

# 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 - Reconsideration of ID16007 and 11353

<b>Appeal ID:</b> 16150	<b>Project Address:</b> 217 NW 4th Ave
<b>Hearing Date:</b> 11/22/17	<b>Appellant Name:</b> Britta Mack
<b>Case No.:</b> B-003	<b>Appellant Phone:</b> 503-235-9400
<b>Appeal Type:</b> Building	<b>Plans Examiner/Inspector:</b> Brian Quattlebaum
<b>Project Type:</b> commercial	<b>Stories:</b> 3+ <b>Occupancy:</b> A-2, B, S-1 <b>Construction Type:</b> III-B
<b>Building/Business Name:</b>	<b>Fire Sprinklers:</b> Yes - Building is fully sprinklered (NFPA 13)
<b>Appeal Involves:</b> Alteration of an existing structure, Reconsideration of appeal	<b>LUR or Permit Application No.:</b> 17-246913-FA
<b>Plan Submitted Option:</b> pdf [File 1] [File 2]	<b>Proposed use:</b> Office

### APPEAL INFORMATION SHEET

#### Appeal item 1

<b>Code Section</b>	Table 602; 705.8.1, Table 705.8, Table 602
<b>Requires</b>	<p>Table 602; 705.8.1, Table 705.8</p> <p>Table 602</p> <p>Fire Resistance Rating Requirements for exterior walls based on Fire Separation Distance</p> <p>705.8.1 Allowable area of openings. The maximum area of unprotected and protected openings permitted in an exterior wall in any story of a building shall not exceed the percentages specified in Table 705.8.</p> <p>Table 705.8</p> <p>Openings 0' to less than 3' from property line are not permitted.</p>
<b>Proposed Design</b>	<p>Note1: This is a revision to our previous Appeal ID# 16007 which was denied do to the language of the easement agreement. The owner has worked with Nancy Thorington at the City and has corrected the language. The easement will be recorded upon a granted appeal.</p> <p>Note2: A previously approved appeal ID 11353 that included (12) new window openings on the 2nd and 3rd floors on this same north property line wall. The Appeal Board approval included a condition that a 10' 'No Build' easement be secured with the neighboring property owner.</p> <p>Our previously approved (12) new windows on the north wall were not in fact added. Instead, we now propose (3) new windows at the ground floor. The sill of the proposed ground floor windows is shown at +/-6ft. above the adjacent grade. The existing building recently completed a major renovation that resulted in a full seismic upgrade and a new fully automatic sprinkler system per NFPA 13 requirements . For added fire protection, we propose adding a sprinkler head at each of the new window openings.</p>

**Reason for alternative** The proposed windows will have the benefit of providing additional natural daylighting for the office space along the North property line without decreasing the life safety or fire protection of the building. We propose that openings be allowed, provided that should the adjacent property be developed and the 10' 'No-Build' easement revoked, then, these window openings would be filled-in and/or protected as required by current code. None of these windows are required forms of egress, so their removal would have no adverse effect on life-safety.

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## APPEAL DECISION

**Window openings located on property line: Granted provided a recorded no build easement is provided prior to plan review approval of the tenant improvement.**

**Note: The easement must be reviewed and approved by BDS prior to recording. Appellant may contact Nancy Thorington (503-823-7023) for assistance**

The Administrative Appeal Board finds with the conditions noted, that the information submitted by the appellant demonstrates that the approved modifications or alternate methods are consistent with the intent of the code; do not lessen health, safety, accessibility, life, fire safety or structural requirements; and that special conditions unique to this project make strict application of those code sections impractical.

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

**DECLARATION OF NO-BUILD EASEMENT AGREEMENT  
LUR 17-200157 LU/PERMIT NO. 17-246913**

**RECITALS**

- A. Declarant Willsing, LLC, an Oregon limited liability company ("Willsing") is the owner of a parcel of real property, as more fully described in Section 1 ("Parcel 1") below.
- B. Declarant L-149 LLC, an Oregon limited liability company ("L-149") is the owner of a parcel of real property, as more fully described in Section 1 below ("Parcel 2"). Willsing and L-149 are sometimes referred to collectively herein as "Declarants."
- C. Willsing has submitted an appeal to the City of Portland to allow openings in the exterior wall of the building that is located within three feet of a property line, which is prohibited by OSSC Table 602, OSSC 705.8.1, and OSSC Table 705.8. The Parcel 2 described in Section 1 below is a surface parking lot adjacent to the Parcel 1. The new construction on the Parcel 1 will add new window penetrations at the ground floor of the existing building on the Parcel 1 at the boundary line with the Parcel 2. The north elevation of the existing building on the Parcel 1 is built up to the property line between the Parcel 1 and the Parcel 2, and the new window penetrations will be adjacent to this property line.]
- D. In exchange for the promises under this Declaration of No-Build Easement Agreement ("Agreement"), Declarants have requested that the City approve an alternative method of meeting the Building Code requirements described above.
- E. Declarants further desire to burden the Parcel 2 with a no-build easement in perpetuity to benefit the Parcel 1, effective upon execution of this Agreement.
- F. Declarants have agreed not to build any new or additional structures within the No-Build Easement Area described below while they own the properties described in Section 1 of this Agreement, except as otherwise provided in this Agreement.
- G. Declarants have further agreed to record this Agreement to provide record notice of the terms of this Agreement, and to bind subsequent transferees of the parcels described in Section 1 below to the terms of this Agreement.

H. In consideration of the promises in this Agreement, NOW, THEREFORE, the Declarants agree 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:

Parcel 2, as more fully described in Exhibit "A" attached hereto.

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

Parcel 1, as more fully described in Exhibit "A" attached hereto.

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

An approximately ten (10) foot by one hundred (100) foot No-Build Easement, as shown in Exhibit "B" 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 or any other above-ground building or structure, or eaves or other projections, shall be erected, constructed, placed or maintained upon any portion of the No-Build Easement Area. An assumed property line, to establish the required fire separation distance, is hereby created ten (10) feet to the north of the actual property line between the Parcel 2 and Parcel 1 for the purpose of restricting future development on the Parcel 2, as shown on Exhibit B attached hereto.

3. **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 the Parcel 1 and burdening the Parcel 2 and shall be binding on the Declarants, their respective 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.

4. **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.

5. **MODIFICATION AND TERMINATION.** The Declarants and subsequent owners and assigns may not modify, withdraw from, terminate, or dissolve this Agreement without the written approval of the City of Portland. Declarants each agree that they will jointly seek the approval of the City of Portland to terminate this Agreement and, subject to obtaining all required permits for such work from the City of Portland, Willsing will remove the ground floor windows adjacent to the No Build Easement Area when and as required by the terms of that certain Crane Swing, Tie-Back, Flashing and Window Penetration

Easement Agreement between Declarants and recorded in the Official Records of Multnomah County, Oregon as Document No. 2017-089932. 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.

6. THIRD PARTY BENEFICIARY. The City of Portland is intended to be the sole third party beneficiary of 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, Declarants 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 Declarants, and their respective 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 Willsing has requested that the City allow Declarant to install window openings at the ground level of the Parcel 1 adjoining the boundary with the Parcel 2 in contravention of OSSC Table 602, OSSC 705.8.1, and OSSC Table 705.8. The requested openings in the exterior wall of the building on the Parcel 1 does not comply with the following sections of the 20\_\_\_\_ Oregon Structural Specialty Code: OSSC Table 602, OSSC 705.8.1, and OSSC Table 705.8. 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.

12. AUTHORITY TO EXECUTE AGREEMENT. The Declarants expressly represent and warrant 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 Agreement as of the date set forth below.

DECLARANT:

L-149 LLC,  
an Oregon limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OREGON                    )  
  ) ss.  
County of Multnomah                )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2017, by \_\_\_\_\_, as \_\_\_\_\_ of L-149 LLC, an Oregon limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public for the State of Oregon  
My Commission Expires: \_\_\_\_\_

*[Signatures continue on following page.]*

DECLARANT:

WILLSING, LLC  
an Oregon limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2017, by \_\_\_\_\_  
\_\_\_\_\_, as \_\_\_\_\_ of WILLSING, LLC, an Oregon limited liability company,  
on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public for State of Oregon  
My Commission Expires: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Building Official or Designee (*signature*)  
  
\_\_\_\_\_  
(*printed name*)  
  
Date: \_\_\_\_\_

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

Parcel 1:

Lots 1 and 4, Block 34, COUCH'S ADDITION TO PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

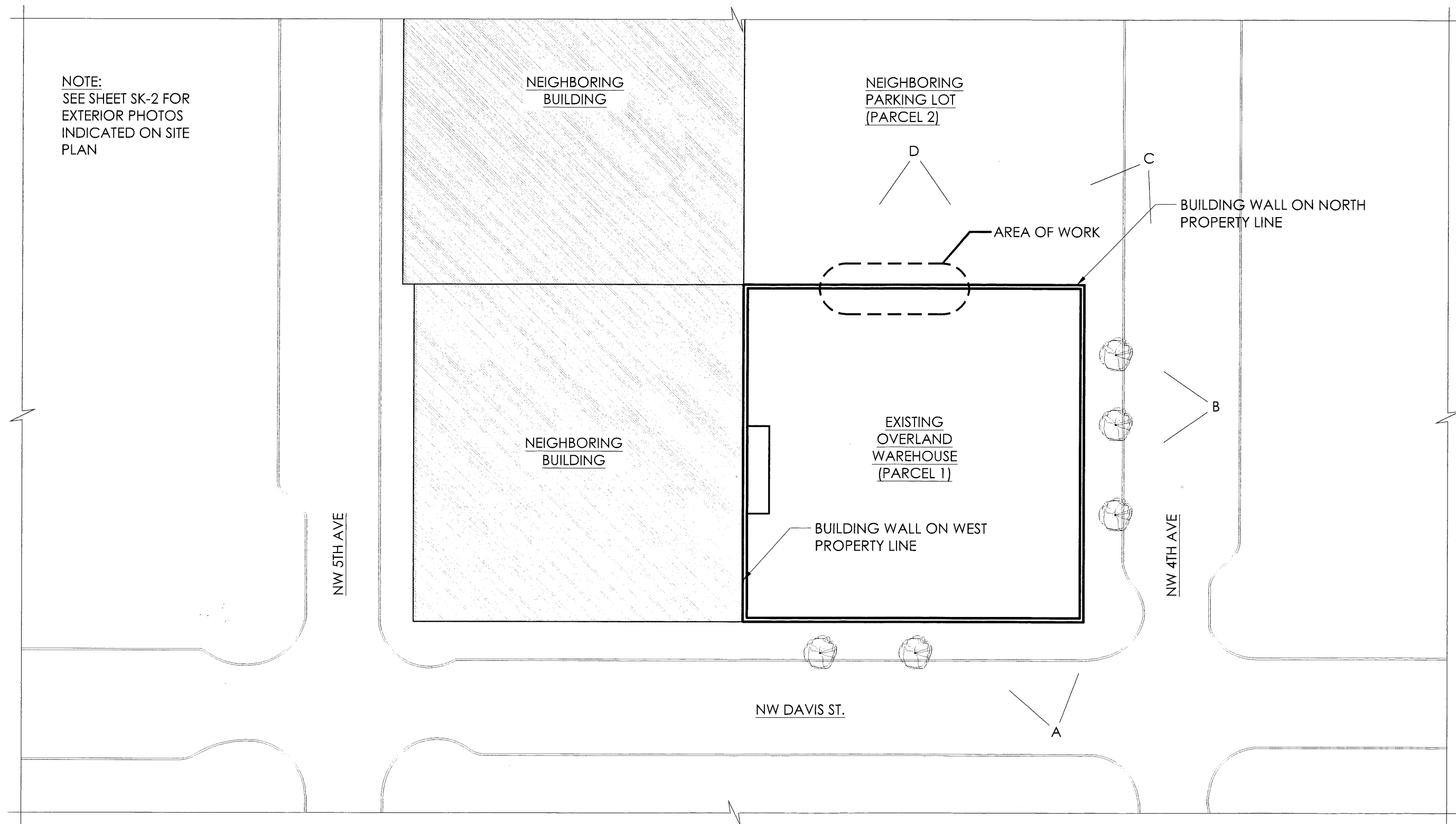
Parcel 2:

Lots 5 and 8, Block 34, COUCH'S ADDITION TO THE CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.



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

NOTE:  
SEE SHEET SK-2 FOR  
EXTERIOR PHOTOS  
INDICATED ON SITE  
PLAN



1 SITE PLAN/ EXTERIOR PHOTO KEY PLAN  
SCALE: 1/32" = 1'-0"

BUILDING APPEAL DRAWINGS

NOT FOR CONSTRUCTION

EMERICK ARCHITECTS

UDP - OVERLAND WAREHOUSE  
209 NW 4TH AVE., PORTLAND OR 97209  
PROJECT #1426

SK-

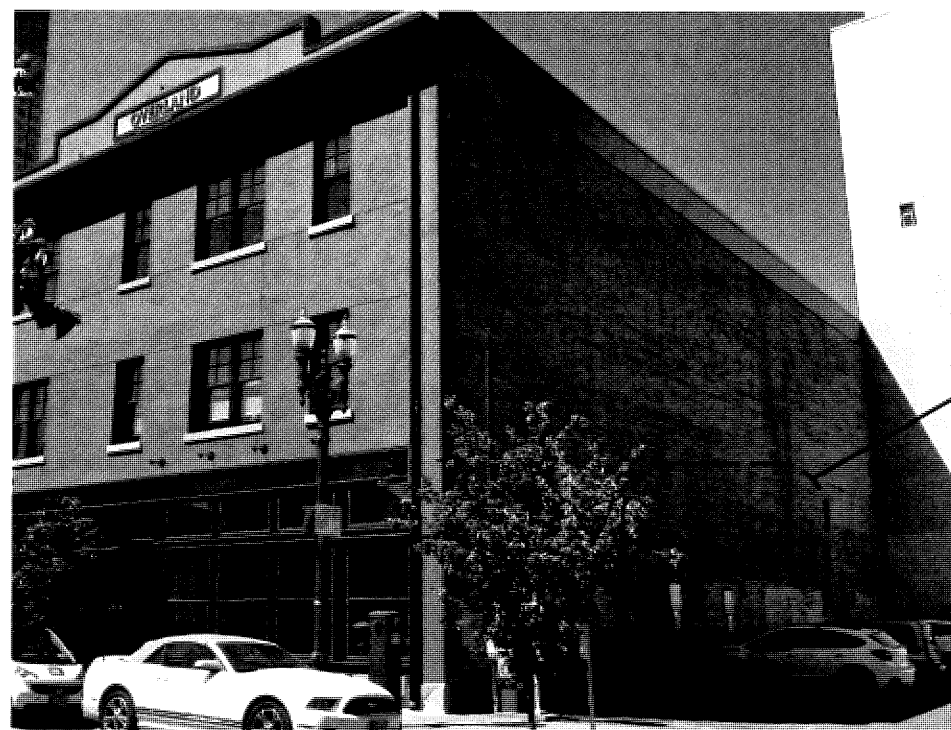
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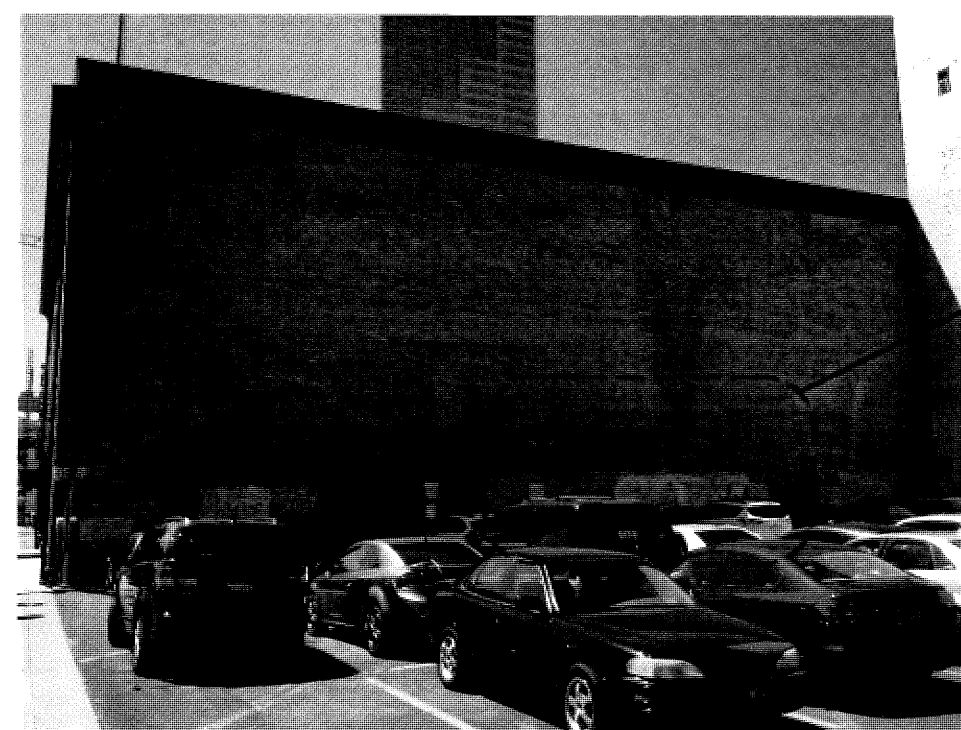
A.



B.



C.



D.

1

## EXISTING PHOTOS

BUILDING APPEAL DRAWINGS

NOT FOR CONSTRUCTION

EMERICK ARCHITECTS

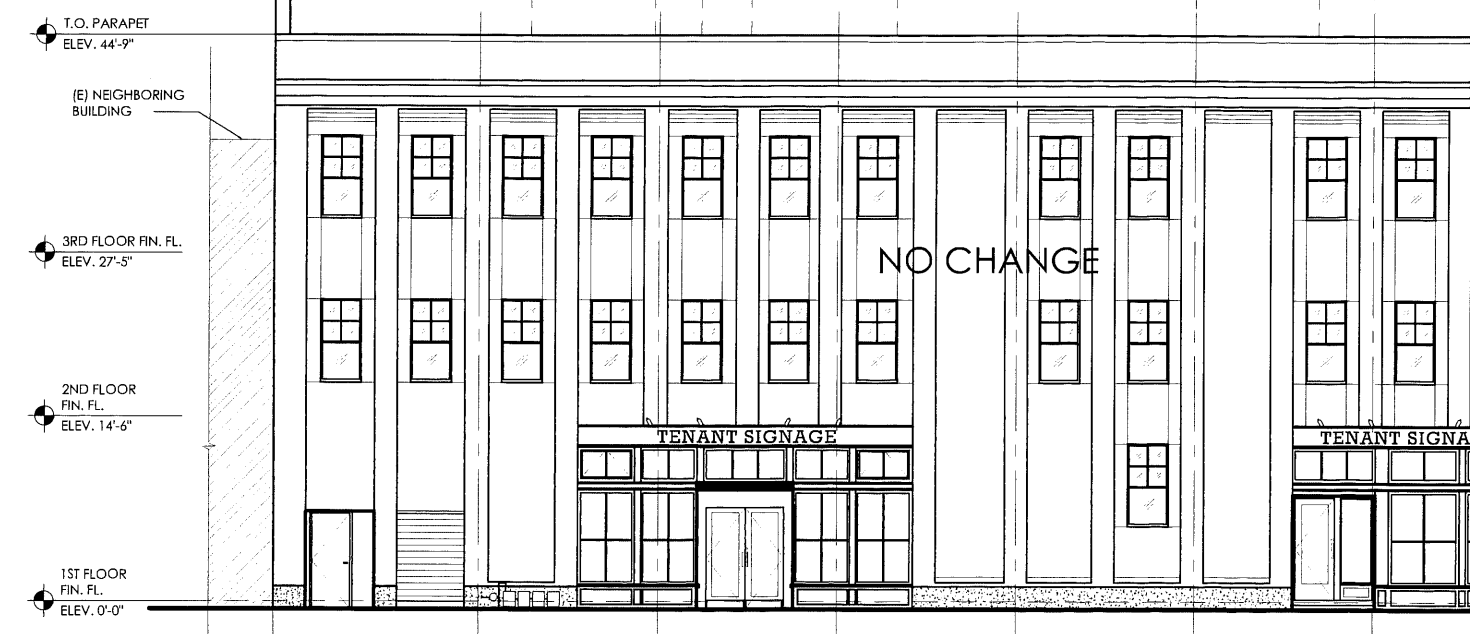
UDP - OVERLAND WAREHOUSE  
209 NW 4TH AVE., PORTLAND OR 97209  
PROJECT #1426

SK-2

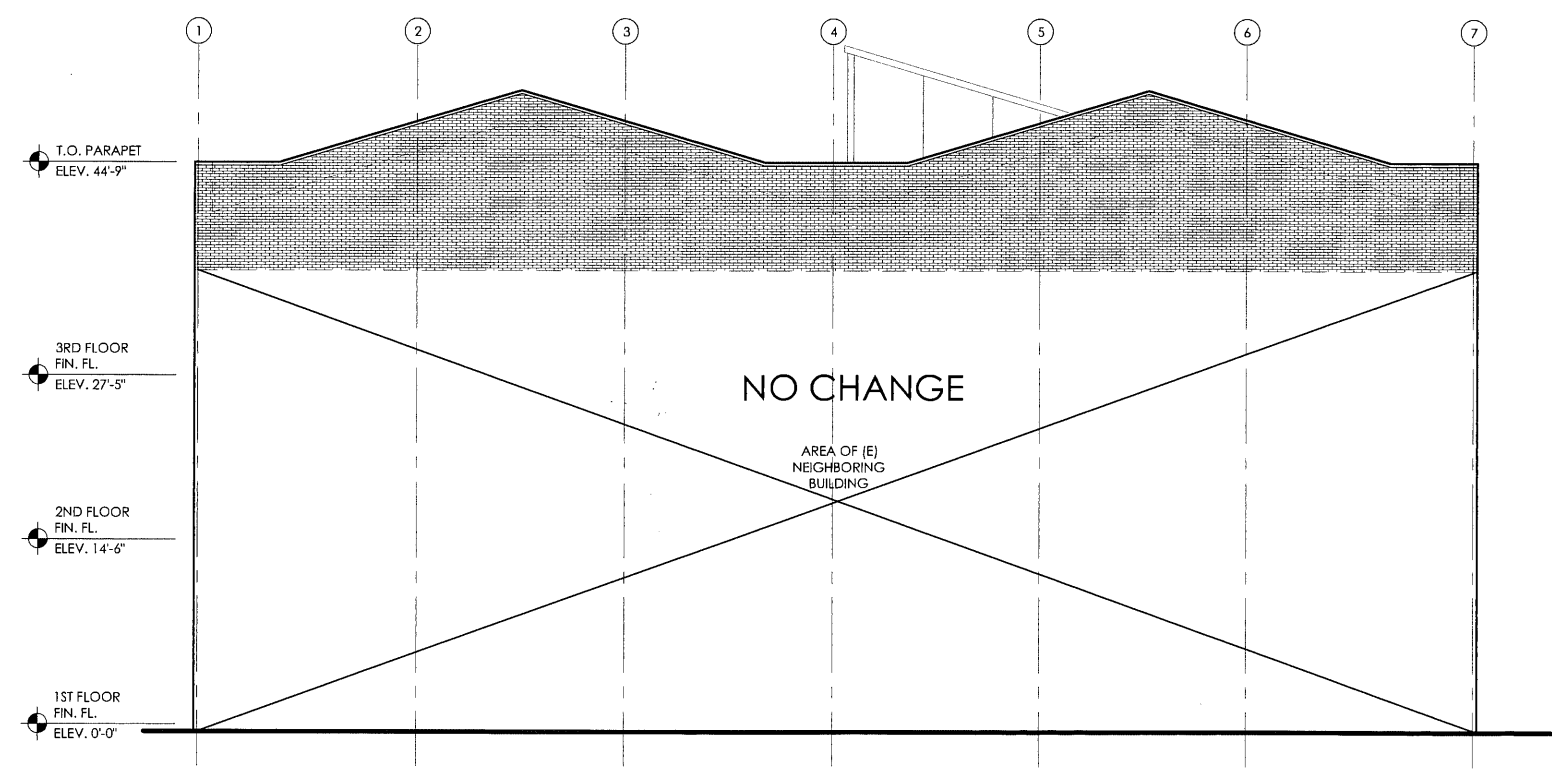
DATE: 11-



1 EAST EXTERIOR ELEVATION - NO CHANGE  
SCALE: 1/16" = 1'-0"



2 SOUTH EXTERIOR ELEVATION - NO CHANGE  
SCALE: 1/16" = 1'-0"



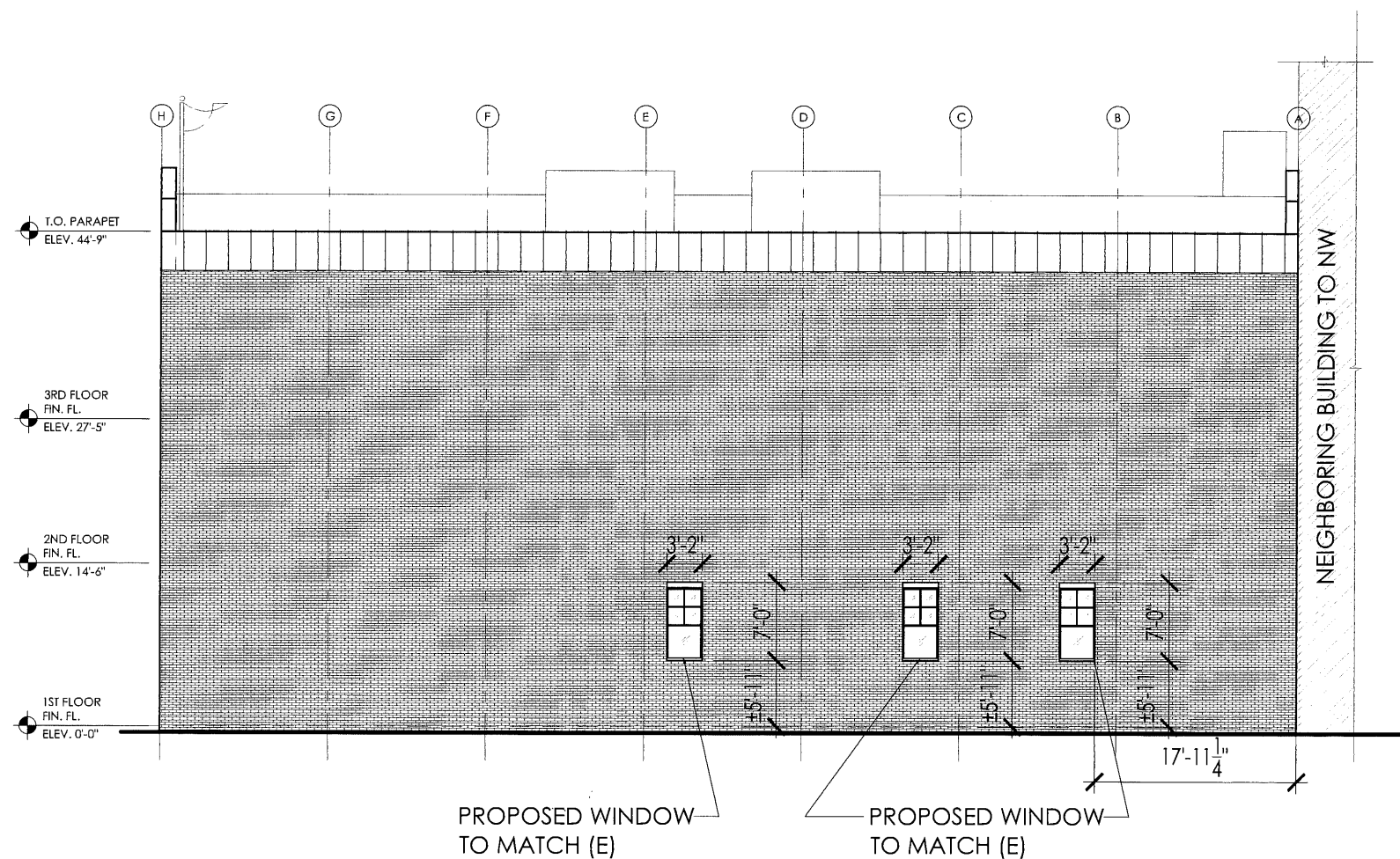
3 WEST EXTERIOR ELEVATION - NO CHANGE  
SCALE: 1/16" = 1'-0"

BUILDING APPEAL DRAWINGS  
FOR REFERENCE ONLY  
NOT FOR CONSTRUCTION



UDP - OVERLAND WAREHOUSE  
209 NW 4TH AVE., PORTLAND OR 97209  
PROJECT #1426

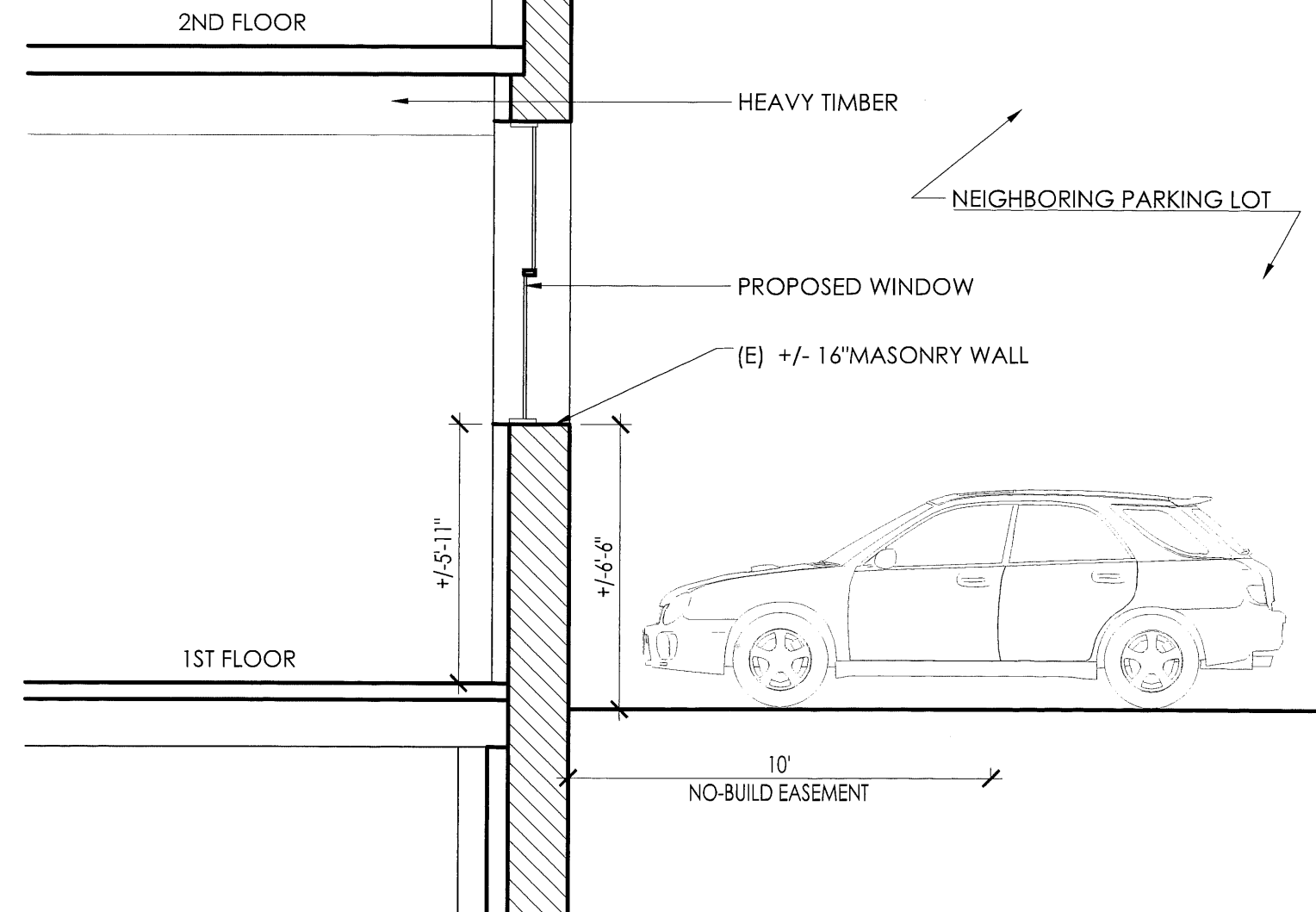
SK-3  
DATE: 11-



1

# NORTH PROPOSED ELEVATION

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



2

# SECTION @ PROPOSED WINDOW

SCALE: 1/4" = 1'-0"

BUILDING APPEAL DRAWINGS

NOT FOR CONSTRUCTION

EMERICK ARCHITECTS

UDP - OVERLAND WAREHOUSE  
209 NW 4TH AVE., PORTLAND OR 97209  
PROJECT #1426

SK-

DATE: 11-