

Development Services

From Concept to Construction

Phone: 503-823-7300 Email: 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

Appeal ID: 18783	Project Address: 6133 SE Tenino St
Hearing Date: 12/19/18	Appellant Name: Michael Manwell
Case No.: B-008	Appellant Phone: 5038308593
Appeal Type: Building	Plans Examiner/Inspector: Preliminary
Project Type: residential	Stories: 1 Occupancy: single family Construction Type: wood frame
Building/Business Name:	Fire Sprinklers: No
Appeal Involves: other: Appeal to ORS R302.1	LUR or Permit Application No.: 18-144155-LU
Plan Submitted Option: pdf [File 1]	Proposed use: Exiting Single Family

APPEAL INFORMATION SHEET

Appeal item 1

Code Section	ORSC SECTION 302.1 EAVES AND EXTERIOR WALLS
Requires	The code requires a 3.00 foot setback to residential buildings from New Parcel Lines and 2.00 foot setbacks to roofs and eaves. The minimum is not able to be met so are requesting approval of a no-build easement.
Proposed Design	Proposal is to provide a no-build easement on the adjoining Parcel
Reason for alternative	The reason for the code is to require fire safety between structures. The no build easement makes sure no structures are built within the no build easement insuring fire safety clearance.

APPEAL DECISION

Omission of fire rated construction within 3 feet of the property line with no build easement: Granted provided the no build easement is a minimum of 5 feet wide.

Appellant must contact Nancy Thorington (503-823-7023) for more information prior to writing the no build easement.

The unrecorded easement must be reviewed and approved by BDS prior to recording. A copy of the recorded easement must then be provided to BDS prior to plan review approval.

The easement must include language that prohibits the construction of fences and eaves in the easement.

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, call (503) 823-7300 or come in to the Development Services Center.

AFTER RECORDING RETURN TO:

COVENANT FOR FUTURE NO-BUILD EASEMENT AND AGREEMENT NOT TO BUILD

18-144155-LPD AD

RECITALS

- A. DK HOMES LLC, is the record owner of the parcels described in Section 1 below.
- B. Declarant has submitted an application to the City of Portland for ORSC SECTION 302.1 – **EAVES AND EXTERIOR WALL PROTECTION**
- 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 Parcel 2 with a covenant that will immediately create a no-build easement in perpetuity to benefit Parcel 1, effective upon the date when Parcel 1 and Parcel 2 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 Parcels 1 and 2 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:
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:

A 5.00 foot by 77.72 foot No-Build Easement, 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 Parcel 1 and/or Parcel 2 so that the parcels are no longer under common ownership, the subsequent owners and users of Parcel 2 shall immediately be burdened by a No-Build Easement on Parcel 2. 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 Parcel 1 and burdening Parcel 2 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 to not protect the exterior wall and eave with the required fire resistance rating on the existing structure on Parcel 1 where the wall is less than 3.00 feet from the property line between Parcel 1 and Parcel 2 on the properties described in Section 2 of this Agreement.

Michael Manwell
Land Surveying, LLC
2847 SE 18TH CIRCLE
GRESHAM, OREGON 97080
(503) 661-5270

EXHIBIT A
LEGAL DESCRIPTIONS OF PARCELS

PARCEL 1

DECEMBER 13, 2018

BEING A PORTION OF LOT 8, BLOCK 20, OF "DARLINGTON PLAT NO.3", BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 8; THENCE N 00°02'55"W ALONG THE EAST LINE OF SAID LOT 8, A DISTANCE OF 3.00 FEET; THENCE S 89°57'35"W, A DISTANCE OF 12.00 FEET TO THE POINT OF BEGINNING; THENCE S 89°57'35"W, A DISTANCE OF 38.84 FEET; THENCE N 00°02'15"E, A DISTANCE OF 77.72 FEET; THENCE N 89°57'35"E, A DISTANCE OF 38.73 FEET; THENCE S 00°02'55"E, A DISTANCE OF 77.72 FEET TO THE POINT OF BEGINNING.

CONTAINS 3,015 SQUARE FEET.

PARCEL 2

DECEMBER 13, 2018

BEING A PORTION OF LOT 8, BLOCK 20, OF "DARLINGTON PLAT NO.3", BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 8; THENCE N 00°02'55"W ALONG THE EAST LINE OF SAID LOT 8, A DISTANCE OF 3.00 FEET TO THE POINT OF BEGINNING; THENCE S 89°57'35"W, A DISTANCE OF 12.00 FEET; THENCE N 00°02'55"W, A DISTANCE OF 77.72 FEET; THENCE S 89°57'35"W, A DISTANCE OF 38.73 FEET; THENCE N 01°02'15"E, A DISTANCE OF 19.28; THENCE S 89°57'35"W, A DISTANCE OF 49.50 FEET TO A POINT ON THE WEST LINE OF SAID LOT 8; THENCE N 00°02'15"E ALONG SAID WEST LINE OF LOT 8, A DISTANCE OF 64.83 FEET; THENCE N 89°57'30"W, A DISTANCE OF 100.10 FEET TO A POINT ON THE EAST LINE OF SAID LOT 8; THENCE S 00°02'55"E ALONG SAID EAST LINE OF LOT 8, A DISTANCE OF 161.84 FEET TO THE POINT OF BEGINNING.

CONTAINS 8,404 SQUARE FEET.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Michael Manwell

OREGON
FEBRUARY 8, 2000
MICHAEL L. MANWELL
57148

RENEWS: 12-31-20

Michael Manwell
Land Surveying, LLC
2847 SE 18TH CIRCLE
GRESHAM, OREGON 97080
(503) 661-5270

EXHIBIT B
LEGAL DESCRIPTION NO-BUILD EASEMENT

DECEMBER 12, 2018

BEING A PORTION OF LOT 8, BLOCK 20, OF "DARLINGTON PLAT NO. 3", BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 8; THENCE N 00°02'55"W ALONG THE EAST LINE OF SAID LOT 8, A DISTANCE OF 3.00'; THENCE S 89°57'35"W, A DISTANCE OF 12.00 FEET TO THE POINT OF BEGINNING; THENCE N 00°02'55"W, A DISTANCE OF 77.72 FEET; THENCE N 89°57'35"E, A DISTANCE OF 5.00 FEET; THENCE S 00°02'55"E, A DISTANCE OF 77.72 FEET; THENCE S 89°57'35"W, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 389 SQUARE FEET.

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Michael Manwell

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FEBRUARY 8, 2000
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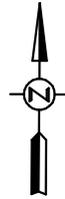
RENEWS: 12-31-20

S 89°57'31"W 100.10'

EXHIBIT C

LOT 8

PARCEL 2
8,404 S.F.



1" = 20'
DECEMBER 13, 2018

LOT 9
DARLINGTON PLAT 3

N 00°01'35"E 100.00'

N 00°02'15"E 64.83'

15.03'

7.82' (8.00') N 89°57'35"E 57.50'

A PORTION OF LOT 8, BLOCK 20,
"DARLINGTON PLAT NO. 3"
IN THE S.E. 1/4 OF SEC. 19,
T1S, R2E, W.M.,
MULTNOMAH COUNTY,
OREGON
DECEMBER 13, 2018
SCALE: 1" = 20'

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Michael Manwell

OREGON
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57148

RENEWS: 12-31-20

N 89°57'37"E 57.50'

19.28'

N 89°57'33"E 5.00'

N 89°57'33"E

38.73'

5.00' WIDE NO-BUILD EASEMENT AREA

15.71'

1.00' EAVE

EXISTING HOUSE (TO REMAIN)

1.00' EAVE

PARCEL 1
3,015 S.F.

3.00' STREET DEDICATION

N 89°57'35"E 38.84'

N 89°57'35"E 50.85'

EXISTING ASPHALT DRIVEWAY

SE CORNER LOT 8

N 00°02'55"W 161.84'

N 00°02'55"W 224.84' (P 225')

PARCEL 3

PARCEL 2

PARTITION PLAT NO. 1994-92

PARCEL 1

S 89°57'33"W 5.00'

12.00'

2.56'

77.72'

2.51'

SE TENINO STREET
(50' WIDTH)

LU 18-144155 LDP

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