exhibits C.1 through C.4, signed and dated April 17, 2015, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through C) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 15-113930 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. The applicant must fully implement the tree preservation and protection plan of Exhibit A.3, including the following elements, throughout construction.
- Have a certified arborist onsite to monitor excavation and soil compaction and be available to prune roots as necessary, mitigating root damage;
 - All digging within a reduced RPZ of 12 feet radius from the trunk must be dug by hand, with an arborist onsite when digging is done to root prune anything over 3 inches;
 - Deep-root fertilize the tree in spring and fall of 2015;
 - Install tree protection fencing as described, to be removed only when hand digging within the reduced RPZ with an arborist present;
 - Keep all equipment, materials, chemicals construction debris, heavy equipment outside of the reduced RPZ;
 - A protective buffer of either 2-inch wood chips or hay, or other organic material, shall be placed 4-6 inches deep around the tree from the trunk to the protective fencing, to reduce soil compacting. This buffer shall be maintained throughout the entire construction process;
 - Any roots greater than 3 inches that are encountered in the RPZ shall be cut only by a certified arborist;
 - Any injury or damage to the tree should be reported to the project arborist within the same business day so that mitigation measures can be taken if needed and appropriate; and
 - Project arborist must approve any grade changes proposed.
- C. All site plans submitted for permit must demonstrate tree preservation and state that the 24-inch incense cedar tree between the two lots must be preserved as a condition of the land use review. Applicant will comply with the signage and final report requirements of the Performance Path of Tree Code Section 11.60.030.C.2.

Staff Planner: Amanda Rhoads

Date Staff Decision: April 21, 2015

First Hearing Date: June 2, 2015

These findings and conclusions were adopted by the Adjustment Committee on: June 2, 2015

By: 
Adjustment Committee

Date Final Decision Effective/Mailed: June 8, 2015

120th day date: July 11, 2015

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 February 3, 2015, and was determined to be complete on **February 20, 2015**.

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 February 3, 2015.

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 requested that the 120-day review period be extended 21 days. Unless further extended by the applicant, **the 120 days will expire on: July 11, 2015.**

Appeal of this Decision. This decision is final and becomes effective the day the notice of decision is mailed (noted above). This decision may not be appealed to City Council; however, it may be challenged by filing a "Notice of Intent to Appeal" with the State Land Use Board of Appeals (LUBA) within 21 days of the date the decision is mailed, pursuant to ORS 197.0 and 197.830. A fee is required, and the issue being appealed must have been raised by the close of the record and with sufficient specificity to afford the review body an opportunity to respond to the issue. For further information, contact LUBA at 775 Summer St NE, Suite 330, Salem, OR 97301-1283. [Telephone: (503)373-1265]

Recording the Final Decision.

If this Land Use Review is approved, the final decision must be recorded with the Multnomah County Recorder. A building or zoning permit will be issued only after the final decision is recorded. The final decision may be recorded on or after June 8, 2015.

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

- By Mail: Send the two recording sheets (sent in a separate mailing) and the final Land Use Review Decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, PO 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 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. This decision expires three years from the date the Final Decision is rendered unless:

- A building permit has been issued, or
- The approved activity has begun, or
- In situations involving only the creation of lots, and the land decision has been recorded.

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

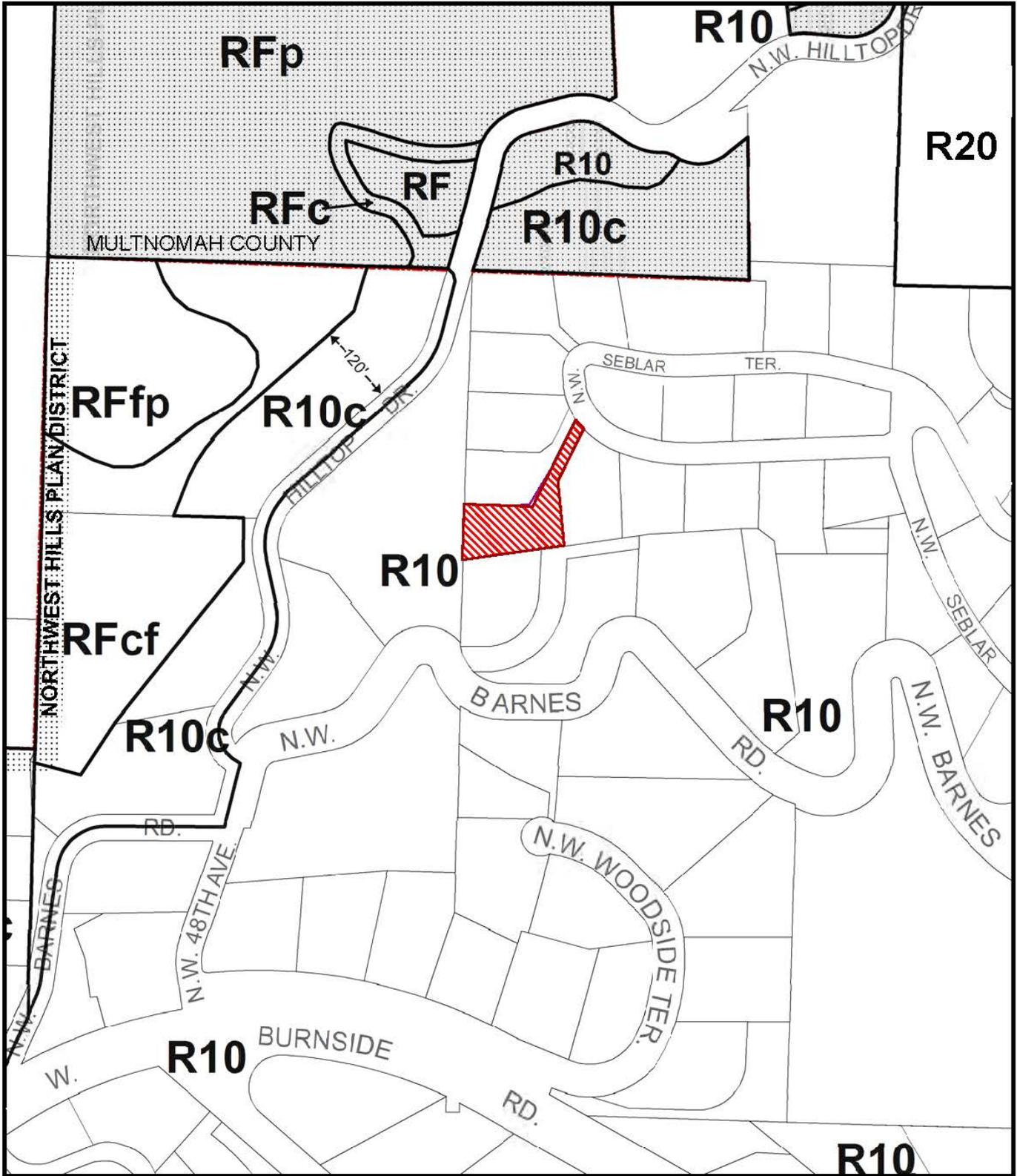
- All conditions imposed here.
- All applicable development standards, unless specifically exempted as part of this land use review.
- All requirements of the building code.
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS NOT ATTACHED UNLESS INDICATED

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant Narrative
 - 2. Site Photos
 - 3. Arborist's Tree Protection Plan, April 3, 2015
 - B. Zoning Map (attached)
 - C. Plans/Drawings:
 - 1. Proposed Site Plan (attached)
 - 2. Proposed North Elevation (attached)
 - 3. Proposed East Elevation (attached)
 - 4. House Massing (attached)
 - 5. Area Plan
 - 6. Existing Site Plan
 - 7. Existing North Elevation
 - 8. Existing East Elevation
 - D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
 - E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety (Building Code) Plans Examiner
 - F. Correspondence:
 - 1. Cordelia Oswald and Jacques Bonfiglio, March 13, 2015, in opposition with tree concerns
 - G. Other:
 - 1. Original Land Use Application and Receipt
 - 2. Request for 21-Day Extension of 120-Day Review Period, April 10, 2015
 - H. Appeal
 - 1. Appeal Submittal
 - 2. Appealed Decision
 - 3. Notice of Appeal
 - 4. NOA Mailing list
 - 5. Committee Packet & Memo
 - 6. Committee Memo II
- Received During Hearing:
- 7. Submission from Appellants Cordelia Oswald and Jacques Bonfiglio



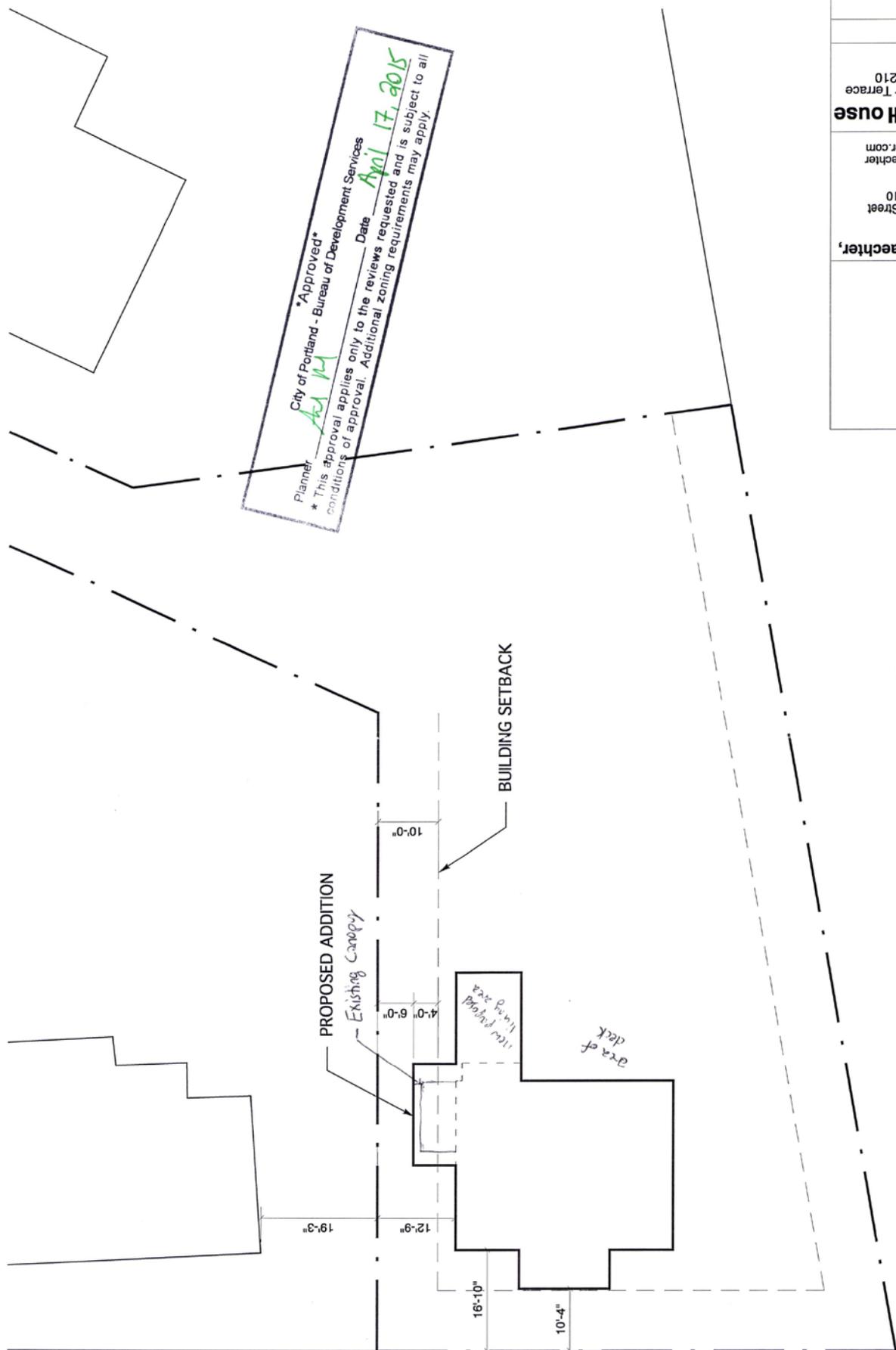
ZONING

-  Site
-  Also Owned



This site lies within the:
NORTHWEST HILLS PLAN DISTRICT

File No. LU 15-113930 AD
 1/4 Section 3024
 Scale 1 inch = 417 feet
 State_Id 1N1E31DD 2000
 Exhibit B (Feb 04, 2015)

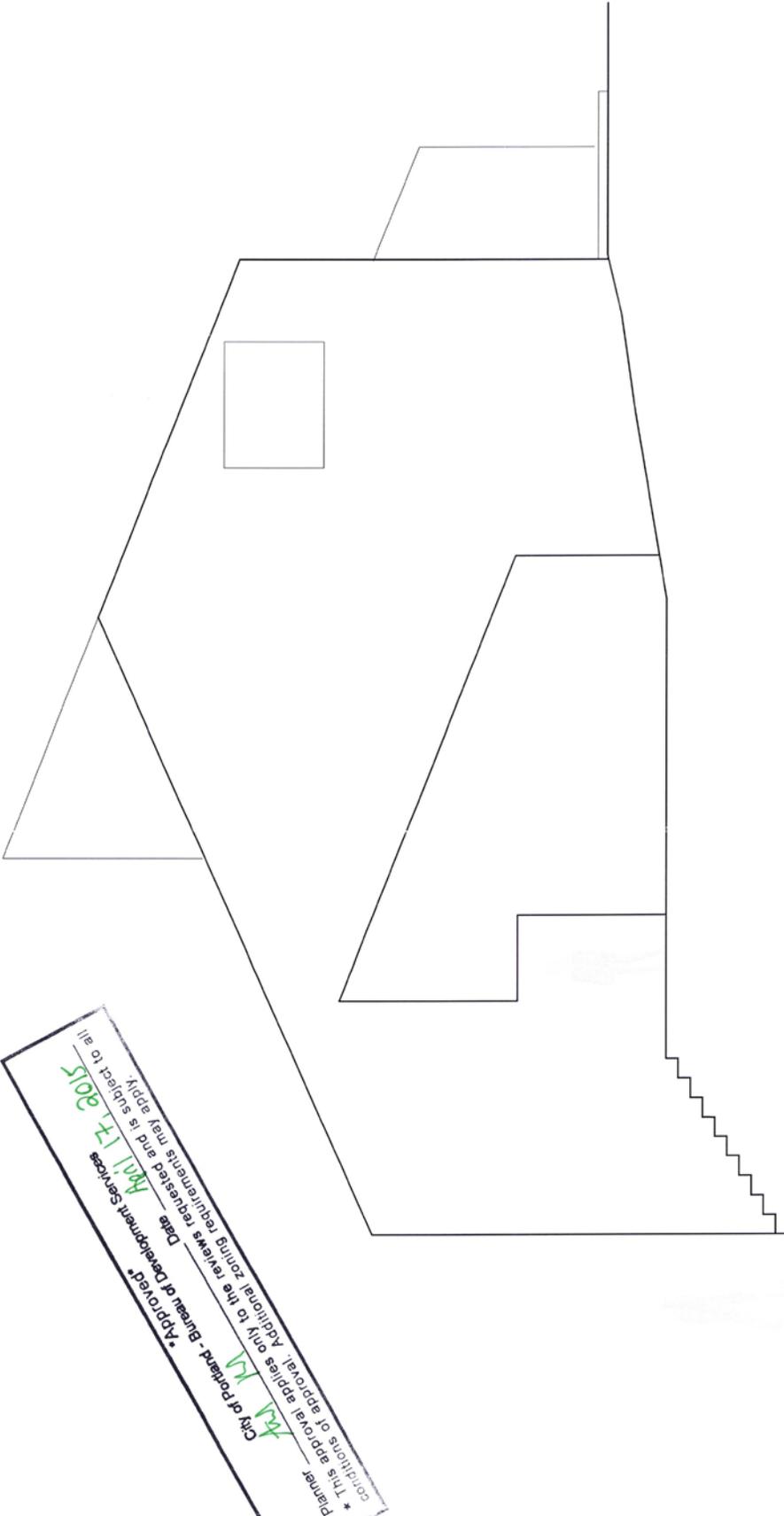


Planner *AMH* *Approved*
 City of Portland - Bureau of Development Services
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.
 Date *April 17, 2015*

A1.1
SITE PLAN
11.26.2014
4683 NW Seblar Terrace Portland, OR 97210
McMillian House
Contact: Ben Waechter ben@benwaechter.com
503.449.1471 2181 NW Nicolai Street Portland, OR 97210
Architect Benjamin Waechter,

PROPOSED SITE PLAN

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



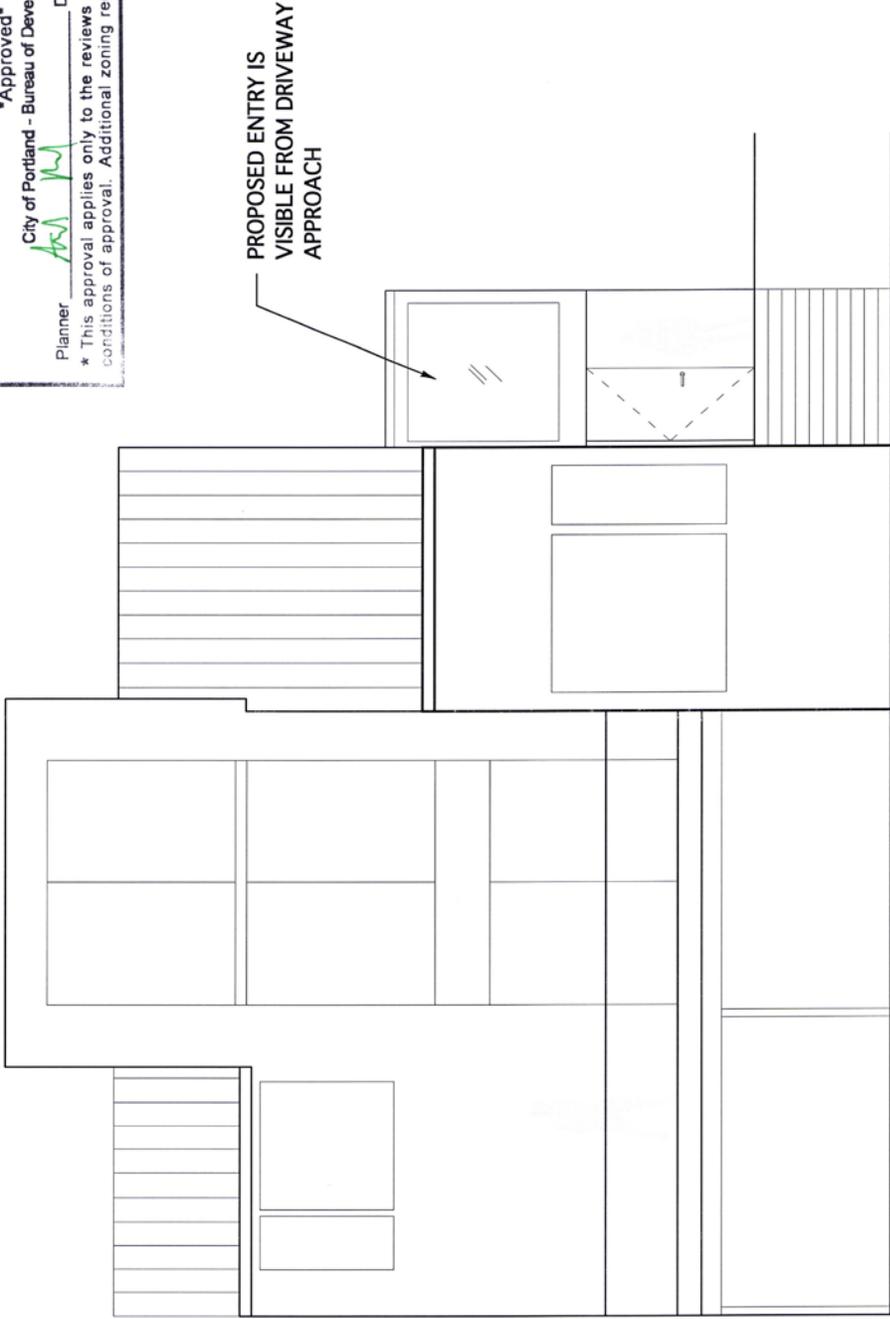
Planner: **MJM**
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.
 City of Portland - Bureau of Development Services
 Date: **Mar 17, 2015**
 Approved: **MJM**
 All subject to all

A3.2
ELEVATIONS
11.24.2014
4683 NW Sablar Terrace Portland, OR 97210
McMillian House
Contact: Ben Waechter ben@benwaechter.com
2181 NW Nicolai Street Portland, OR 97210 503.449.1471
Benjamin Waechter, Architect

PROPOSED NORTH ELEVATION

SCALE: 3/16" = 1'-0"

Approved
 City of Portland - Bureau of Development Services
 Planner: AMM Date: April 17, 2015
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



A3.1
ELEVATIONS
11.24.2014
4683 NW Seblar Terrace Portland, OR 97210
McMillian House
Contact: Ben Waechter ben@benwaechter.com
2181 NW Nicolai Street Portland, OR 97210 503.449.1471
Architect Benjamin Waechter,

PROPOSED EAST ELEVATION

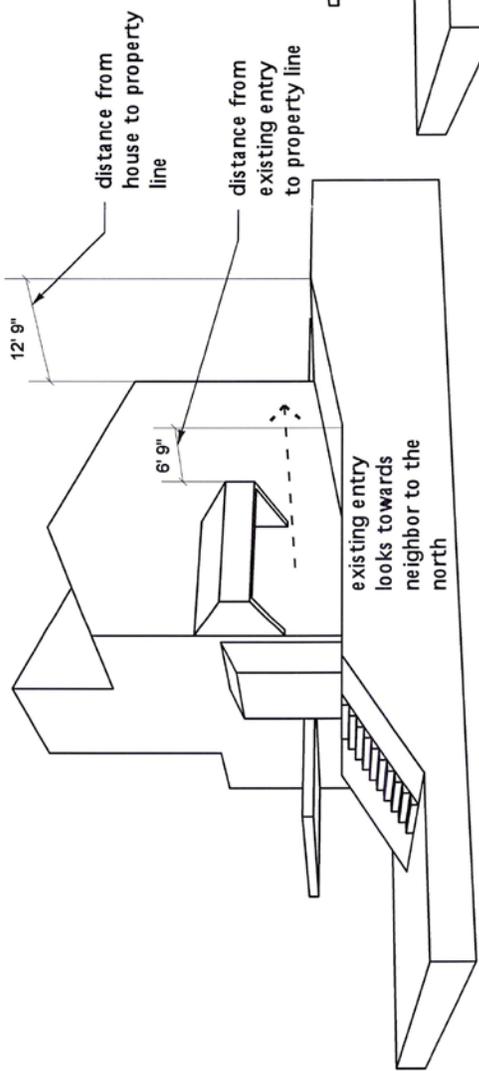
SCALE: 3/16" = 1'-0"

Approved

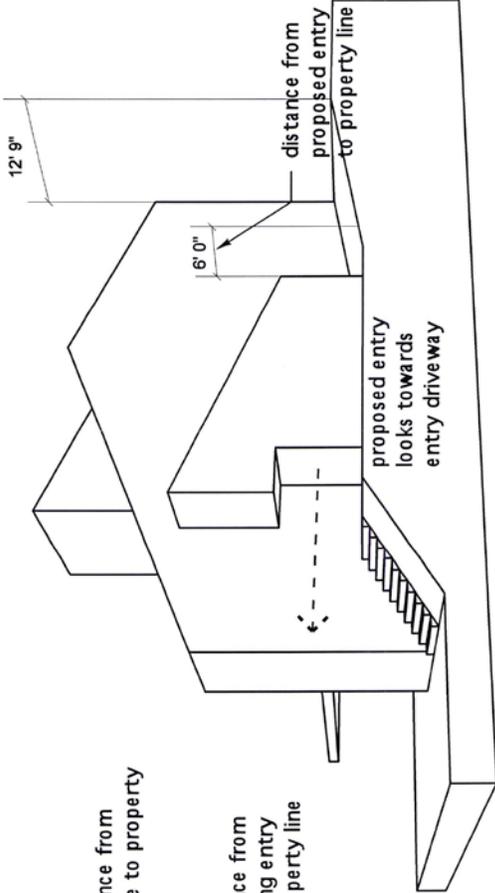
City of Portland - Bureau of Development Services

Planner Ann M Date April 17, 2015

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



EXISTING MASSING



NEW MASSING

HOUSE MASSING

NO SCALE

A0.0
MASSING
12.12.2014
4683 NW Seblar Terrace Portland, OR 97210
McMillan House
Contact: Ben Waechter ben@benwaechter.com 503.449.1471 Portland, OR 97210
Benjamin Waechter, Architect 2181 NW Nicolai Street