



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

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Date: July 7, 2015
To: Interested Person
From: Kathleen Stokes, Land Use Services
503-823-7843 / Kathleen.Stokes@portlandoregon.gov

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

The Bureau of Development Services has **Denied** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, 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 15-131783 AD

GENERAL INFORMATION

Applicant: Mike Coyle, Faster Permits
14334 NW Eagleridge Lane / Portland, OR 97229

Melissa Manley, Intrinsic Homes LLC
12042 SE Sunnyside Rd, Ste 399 / Clackamas OR 97015

Site Address: 4817 SE 63RD AVE

Legal Description: BLOCK 2 LOT 13 S 20' OF LOT 14, ARLETA PK 3
Tax Account No.: R036900300
State ID No.: 1S2E17BB 11800
Quarter Section: 3537

Neighborhood: Mt. Scott-Arleta, Nicole Green at 503-816-1310.
Business District: 82nd Avenue of Roses Business Assn, Frank Harris at 503-774-2832.
District Coalition: Southeast Uplift, Bob Kellett at 503-232-0010.
Zoning: R2.5a (Residential 2,500, Attached Single-Dwelling)
Case Type: Adjustment Review
Procedure: Type II, administrative decision with appeal to Adjustment Committee.

Proposal: A new single-dwelling residence is being proposed on 24-foot-wide Tract 2, which abuts the north side of Tract 1 on this site. Under this proposal, the existing single-dwelling residence on Tract 1 (4817 SE 63rd Avenue) would have a setback from the north side property line that varies from 4.99 to 3.16 feet. The new residence on Tract 2 would generally have a setback of 4 feet from the south side property line, which is the commonly shared property line between the two tracts. A "no-build" easement, which would be recorded with the deed, is proposed for Tract 2. Both residences would have eaves and other minor projections into the building setback areas, including projection into the "no-build" easement.

The Portland Zoning Code, Section 33.110.220, requires structures in the R2.5 zone to be located a minimum of 5 feet from side and rear property lines. Roof eaves and other minor projections, such as bay windows, may extend 20 percent into the setback, or up to 4 feet from these property lines. Exceptions to the minimum setback requirements may be approved through Adjustment Reviews, if all of the relevant approval criteria are met or if the criteria can be met through reasonable conditions of approval.

Therefore, the applicants have requested approval of Adjustments to reduce the minimum building setbacks:

- from 5 feet to a distance that varies from 4.99 to as little as 3.16 feet to the north side property line for building wall on Tract 1, and
- from 3.49 feet to as little as 1.66 feet from the north side property line for the 1.5-foot wide roof eave on Tract 1, and
- from 5 feet to 4 feet from the south side property line for the building wall on Tract 2, and
- from 4 feet to 3 feet from the south side property line for the 1-foot wide roof eave on Tract 2, and
- from 4 feet to 3.5 feet from the south side property line for the bay on Tract 2.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

ANALYSIS

Site and Vicinity: The site consists of a 6,000 square-foot lot that is located on the west side of SE 63rd Avenue, one lot to the south of the intersection with SE Schiller Street. The west side of the site abuts an alley that extends, north to south through the block, from SE Raymond to SE Schiller. The site is currently developed with a single-dwelling residence that was constructed in 1909. The existing house is located on proposed Tract 1. The proposed Tract 2 currently serves as a side yard for the existing dwelling unit, with mature trees and an outdoor area, as is common on many other sites in the surrounding neighborhood.

The residential area contains an eclectic mix of newer and older single-dwelling residences. Many of the older homes in the area are substantially-sized structures, with established garden plots in the extended side or rear portions of the lots. Other sites contain more recent, generally smaller, infill development that reflects the R2.5a zone designation. In visual surveys of the area, both electronically, with aerial photos, and in person, with a site visit that included driving and walking around the area, it appears that smaller infill lots are generally at least 25 feet wide and maintain the setbacks that are required by the base zone standards.

Zoning: The zoning for this site is R2.5, Attached Residential. This zone is intended for areas with complete public services and without development constraints. The zone allows a mixture of housing types of a single-dwelling character, including both detached and attached houses. The maximum density is generally 17.4 units per acre or one unit per 2,500 square feet. To allow the fulfillment of these densities, the allowed scale of development is greater than for other single-dwelling housing structure types.

The site also has an “a” or Alternative Design Density Overlay. This zone provides the opportunity for additional residential density in some situations, when design standards are met. The provisions of this overlay zone are not being applied to this proposal.

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 **June 9, 2015**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services stated that there were no objections to the Adjustment requests and referenced a submittal for building permits for the site. The response stated that

BES permit requirements remain unaltered and then proceeded to supply some information on sanitary infrastructure and storm water management requirements (Exhibit E-1).

- Water Bureau also indicated no objections to approval of the requested Adjustments. Their response detailed requirements for changes to the water service for the existing residence and for the provision of water and sewer services for the proposed new residence (Exhibit E-2).
- Life Safety Plan Review Section of BDS did not state any concerns regarding approval of the requested Adjustments. They sent a response that noted that building permit requirements must be met, including fire safety requirements for exterior walls and eaves which may require fire-rated construction (Exhibit E-3).
- The other service agencies each provided a response of “no concerns,” without any additional comments (Transportation Engineering, Fire Bureau and Site Development Section of BDS - Exhibit E-4).

Neighborhood Review: A total of five written responses (Exhibits F-1 through F-5) have been received from either the Neighborhood Association or notified property owners in response to the proposal. All of these responses opposed approval of the requested Adjustments. These letters included the following issues:

- The reduced setbacks will detract from the appearance and livability of the neighborhood.
- Older trees would need to be cut down to make room for the proposed house.
- The reduced setbacks raise privacy concerns for neighbors.
- The reduced setbacks would create an appearance of crowding that would be out of character with the neighborhood.
- Small newer houses can be built that respect the usual setback requirements and that fit into the overall character of the neighborhood but this proposal is squeezing too much into an under-sized lot.
- The neighborhood is characterized by having yards and gardens that enhance the livability. Reducing the setbacks below the required 5 feet is contrary to this character.
- Fire safety concerns may exist for homes that are placed in such close proximity to one another, as they are in this proposal.
- The reduced setbacks would not provide the “protection” or buffering that the setbacks are intended to provide for adjacent properties.
- Density should be supported but not at the cost of being, “detrimental to existing homes, natural spaces and existing urban canopy, housing affordability and overall neighborhood compatibility and characteristics.”

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 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below, have been met.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The proposal has not been found to meet the purpose of the building setback requirements. The purpose statement is given below and will be addressed in comments for each bullet point: Building setbacks are intended:

- to maintain light, air, separation for fire protection, and access for fire fighting
The proposed side setbacks would allow two primary structures to be located with a separation that is only deemed adequate for building code requirements because one-hour fire wall treatments and a “no-build” easement are included. Instead of the zoning code mandated 10 feet between the building walls, with a minimum of 8 feet between roof eaves and minor projections of the structures, the proposal would have a distance as little as 7.16 feet between the walls of the primary structures and as little as 4.66 feet between the roof eaves. The proposed fire-rated treatment would likely slow down a fire but would not keep it from spreading from one property to the other in the same way that the greater required distance between structures would. Further, the reduced setbacks would cause each property to reduce light and air for its neighbor, particularly in regards to the length and height of the proposed house on Parcel 2, which would be a full two stories tall and approximately 64 feet long.
- to reflect the general building scale and placement of development in the City’s neighborhoods and promote a reasonable physical relationship between residences
The neighbors noted the same issues that were observed by staff in surveying the character, scale and placement of development in the neighborhood. The proposal calls for development that strips away all of the buffering and space that contributes to the livability of the area. Other new development in the area, although smaller in scale than some of the older homes and placed on narrower lots, still respects the minimum building setbacks and preserves some green spaces. The proposal would place an additional unit on a lot that is narrower than the minimum 25-foot width that is required for detached houses on new lots in the R2.5 zone. When new lots are created, even at this minimum width, additional standards apply that ensure that the development of the lots will be more compatible with the surrounding neighborhood. These include such requirements as providing vehicular access from the alley, meeting garage width limitations and proving additional landscaping in the front yard area (at least 60%). This proposal is not required to meet these standards, because this is a proposal that is tied to a lot confirmation and property line adjustment and is not the creation of a new lot. The applicants did not choose to offer such considerations as mitigation.
- to promote options for privacy for neighboring properties and
The proposed setbacks do not offer any options for privacy between the neighboring properties. Windows allow direct views between the neighboring houses and the separation is so small that an adult could easily touch both roof eaves.
- to 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.
The setbacks that are proposed are not compatible with the neighborhood. Outdoor area is minimized to the limit and the proposal does not reflect any flexibility, but rather the tightest possible corset to push the fit of one design prototype, that is driven by the inclusion of a front-facing attached garage, onto a property that does not meet the minimum width standard and was historically used as the outdoor space for the 1909 residence on Tract 1. There are house plans that are available online, which are narrower than 15 feet and that could provide architectural interest and diversity and still meet the minimum setback requirements of the zone. These plans are not used as the standard for narrow lots in this region of the country and have not been considered under this proposal.

Therefore, because the purposes of the regulation are not equally met, this criterion has not been 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: Approval of the request to reduce the required setbacks from the relocated shared side property line for the existing and proposed residences would significantly detract from the appearance and the livability of the residential area. While the neighbors stated that they supported new development in the area, they were unanimous in saying that the proposal demanded too many exceptions to try to make a bad fit work. The four-foot-wide “no-build” easement was proposed to avoid the fire-safety issues of the building code but it is not adequate to deal with the aesthetics of reduced distances between structures. Numerous projections into the easement area are introduced and the eaves between the buildings would be only about 1.5 yards apart. At least one large tree would need to be removed, which would be allowed through a payment to the tree fund. This would go toward planting more trees elsewhere, but would not compensate on this site that would be filled, and seeming to be over-filled, with the proposed structures. The distance between the two buildings would become a narrow, dark runway that would be difficult to landscape of otherwise provide any buffer or relief. The appearance of the two homes from the street edge would be peculiar, to say the least, on this block with well-kept, gracious homes and luxuriant garden spaces. Affordability may be served, but at the cost of consistency with the character of the area and appeal to its aesthetics. This criterion has not been 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: The Portland Zoning Code, Title 33, states that the purpose of the R2.5 zone and the other single-dwelling zones is, “to preserve land for housing and to provide housing opportunities for individual households.” The Code also states, “The development standards are intended to preserve the character of neighborhoods by providing six different zones with different densities and development standards. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City’s various neighborhoods. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed. The development standards are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.”

Two Adjustments have been requested. The cumulative impact makes it seem that the proposal is for something other than single-dwelling development, such as the higher density multi-dwelling zones where such reduced setbacks are more characteristic. The findings for the previous criteria have detailed the concerns that the requested setbacks would result in development that is not aesthetically pleasing and threatens safety and privacy for the residents. The removal of all but the barest minimum of open space will not contribute to energy conservation through natural cooling and absorption of air-borne and water-borne pollutants, nor will it contribute to on-site recreational opportunities. This is not a situation that calls out for any exceptions due to physical constraints such as adverse topography. The site is a rectangular lot that is relatively flat and was developed with a modest single-dwelling residence with a modest side yard, over 100 years ago. An accessory dwelling unit could be created that would provide a second unit on the site. Equally, a different design that did not require the proposed 15-foot-width to accommodate a garage in the front of the house could also be developed and meet the standard setback requirements for both parcels. These choices were not put forward, but those that were put forward do have a cumulative impact that is not consistent with the overall purpose of the zone or the development standards for the zone. Therefore, this criterion has not been met.

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

Findings: City-designated scenic resources are shown on the City’s zoning maps by an “s” or Scenic Overlay Zone. City-designated historic resources are shown on the City’s zoning maps, either as an adopted landmark, or as a site that is located within the boundaries of a

Historic Conservation or Historic Design District. There are no City-designated scenic or historic resources on the site. Therefore, this criterion does not apply.

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

Findings: Numerous impacts from approval of the requested Adjustments have been identified by neighbors and staff and are detailed in the findings above. No mitigation has been offered for these impacts, other than the proposed “no-build” easement on proposed Tract 2. This easement, which actually allows projects into the “no-build” area, does not actually mitigate any concerns other than a minimal insurance for fire prevention. At the same time, it decreases the useable area on an already under-sized parcel and so creates new restrictions that are out of character with the neighborhood and the zone. Therefore, this criterion has not been 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 zones are designated with either a lower case “c,” for the Environmental Conservation Overlay, or “p,” for the Environmental Protection Overlay. The site is not located in 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.

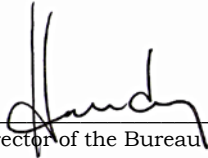
CONCLUSIONS

The relevant approval criteria have not been met for the requested Adjustments. The stated purposes for building setbacks have not been equally met. The reduced setbacks would negatively impact light and air and privacy for the abutting households. While fire safety may be met, it would only be through special restrictions such as providing fire-rated walls and a “no-build” easement. The crowded character of the development would not be in character with the scale and placement of residences in the neighborhood and would strip the site of all but the barest minimum of open space and recreation areas. All of these same issues are reflected when considering the criteria related to impacts on appearance and livability and on the cumulative impacts and consistency with the purpose of the zone. Therefore, these criteria are likewise not met. No mitigation has been provided for this proposal, aside from the “no-build” easement, which further constricts the ability to enjoy the property. The burden of proof has not been met for this proposal and the requested Adjustments are to be denied.

ADMINISTRATIVE DECISION

Denial of the requested Adjustments to Code Section 33.110.220 to reduce the minimum building setbacks on proposed Parcels 1 and 2.

Staff Planner: Kathleen Stokes

Decision rendered by:  **on July 2, 2015**
By authority of the Director of the Bureau of Development Services

Decision mailed: July 7, 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 March 10, 2015, and was determined to be complete on **May 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 March 10, 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 did not waive or extend the 120-day review period. the applicant requested that the 120-day review period be extended for 16 days, as stated with Exhibit A-4. Unless further extended by the applicant, **the 120 days will expire on: October 3, 2015.**

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 July 21, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th 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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

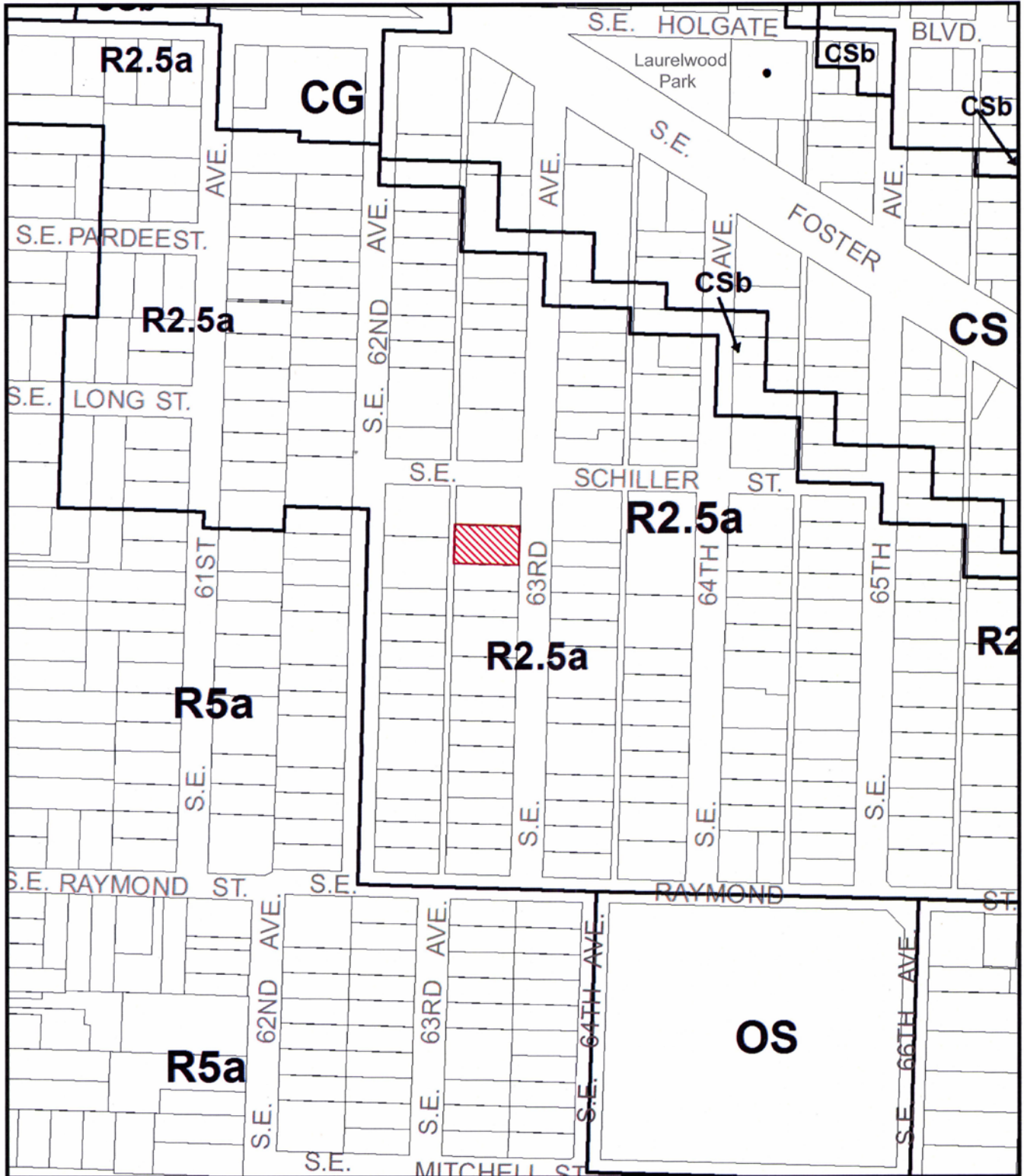
Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Application and original plans and narrative
 - 2. Supplemental Information, received April 8, 2015
 - 3. Supplemental Information, received May 15, 2015
 - 4. Request to extend 120 days for final local decision, dated May 26, 2015
 - 5. Final revised site plan, received June 4, 2015
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation Drawings – Tract 2 (attached)
 - 3. Elevation Drawings – Tract 1 and Tract 2 (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
 - 3. Life Safety Plan Review Section of BDS
 - 4. Summary of electronic responses from City service agencies, including Bureau of Transportation Engineering and Development, Fire Bureau and Site Development Review Section of BDS
- F. Correspondence:
 - 1. Summer Ashley
 - 2. Ted and Lenore Ooyevaar
 - 3. Matthew Howard and Elizabeth Chenven
 - 4. Krista Hart
 - 5. Erika Palmer-Wilson and Johnathan Brandt, Co-Chairs, Mt. Scott-Arleta Neighborhood Association
- G. Other:
 - 1. Letter from Kathleen Stokes to Mike Coyle, March 24, 2015

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



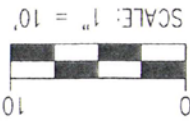
Historic Landmark



NORTH

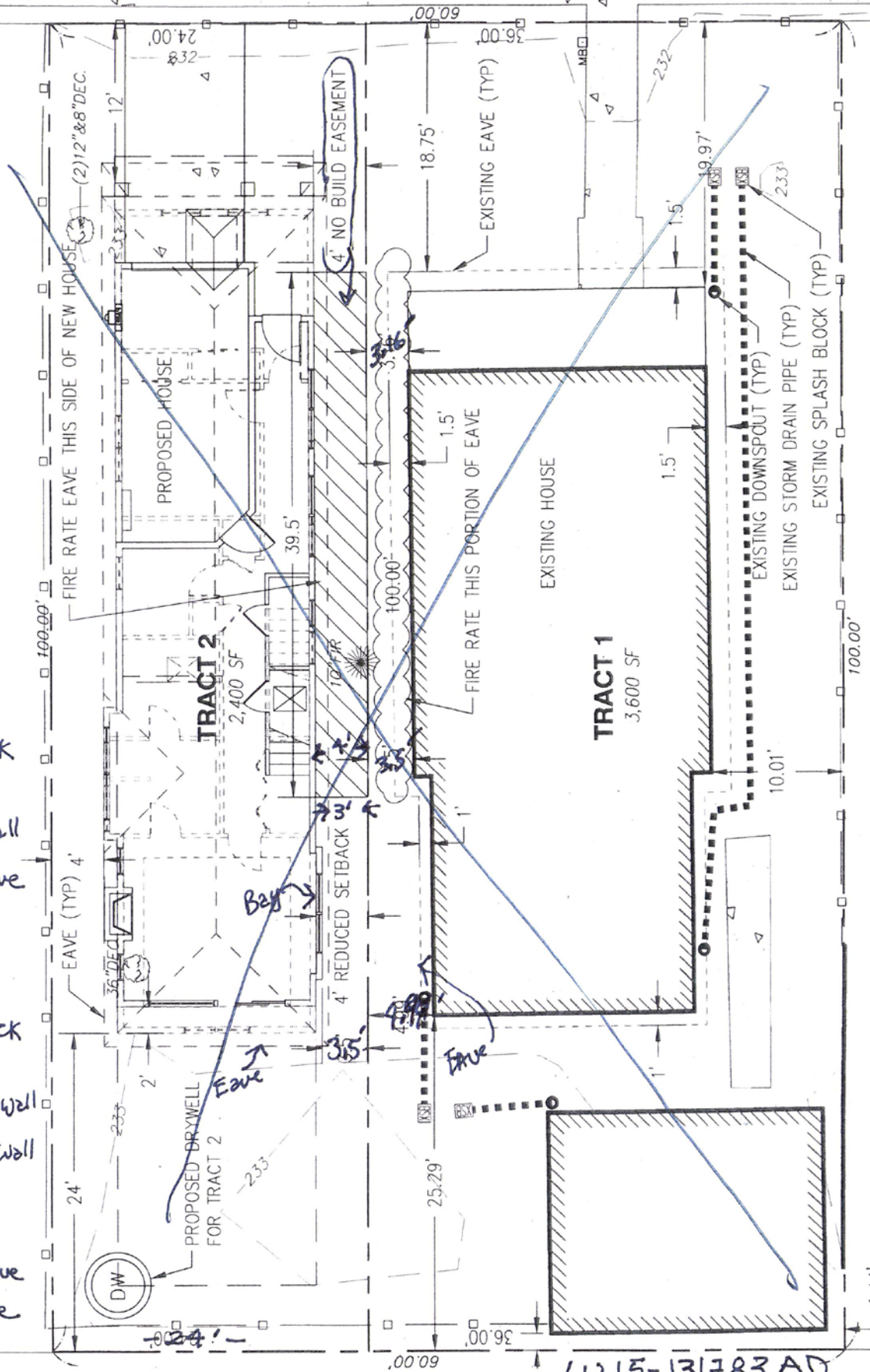
File No.	LU 15-131783 AD
1/4 Section	3537
Scale	1 inch = 200 feet
State_Id	1S2E17BB 11800
Exhibit	B (Mar 12, 2015)

Denied



SOUTH SETBACK
TRACT 2
 4' to Wall
 3' to Eave
 3.5' to Bay

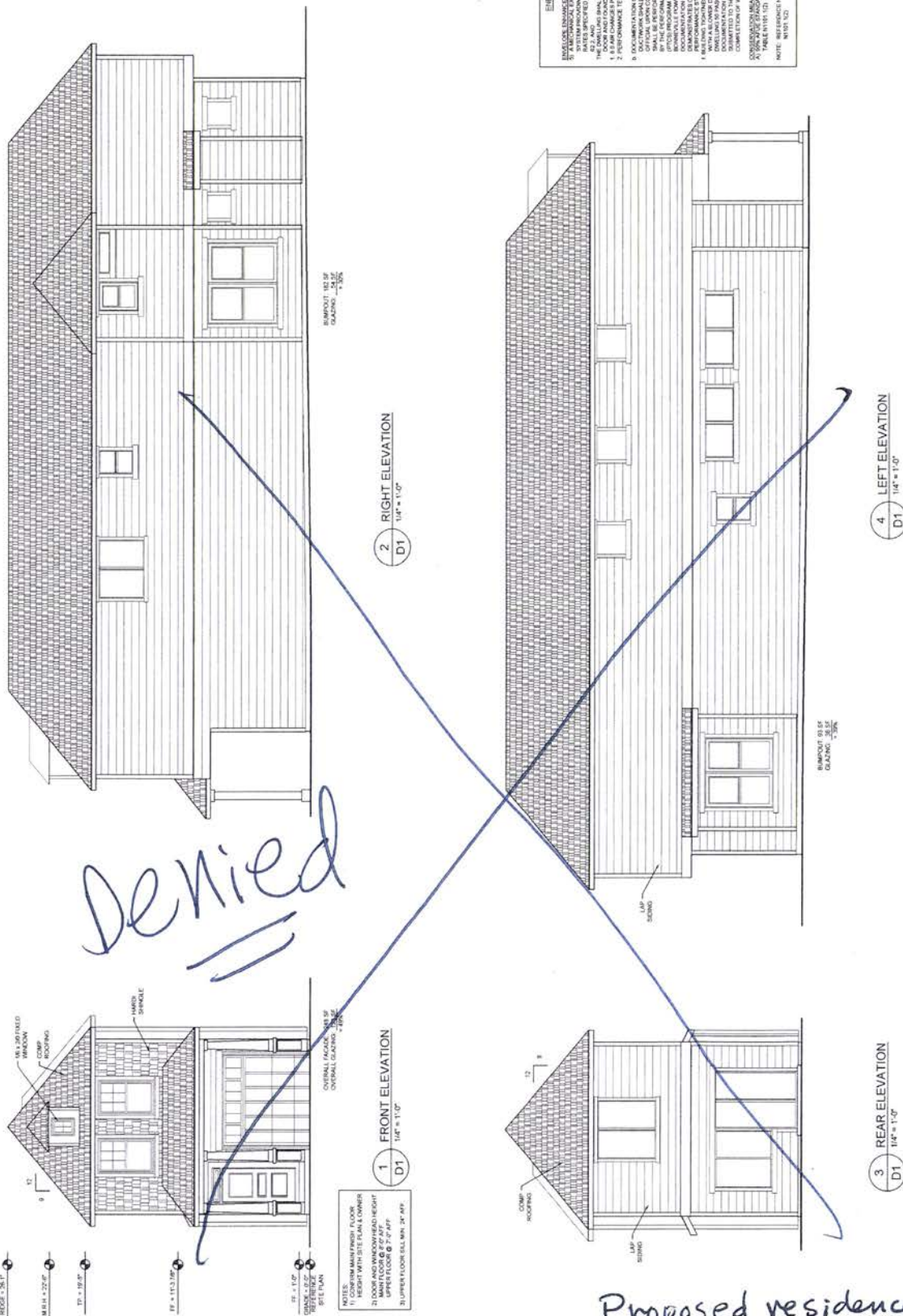
NORTH SETBACK
TRACT 1
 3.16' to 3.5' to wall
 and 4.99' to wall
 (4' "No-Build" Easement)
 1.66 to 2' to eave
 & 3.49' to eave



LU 15-131783 AD

Ev. 1.1. + 1.1

ENERGY OPTIONS

[illegible]

Denied

NOTES:
1) CONFIRM MAIN FINISH FLOOR HEIGHT WITH SITE PLAN & OWNER
2) DOOR AND WINDOW HEAD HEIGHT MAIN FLOOR @ 8'-0" AFF UPPER FLOOR @ 7'-0" AFF
3) UPPER FLOOR SILL MIN. 24" AFF

Proposed residence:
TRACT 2

Exhibit C-2

LU 15-131783 AD



Denied

Exhibit C-3
LU15-131783 AD