



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** June 26, 2015  
**To:** Interested Person  
**From:** Matt Wickstrom, Land Use Services  
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**NOTICE OF A TYPE II DECISION ON A REVISED  
PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has **approved** 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 15-133155 AD**

**GENERAL INFORMATION**

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

**Architect:** Ryan Brunelle / Waterleaf Architecture  
419 SW 11th Ave Suite 200 / Portland OR 97205

**Owner:** Martin Eichinger / Fire & Earth LLC  
2516 SE Division / Portland OR 97202

**Site Address:** 2516 SE DIVISION ST

**Legal Description:** SIMONS ADD, BLOCK 1, W 90' OF LOT 2&3  
**Tax Account No.:** R771000030  
**State ID No.:** 1S1E12BB 06600  
**Quarter Section:** 3333  
**Neighborhood:** Hosford-Abernethy, contact Joanne Stainbrook at 503-231-9245  
**Business District:** Division-Clinton Business Association, contact Darice Robinson at 503-233-1888  
**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010  
**Zoning:** CSm (Storefront Commercial with a Main Street Corridor Overlay Zone)  
**Case Type:** AD (Adjustment Review – 3 concurrent Adjustments)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

**Proposal:**

The applicant proposes to preserve the existing one-story building at this site and add a two-story addition on top of it. The existing building currently contains offices and a workshop for the sculptor who owns the property. The overall project would create ground floor retail, office and workshop space as well as additional office space and a residence for the sculptor in the southeast corner of the second and third floors. The existing building is constructed of

concrete and occupies the full lot. The second and third floor additions would be constructed of wood and occupy roughly the same area as the existing building except on the rear (south) side of the project.

The second floor is proposed to be set back 5 feet 4 inches from the property line to the south, aside from the proposed living space which is set back 11 feet 1 inch from the shared property line. The two floor living area is also set back 11 feet 1 inch from the south property line on the third floor, aside from the balcony which is set back 5 feet 4 inches. Two balconies are proposed to provide outdoor area for the second and third floor office spaces at the southwest corner of the building where it is adjacent to SE 25<sup>th</sup> Avenue. One patio is proposed to provide outdoor area for the residence on the third floor at the southeast corner of the building. A three-foot six-inch parapet is proposed to help screen views from the balconies and windows to the residentially zoned properties to the south of the project. A vegetative screen is proposed for the two office balconies to obstruct views from the balconies to the neighbors' backyard southeast of the site. Eighteen-inch deep planters adjacent to the parapet are proposed to provide further separation and screening between the residential balcony on the third floor and the neighbors' backyard.

The project requires Adjustments to three regulations of the Portland Zoning Code:

1. The Portland Zoning Code requires building walls between 16 and 30 feet in height to be set back 8 feet from abutting residentially zoned lots. The applicant proposes to reduce the setback of the second floor from 8 feet to 5 feet 4 inches from the south lot line.
2. The Main Street Corridor Overlay zone as applied along SE Division Street requires that for portions of a site within 25 feet of an adjoining lot zoned R5 and R2.5, the maximum building height is 35 feet. The applicant proposes to increase the maximum allowed height to 42 feet for portions of the building within 25 feet of the adjoining R2.5 zoned lots.
3. The Portland Zoning Code requires the buildings with residential and non-residential uses over 20,000 square feet in floor area to provide an on-site loading space. The loading space must be at least 35 feet long, 10 feet wide, and have a clearance of 13 feet. The applicant proposes to waive the required on-site loading space.

The proposal included in this decision is different than described in the Notice of Proposal sent on April 6, 2015. The second floor setback has been increased to 5 feet 4 inches for the entire story. Three of the previously proposed six rear-facing balconies have been removed from the project design. To protect privacy for neighboring single-dwelling homes, vegetative screening or planter areas have been included for the remaining three balconies.

**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 site is approximately 9,200 square feet in size. It is developed with a single-story commercial/industrial building built in the 1920s. The building occupies the entire site and has a loading space accessed from SE 25<sup>th</sup> Avenue. The loading spaces serves the manufacturing (sculptor's studio) space on the ground floor. The height of the loading space entry does not meet current Portland Zoning Code standards.

To the north, east and west, the surrounding vicinity is developed with commercial and mixed use buildings fronting on SE Division Street. Development to the south is primarily single-dwelling development and duplexes. The site shares a side property line with a single-dwelling home to the southeast that fronts on SE 26<sup>th</sup> Avenue. It is adjacent to the driveway and backyard of that home. The site shares a rear property line with a single-dwelling home to the

southwest that fronts on SE Ivon Street. It is adjacent to the driveway and detached garage of that home.

**Zoning:** The site is zoned CSm (Storefront Commercial with a Main Street Corridor Overlay Zone). The CS zone is intended to preserve and enhance older commercial areas that have a storefront character. The zone allows a full range of retail, service and business uses with a local and regional market area. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged. Along SE Division Street, the “m” overlay promotes development that fosters a pedestrian and transit-oriented main street and reinforces the pattern of older industrial, commercial and residential buildings along the street. The overlay also steps down building heights to reduce the negative impacts of larger scale buildings on the adjoining single-dwelling zones.

**Land Use History:** City records indicate that prior land use reviews include the following:

**07-133145 AD** – Approval of six Adjustments to standards of the Portland Zoning Code for a mixed use building with retail space on the ground floor and residential dwelling units on the upper floors. The proposed covered two tax lots (the tax lot which is subject to this land use review (15-133155 AD) and the tax lot to the east). The land use decision approved height Adjustments for the east and west portions of the proposed building. It also approved setback Adjustments for the east and west portions of the building. The land use decision also approved Adjustments to the transit street main entrance standard of the CS zone and the standard referred to as Reinforce the Corner as part of the Divisions Street “m” overlay zone. The land use decision denied an Adjustment request to waive the loading space requirement stating that due to the pro-time lanes on SE Division Street which remove on-street parking on the south side of Division during evening commute hours, loading activities would need to occur on residential side streets. The project associated with this Adjustment Review was not completed due to economic conditions at the time; however, columns to support new upper floors about the existing sculptor’s studio were installed inside the building at a distance of 5 feet 4 inches from the rear property line.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **April 6, 2015**. The following Bureaus have responded:

The Bureau of Environmental Services responded with information about sanitary service and stormwater management (Exhibit E-1).

The Portland Bureau of Transportation responded with no objections to the loading space Adjustment and provided information on adjacent streets and sidewalk corridors (Exhibit E-2).

The Water Bureau responded with information on water service (Exhibit E-3).

The Fire Bureau responded that all applicable Fire Code requirements shall apply at the time of permit review and development (Exhibit E-4).

The Life Safety Section of the Bureau of Development Services (BDS) responded with building code information (Exhibit E-5).

The Site Development Section of BDS responded with site-related information (Exhibit E-6).

**Neighborhood Review:** A total of three written responses have been received from the Neighborhood Association and notified property owners in response to the Notice of Proposal.

The first letter came from neighbors who live to the southeast of the site. The letter states that the proposal does not meet the Adjustment Review approval criteria. The neighbors state that the size, height and minimal setback is inconsistent with the character and livability of the adjoining single-dwelling residential zone. The neighbors express concerns about a loss of privacy especially in their backyard. The neighbors state that impacts aren’t appropriately

mitigated. The letter also states that waiving the loading space would cause loading and unloading to occur in the adjacent rights-of-way. (Exhibit F-1).

*Staff response: Staff has discussed the letter with the neighbor as well as on-going revisions to the proposal.*

The second letter came from the Neighborhood Association. The letter states that the project was discussed with the architect team at the April 21, 2015 Hosford-Abernethy Neighborhood District Association (HAND) meeting. The letter mentions setbacks, loss of privacy, the loading space proposal and height Adjustments as areas of concern. Mitigation was also discussed which includes applying for a designated on-street loading space, placing a deed restriction on the adjacent property under the same ownership and removal of the rear-facing balconies. (Exhibit F-2).

*Staff response: Staff had several follow-up conversations with HAND representatives regarding the letter and changes to the proposal.*

The third letter was from a neighbor who lives across SE 26<sup>th</sup> Avenue from the site. The neighbor expressed concerns about the proposal, overcrowding and visual dominance.

*Staff response: The findings below address concerns brought up in this letter.*

## **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 applicant requests three Adjustments to regulations of the Portland Zoning Code. The first Adjustment request is to reduce the setback abutting a residential zone from 8 feet to 5 feet 4 inches for the portion of the proposed building wall between 16 and 30 feet in height. The second Adjustment request is to increase the maximum building height from 35 feet to 42 feet for portions of the building within 25 feet of the rear property line where it abuts an R2.5 zoned lot. The third Adjustment is to waive the required loading space for a building with between 20,000 and 50,000 square feet of residential and non-residential floor area. The three Adjustment requests are discussed separately below.

#### Setback Adjustment

The applicant requests to reduce the setback abutting a residential zone from 8 feet to 5 feet 4 inches for the portion of the building within 16 and 30 feet in height. The purpose for the setback regulations in commercial zones is found in Portland Zoning Code Section 33.130.215.A and states:

*The required building setbacks promote streetscapes that are consistent with the desired character of the different commercial zones. The CN1, CM, CS, and CX setbacks promote buildings close to the sidewalk to reinforce a pedestrian orientation and built-up streetscape. The setback requirements for areas that abut residential zones promote commercial development that will maintain light, air, and the potential for privacy for adjacent residential zones. The setback requirements along transit streets and in Pedestrian Districts create an environment that is inviting to pedestrians and transit users.*

The proposal complies with the street setbacks and transit setbacks so those portions of the purpose statement are not relevant to this request.

The overall reason for the requested setback reduction is that the 2007 land use review approved a different development proposal, which also included the addition of two floors above the existing building on the site, at a 5 foot 4 inch setback from the rear property line. The supports for the upper floors were installed at the 5 foot 4 inch setback, but then due to issues with the economy at the time, the project was put on hold. The supports are made of wood with an architectural tree cover to make them appear as recycled tree trunks. Moving and reinstalling them could prove problematic and destructive.

The intent of the setback regulation in this situation is to maintain light, air, and the potential for privacy for adjacent residential zones. The site is located to the north of the abutting residential zones so it will not disrupt southern exposure because light will be maintained by virtue of directions the sun is located in the sky in the Northern Hemisphere. The setback is proposed to be reduced from 8 feet to 5 feet 4 inches or by 2 feet 8 inches for only the portions of the building within 16 and 30 feet in height. This is not a significant amount when considering the availability of air. The second floor balcony for the office space in the southwest corner extends to the rear property line but since it is not fully enclosed, it also will not reduce light or air.

The potential for privacy is an important consideration with this proposal. In order to protect privacy, the applicant proposes a 3-foot 6-inch parapet along the south sides of the second (and third) floor of the building. The parapet will help screen views from the rear facing windows and second floor balcony of the backyard for the neighbors to the southeast. It will also help screen views of the driveway and detached garage for the neighbors to the southwest. In order to ensure the parapet is installed, a condition of approval is necessary. The condition states that a 3-foot 6-inch tall parapet is required along the south wall of the second and third floors as shown in Exhibit C-6.

The Notice of Proposal described a building with six rear-facing balconies, three on each floor. These balconies would have compromised privacy for the single-dwelling home to the southeast of the site because the backyard of that home is adjacent to the rear lot line of the site. In other words, four of the second and third floor balconies could easily look into their backyard. Four of the six second and third floor balconies would have allowed direct views into their backyard. Three balconies adjacent to the southeast neighbors' backyards have been removed from the proposal. The remaining balcony of these four is located on the third floor and is discussed below under the Division Street Regulations Adjustment.

The home to the southwest is separated from the site by a driveway and detached garage. The potential for privacy impacts is much less for this neighbor. The proposed second floor balcony for the office space would allow views down on a driveway and detached garage, not these neighbors' backyard. Those using the balcony would also naturally look to the west and toward commercial activity on SE Division Street instead. Regardless, the purpose statement speaks to preserving the potential for privacy for adjacent residential zones. In this case, the applicant is proposing to install vegetative screening along the east sides of the second (and third) floor balcony, in addition to the parapet. In order to ensure the vegetative screens are included with the project, a

condition of approval is necessary. The condition states that the balconies on the second and third floors in the southwest corner must be screened along the east sides with a vegetative screen in substantial conformance with Exhibit A-2.

#### Division Street Regulations Adjustment

The applicant requests to increase the maximum height for the portion of the building within 25 feet of the adjoining R2.5 zoned lot from 35 feet to 42 feet up to a distance 11 feet 1 inch from the shared property line. The purpose for the special Division Street Regulations is found in Portland Zoning Code Section 33.460.300 and states:

*These regulations promote development that fosters a pedestrian- and transit-oriented main street and reinforces the pattern of older industrial, commercial, and residential buildings along the street. These regulations ensure that development:*

- *Activates Division Street corners and enhances the pedestrian environment;*
- *Steps down building heights to reduce the negative impacts of larger scale buildings on the adjoining single-dwelling zones;*
- *Is constructed with high quality materials in combinations that are visually interesting;*
- *Consists of retail that primarily serves the surrounding neighborhood, is small in scale and promotes pedestrian activity; and*
- *Provides neighbors with the opportunity to give early input to developers on significant projects.*

The aspect of the proposal that most relates to the Division Street Regulations found in the Main Street Corridor Overlay Zone Section of the Portland Zoning Code addresses the location of height in commercial zones and proximity to adjoining single-dwelling zones. The applicant is proposing to increase the maximum allowed height to 42 feet from 35 feet for portions of the building addition within 25 feet of the abutting R2.5 zoned lots.

The proposed Adjustment to height does not create negative impacts. As described above, the building addition is located to the north of the adjoining single-dwelling zoned lots and will therefore not impact southern exposure. This reduces impacts associated with light. It also reduces impacts associated with the availability of air.

Limiting the building height to 35 feet when within 25 feet of the R2.5 zone, generally limits the building to 3 stories in height. The overall project proposed exceeds the 35-foot height limit but remains 3 stories so therefore although the 35-foot height limit is exceeded, it is not exceeded in order to add an additional floor. In this situation, the property owner is preserving the existing building on the site which has a taller height than that of a typical ground floor commercial space. Including second and third floor office area which necessitates greater ceiling height than residential also adds height. The difference between 42 feet of building height and the 35 feet of height allowed by right does not translate into increased impacts, the same number of floors are proposed as allowed by right.

The third floor balconies for the office space and residential space are set back 5 feet 4 inches from rear property line. The balconies are separated from the rear property line by a 9-inch deep and 3 foot 6 inch tall parapet. The office balcony includes a vegetative screen to restrict views of the lot to the southeast of the site. The residential balcony includes 18-inch deep planters located on the interior edge of the parapet. The additional distance provided by the planters and parapet plus the 5 foot 4 inch setback of the patio from the rear property line provide adequate separation and visual obstruction to reduce impacts on privacy for the adjoining R2.5 zoned lot caused by the third floor balcony. In order to ensure the planters are included in the proposal, a condition of approval is necessary. The condition states that the third floor residential

balcony in the southeast corner of the site must include 18-inch deep planters located on the interior side of the parapet.

Overall, the proposal addresses all aspects of the Division Street Regulations in the Main Street Corridor Overlay Zone. The project will help to activate SE Division Street. Whereas the site is currently used solely as a sculptor's studio, a restaurant space will be added (or retail, office or other use allowed in the zone). This helps activate the street. The proposal saves an existing commercial building constructed in the 1920s. This speaks to preserving a building constructed of high quality materials and which is a significant piece of the development fabric along this portion of SE Division Street. The proposal adds onto this 1920s building in a way that doesn't compromise its original integrity, the second and third floor additions are set back from the facades of the original first floor.

#### Loading Space Adjustment

The applicant requests to waive the required on-site loading space and keep the current non-conforming loading space that serves the artist's studio use on the site. The purpose for the loading space regulations is found in Portland Zoning Code Section 33.266.310 and states:

*A minimum number of loading spaces are required to ensure adequate areas for loading for larger uses and developments. These regulations ensure that the appearance of loading areas will be consistent with that of parking areas. The regulations ensure that access to and from loading facilities will not have a negative effect on the traffic safety or other transportation functions of the abutting right-of-way.*

Unlike the 2007 land use review, PBOT responded with no concerns to the proposal to waive the on-site loading space. The property owner is working with PBOT in conjunction with other commercial businesses in the vicinity to located an on-street loading space on SE 25<sup>th</sup> Avenue. The neighborhood association has signaled its support for this solution as well.

The site currently has a non-conforming loading space on the ground floor of the building. This space will be maintained and continue to serve the artist's studio. Office uses, as are proposed for the second and third floors at the site, generally do not result in tenants moving in and out of an office space with the same frequency as residential uses. Therefore, providing an on-site loading space for the proposed distribution of uses and proposed amount of development is less necessary.

Based on the information above, this criterion is met.

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

**Findings:** The proposal is located in a C (Commercial) zone. PBOT reviewed the proposal and determined it is consistent with the classification of adjacent streets. The Portland Zoning Code defines "desired character" as follows:

*The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.*

In this situation, desired character of the area is defined by the character statement of the CS (Storefront Commercial) zone, the Division Street Regulations found in the “m” overlay, and the 2006 *Division Green Street/Main Street Plan*.

The character statement for the CS zone reads:

*The Storefront Commercial (CS) zone is intended to preserve and enhance older commercial areas that have a storefront character. The zone intends that new development in these areas will be compatible with this desired character. The zone allows a full range of retail, service and business uses with a local and regional market area. Industrial uses are allowed but are limited in size to avoid adverse effects different in kind or amount than commercial uses and to ensure that they do not dominate the character of the commercial area. The desired character includes areas which are predominantly built-up, with buildings close to and oriented towards the sidewalk especially at corners. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged.*

The proposal is consistent with the character statement of the CS zone. The existing building on the site will remain, albeit two additional stories will be added above it. This helps preserve the storefront character of the older commercial area. The additional second and third story floor area and addition of a new ground floor use on the site helps enhance the commercial area and its storefront character. The artist’s studio is a manufacturing use; however, it meets size limitations of the CS zone which means it will not dominate the commercial area and therefore limits adverse effects. In its current form, the artist’s studio is a very benign manufacturing use because it also resembles an art gallery even though it would not be categorized as such by the Portland Zoning Code. The proposal includes retaining the existing building on the site that occupies the full site and is built to the street. This retains the pedestrian-orientation of the building and existing storefront character.

The Division Street Regulations of the “m” overlay were discussed above under Criterion A. The project allows for the continued fostering of a pedestrian and transit-oriented main street because it retains the existing building constructed in the 1920s which is built to the SE Division Street and SE 25<sup>th</sup> Avenue property lines. The proposal steps down the building height where the site adjoins the R2.5 zone appropriately with reductions reviewed elsewhere in this Adjustment Review. Retail space is limited in size which promotes uses that serve the surrounding neighborhood.

*These regulations promote development that fosters a pedestrian- and transit-oriented main street and reinforces the pattern of older industrial, commercial, and residential buildings along the street. These regulations ensure that development:*

- *Activates Division Street corners and enhances the pedestrian environment;*
- *Steps down building heights to reduce the negative impacts of larger scale buildings on the adjoining single-dwelling zones;*
- *Is constructed with high quality materials in combinations that are visually interesting;*
- *Consists of retail that primarily serves the surrounding neighborhood, is small in scale and promotes pedestrian activity; and*
- *Provides neighbors with the opportunity to give early input to developers on significant projects.*

The policy language in the *Division Street Green Street/Main Street Plan* reflect the project and proposed Adjustments. The Plan includes an implementation strategy to revitalize existing commercial nodes which this project will help accomplish. Another implementation strategy involves pursuing green construction. The project assists with achieving this strategy because it maintains an existing building and incorporates it

into the project, rather than demolishing the building and starting with a vacant site. The Plan also includes an implementation strategy to encourage the renovation and reuse of buildings from the street's historic era to maintain the main street character. The project and proposal help accomplish this strategy.

Based on the information above the project and proposal meet the desired character of the area. 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 overall purpose of the zone was addressed above under Criterion B. Consistent with the conclusion for Criterion B, this approval criterion is met.

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

**Findings:** There are no City-designated scenic or historic 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:** The primary impacts of the project and proposal are on privacy for the adjoining R2.5 zoned lots to the south. The availability of light and air are not issues because the site is located to the north of the two single-dwelling lots and therefore will not impact southern exposure. The availability of air is not expressly impacted because the adjoining lots still have plenty of sky to view and the reduced setback and increased height proposed will not significantly compromise views of the sky or access to air.

Impacts resulting from reduced privacy have been mitigated to the extent practical. A 3-foot 4-inch parapet will be located above the rear portions of the first and second floors to obstruct views of the neighbors' homes to the southeast and southwest. Three of the six proposed balconies have been removed from the proposal described in the April 6, 2015 Notice of Proposal. The remaining three balconies have features that reduce their privacy impacts on the adjoining R2.5 zoned lots. The two office balconies on the second and third floors in the southwest corner of the site look out onto a driveway and detached garage of the house to the south. No significant impact will occur especially considering there are views to more active areas to the west and to SE Division street as well. Views to the east which could impact the privacy of the home to the southeast of the site will be obscured by the vegetative screens required in the conditions of approval.

Impacts resulting from the balcony on the third floor in the southeast corner of the site are mitigated. The applicant proposes to install, and conditions of approval require, a 3-foot 6-inch parapet that is 9 inches in width at a 5-foot 4-inch setback. The height of the parapet and its 5-foot 4-inch setback from the rear property line, minimize views from the third floor balcony into the backyard of the neighbors to the southeast. Planters are also required to be placed in the balcony adjacent to the parapet. The planters are 18 inches deep and further separate active area on the balcony from the shared property line. This further reduces the potential for views into the neighbors' backyard. Submitted line-of-sight drawings provided by the architect help demonstrate the potential for views into the neighbors' backyard (Exhibit C-6).

A final condition of approval addresses the 11-foot deep roof space adjacent to the second floor living area of the residential unit and the property to the south, and impact that could be associated with this area. Recreation area at this level such as a balcony or patio could or would impact privacy for the residents who live to the southeast of the site, and therefore, the addition of recreation area such as a deck,

patio, balcony or recreational outdoor space would require approval through another Adjustment Review. For purpose of this review this portion of roof area can be used as a passively aesthetic area where sculptures, a small fountain, interesting roof-paving materials or minimal low-maintenance potted plants such as hardy drought resistant plants could be viewed from inside the residence, and occasionally accessed for maintenance and plant care if the area meets building code requirements. The condition of approval states that recreating is not allowed on the second floor roof area in the southeast corner of the site. The roof area may be utilized for maintenance and care of low maintenance plants.

Based on this information and with the condition of approval regarding the second floor roof area, this criterion is met.

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

**Findings:** The site is not within an environmental zone. This criterion is not applicable.

## **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## **CONCLUSIONS**

The applicant proposes three Adjustments associated with plans to construct a two-story addition on top of the existing building on this site. The proposal to utilize the existing building as part of this project recognizes its architecture and historic streetcar-era characteristics requires different consideration of the proposal than one involving only new construction. In this situation, the applicant has provided a proposal that meets the purposes of the setback standards in the CS zone, the Division Street Regulations of the “m” overlay zone and the loading space standards. The proposal is consistent with the classification of adjacent street and the desired character of the area. Impacts have been mitigated, revisions to the original proposal have been made and conditions of approval are included so that this project is constructed consistent with this land use review. The proposal meets the approval criteria and should be approved.

## **ADMINISTRATIVE DECISION**

Approval of three Adjustments associated with plans for a two-story addition on top of the current single-story building on this site. The approval allows the applicant to:

1. Reduce the minimum building setback abutting a residentially zoned lot from 8 feet to 5 feet 4 inches for the area of the building within 16 and 30 feet in height (33.130.215.B.2.a);
2. Increase the maximum allowed height from 35 feet to 42 feet for the area of the building within 25 feet of the adjoining R2.5 zone (33.460.310.B.1); and
3. Waive the required Type A onsite loading space (33.266.310.C.2.b).

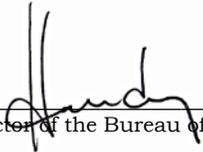
This is per the approved site plans, Exhibits C-1 through C-6, signed and dated June 24, 2015, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through E) 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 15-133155 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. A 3-foot 6-inch tall parapet is required above the south walls of the first and second floors to partially screen views from the second and third floors as shown in Exhibits C-6.
- C. The office balconies on the second and third floors in the southwest corner must be screened with a vegetative screen in substantial conformance with Exhibit A-2.
- D. The third floor residential balcony in the southeast corner of the site must include 18-inch deep planters located on the interior side of the parapet.
- E. Recreating is not allowed on the second floor roof area in the southeast corner of the site. The roof area may be utilized for maintenance and care of low maintenance plants.

**Staff Planner: Matt Wickstrom**

**Decision rendered by:**  **on June 24, 2015**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: June 26, 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 27, 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 requested that the 120-day review period be extended. Unless further extended by the applicant, **the 120 days will expire on: July 24, 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 10, 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 5<sup>th</sup> 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](http://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.

**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 **July 13, 2015 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

**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:

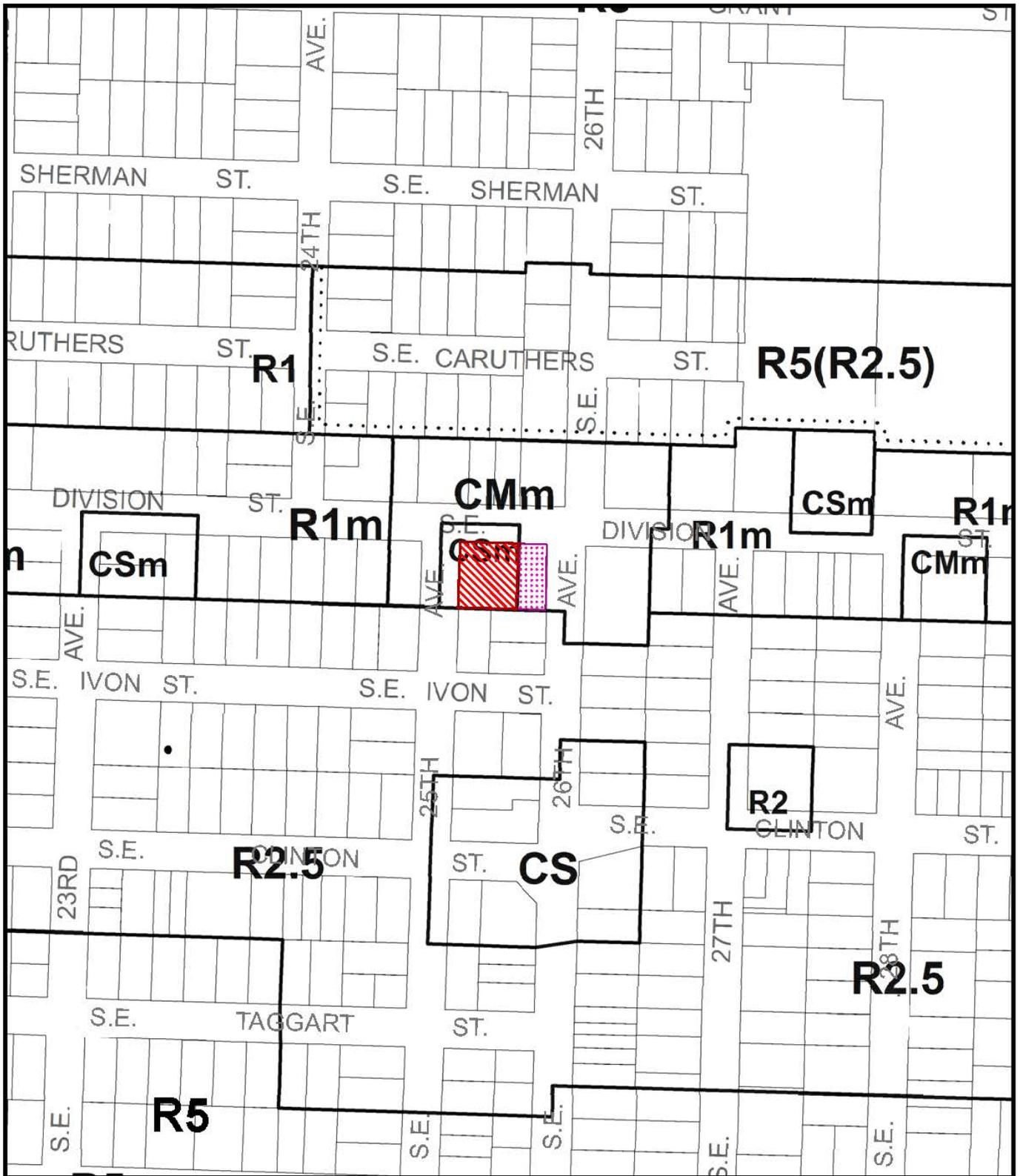
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
  1. Revised drawings submitted on May 22, 2015
  2. Vegetative planter detail submitted on June 2, 2015
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Ground Floor plan (attached)
  2. 2<sup>nd</sup> Floor plan (attached)
  3. 3<sup>rd</sup> Floor plan (attached)
  4. North and West exterior elevations (attached)
  5. East and South exterior elevations (attached)
  6. Sight line drawing showing parapet location (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. Fire Bureau
  5. Life Safety Section of BDS
  6. Site Development Review Section of BDS
- F. Correspondence:
  1. Greg Bauer and Rebecca Copenhaver, April 11, 2015, opposition
  2. HAND, April 27, 2015, items of concern and mitigation ideas
  3. Kelly Maltzer, April 25, 2015, concern the proposal does not meet the approval criteria

**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

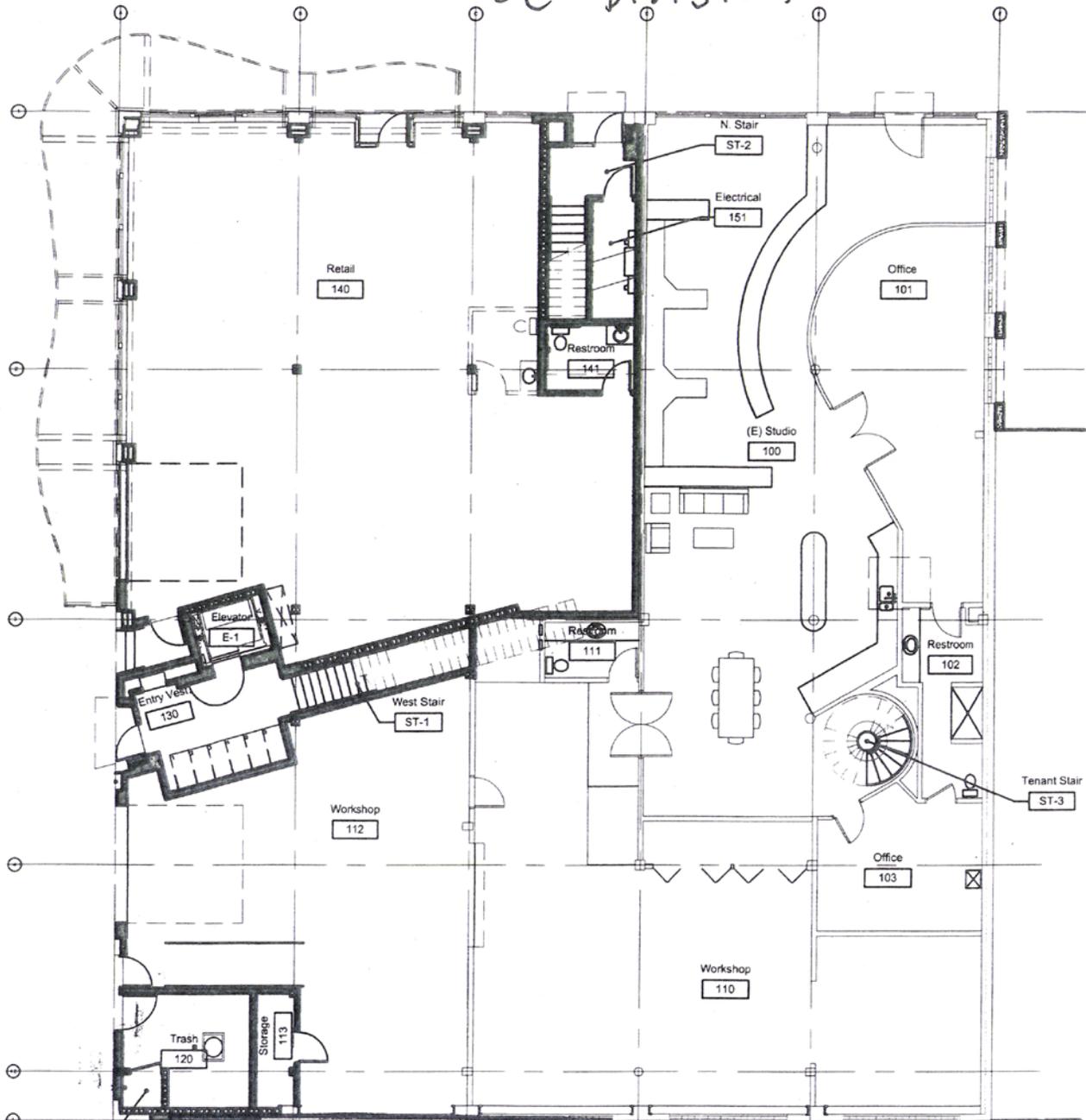
-  Site
-  Also Owned
-  Historic Landmark



File No. LU 15-133155 AD  
 1/4 Section 3333  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E12BB 6600  
 Exhibit B (Mar 16, 2015)

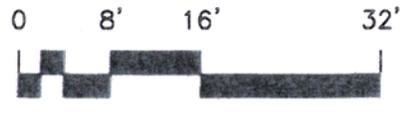
SE Division

SE 25th Avenue



**\*Approved\***  
 City of Portland  
 Bureau of Development Services  
 Planner: Wickstrom  
 Date: 6-24-15

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



the geode

main floor plan

1319.00

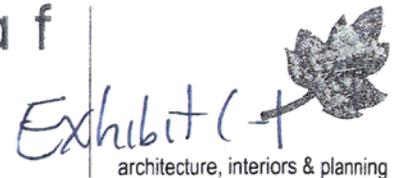
10 march 2015

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

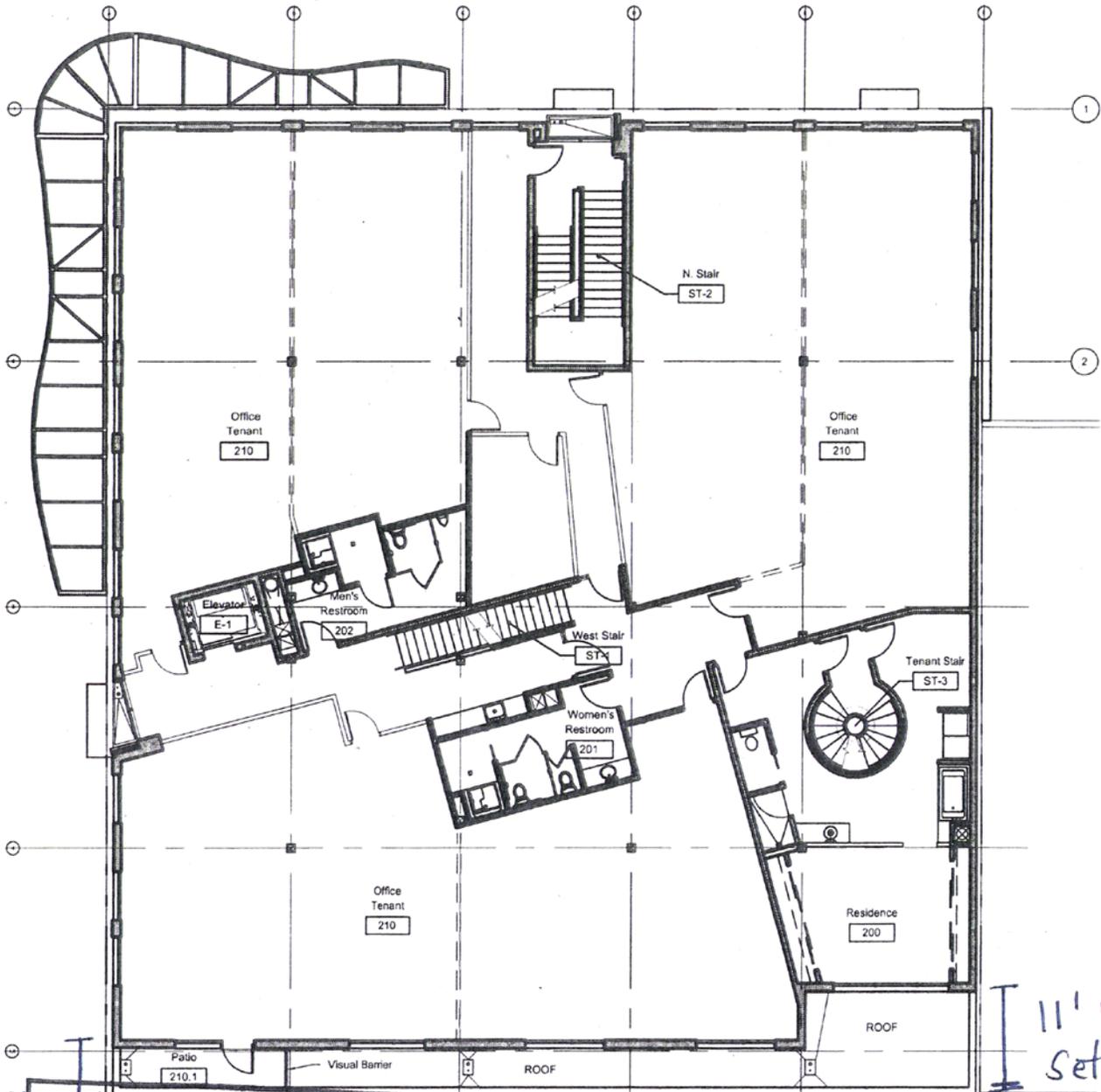
C2

waterleaf

419 SW 11th Ave Suite 200  
 Portland, Oregon 97205  
 Phone: 503/228-7571  
 Fax: 503/273-8891



W15 - 138155AD

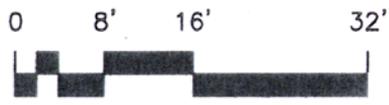


5' 4" Setback

11' 1" Setback

\* Approved \*  
 City of Portland  
 Bureau of Development Services  
 Planner Wickstrom  
 Date 6-24-15  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval.  
 Additional zoning requirements may apply.

location of 3 foot 6-inch parapet



the geode

2nd floor plan

15 may 2015

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

1319.00

C3

waterleaf

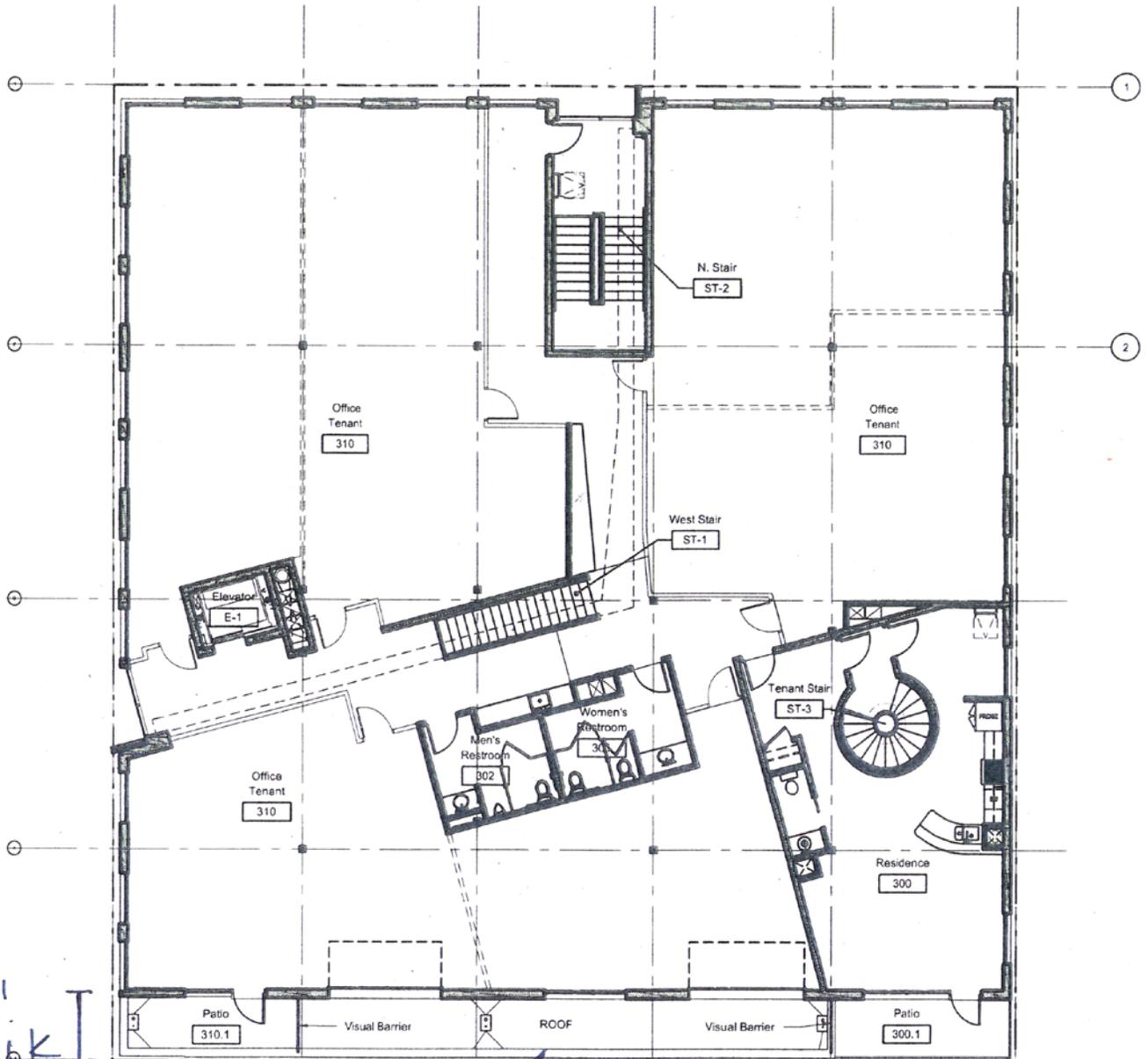
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 Portland, Oregon 97205  
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 Fax: 503/273-8891



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Exhibit C-2

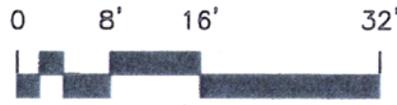


11'1" Setback

15'4" Setback

**\*Approved\***  
 City of Portland  
 Bureau of Development Services  
 Planner Wilkstrom  
 Date 6-24-15  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

location of 3-foot 6-inch parapet wall



the geode

3rd floor plan

1319.00

12 may 2015

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

C4

waterleaf

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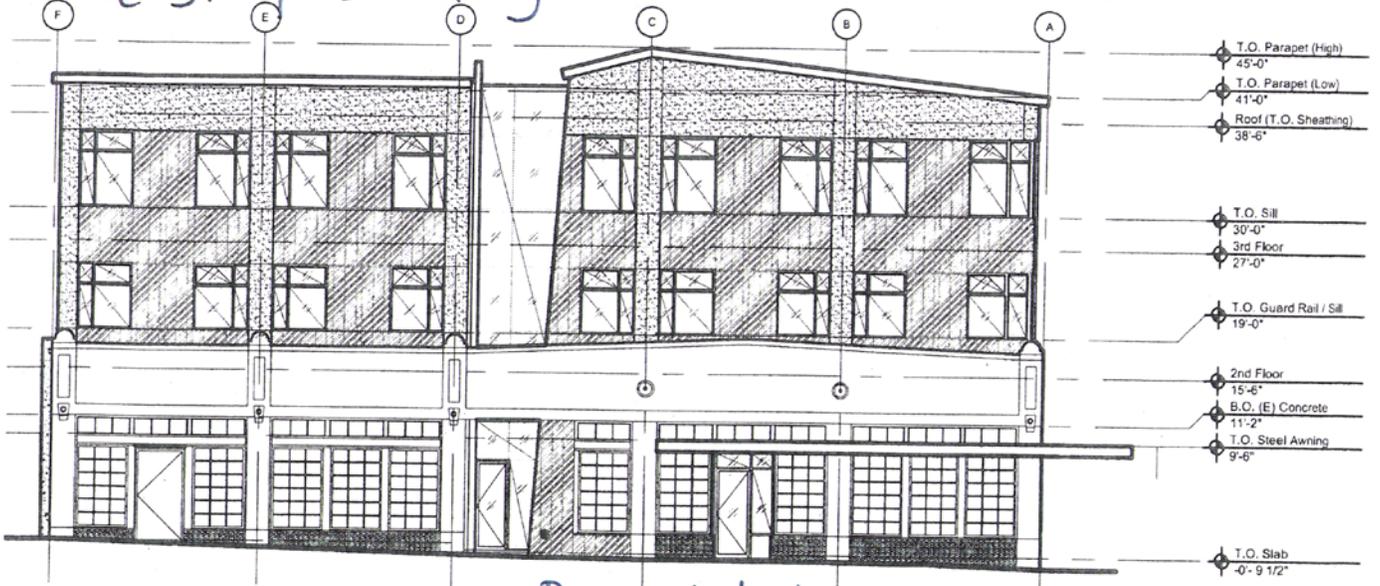


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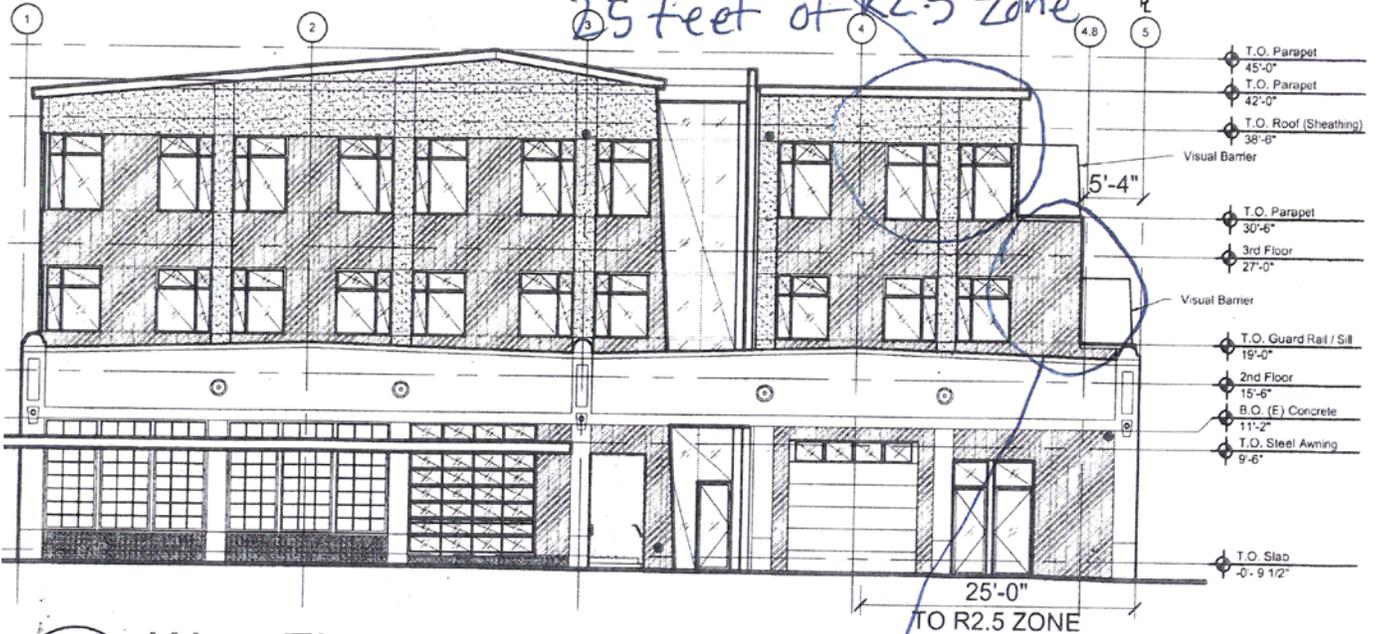
Exhibit C-3

Proposal to add two stories above existing one-story building



1 North Elevation  
A2.1 SCALE: 1/16" = 1'-0"

Proposal to increase allowed height to 42 feet within 25 feet of R2.5 zone



2 West Elevation  
A2.1 SCALE: 1/16" = 1'-0"

Proposal to reduce building setback



from 8 feet to 5 feet 4 inches, a second floor balcony will reduce setback to 0 feet.

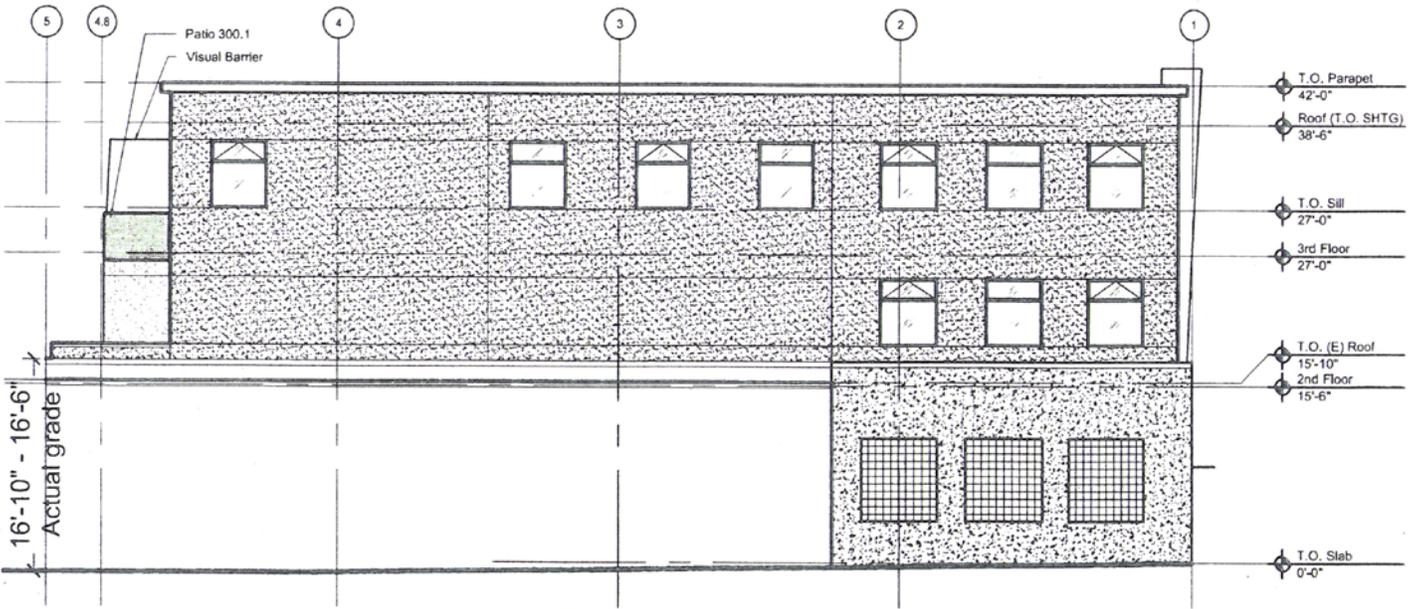
the geode exterior elevations approval application 1319-00 to the City of Portland Bureau of Development Services Planner Widstrom Date 6-24-15 12 may 2015 scale: 1/16" = 1'-0"

419 SW 11th Ave Suite 200 Portland, Oregon 97205 Phone: 503/228-7571 Fax: 503/273-8891

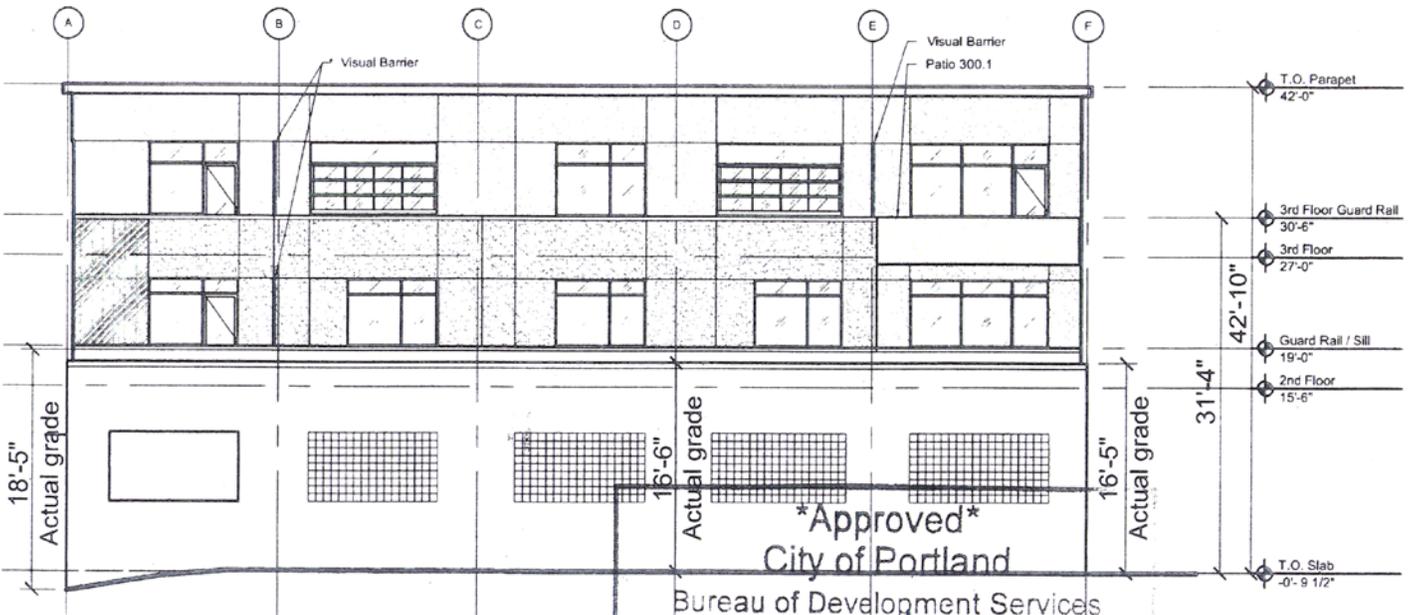
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Exhibit C-4



1 East Elevation  
A2.2 SCALE: 1/16" = 1'-0"



2 South Elevation  
A2.2 SCALE: 1/16" = 1'-0"

the geode  
exterior elevations 1319.00  
15 may 2015  
scale: 1/16"=1'-0"

waterleaf

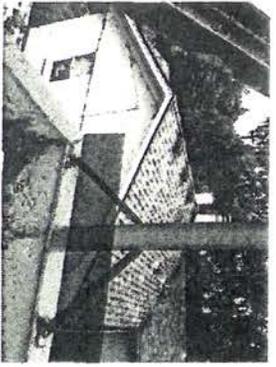
419 SW 11th Ave Suite 200  
Portland, Oregon 97205  
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Fax: 503/273-8891



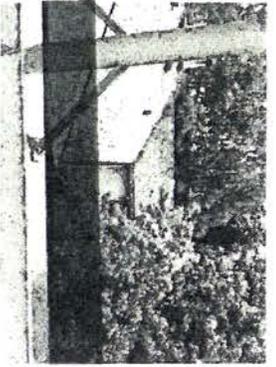
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Exhibit C-5



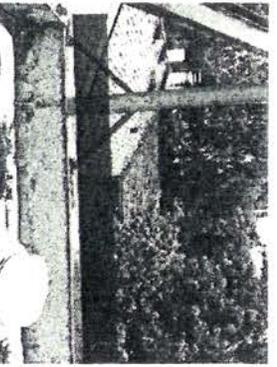
View towards SE at 5'-4" from property line without taking into account extended parapet



View towards S at 5'-4" from property line without taking into account extended parapet



View towards SE at 8'-0" from property line without taking into account extended parapet

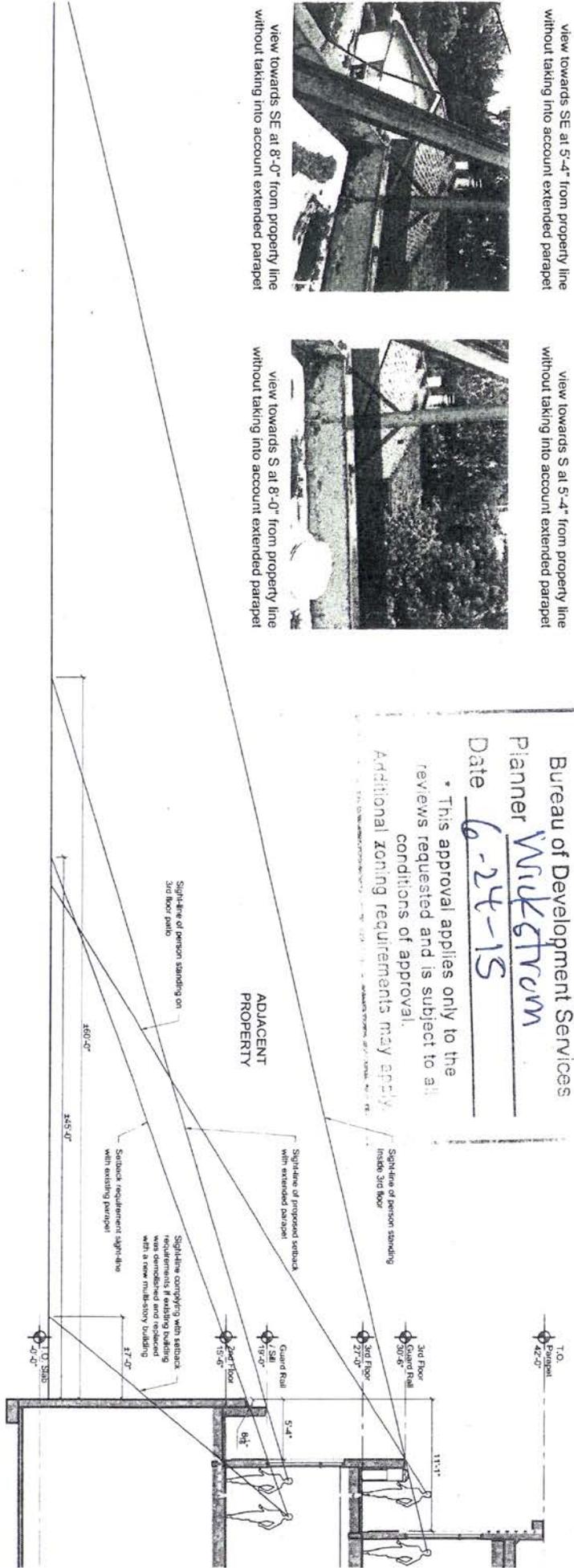


View towards S at 8'-0" from property line without taking into account extended parapet

Area representing the parapet extension along the South facade at the 2nd floor

**\* Approved \***  
 Bureau of Development Services  
 City of Portland  
 Planner Wickstrom  
 Date 6-24-15

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



sight-line diagram



the geode  
 15 May 2015  
 Scale: 1/16"=1'-0"

1319.00

**waterleaf**  
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 Portland, Oregon 97205  
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 Fax: 503.273-8891



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Exhibit C-6