

# 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:** Hold for Additional Information

<b>Appeal ID:</b> 20534	<b>Project Address:</b> 5529 NE 25th Ave
<b>Hearing Date:</b> 6/19/19	<b>Appellant Name:</b> Slavik Dezhnyuk
<b>Case No.:</b> B-007	<b>Appellant Phone:</b> 503-209-7561
<b>Appeal Type:</b> Building	<b>Plans Examiner/Inspector:</b> Tara Carlson, Nancy Thorington
<b>Project Type:</b> residential	<b>Stories:</b> 2 <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> 19-157928-PR
<b>Plan Submitted Option:</b> pdf [File 1] [File 2] [File 3] [File 4]	<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 19-157928-PR.
<b>Proposed Design</b>	Proposal of "No-Build" easement as optioned in attached checksheet for 19-157928-PR. The "No-Build" easement is imposed on the property adjacent to the existing structure. This easement restricts future development on that portion of the lot, and therefore guarantees the fire separation between the current, non-fire-rated structure and future structures.
<b>Reason for alternative</b>	The approval of a "No-Build" easement as optioned in attached checksheet for 19-157928-PR would allow the approval of lot confirmation while retaining the existing on site structure.

### APPEAL DECISION

**Omission of fire rated construction within 3' of the property line with no build easement: Hold for additional information.**

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

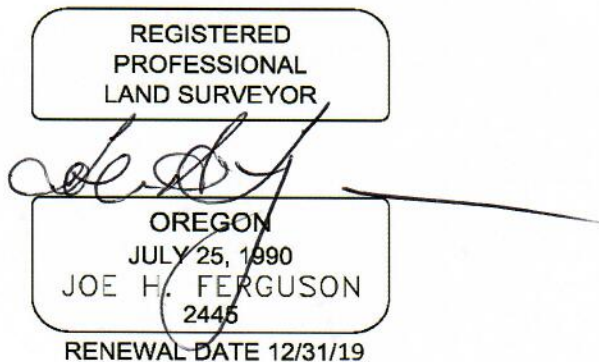
**Ferguson Land Surveying, Inc.**  
Portland, Oregon

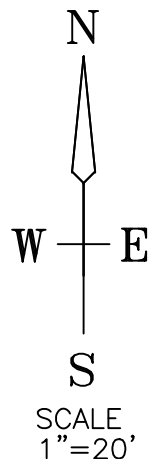
NO BUILD EASEMENT

A NO BUILD EASEMENT LOCATED IN LOT 38, BLOCK 15, IRVINGTON PARK, LOCATED IN THE SW 1/4 OF SECTION 13, TOWNSHIP 1 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, MORE FULLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHEAST CORNER OF LOT 38, BLOCK 15, IRVINGTON PARK, MULTNOMAH COUNTY PLAT RECORDS; THENCE S89°41'26"W ALONG THE NORTH LINE OF SAID LOT 38, A DISTANCE OF 16.10 FEET TO THE TRUE PLACE OF BEGINNING; THENCE S0°00'00"E A DISTANCE OF 4.40 FEET; THENCE S89°41'26"W A DISTANCE OF 15.70 FEET; THENCE S0°00'00"E A DISTANCE OF 1.60 FEET; THENCE S89°41'26"W A DISTANCE OF 32.60 FEET; THENCE N0°00'00"W A DISTANCE OF 6.00 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 38; THENCE N89°41'26"E ALONG THE NORTH LINE OF SAID LOT 38, A DISTANCE OF 48.30 FEET TO THE PLACE OF BEGINNING.

CONTAINING 264 S.F. MORE OR LESS



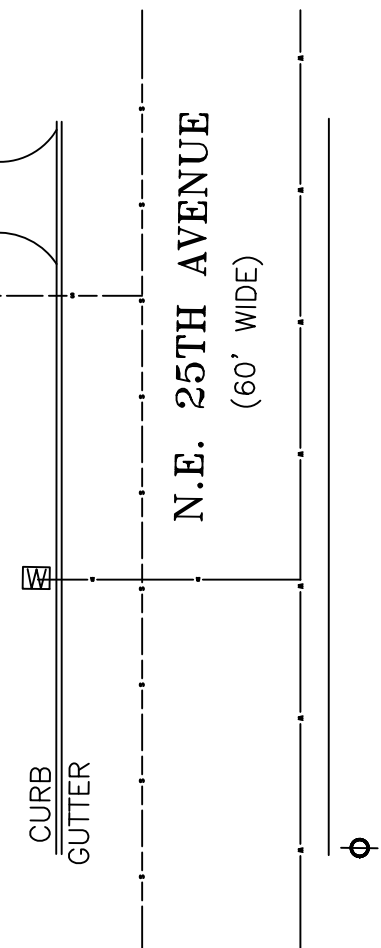
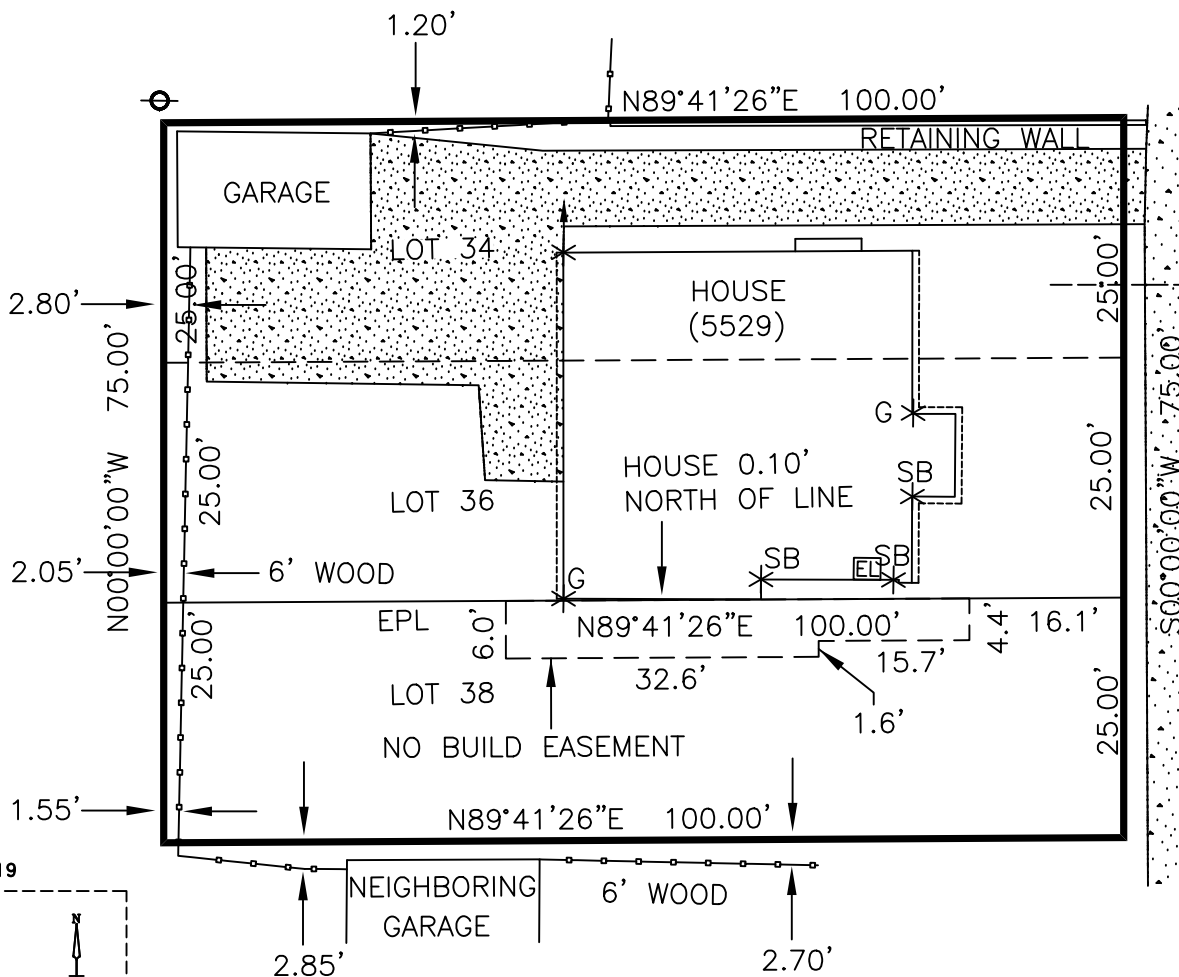
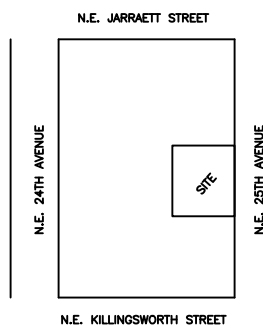


# SYMBOLS

- = POWER POLE
- = ELECTRIC METER
- = GROUND
- = SPLASHBLOCKS
- = DOWN SPOUTS
- "EPL" = LINE TO CONFIRM
- = ELECTRIC LINE
- = DECIDUOUS TREE
- = CONIFER TREE

DATE: JUNE 10, 2019

## VICINITY MAP NO SCALE



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*[Signature]*

OREGON  
JULY 25, 1990  
JOE H. FERGUSON  
2445

RENEWAL DATE 12/31/19

NOTE: ELEVATION DATUM IS PER CITY OF PORTLAND BENCHMARK NO. 4277

**Ferguson Land Surveying, Inc.**

646 SE 106TH AVE. PORTLAND, OR 97216  
Phone (503) 408-0601

## LOT CONFIRMATION

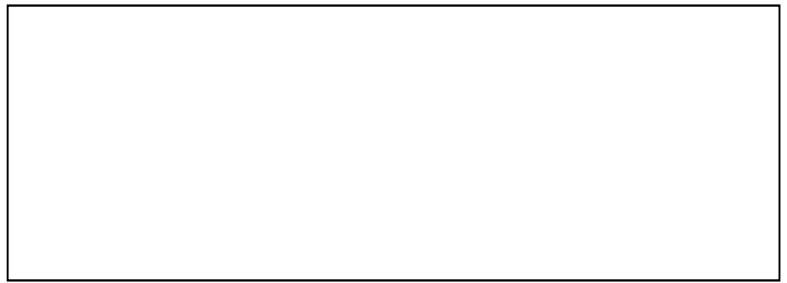
LOTS 34, 36, AND 38, BLOCK 15, "IRVINGTON PARK"  
SITUATED IN THE SW 1/4 OF SECTION 13, T.1N, R.1E., W.M.  
PORTLAND, MULTNOMAH COUNTY, OREGON

CLIENT: DEZ DEVELOPMENT  
SLAVIK DEZ  
10117 SE SUNNYSIDE ROAD  
F1123  
CLACKAMAS, OR 97015

JOB NO. 19-043  
DRAFTED 6.10.19  
SHEET 1 OF 1

AFTER RECORDING, RETURN TO:

DEZ Development LLC  
10117 SE Sunnyside Road, Ste F1123  
Clackamas, OR 97015



**COVENANT FOR FUTURE NO-BUILD EASEMENT AND AGREEMENT NOT TO BUILD  
2019-157928-PR**

**RECITALS**

- A. DEZ Development LLC, an Oregon limited liability company ("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 between Lots 36 and 38 described in Section 1 below. The existing house on Lot 34 and 36 described in Section 1 below are less than three feet from the lot line to be confirmed and the wall and eaves are not fire protected. The 2014 Oregon Structural Specialty Code ("ORSC") Section R302.1 and Table R302.1 require exterior walls and projections less than three feet from a property line to be one-hour fire rated.
- 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 38 with a covenant that will immediately create a no-build easement in perpetuity to benefit Lot 34 and 36, effective upon the date when Lot 36 and Lot 38 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 Lots 36 and 38 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 38, as more fully described in Exhibit "A" attached hereto.

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

Lot 34 and 36, as more fully described in Exhibit "A" attached hereto.

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

A 4.4' by 15.7' No-Build Easement which widens to a 6' by 32.6' 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. If the existing structure located on Lot 34 and 36 is demolished or destroyed in the future, regardless of the cause, any replacement structures must comply with all codes in effect at the time of replacement.

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 36 and/or Lot 38 so that the parcels are no longer under common ownership, the subsequent owners and users of Lot 38 shall immediately be burdened by a No-Build Easement on Lot 38. 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 34 and 36, and burdening Lot 38 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 not to project the exterior wall of the garage and the eaves on the existing house on Lot 34 and 36 with the required fire resistance rating where the wall and eaves are less than 3 feet from the property line between Lots 36 and 38. Such properties do not comply with the following sections of the 2014 Oregon Residential Specialty Code: Section R302.1 and Table R302.1, which require one-hour fire resistant rated walls and eaves on residential structures less than 3 feet from a 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.

DECLARANT:

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

IRVINGTON PK, BLOCK 15, Lot 34&36

IRVINGTON PK, BLOCK 15, Lot 38

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

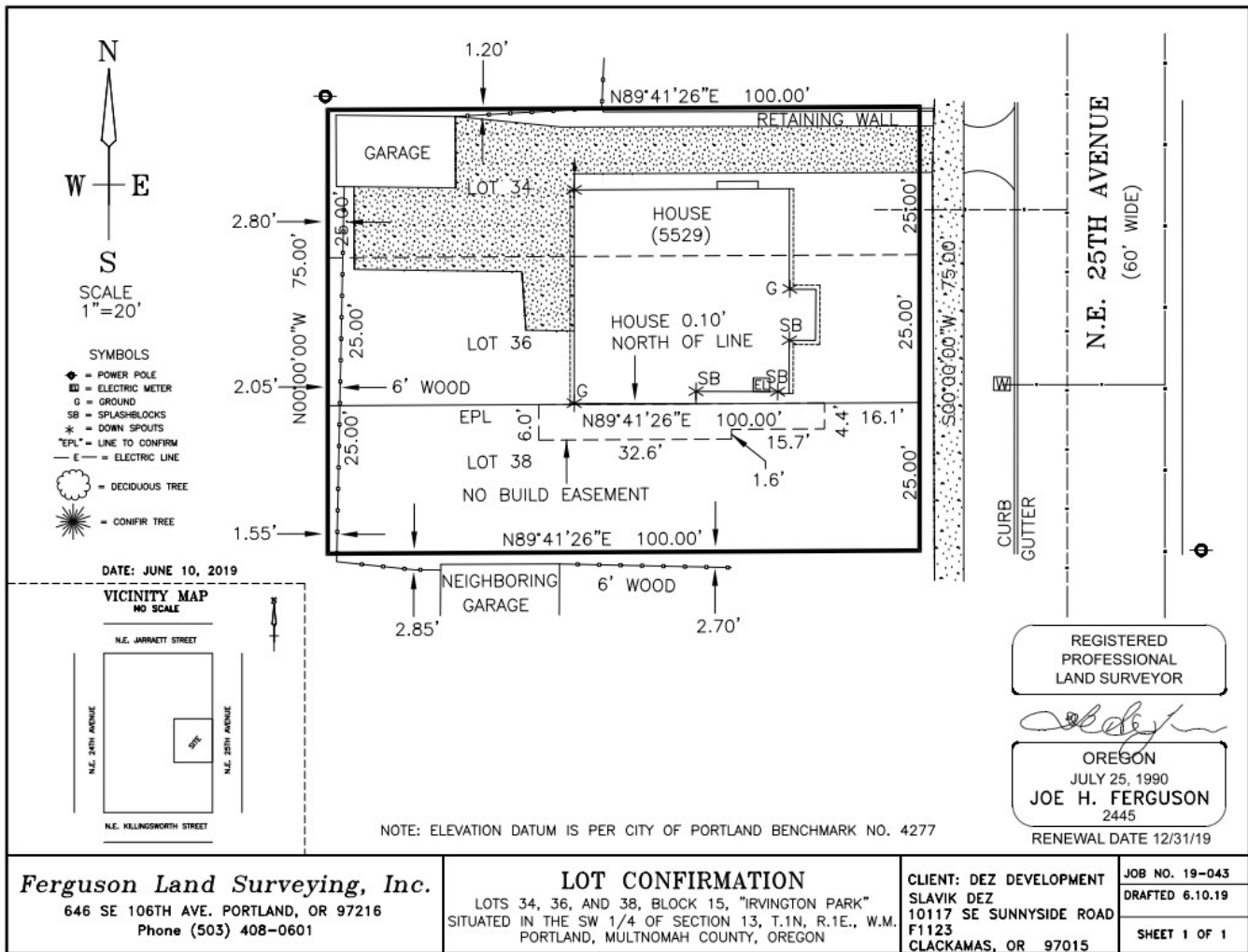
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CONTAINING 264 S.F. MORE OR LESS



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




**Ferguson Land Surveying, Inc.**  
 646 SE 106TH AVE. PORTLAND, OR 97216  
 Phone (503) 408-0601

**LOT CONFIRMATION**  
 LOTS 34, 36, AND 38, BLOCK 15, "IRVINGTON PARK"  
 SITUATED IN THE SW 1/4 OF SECTION 13, T.1N, R.1E., W.M.  
 PORTLAND, MULTNOMAH COUNTY, OREGON

**CLIENT:** DEZ DEVELOPMENT  
 SLAVIK DEZ  
 10117 SE SUNNYSIDE ROAD  
 F1123  
 CLACKAMAS, OR 97015

**JOB NO. 19-043**  
**DRAFTED 6.10.19**  
**SHEET 1 OF 1**



## LOT CONFIRMATION CHECKSHEET

**DATE:** June 4, 2019

**TO:** Tyson Okely  
DEZ DEVELOPMENT  
10121 SE Sunnyside, #300  
Clackamas OR 97015


**FROM:** Katie Moore  
BDS Planning and Zoning Review

**RE:** 19-157928-PR – Lot Confirmation at 5529 NE 25TH AVE

***The items listed below must be addressed and/or submitted before the lot confirmation can be completed.***

- ☐ **OWNER INFORMATION.** PortlandMaps currently lists the owner of this property as Fareeda Saahir. The application form lists the property owner as Dez Development LLC. Please provide a copy of a deed for the property, or change the owner name on the application. Also, on the application form, the applicant is listed as Tyson Okely, but Slavik Dezhnyuk signed the application form. Which is correct? Please update the application form.
- ☐ **SITE PLAN.** Please submit an 8 ½ by 11 inch site plan, drawn to scale, with the following information:
  - All property lines; existing and proposed.
  - All buildings on the site, including garages, sheds and decks.
  - The dimensions of all buildings and their distance from the property lines, existing and proposed.
  - All driveways and other vehicle areas with dimensions and paving materials (gravel, asphalt, concrete, etc.).**A complete site plan must be submitted in order to complete the review. You may receive additional checksheets in the future after a site plan is submitted.**
- ☐ **BUILDING CODE.** *The Lot Confirmation will result in the existing building wall being located less than 3 feet from the proposed property line. BDS Life Safety has reviewed your proposal and provided comments regarding compliance with the Building Code. **Please refer to the Life Safety Review Response below for options for bringing the structure into compliance with the Building Code.** Any information needed regarding this requirement should be directed to a Plans Examiner. They can be reached at (503) 823-7310 or in person in the Development Services Center. The Development Services Center is located at 1900 SW 4<sup>th</sup> Avenue, 1<sup>st</sup> Floor, and open Monday through Friday from 8:00 a.m. to 3:00 p.m. (close at 12:00 p.m. on Thursday).*

**LIFE SAFETY RESIDENTIAL PLAN REVIEW RESPONSE**



From: Tara Carlson, Life Safety Plans Examiner, [Tara.Carlson@portlandoregon.gov](mailto:Tara.Carlson@portlandoregon.gov),  
503-823-7782  
Date: May 21, 2019  
RE: 5529 NE 25TH AVE, 19-157928-PR

The following comments are based on the plans and documents provided to the Life Safety Plan Reviewer. They are intended to provide the applicant with preliminary Building Code information that could affect this Land Use review and/or future Building Permit reviews. The comments may not identify all conflicts between this proposal and the Building Codes. A complete Life Safety plan review will be provided at the time of Building Permit submittal. The comments are based on the 2017 Oregon Residential Specialty Code (ORSC), henceforward referred to as the Building Code.

## **RESPONSE SUMMARY**

Life Safety Plan review cannot support approval of the current Land Use proposal. See attached **ISSUE(S) TO BE ADDRESSED PRIOR TO LAND USE APPROVAL**. These are building code requirements that must be addressed prior to Land Use approval.

## **ISSUE(S) TO BE ADDRESSED PRIOR TO LAND USE APPROVAL**

### **Oregon Residential Specialty Code R302.1**

The scope of work proposed establishes a new property line adjacent to an existing building. This potentially impacts the requirements of ORSC R302.1. ORSC R302.1 requires that exterior walls that are parallel to, and less than three feet to a property line be one-hour fire-rated with no openings, such as windows, doors, or vents allowed. Roofs and eaves of houses may project not closer than two feet to a property line. Detached garages accessory to the house and located within 2 feet of a property line are permitted to have roof eave projections not exceeding 4 inches. Eaves that are less than three feet to a property line must be provided with fire-blocking from the wall top plate to the underside of the roof sheathing and must not have gable vent openings.

In order to approve the request to establish this lot line, the existing building(s) must be shown to comply or the conflicting building code requirements must be resolved. If the existing walls and eaves are out of compliance, the applicant has two options to remedy the situation. See below for options.

More information regarding building code requirements can be obtained by visiting the Bureau of Development Services Development Services Center - 1900 SW 4th Ave, 1st floor. The Development Services Center is open Monday through Friday from 8:00 a.m. to 3:00 p.m. (close at noon on Thursday). No appointment is necessary. Building Code information is also available online at: <http://www.portlandonline.com/bds/>, or by calling (503) 823-1456.

## **RESIDENTIAL PROPERTY LINE ADJUSTMENT OPTIONS**

### **Option 1**

**This option modifies existing structures to meet building code requirements for fire ratings.**

- This option requires a building permit showing how the existing construction will be modified to comply with the building code requirements.
- The existing exterior wall, if it is within 3' of the property line, would need to be improved to meet the fire rating requirement as shown in the handout. All openings would need to be sealed.
- The existing eave would need to be modified to cut back existing soffits to meet requirements for minimum distance from the interior lot line and provide fire-blocking as described above.
- To apply for the building permit, prepare drawings that show these improvements. The drawing set will contain a site plan and a building wall section showing specific conditions and identifying all components required to meet the building code. All drawings are required to be to scale and fully dimensioned.
- To apply for the building permit, bring a complete building permit Application (<http://www.portlandoregon.gov/bds/article/71706>), along with 4 copies of the drawing set

to the Development Services Center at 1900 SW 4<sup>th</sup> Ave. See the website for hours (<http://www.portlandoregon.gov/bds> ).

- Once the permit has been issued, construction may begin. Call for Inspections as work proceeds.
- When work is completed, and the Final Inspection has been approved, you should notify the planner assigned to this project that the building permit has been Finaled and identify the permit number.
- The Planner will notify the Life Safety plans examiner, who will then complete the Life Safety portion of the lot confirmation.

## **Option 2**

**This option does not modify the existing structure, and instead utilizes a “No-Build” Easement along the lot line and a building code appeal.**

- A future “No-Build” easement is imposed on the property adjacent to the existing structure. This easement restricts future development on that portion of the lot, and therefore guarantees the fire separation between the current, non-fire-rated structure and future structures.
- The no-build easement is typically wide enough to provide a distance of 6'-0" clear between the existing structure and any new structure, measured between the eaves. This distance may be reduced, depending on the location and fire ratings of the existing and future structures. The proposal would need to show how criteria in the handout “ORSC SECTION 302.1 – EAVES AND EXTERIOR WALL PROTECTION” is met for both structures, based on measurement to an imaginary property line that you assign between the current and future buildings.
- Since the easement option is not allowed outright in the code, a building code appeal is required in order to approve it. Information about the building code appeal process is available online at <http://www.portlandonline.com/bds/index.cfm?c=34196>.
- The documentation submitted for the appeal should include a site plan, wall section drawing showing the location of the wall and eave in relation to the proposed and imaginary property lines, a legal description of the parcels and the no-build easement area and a completed draft easement.
- A sample Easement, with instructions, is attached for your use, *starting on page 4*. This sample has been previously reviewed by the City Attorney. Alternative language may be proposed, but would need to be reviewed by the City Attorney prior to approval.
- As part of the appeal, the board will verify the draft easement provided is acceptable, and that the width of the easement will meet the intent of the code for separation between structures.
- Once the appeal is granted, the draft easement will be signed by the Life Safety staff and returned to you for recording with Multnomah County.
- Once the easement is recorded, you should submit the following to the planner assigned to the project: the approved appeal, the recorded easement, site plan and legal description.
- The Planner will notify the Life Safety plans examiner, who will then complete the Life Safety portion of the lot confirmation.

❑ **BUREAU OF ENVIRONMENTAL SERVICES.**

Ella Indarta Ella.Indarta@portlandoregon.gov 503-823-2073

BES has no specific approval criteria related to Lot Confirmations (LC). These comments are provided in order to inform the applicant of sewer and stormwater requirements that will apply to future development of the sites.

**SANITARY:** There is a public 8-inch combined sewer in NE 25th Ave (BES as-built #0917).

According to historic plumbing permits, the existing structure is connected to the combined sewer in NE 25th Ave with a lateral located approximately 68 feet to the north of the manhole in NE 25th Ave.

Be aware that all new laterals constructed to the property must be constructed to the public main at the applicant's or owner's expense at the time of development. Connection to public sewers must meet the standards of the City of Portland's Sewer and Drainage Facilities Design Manual. System development charges and connection fees are assessed at the time of building permit review.

**STORM:** There is no storm-only system available to this property.

Stormwater from the existing house should be managed in a way that does not impact adjacent properties and should meet all setback requirements.

Splashblocks should discharge 2 feet from slab on grade, 6 feet from foundations with basements, 5 feet from property lines and 10 feet from all neighboring structures. Refer to the Downspout Extensions information on page 2-57 of the 2016 Stormwater Management Manual.

Future development of these properties will be required to meet the City of Portland's Stormwater Management requirements: [www.portlandonline.com/bes/SWMM](http://www.portlandonline.com/bes/SWMM). BES's stormwater management requirements would apply to private property and public right-of-way improvements. Stormwater will need to be managed onsite to the maximum extent feasible.

❑ **WATER FACILITIES.**

Michael Puckett, 503-823-4976, [michael.puckett@portlandoregon.gov](mailto:michael.puckett@portlandoregon.gov)

The existing house may continue to use the existing service. Water is available to lot 38 from the 8" main in NE 25th Avenue.

***If you have any questions, please call me at 503-823-7344. Thank you.***