

# Development Services

## From Concept to Construction

Phone: 503-823-7300 Email: [bds@portlandoregon.gov](mailto:bds@portlandoregon.gov) 1900 SW 4th Ave, Portland, OR 97201  
More Contact Info (<http://www.portlandoregon.gov/bds/article/519984>)



### APPEAL SUMMARY

**Status:** Decision Rendered - Held over from ID 15257 (6/21/17) for additional information

<b>Appeal ID:</b> 15350	<b>Project Address:</b> 4703 SE 63rd Ave
<b>Hearing Date:</b> 7/12/17	<b>Appellant Name:</b> Nathan Arnold
<b>Case No.:</b> B-008	<b>Appellant Phone:</b> 5034388113
<b>Appeal Type:</b> Building	<b>Plans Examiner/Inspector:</b> Kathy Aulwes
<b>Project Type:</b> residential	<b>Stories:</b> 1 <b>Occupancy:</b> Residential <b>Construction Type:</b> Other
<b>Building/Business Name:</b>	<b>Fire Sprinklers:</b> No
<b>Appeal Involves:</b> other: no build easement	<b>LUR or Permit Application No.:</b>
<b>Plan Submitted Option:</b> pdf [File 1] [File 2] [File 3] [File 4] [File 5] <b>Proposed use:</b> single family dwelling	

### APPEAL INFORMATION SHEET

#### Appeal item 1

<b>Code Section</b>	ORSC SECTION 302.1 – EAVES AND EXTERIOR WALL PROTECTION
<b>Requires</b>	Proposal of no-build easement as optioned in attached checksheet for 17-145279-PR
<b>Proposed Design</b>	Proposal of no-build easement as optioned in attached checksheet for 17-145279-PR
<b>Reason for alternative</b>	Approval of no-build easement would allow the approval of lot confirmation while retaining existing on site structures.

### APPEAL DECISION

**No build easement for lot confirmation: Denied: Proposal does not provide equivalent Life Safety protection.**

**Appellant may contact John Butler (503-823-7339) with questions.**

Pursuant to City Code Chapter 24.10, you may appeal this decision to the Building Code Board of Appeal within 180 calendar days of the date this decision is published. For information on the appeals process and costs, including forms, appeal fee, payment methods and fee waivers, go to [www.portlandoregon.gov/bds/appealsinfo](http://www.portlandoregon.gov/bds/appealsinfo), call (503) 823-7300 or come in to the Development Services Center.

AFTER RECORDING, RETURN TO:

T&T Real Estate Investments LLC  
1225 SE 60<sup>th</sup> Avenue  
Portland, Oregon 97215



**COVENANT FOR FUTURE NO-BUILD EASEMENT AND AGREEMENT NOT TO BUILD  
2017-145279-PR**

**RECITALS**

- A. T&T Real Estate Investment LLC (“Declarant”), is the record owner of the parcels described in Section 1 below.
- B. Declarant has submitted an application to the City of Portland for the confirmation of an internal property line that is within 3’ of an existing structure, without fire protection within that distance.
- C. In exchange for the promises under this Covenant for Future No-Build Easement and Agreement Not to Build (“Agreement”), Declarant has requested that the City approve an alternative method of meeting the Building Code requirements described above.
- D. Declarant further desires to burden Lot 18 with a covenant that will immediately create a no-build easement in perpetuity to benefit Lot 19, effective upon the date when Lot 18 and Lot 19 are no longer under common ownership.
- E. Declarant has agreed not to build any new or additional structures within the No-Build Easement Area described below.
- F. Declarant has further agreed to record this Agreement, to provide record notice of the terms of this Agreement, and to bind subsequent transferees of Lot 18 and 19 to the terms of this Agreement.

NOW, THEREFORE, the Declarant agrees as follows:

**AGREEMENT**

1. **LEGAL DESCRIPTION.** The properties that are subject to this Agreement are as follows:
- a. The property to be burdened by the No-Build Easement is:

Lot 18, as more fully described in Exhibit “A” attached hereto.

- b. The property to be benefitted by the No-Build Easement is:

Lot 19, as more fully described in Exhibit "A" attached hereto.

- c. The No-Build Easement Area is as follows:

A 86-foot by 4-foot No-Build Easement which widens to a 5-foot easement on the western 19-feet, as shown and described more fully in Exhibits "B" and "C" attached hereto (the "No-Build Easement Area").

2. NO-BUILD EASEMENT AREA RESTRICTIONS. No new or additional above-ground structure, including, but not limited to, a dwelling unit, garage, shed, fence, eave or any other above-ground building or structure, shall be erected, constructed, or placed upon any portion of the No-Build Easement Area.

3. COVENANT FOR NO-BUILD EASEMENT. Declarant, Declarant's successors and assigns, covenant that, if Declarant or subsequent owners or assigns transfer ownership of Lot 19 and/or Lot 18 so that the parcels are no longer under common ownership, the subsequent owners and users of Lot 18 and/or 19 shall immediately be burdened by a No-Build Easement on Lot 18. Subsequent owner(s) of the parcels described in Section 1 above shall abide by the No-Build Easement Area restrictions described in Section 2 of this Agreement.

4. TERM AND BINDING EFFECT. This Agreement shall be effective as of the date of the signature(s) below and shall continue in perpetuity. All terms and provisions herein are intended to and shall be covenants running with the land and/or equitable servitudes for the benefit of Lot 19 and burdening Lot 18 and shall be binding on Declarant, Declarant's heirs, executors, administrators, successors, and assigns and all current and future owners of the parcels described in Section 1 above and all persons claiming title, possession, or ownership of or to such properties.

5. DEFINITIONS. *Building Code* means the State of Oregon Building Code as defined in Oregon Revised Statutes Chapter 455, as amended from time-to-time and as adopted by the City of Portland.

6. MODIFICATION AND TERMINATION. The Declarant(s) and subsequent owners and assigns may not modify, withdraw from, terminate, or dissolve this Agreement without the written approval of the City of Portland. If this Agreement is a condition of approval of a property division, the City of Portland may require such condition to be modified before permitting this Agreement to be terminated or dissolved or permitting a party to withdraw from this Agreement.

7. GOVERNING LAW AND VENUE. This Agreement shall be construed in accordance with the laws of the State of Oregon. Any action arising out of or relating to this Agreement shall be commenced in the Circuit Court for Multnomah County, Oregon, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division. Any

arbitration or other form of alternative dispute resolution arising out of this Agreement shall take place in an appropriate forum within Portland, Oregon.

8. COPY TO BUREAU OF DEVELOPMENT SERVICES. Upon recording, Declarant shall provide a copy of this Agreement to the Bureau of Development Services.

9. NOTICES. Any notice under this Agreement shall be made in writing and sent to the City of Portland at the address below and to each owner via first class mail, in care of the street address of the owner's lot, or in the event the owner does not reside on said property, in care of the current property tax notification address of the property; provided, however, that an owner can change the notification address by written notice to each other owner and the City of Portland.

**City of Portland:**

Bureau of Development Services  
1900 SW Fourth Avenue, Suite 5000  
Portland, OR 97201

10. INDEMNIFICATION. The Declarant, Declarant's successors and assigns shall indemnify, defend, and hold harmless the City of Portland, its officers, agents, officials, and employees against any and all claims, demands, actions, and suits, including attorneys' fees and costs brought against any of them arising out of or resulting from the terms of this Agreement.

11. CONSIDERATION. Declarant has requested that the City allow Declarant to keep the openings and not to project the exterior wall and eave with the required fire resistance rating on the existing structure on Parcel 18 where the wall is less than 3 feet from the property line between Lots 18 and 19. Such properties do not comply with the following sections of the 2014 Oregon Residential Specialty Code Section 302.1 and Table 301.1, which require one-hour fire resistant rated walls on residential structures less than 3 feet from a property line and prohibit openings in exterior walls that are less than 3 feet from the property line. In exchange for the promises under this Agreement, Declarant acknowledges that this Agreement is executed as an alternate method of complying with these sections of the Building Code. The parties agree that the City of Portland is an intended third party beneficiary of this Agreement.

12. AUTHORITY TO EXECUTE AGREEMENT. The Declarant expressly represents and warrants that the persons executing this Agreement are duly authorized to do so. This Agreement may be executed in counterparts, and each counterpart shall have the same binding legal effect as if it were a single document containing all signatures.

13. SEVERABILITY. Each provision of this Agreement shall be independent and severable. The invalidity or partial invalidity of any provision thereof shall not affect any of the remaining portions of that or any other provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the date set forth below.

DECLARANT:

\_\_\_\_\_  
(signature) DATE: \_\_\_\_\_

By: \_\_\_\_\_  
(printed name)

Title: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
(mailing address)

STATE OF OREGON )  
County of \_\_\_\_\_ )

Personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017,  
\_\_\_\_\_ (name) and acknowledged the foregoing instrument  
to be his/her voluntary act and deed.

By: \_\_\_\_\_  
Notary Public for Oregon

My Commission Expires: \_\_\_\_\_

Approved as to form:

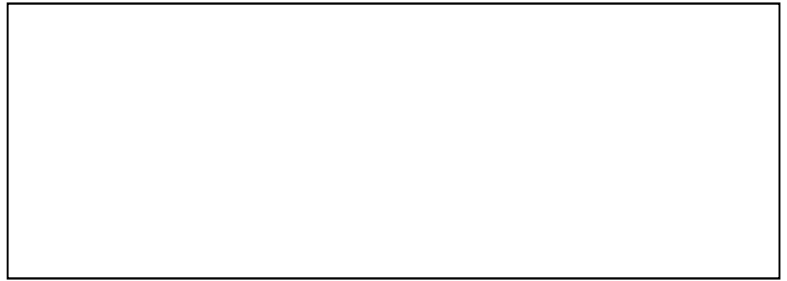
\_\_\_\_\_  
Building Official or Designee (signature) Date: \_\_\_\_\_

\_\_\_\_\_  
(printed name)



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DECLARANT:

\_\_\_\_\_  
(signature) DATE: \_\_\_\_\_

By: \_\_\_\_\_  
(printed name)

Title: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
(mailing address)

STATE OF OREGON )  
 )  
County of \_\_\_\_\_ )

Personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017,  
\_\_\_\_\_ (name) and acknowledged the foregoing instrument  
to be his/her voluntary act and deed.

By: \_\_\_\_\_  
Notary Public for Oregon

My Commission Expires: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Building Official or Designee (signature) Date: \_\_\_\_\_

\_\_\_\_\_  
(printed name)

**EXHIBIT A**  
**Legal Description of Parcels**

Laurelwood Anx, Block 2, Lot 18

Laurelwood Anx, Block 2, Lot 19

**EXHIBIT B**  
**Legal Description of No-Build Easement Area**

Laurelwood Anx, Block 2, Lot 18, beginning at the Northwest corner of lot 18 along the north line, of said lot 18, 86-feet to the Northeast corner, of said lot easement, thence 4-feet Southerly along the east line, of said easement; thence 67-feet to the west in parallel with north line, of said lot 18; thence 1-foot to the south in parallel to the east line, of said lot 18, thence 19-feet to the west in parallel with East line, of said lot 18; thence along the West line, of said lot 18, 5-feet to the point of the beginning.

**EXHIBIT C**  
**Map Depicting Parcels and No-Build Easement Area**

