



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

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**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 15-133082 AD
LOCATION: 653 SE Andover Place

The administrative decision for this case, published on May 7, 2015, was appealed to the Adjustment Committee by a citizen.

A public hearing was held on July 21, 2015. The original administrative analysis, findings and conclusions were adopted by the Adjustment Committee. 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.

GENERAL INFORMATION

Applicant: Lisa Christie / Christie Architecture
9532 SW 18th Place / Portland OR 97219
(503) 490-5472

Owners: Georges and Mary Birenbaum
1806 Barnes Circle / West Linn OR 97068-4114

Appellant: Mark Hudspeth
659 SE Andover Place / Portland, OR 97202
(503) 515-3530

Site Address: 653 SE ANDOVER PLACE

Tax Account No.: C16299
State ID No.: 11E26AB00400
Quarter Section: 3932
Neighborhood: Sellwood-Moreland, contact Ellen Burr at 503-754-3868.
Business District: Sellwood-Westmoreland, contact Tom Brown at 503-381-6543.
District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.
Zoning: R10a, Single Dwelling 10,000 Residential Zone, within the Alternative Design Density Overlay Zone (a)

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

Proposal: The owners propose a renovation and expansion of the existing house and garage, including a new second story, a new main level master bedroom at the west side of the house, new basement living area, and an art studio room attached to the existing garage at the east

side of the house. The garage and art studio building will be attached to the main house with a canopy cover.

For new development, the R10 zone requires a minimum 10-foot side setback, measured from property lines to exterior building walls. The existing house, however, is nonconforming with respect to its location in the minimum side setback, being only 8 feet, 3 inches from the west property line. The existing detached garage is also nonconforming, being located 8 feet, 4 inches from the east property line. The proposed additions will continue this same setback distance, with a 1-foot eave overhang. The zoning code allows additions to existing buildings located within required setbacks only where there is not an increase in height of the building wall. Because the walls of the new additions are proposed to be higher than the existing building walls, an adjustment review is required for both the east and west building additions.

Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria for Adjustment reviews are found in Section 33.805.040.

ANALYSIS

Site and Vicinity: The site is within a single-dwelling residential neighborhood called Garthwick, which is part of the larger Sellwood-Moreland neighborhood. The lot is over 13,000 square feet in area. The house is a one-story ranch style, built in 1950. Garthwick was developed with large residential lots, varying from 10,000 square feet to 20,000 square feet. Tudor and English Country-style, 2 to 2-1/2 story houses (generally built between 1920 and 1940) intermix with Ranch and Cape Code style, 1-story homes (generally built between 1940 and 1960). Front setbacks are fairly uniform; most houses are set back approximately 40 feet from the streets, resulting in expansive front yard lawns and mature trees and shrubs. The streets are winding and tree-lined. Traffic volumes on Garthwick streets are low, in part due to the low density character of residential development and also the limited street connections to other neighborhoods. Waverly Golf Club is located to the south and west. A rail right-of-way is contained with SE Ochoco, coinciding with the site's rear (north) property line. A mix of industrial, employment and commercial development is located approximately 300 feet east of the site, along SE 17th Avenue. The Milwaukie light rail transit line is located along SE 17th Avenue.

Zoning: The site and surrounding properties are located in an R10, Single-Dwelling Residential 10,000 zone. The regulations of the Single-Dwelling zones are intended to create, maintain and promote single-dwelling neighborhoods. The development standards work together to preserve the character of neighborhoods, and 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.

The site is also mapped with the Alternative Design Density of "a" Overlay Zone designation. This zone offers some opportunities for additional density when Community Design Standards are met or when approved through Design Review. This project is not taking advantage of the additional density provisions of this overlay zone.

Land Use History: City records indicate that prior land use reviews include the following: VZ 124-66 – 1966 Variance request. No information on this record is available.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **April 1, 2015**. The following Bureaus have responded with no issues or concerns with approval of the Adjustment Review:

- Bureau of Environmental Services provided information on sanitary infrastructure and discussed the City's Stormwater management requirements (Exhibit E-1).

- Bureau of Transportation Engineering noted that no right-of-way improvements will be needed as city standards are already exceeded (Exhibit E-2).
- Portland Water Bureau provided information on the existing water service and generally outlined requirements for any expansions to the service (Exhibit E-3).
- Site Development Section of BDS offered an analysis of the physical characteristics of the site and noted Title 10 requirements for erosion prevention and sediment control (Exhibit E-4).
- Life Safety Plans Examiner of BDS, stated that a building permit is required for the proposed work (Exhibit E-5).

Neighborhood Review: Two written responses were received from nearby property owners in response to the proposal (Exhibits F-1 and F-2). A summary of issues raised in the letters includes:

1. Desire to maintain the historic character of Garthwick
2. Contemporary architectural design does not fit with historic character of existing homes
3. Loss of privacy inside home and in backyards
4. Loss of light and views

The first two issues are not relevant to the approval criteria, in that Garthwick is not designated as a historic resource, and compatible architectural style is not a requirement of the R10 zone and is not part of the approval criteria.

The last two issues are relevant to the approval criteria and are discussed below in the findings.

FINDINGS

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of Adjustment Reviews

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., 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 of the regulation is as follows (relevant excerpts of 33.110.220.A):

- *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;*

The request is to reduce both the east and west side yard setbacks from the minimum required 10 feet to approximately 8 feet. The proposal for additional buildings within the required side setbacks will not significantly reduce light, air, fire protection, and access for firefighting between adjacent properties to the east or west. The closest structure to the east of the site is 19 feet away from the new garage/art studio and is separated from the building by a driveway. The closest structure to the west of the site is 30 feet away from the new master bedroom addition, and is also separated by a driveway. Therefore, a reasonable separation between the existing houses is established, and will be maintained by the proposal.

On the one hand, the proposal results in additional building mass within the required 10-foot setback area. But, this is mitigated due to the low height of the proposed building walls within the setback area. The proposed second floor of house is centered on the lot, 36 feet away from side property lines. For the one-story garage expansion on the east side, the wall is proposed to be at 10 feet tall. For the one-story master bedroom, on the west side, the wall is proposed to be at 13 feet tall.

A closer examination of existing and proposed conditions shows that the existing garage roof peak is 13 feet in height, so some of the building mass within the setback area is reduced in height. Similarly, along the west property line, the existing master bedroom roof peak wall is 17 feet in height, while the new renovation and expanded master bedroom roof is 13 feet in height. This is due to the change in roof style, from pitched or hipped roof style to a flat roof. It allows for a reduced building mass, but requires a small wall height increase to accommodate the revised structure.

Privacy, light and air are reasons for requiring building setbacks. Neighborhood letters raised concerns about the loss of privacy, light, and air. As stated above, the proposed walls are relatively low in height and set back approximately 8 feet from property lines. In addition, existing driveways border the side property lines, ensuring that light and air will be maintained. Also, as noted above, while the height of the building wall will increase approximately one foot, the overall height of the structure will be reduced by replacing a hipped roof with a flat roof. As such, there should be no increased impacts on light and air reaching adjacent properties.

The expanded garage wall has no windows or openings in the setback area and therefore has little effect on neighbors' privacy. The master bedroom wall contains windows and does have the potential to reduce privacy. While the existing bedroom wall currently has windows, the northernmost proposed two windows have the potential to impact privacy of neighbors' backyards. To reduce potential impacts on privacy, a condition will require that these windows be removed.

The purpose statement for building setbacks additionally includes the following statements:

- *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 meets the three purpose statements above, as it preserves the wide, landscaped front setback that is a prominent and defining feature of the Garthwick neighborhood. In addition to maintaining the front yard setback of almost 38 feet, existing trees will be preserved. Compared with other lots along SE Andover Place, the site is relatively narrow in width, and its existing buildings are located within the required 10-foot side setbacks. A reasonable response to these site conditions is to

expand existing buildings along the same setback line. This is supported by the zoning code regulations, which include a setback exception for “established building lines.” This project, however, cannot meet the exception because the walls are increasing in height to accommodate a flat roof style.

In consideration of all the above factors, the proposal meets the purpose statement for setbacks with the condition that the northernmost two windows be removed from the west elevation. With this condition, this criterion can be met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The proposal will not detract from the livability or appearance of the immediate neighborhood area. Neighborhood features will be retained, such as the established front building setback prevalent along Garthwick streets. Existing mature trees on the site will be maintained. Zoning standards that regulate front entrance location, front facing window area, and garage wall width and location will be met.

The architecture of the existing ranch-style house is being transformed into a contemporary and modern style, marked by flat roofs and a generous amount of street-facing window area. While there is precedence for modern design in the neighborhood, some neighbors contend that the proposed house design is out of place with the prevalent Tudor, English Cottage and Cape Cod styles. However, allowing “architectural diversity” is part of the purpose statement for setbacks. While in contrast to the predominant character of the architectural styles of houses in Garthwick, this proposal for a modest reduction in the building setbacks fits in with other neighborhood characteristics.

The proposal extends existing one-level building walls and adds a second story, expanding the existing house’s floor area. The area added within the side setbacks will not be noticeable from the street. Note that this project is not considered infill development as it seeks to transform and expand an existing house. Additionally, all new and renovated floor area is for the primary household use; an accessory dwelling unit or a short term accessory rental unit are not proposed.

For the reasons stated above, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: The applicant is requesting to vary from one development standard, the minimum side building setback requirement. The overall purpose of the R10 zone is to create, maintain, and promote single-dwelling neighborhoods. The zone preserves land for housing and provides housing opportunities to individual households. As a remodeling project that expands and upgrades the existing one-story home on the property, that generally follows the pattern of spacing between houses and accessory buildings, and respects front yard setbacks, the project is consistent with this overall purpose. Therefore, this criterion is met.

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

Findings: 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; and

Findings: Negligible impacts result from the expanded garage and art studio. The master bedroom wall expansion will result in a building wall that is 45 feet in length, and extends into backyard landscaping areas. To minimize neighbor's privacy concerns, the northern-most two windows on the west elevation will be required to be removed. With this condition, privacy impacts will be mitigated and this criterion can be met.

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

Findings: The site is located outside the Environmental Overlay Zone. Therefore, this criterion does not apply.

CONCLUSIONS

The additions that are proposed to be located within the building setback areas on the east and the west sides of the site are low in height (10 feet on the east side and 13 feet on the west side). The setbacks will only be reduced by about two feet, to approximately eight feet. These low profile additions will each be abutting driveways on the adjacent properties, which further reduces any potential impacts. With a condition that requires the design to be amended to remove the two northernmost windows on the proposed west elevation that could potentially impact privacy, the proposal can be approved in general compliance with the site plan and elevation drawings.

DECISION

Approval of an Adjustment to Zoning Code Section 33.110.220, to reduce the minimum side building setback, from 10 feet to 8 feet, 3 inches from the west property line and from 10 feet to 8 feet, 4 inches from the east property line, with a one-foot wide roof eave on each side, in general compliance with the approved site plan and elevation drawings, signed and dated May 5, 2015, and subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) 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 15-133082 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Remove the two northernmost windows on the west elevation of the master bedroom addition, as shown on Exhibit C-2.

Staff Planner: Marguerite Feuersanger

Tentative Decision Date: August 18, 2015

First Hearing Date: July 21, 2015

These findings and conclusions were adopted by the Adjustment Committee on August 18, 2015.

By:



**Adjustment Committee
Roger Alfred, Chair**

**Date Final Decision Effective/Mailed: August 27, 2015
160th day date: September 2, 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 13, 2015, and was determined to be complete on **March 26, 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 13, 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 extended the 120-day review period by 40 days, to 160 days. The 160-day review period will expire on September 2, 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.

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 the **August 27, 2015**.

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

SITE IS IN CLACKAMAS COUNTY – Recording documents will be sent to the applicant along with instructions on the Clackamas County Recorder procedures.

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

- A. Applicant's Statement
 - B. Zoning Map (attached)
 - C. Plans/Drawings
 - 1. Site Plan (attached)
 - 2. Proposed Elevations, South and West (attached)
 - 3. Proposed Elevations, North and East (attached)
 - 4. Proposed East Elevation showing Garage and Art Studio (attached)
 - D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
 - E. Agency Responses
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Site Development Review Section of BDS
 - 5. Life Safety Plans Examiner of BDS
 - F. Correspondence
 - 1. D. Anderson Letter, Received April 21, 2015
 - 2. M. Hudspeth Letter, Received April 22, 2015
 - G. Other
 - 1. Original LU Application
 - 2. Applicant's Statement and Photos of Adjacent Properties
 - H. Appeal
 - 1. Appeal Submittal
 - 2. Appealed Decision
 - 3. Notice of Appeal Hearing
 - 4. Appeal Mailing List
- (Received before Hearing)
- 5. Committee Appeal Packet Memo
 - 6. Greg & Erin Leedy Letter (July 8)
- (Received During Hearing (July 21, 2015))
- 7. PowerPoint Presentation, Staff
 - 8. Submittal information, Appellant
 - 9. Applicant Pictures



ZONING



Site



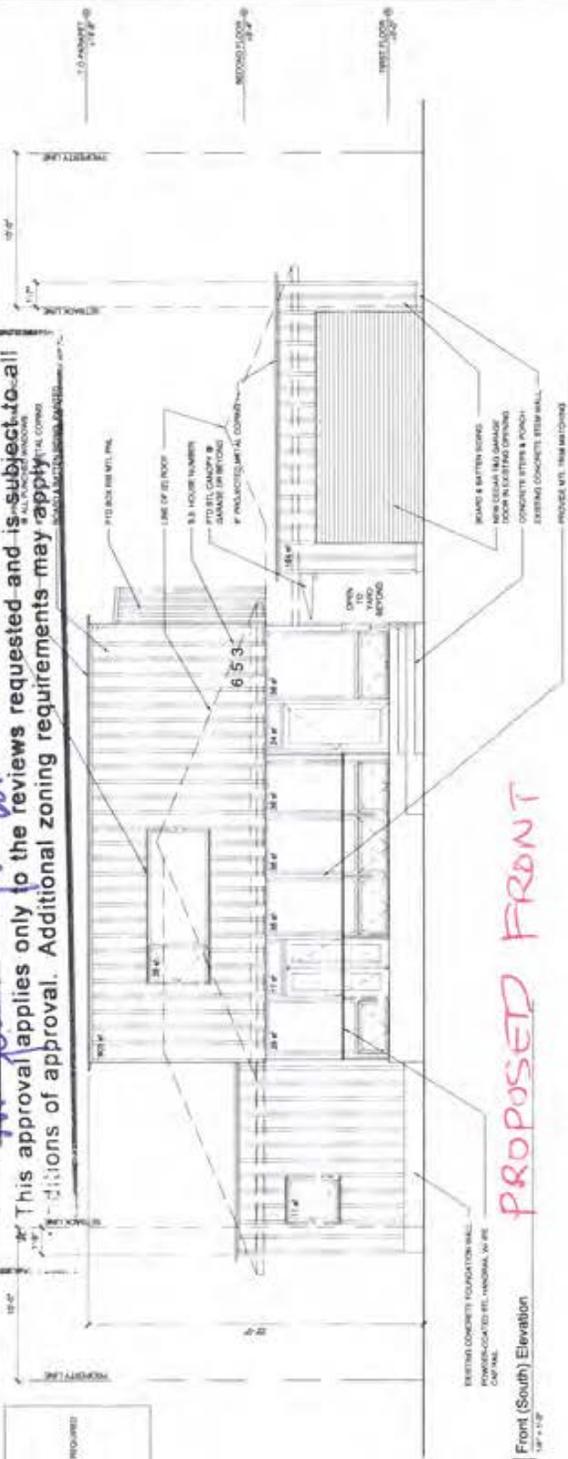
City of Portland Boundary



File No. LU 15-133082 AD
 1/4 Section 3932
 Scale 1 inch = 200 feet
 State_Id 11E26AB00400
 Exhibit B (Mar 16, 2015)

Approved
 City of Portland - Bureau of Development Services
 Planner M. Jernigan Date 5.5.15
 This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply to all windows.

AREA OF FRONT ELEVATION OF HOUSE MUST BE GLAZED	
TOTAL AREA OF FRONT ELEVATION	144 SF
GLAZED AREA	144 SF
TOTAL	144 SF
AREA OF 1ST FLOOR	
GLAZED (APPROVED)	144 SF
LIVING ROOM	144 SF
BED ROOM	144 SF
TOTAL GLAZED (PROPOSED)	144 SF

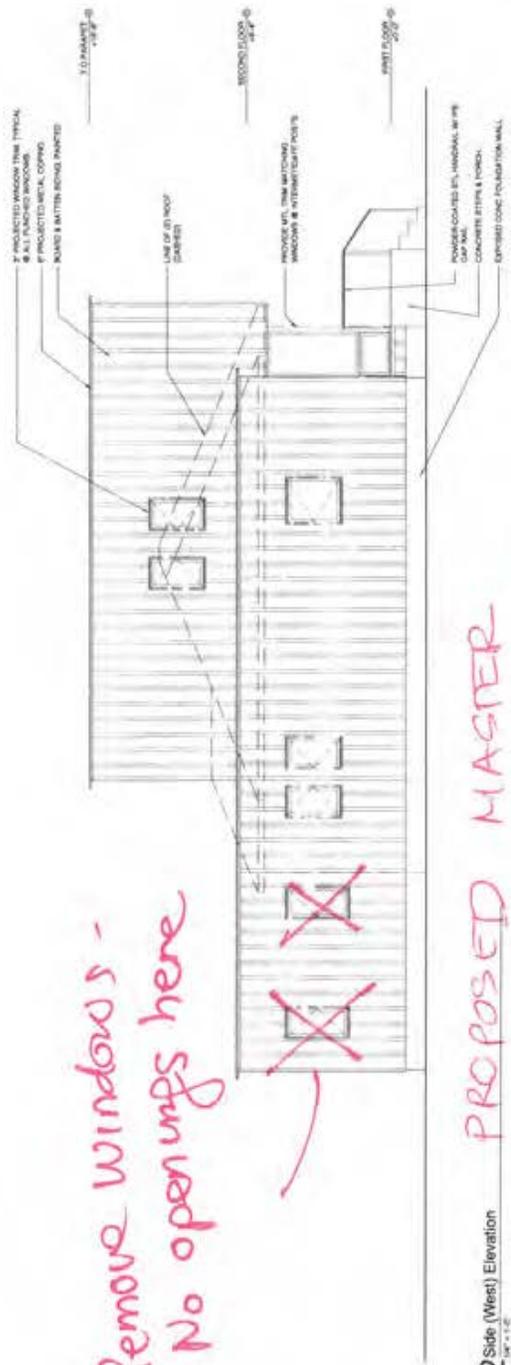


PROPOSED FRONT

Remove windows - No openings here

PROPOSED MASTER BED ROOM ADDITION

1 Front (South) Elevation
 1/4" = 1'-0"



2 Side (West) Elevation
 1/4" = 1'-0"

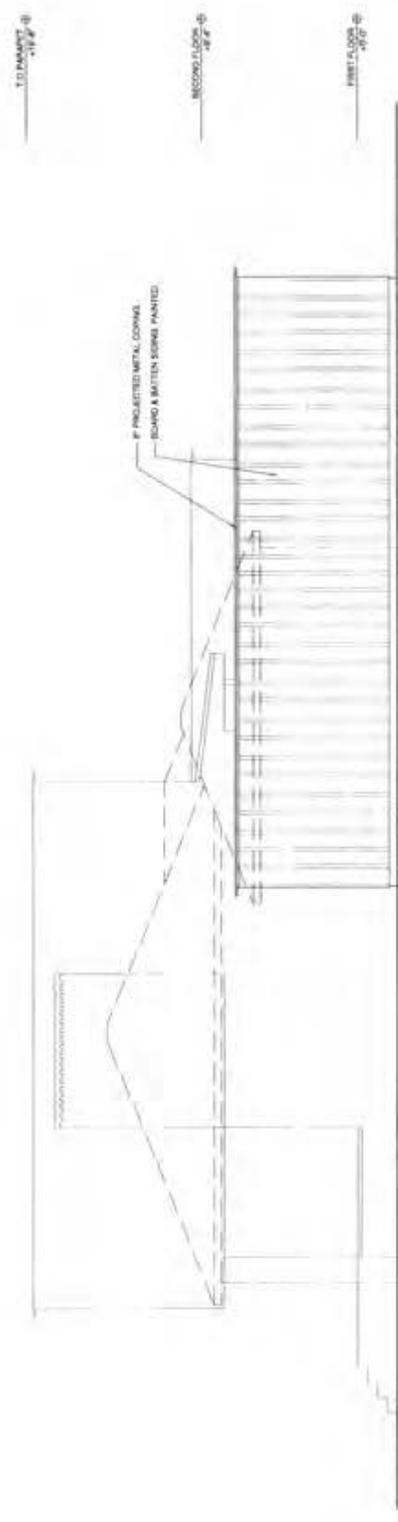
Approved
City of Portland - Bureau of Development Services

Planner M. Jewell Date 4-5-15

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

LV15 - 133082AD

EXHIBIT C-4



PROPOSED GARAGE + ART STUDIO

1 Side (East) Elevation
1/8" = 1'-0"