



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

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Date: December 17, 2020
To: Interested Person
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 20-134213 AD

GENERAL INFORMATION

Applicant/Owner: Diem Le
6360 McEwan Rd.
Lake Oswego, OR 97035

Site Address: SW Upper Hall Ave. and SW 16th St.

Legal Description: LOT 1, PARTITION PLAT 2003-51
Tax Account No.: R649832010
State ID No.: 1S1E04BD 06101
Quarter Section: 3127

Neighborhood: Goose Hollow, contact Jerry Powell or Scott Schaffer at planning@goosehollow.org & Southwest Hills Residential League, contact at contact@swhrl.org

Business District: None
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212 & Southwest Neighborhoods Inc., contact Sylvia Bogert at 503-823-4592

Zoning: R5 – Single-Dwelling Residential 5,000
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The applicant proposes to construct a new single-dwelling house on this vacant lot. The following Adjustments to zoning requirements are requested:

1. To reduce the minimum 10-foot front building setback and the 18-foot garage entrance setback to zero (Zoning Code Section 33.110.220.B).

Note: These setbacks are measured from the subject property's west lot line, which the Zoning Code defines as the front lot line because it abuts a street right-of-way. However,

the section of street right-of-way adjacent to the subject property (which is designated as SW 16th Avenue) is unimproved. Access to the new home will be taken from SW Upper Hall Street, which is adjacent to and immediately west of the unimproved SW 16th Avenue right-of-way. The actual setback distance from the east edge of the SW Upper Hall Street pavement to the new house will be approximately 40 feet.

2. To increase the maximum building height from the average elevation of the northwest and southwest lot corners from 23 feet to 37.2 feet (Zoning Code Section 33.110.215.D.1).

Note: The requested height Adjustment is 5 feet lower than shown in the “Notice of Proposal” previously mailed to neighbors. Responding to concerns raised by neighbors and staff, the applicant revised the building design to lower the height.

Building height is measured from the average elevation of the northwest and southwest lot corners. The elevation of the northwest lot corner is 403 feet and the elevation of the southwest lot corner is 430 feet, so the average elevation from which the building height is measured is 416.5 feet. The SW Upper Hall Street pavement adjacent to the centerline of the proposed driveway is at approximately 432 feet elevation. The applicant requests the highest part of the new roof to be at 453.65 feet elevation, which is approximately 21.7 feet above the SW Upper Hall Street pavement.

Relevant Approval Criteria: To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The subject site is a 3,000-square-foot vacant lot near the intersection of SW Upper Hall Street and SW College Street. The site abuts a public right-of-way designated for SW 16th Avenue (Exhibit B), but this section of right-of-way has not been improved. Driveway access to the site will be from SW Upper Hall Street to the west (Exhibit C-1). The ground slopes steeply downward in an easterly direction from SW Upper Hall Street. The average elevation of the lot’s front lot line is approximately 15.5 feet lower than SW Upper Hall Street pavement, and the average elevation of the rear lot line is approximately 25 feet lower than the front lot line. The surrounding area is characterized by steep slopes, large trees, and single-dwelling houses. The Portland State University campus is a few blocks east of the site, on the opposite side of the I-405 freeway.

Zoning: The R5 single-dwelling residential zone is intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

Land Use Review History: The subject lot was created in a land division (LUR 01-00633 MP AD, Exhibit G-3) that separated this lot from the property to the east at 1525 SW College Street. The land division was approved in 2002 and the plat was recorded in 2003. The land division approval included an Adjustment to reduce the front building setback on the new lot (the lot subject to this Adjustment review) to zero, but that prior Adjustment has since expired per Zoning Code Section 33.730.130.B.1.

Agency Review: A “Notice of Proposal” was sent November 3, 2020. The following Bureaus will administer regulations during building permit review, but responded with no objections to the proposed zoning Adjustments:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4);
- Site Development Section of the Bureau of Development Services (BDS) (Exhibit E-5); and

- Life Safety Review Section of BDS (Exhibit E-6).

Neighborhood Review: In response to the mailed “Notice of Proposal,” 14 public comments were received (Exhibits F-1 through F-14). One was from the Southwest Hills Residential League (Exhibit F-4) and the rest were from neighbors. Concerns raised in the public comments can be summarized as follows:

- The new driveway from SW Upper Hall Street may cause safety issues on the street and interfere with others’ property rights.

Staff response: The proposed driveway will be entirely in the public right-of-way, and the Portland Bureau of Transportation will review the driveway proposal in a separate process (Exhibit E-2). All regulations related to the driveway, including safety regulations, will be enforced by the Portland Bureau of Transportation.

- The new development may cause drainage problems and threaten the stability of the hillside.

Staff response: During any future building permit review and inspection process, the Bureau of Environmental Services and the Site Development Review Section of BDS will enforce regulations to prevent drainage impacts on neighbors and protect the stability of the hillside. Information on these regulations is included in Exhibits E-1 and E-5. However, these issues are not relevant to this Adjustment Review, which is limited to the applicant’s requests for increased building height and a reduced building setback.

- Tree removal should be limited and tree-related conditions of approval from the 2002 land division approval (LUR 01-00633 MP AD) should be enforced.

Staff response: The subject site is 3,000 square feet in area, and the Portland Tree Code does not regulate tree removal on development sites smaller than 5,000 square feet (Tree Code Section 11.50.040.B.2).

While LUR 01-00633 MP AD imposed two conditions of approval related to tree preservation (Exhibit G-3, page 16), these conditions are no longer enforceable per Zoning Code Section 33.700.115.B:

Tree preservation requirements for land divisions expire 10 years from the date the final plat is approved, unless otherwise stated in the conditions of approval.

The final plat for this land division was approved on May 8, 2003.

Staff finds that tree removal is not relevant to this Adjustment Review because the specific Adjustments requested are not likely to increase tree removal. The requested increase in building height does not change the ground disturbance area, and the reduced setback from the front lot line minimizes ground disturbance, since the driveway structure would have to extend further into the lot if the house were set further back.

- The condition of approval from LUR 01-00633 MP AD limiting window coverage for the abutting house to the south was intended to preserve existing views to a greater extent than the current plans would.

Staff response: LUR 01-00633 MP AD imposed the following condition of approval (Exhibit G-3, page 16):

Any development allowed within the easternmost 37 feet of Parcel 1 shall be subject to the following design restrictions:

- a. *Permit drawings submitted for development shall include reference drawings showing the northern elevation of the house located on the adjacent lot (Tax Lot 6300);*
- b. *Drawings must clearly show the relationship between development elevations on Parcel 1 and the window areas on the north façade of the house on Tax Lot 6300;*
- c. *Development on Parcel 1 within the restricted area shall be situated so that it does not obstruct more than 20 percent of the window area of the north façade of the building on Tax Lot 6300; and*
- d. *For the purposes of this condition, development “obstructs” window area if that development overlaps the window area as seen when both building elevations are overlaid on the same sheet.*

Since this condition of approval applies to the eastern 37 feet of the subject lot (“Parcel 1”), and the new home will be set back 20 feet from the east lot line, the condition of approval limits how much the eastern 17 feet of the new home can overlay existing north-facing windows on the neighboring home to the south (on “Tax Lot 6300”). While not necessarily relevant to the approval criteria for the current Adjustment Review, this prior condition of approval will apply to the building permit review, and the applicant submitted a plan demonstrating this condition of approval will be met outright (Exhibit A-5). View impacts in relation to the current Adjustment Review are discussed in the findings for approval criterion B, below.

- The new home will appear out of character with the neighborhood, since nearby homes on the downslope side of the street have only a single-story profile from the street.
- LUR 01-00633 MP AD was approved with plans for a significantly lower house than the current proposal. In that review, staff acknowledged that a low building height would protect the appearance and livability of the neighborhood.
- The increased building height will tower above neighboring properties, negatively affecting neighbors’ views, privacy, and property values.
- The proposal does not mitigate for negative impacts.
- Such a large increase in allowable building height is not necessary for a reasonably sized home, and the approval criteria are not intended to protect an applicant’s economic returns.
- The proposed height Adjustment will negatively affect nearby vacant lots and set a bad precedent for future development in the area.

Staff response: Staff agrees the building plans illustrated in the “Notice of Proposal” (Exhibit D-2) were too tall to meet the Adjustment Review approval criteria. The applicant submitted revised plans with a lower building height (Exhibits C-1 – C-4), and staff finds the revised plans meet the relevant Adjustment Review approval criteria and therefore must be approved. The approval criteria findings below discuss issues raised by neighbors.

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

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

Findings: The applicant is requesting two Adjustments:

- To reduce the minimum 10-foot front building setback and the 18-foot garage entrance setback to zero (Zoning Code Section 33.110.220.B); and
- To increase the maximum building height from the average elevation of the northwest and southwest lot corners from 23 feet to 37.2 feet (Zoning Code Section 33.110.215.D.1).

The purposes of these requirements are discussed below.

Front building and garage entrance setback

The purposes of the setback requirements in the R5 zone are stated in Zoning Code Section 33.110.220.A:

The setback regulations for buildings and garage entrances serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the city's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

Although the proposed house will abut the subject property's front lot line on the unimproved right-of-way for SW 16th Avenue, the house will be set back about 40 feet from the edge of the SW Upper Hall Street roadway which serves the site. The Adjustment is necessary because this 40-foot-deep setback will be in the public right-of-way, and therefore not counted toward the Zoning Code setback standards, which apply only within the subject property.

However, the approximately 40-foot separation between the house and the street will appear and function like a deep (though steeply sloping) front yard. The setback area from SW Upper Hall Street will preserve light, air, and fire-fighting access for the new home and allow options for privacy, appropriate separation, and a reasonable physical relationship between the new home and neighboring homes across the street. The new home will be approximately 100 feet from the nearest house on the opposite (west) side of SW Upper Hall Street and nearly 200 feet from the next nearest house on that side of the street.

The proposed setback Adjustment is appropriate for the topography of the site, since a building location 10 feet further from the west (front) lot line would be significantly further down the hillside (Exhibit C-1) and harder to serve with a driveway from SW Upper Hall Street. The proposed building location also maximizes the open area behind the house, and results in greater separation from the existing home on the adjacent lot to the east.

Since the garage entrance will be set back approximately 40 feet from the roadway from which it is accessed, there will be ample room on the proposed driveway for a car to park in front of the garage door without overhanging the street (Exhibit C-1). Since the Portland Bureau of Transportation will require the driveway to be wide enough for vehicles to both enter and exit the site in a forward motion (Exhibit E-2), drivers will not need to back out onto the street. During building permit review, the Portland Bureau of Transportation will also ensure that all safety standards for the new driveway are met (Exhibit E-2).

For these reasons, staff finds the proposal equally meets the intent of the setback standards. Staff also notes the same setback Adjustment was approved with the land division that created this lot (LUR 01-00633 MP AD), but that Adjustment has since expired per Zoning Code Section 33.730.130.B.1.

Maximum building height

The purposes of the building height requirements in the R5 zone are stated in Zoning Code Section 33.110.215.A:

The height standards serve several purposes:

- *They promote a reasonable building scale and relationship of one residence to another;*
- *They promote options for privacy for neighboring properties; and*
- *They reflect the general building scale and placement of houses in the city's neighborhoods.*

In the R5 zone, the maximum building height for steeply down-sloping lots is determined by this sentence from Zoning Code Section 33.110.215.D.1:

On lots that slope downhill from the street with an average slope of 20 percent or greater, the height limit is the higher of either 23 feet above the average grade of the street, or the normal height limit calculated as stated in Chapter 33.930, Measurements.

The subject site slopes downward from the street at an average slope of 42% (measured per Zoning Code Section 33.930.060) and the applicable building height limit for the property is “23 feet above the average grade of the street” as specified above. The Zoning Code provides no guidance on how to determine the “average grade of the street” as the base point for this height limit. Since the Zoning Code does not specify, and since precise elevation information within public rights-of-way is not always readily available, BDS’ longstanding practice is to consider the average elevation of the two front lot corners as the “average grade of the street” for this building height standard. This is a conservative approach in applying this standard in that frequently the front lot line on downward sloping lots will be lower than the average grade of the street.

With a plain reading of the text above from Zoning Code Section 33.110.215.D.1, it seems likely the code writers intended for a maximum 23-foot building height to be exposed to public view above an elevation commonly perceived as the “street,” such as the paved roadway or sidewalk. While BDS has been consistent with past practice by measuring building height on this site from the average elevation of the two front lot corners (*i.e.* the average elevation of the front lot line), this site is unusual in that the front lot line is set back approximately 40 feet horizontally from the SW Upper Hall Street roadway that serves the site, and the average elevation of the two front lot corners is approximately 15.5 feet below the corresponding elevation of the SW Upper Hall Street roadway. If the 23-foot maximum building height standard was met outright, the top of the new house would extend only 7.5 feet above the SW Upper Hall Street pavement.

Neighbors pointed out the house plans illustrated in the 2002 land division approval that created this lot (LUR 01-00633 MP AD) were for a significantly lower house than currently

proposed, with almost all of the house shown below SW Upper Hall Street (Exhibit G-3, page 23). The findings in the LUR 01-00633 MP AD decision acknowledged that the illustrations of a low building height (significantly lower above the street than comparably situated homes nearby) were supported by neighbors and would prevent negative impacts (Exhibit G-3, page 8). However, the decision also stated the house plans illustrated at that time were preliminary and were not under review in LUR 01-00633 MP AD (Exhibit G-3, page 5). The LUR 01-00633 MP AD decision listed conditions of approval that were found necessary for the approval criteria to be met (Exhibit G-3, page 8), and the decision specifically declined to impose a condition of approval limiting building height, as requested by the Goose Hollow Foothills League at that time (Exhibit G-3, page 5). Moreover, the language of the decision and the conditions of approval did not require conformance with any approved building elevations. Even if the land division approval *did* impose a specific building design and height, there would be nothing to stop a future applicant from proposing something taller through a new land use review, subject to public notice and review of the applicable approval criteria. Finally, staff notes that in 2002, the newly created lot was smaller than allowed outright and required Adjustments to minimum lot size and minimum lot depth. That is no longer the case; the subject lot now meets all current dimensional requirements for lots in the R5 zone outright (Zoning Code Table 610-2).

Some houses in hillside neighborhoods are built almost entirely below the street grade, as illustrated in the LUR 01-00633 MP AD decision, with only the roof or the topmost part of the upper story visible from the abutting street. However, staff does not find that to be the prevalent building scale for downward sloping lots in this area, and staff does not find a house that low to be the only way to achieve the stated purposes of the building height standard.

Neighbors also pointed out that existing homes on steeply down-sloping lots in this area typically have a single story exposed above the street, rather than two stories as proposed by the applicant. Staff visited the neighborhood and agrees with this assertion. Staff finds the typical building scale for comparably situated lots in the neighborhood is relevant to this approval criterion, since the purpose of the height standard cited above refers to a “reasonable building scale” and the “general building scale” in the neighborhood.

However, staff also finds the code writers intended to allow a two-story building scale to be exposed above the street on steeply down-sloping lots. If the code writers anticipated no more than one story exposed above the street, the maximum building height above the street grade would have been set significantly lower than 23 feet.

Balancing these factors, staff finds that for approval criterion A to be met, the proposed building height on this site must be consistent with both of these considerations:

- no taller than 23 feet above the SW Upper Hall Street roadway; and
- as low as reasonably possible for a modest, two-story building scale above SW Upper Hall Street, in order to allow the two-story scale intended by the standard while minimizing the scale difference with comparably situated homes in the area that extend only a single story above the street.

Staff finds the building plans originally proposed by the applicant (and included with the mailed “Notice of Proposal,” Exhibit D-2) were too tall to meet this approval criterion. The highest point on the shed roof was shown 27 feet above the SW Upper Hall Street roadway, which is 4 feet higher than the 23 feet anticipated by the building height standard. The roof was also taller than necessary for a two-story building scale above the street, and the overlapping shed roof design with a high street-facing window accentuated the perception of height from the street (Exhibit A-6).

At staff's request, the applicant revised the plans to lower the proposed building height (Exhibits C-1 – C-4). In the original plans, the highest part of the house was the peak of a shed roof running from the front of the house to the back (Exhibit A-6). In the revised design, a lower, shallower roof slopes downward from the back of the house toward SW Upper Hall Street (Exhibits C-2 – C-4). The highest part of the redesigned roof is 21.7 feet above the corresponding elevation of the SW Upper Hall Street roadway, which is less than the 23-foot maximum height above the street anticipated by the building height standard. The highest roof elevation at the back of the house is shown 5 feet lower than the original highest roof line, and the revised, street-facing roof line at the front of the house is approximately 8 feet lower. Staff finds the new, lower design results in a more modest, compatible appearance while still allowing a two-story building scale above the street, as anticipated by the standard.

In the revised design, the highest roof elevation (453.65 feet, Exhibits C-3 – C-4) will be similar to the highest roof elevation on the neighboring house to the south (455.3 feet, Exhibit C-1). The neighboring house to the south will be the new home's nearest neighbor (and only next-door neighbor) and has a typical exposed height above the street for downward sloping lots in the vicinity. Since the front lot line of the subject site is relatively further down the hill from SW Upper Hall Street, the new home must be constructed from a lower ground elevation than homes built closer to the street. However, making the new home's highest roof elevation similar to the nearest neighbor's highest roof elevation will better ensure the height Adjustment does not create a jarring difference in perceived building height. The new home's 8-foot setback from its south lot line (3 feet more than required) will further promote a reasonable scale relationship with the neighboring home to the south.

With its position on a very steep hillside, any new home on this lot would overlook neighboring windows and yards at lower elevations. Existing trees on the hillside will block some views, but the new construction will affect neighbors' privacy to some extent. However, staff does not find that preventing any views from a new home toward neighboring homes is the intent of the height standard. Though some neighboring windows and outdoor areas have enjoyed a high level of privacy while the subject site has been vacant, absolute visual privacy between homes is not typical for the R5 zone, which allows up to 8.7 residential lots per acre (Zoning Code Section 33.610.100) and allows homes to be within 10 feet of each other, given the minimum 5-foot side setback requirement on each lot (Zoning Code Table 110-3). The nearest neighboring home will be the home to the south, and the only south-facing windows on the new home's two upper stories will be placed high in the wall to allow light into the rooms but not views outward (Exhibit C-4). This will minimize privacy impacts on the neighboring home related to the building height, so a condition of approval will ensure this feature is retained when the home is constructed. All other existing homes will be at least 30 feet from the new home on the subject site. With this amount of horizontal separation, staff does not find that eliminating the new home's upper story, as suggested by some neighbors, would improve neighbors' privacy to the extent that this approval criterion would not be met otherwise.

For all the reasons discussed above, and with the condition of approval mentioned above, staff finds that with the revised design in Exhibits C-1 - C-4, the proposal equally meets the intent of the building height standard.

Summary

With the condition of approval mentioned above for high windows on the south-facing wall, staff finds approval criterion A is met.

- B.** If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: Since the site is in the R5 residential zone, the proposal must not significantly detract from the livability or appearance of the residential area.

As discussed above, the new house will be set back approximately 40 feet from SW Upper Hall Street, even though the setback from the property's front lot line will be zero. The location of the lot lines and the extent of the public right-of-way will not be discernible from the public view, so the house will appear to have a generous front setback that will not seem incompatible with the neighborhood.

The building height Adjustment will not create an incompatible appearance, either. As explained above, the applicant reduced the building height from the original proposal to better meet the intent of the building height standard. While the proposed building height measured from the ground is still significantly higher than allowed outright, the subject site's ground level is significantly lower than street level. The new home will have a similar roof elevation to the only adjacent house along SW Upper Hall Street (the neighboring house to the south), and the new house will present only a modest, two-story building scale to the street. As mentioned in the findings for approval criterion A, a condition of approval will limit south-facing windows in the two upper stories to high, clerestory-style windows in order to limit privacy impacts on the neighboring home related to the building height.

This area overlooks the downtown skyline to the northeast, and views over the city are valued by neighbors. The lots across SW Upper Hall Street from the subject site are higher in elevation, but much of their skyline views are already blocked by tree canopy which is higher than the proposed home. The neighboring property to the south holds a view easement on the eastern 20 feet of the subject lot which limits structure height and vegetation height within the easement area to 20 feet above the ground (Exhibit G-4). The proposed building footprint is entirely outside the view easement area, preserving skyline views for the neighboring property to the south.

The proposed height Adjustment would contribute to a fairly massive appearance for the rear (east) building wall if this entire building wall were visible from points to the east which are lower in elevation (Exhibit C-2). Therefore, staff finds a condition of approval is warranted for a vegetative screen in the rear yard. The vegetative screen must be tall enough to obscure views of the ground-level, east building wall from points lower on the hillside, but not tall enough to violate the view easement in Exhibit G-4.

For these reasons, and with the conditions of approval mentioned above, staff finds the proposed Adjustments will not significantly detract from the livability or appearance of the area. With the conditions of approval, approval criterion B 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 purpose of single-dwelling residential zones such as R5 is described in Zoning Code Section 33.110.010:

The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing.

A. Use regulations. The use regulations are intended to create, maintain and promote single-dwelling neighborhoods. They allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood.

B. Development standards. The development standards 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.

The proposal will develop a vacant lot with a new single-dwelling house, increasing the supply of housing and reinforcing the single-dwelling residential character of the area. As stated above, requests for exceptions to zoning requirements are anticipated for unusual situations, such as this very steep lot set relatively far down the hillside from the street.

As discussed previously in this decision, staff finds the Adjustments to the front setback and building height requirements will not create an incompatible or unattractive development on this site. In response to concerns from staff and from neighbors, the applicant agreed to lower the proposed building height to present a more modest building scale toward the street. Though significantly taller above the corresponding ground elevation than allowed outright, the new home will be only about 21.7 feet higher than the elevation of the SW Upper Hall Street roadway, and the roof elevation will be comparable to the roof elevation of the house next door. In addition, on the top two stories, only high, clerestory-style windows will face the nearest neighboring home, minimizing privacy impacts related to the building height.

The Adjustments requested will not diminish opportunities for energy conservation, recreation, or safety. During the building permit review and inspection process, all safety requirements related to structural integrity, fire prevention, hillside stability, and driveway construction will be enforced.

For these reasons, and with the condition of approval for windows mentioned above, staff finds the cumulative effect of the Adjustments is still consistent with the purpose of the R5 zone. Approval criterion C is met.

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

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

E. Any impacts resulting from the Adjustment are mitigated to the extent practical; and

Findings: Staff finds the Adjustment to reduce the front building setback and garage entrance setback requirements to zero will create no negative impacts that require mitigation. The new home will be approximately 40 feet from SW Upper Hall Street, and although this setback area will be within an unimproved public right-of-way rather than within the subject lot, the home will be set back a reasonable and typical distance from the street.

Compared with the lower building height that would be allowed outright, the building height Adjustment could negatively impact the privacy of the nearest neighboring home, which is to the south of the subject site. The proposed plans limit south-facing windows in the two upper stories to high, clerestory-style windows that will allow light into the rooms but not views outward (Exhibit C-4). Staff finds this appropriately mitigates potential privacy impacts related to the building height, so a condition of approval will ensure this feature is retained when the home is constructed.

The building height Adjustment would also contribute to a fairly massive appearance for the rear (east) building wall if this entire building wall were visible from points to the east which are lower in elevation (Exhibit C-2). Therefore, a condition of approval will require a vegetative screen in the rear yard. The vegetative screen must be tall enough to obscure views of the ground-level, east building wall from points lower on the hillside, but not tall enough to violate the view easement in Exhibit G-4.

For these reasons, and with the conditions of approval mentioned above, staff finds approval criterion E is met.

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

Findings: Environmental overlay zones are designated on the official zoning maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on the site, this criterion is not applicable.

DEVELOPMENT STANDARDS

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

CONCLUSIONS

With the revised building design, the proposed Adjustments are found to be consistent with the overall purpose of the R5 residential zone and with the specific purposes of the requirements to be modified. Staff finds the Adjustments will not cause the new development to significantly detract from the livability or appearance of the residential area. With conditions of approval for landscape screening behind the house and clerestory-style windows facing the nearest neighboring home, staff finds that all applicable approval criteria are met. Since the approval criteria are found to be met, the proposal must be approved.

ADMINISTRATIVE DECISION

Approval of the following Adjustments for a new single-dwelling house:

- To reduce the minimum 10-foot front building setback and the 18-foot garage entrance setback to zero (Zoning Code Section 33.110.220.B); and
- To increase the maximum building height from the average elevation of the northwest and southwest lot corners from 23 feet to 37.2 feet (Zoning Code Section 33.110.215.D.1);

per the approved plans, Exhibits C-1 through C-4, subject to the following conditions:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 through C-4. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 20-134213 AD."
- B. The bottoms of south-facing windows in the two upper stories of the new home must be at least 6 feet above the floor, as illustrated in Exhibit C-4.

- C. The building permit plans for the new house must include a required vegetative screen consisting of trees and/or shrubs within the eastern 20 feet of the subject site. The plantings must form a continuous screen extending across the entire ground-level, east wall of the new house. The proposed tree or shrub varieties must be labeled, and each plant variety counted toward this condition of approval must have a mature height of at least 8 feet but not more than 20 feet (to avoid conflicting with the view easement in Exhibit G-4). At least 50% of the new plants must be evergreen, and the landscaping requirements in Zoning Code Section 33.248.030 must be met for the new plants. If labeled with trunk diameters and species on the site plan, existing trees to be retained which meet this height limitation and whose trunks are within or partially within the eastern 20 feet of the subject site may count toward the required vegetative screen.

Staff Planner: Andrew Gulizia

Decision rendered by:  **on December 14, 2020.**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 17, 2020

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 April 2, 2020 and was determined to be complete on September 29, 2020.

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 April 2, 2020.

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 review period by 245 days, the maximum allowable (Exhibit A-4). The extended 120-day review period will expire **September 28, 2021**.

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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. **Appeals must be received by 4:30 PM on December 31, 2020. The completed appeal application form must be e-mailed to landuseintake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations for the appeal of Type II decisions on property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in the file, please contact the planner listed on the front of this decision. The planner can provide some information over the phone. Please note that due to COVID-19 and limited accessibility to files, only digital copies of material in the file are available for viewing. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <https://www.portlandoregon.gov/citycode/28197>.

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 will be recorded with the Multnomah County Recorder.

Unless appealed, the final decision will be recorded after December 31, 2020 by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. This approval expires if a building permit has not been issued by January 1, 2024.

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

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and

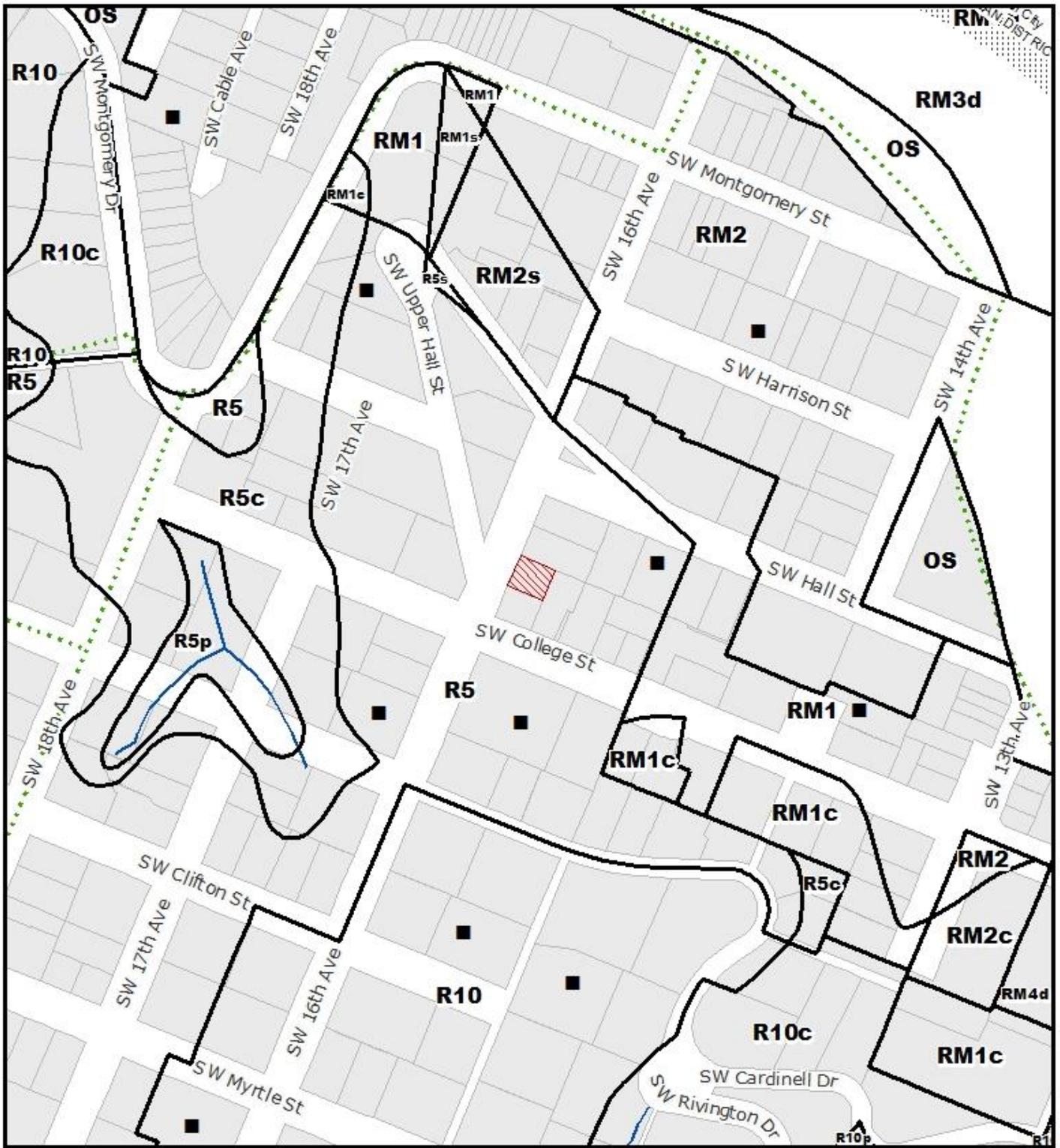
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Prior submittals
 - 2. Final narrative for setback Adjustment, dated October 11, 2020
 - 3. Final narrative for height Adjustment, dated December 8, 2020
 - 4. Request for extension of 120-day review period
 - 5. LUR 01-00633 MP AD condition of approval B.5 compliance plan
 - 6. Building plans included with "Notice of Proposal" (superseded by final revised plans in Exhibits C-1 – C4)
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Approved site plan (attached)
 - 2. Approved west and east building elevations (attached)
 - 3. Approved north building elevation (attached)
 - 4. Approved south building elevation (attached)
- D. Notification Information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Review Section of BDS
- F. Correspondence:
 - 1. Letter from Frederic Cann, dated November 12, 2020
 - 2. E-mail from Leslie Kahl, dated November 17, 2020
 - 3. E-mail from Doug Metzger, dated November 20, 2020
 - 4. Letter from Southwest Hills Residential League, dated November 20, 2020
 - 5. E-mail from Gregory Miner, dated November 21, 2020
 - 6. E-mail from Gregory Miner, dated November 22, 2020
 - 7. Letter from Faye Weisler, dated November 23, 2020
 - 8. E-mail from Julie Vigeland, dated November 23, 2020
 - 9. E-mail from Kaaren Demorest, dated November 23, 2020
 - 10. E-mail from Harry Demorest, dated November 23, 2020
 - 11. E-mail from David Christian, dated November 23, 2020
 - 12. E-mail from Susie Barrios, dated November 24, 2020
 - 13. E-mail from Eli Schmitz, dated November 24, 2020
 - 14. Letter from Jerald Powell, dated November 24, 2020
- G. Other:
 - 1. Land use application form
 - 2. Incompleteness determination letter, dated October 8, 2020
 - 3. LUR 01-00633 MP AD decision
 - 4. View easement

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).

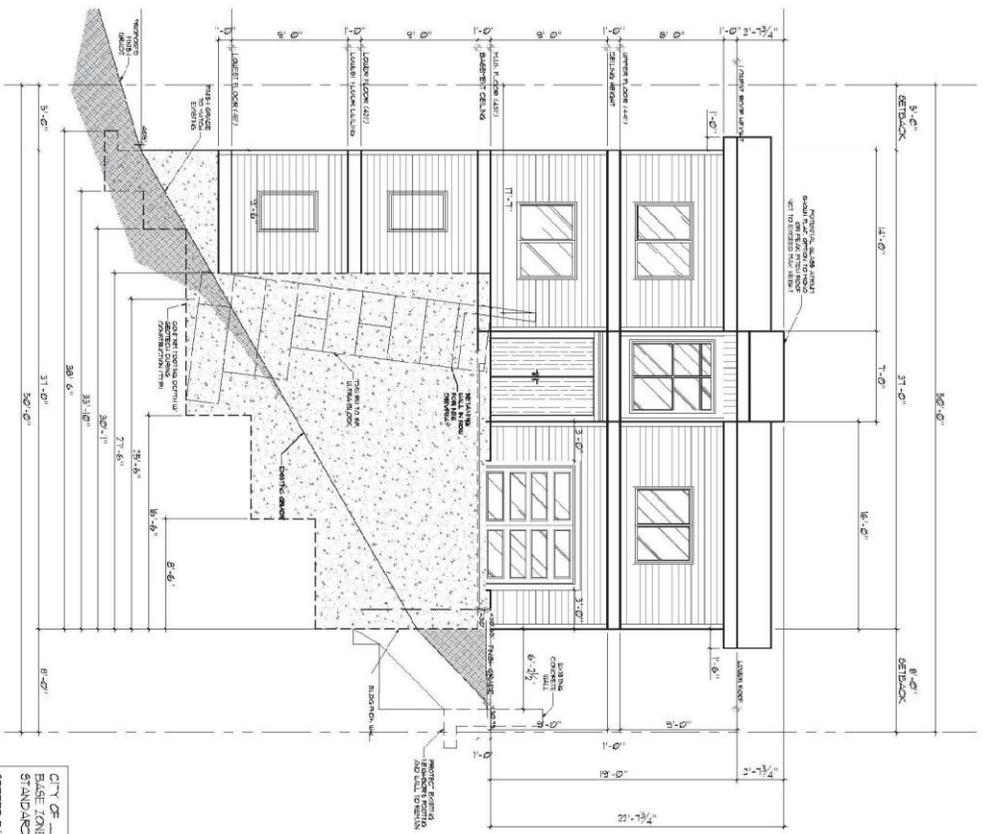


ZONING

NORTH ↑

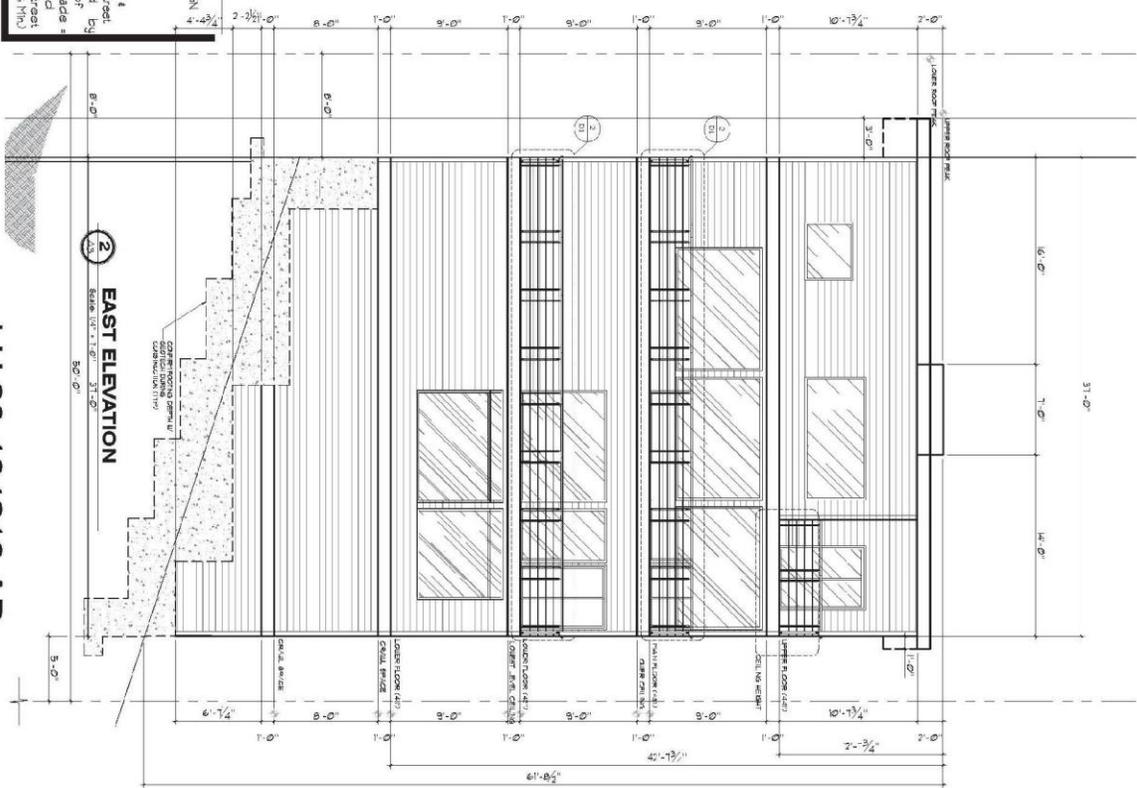
-  Site
-  Stream
-  Historic Landmark
-  Recreational Trails

File No.	LU 20 - 134213 AD
1/4 Section	3127
Scale	1 inch = 200 feet
State ID	1S1E04BD 6101
Exhibit	B Apr 20, 2020



1 WEST ELEVATION

CITY OF PORTLAND
 BASE ZONE DESIGN
 STANDARD
 STREET FRONTAGE
 FACADE
 1. 50% F. Window &
 2. 100% Area of Street
 Facing
 3. 50% F. Area of
 Street Facing Facade
 4. 100% Window and
 Door Area of Street
 Facing Facade (15% Min.)



2 EAST ELEVATION

LU 20-134213 AD
 Exhibit C-2

A3

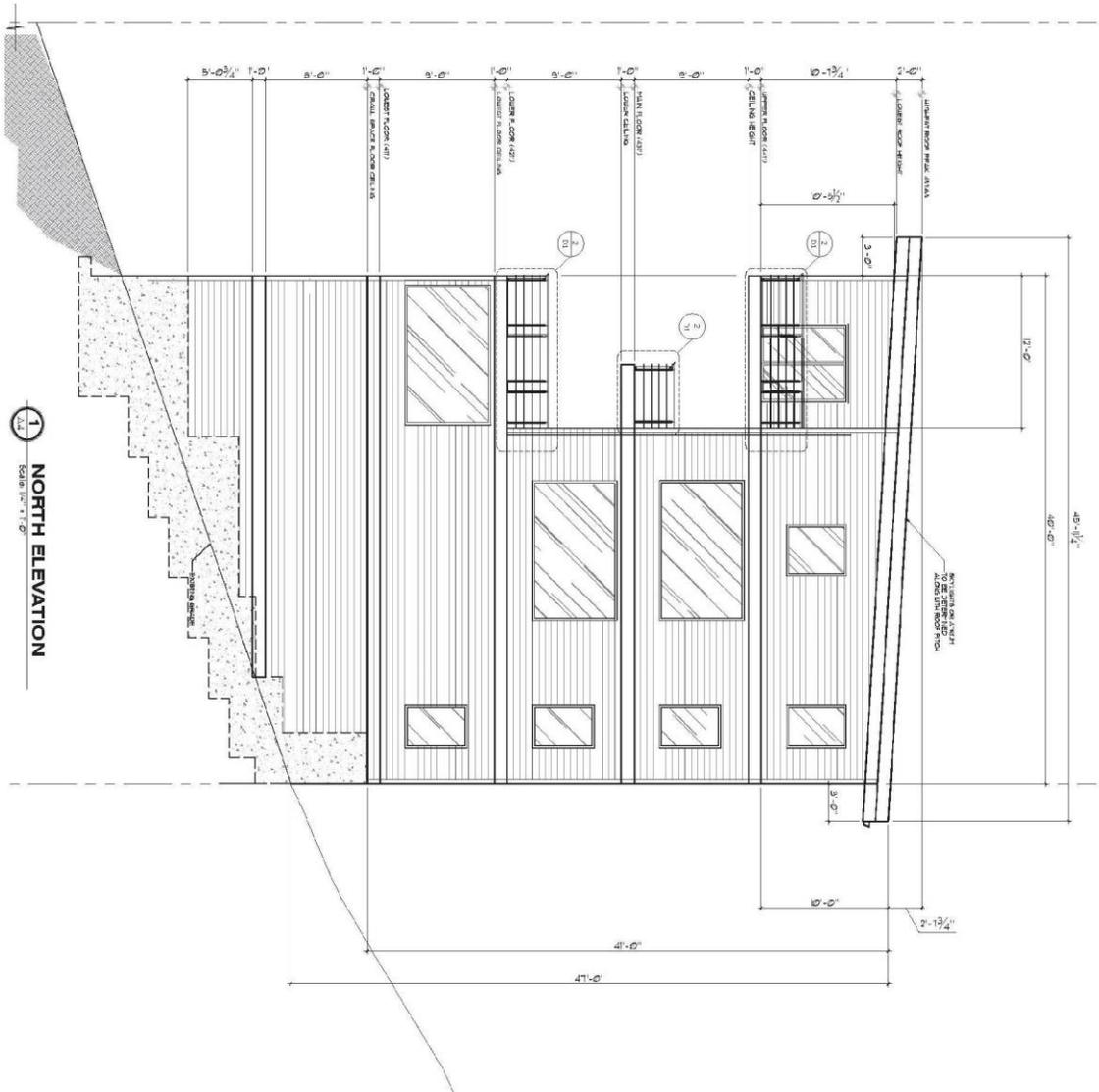
Sheet No.:	A3
Date:	05/05/2020
Scale:	As Shown
Designer:	Dan Le
Drafter:	Dan Le & Partner

DIEM LE'S HOUSE
 Project Address:
 (R6-43832010)
 SW UPPER HALL ST
 PORTLAND, OR 97212

SHEET TITLE:
 WEST AND EAST
 ELEVATIONS

Diem Le
 636C Hickam Rd
 Lead Designer OR 97238





1 NORTH ELEVATION
Scale 1/4" = 1'-0"

LU 20-134213 AD
Exhibit C-3

A4

REV.	Date	By	Check

Date: 05-20-2010
 Scale: see plan
 Designer: Dan Le
 Drafter: Dan Le
 Plot Date: 05-20-2010

DIEM LE'S HOUSE
 Project Address:
 (R643832010)
 SW UPPER HALL ST
 PORTLAND, OR 97212

SHEET TITLE:
 NORTH ELEVATION

Dan Le
 656C Fisher Rd
 Lead Designer OR 97238



