

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File No.: LU 10-148328 PDM (HO 4100015)

Applicants: Eli Spevak
6325 N Albina Avenue #6
Portland, OR 97217

Zachariah D. and Jessica Parrish (*owners*)
4745 NE Going Street
Portland, OR 97218

Applicants' Representative: Mieke Keenan
Mieke M. Keenan Land Use Consulting Services
10211 NW Wilshire Lane
Portland, OR 97229

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representative: Sue Donaldson

Site Address: 4745 and 4821 NE GOING ST

Legal Description: TL 8000 0.94 ACRES, SECTION 19 1N 2E; TL 8100 0.94 ACRES, SECTION 19 1N 2E

Tax Account No.: R942192110, R942192120

State ID No.: 1N2E19BD 08000, 1N2E19BD 08100

Quarter Section: 2535

Neighborhood: Cully

Business District: None

District Coalition: Central Northeast Neighbors

Plan District: None

Zoning: R5h Residential 5000 with Aircraft Landing Overlay

Land Use Review: Type III, PDM - Planned Development with Modifications

BDS Staff Recommendation to Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 9:00 a.m. on September 8, 2010, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon. The hearing notification contained the incorrect start time (Exhibit H.2). Consequently, the Hearings Officer took a recess at 9:05 a.m. and reopened the hearing at 9:30 a.m. The public hearing was closed at 12:13 p.m. The record was left open until 4:30 p.m. on October 13, 2010 for new written evidence, and until 4:30 p.m. on October 20, 2010 for Applicants' final rebuttal. The Applicants requested the record to be closed early (Exhibit H.20). The Hearings Officer denied the request for the record to close early. The record closed at 4:30 p.m. on October 20, 2010 for the Applicants' final rebuttal.

Testified at the Hearing:

Sue Donaldson, BDS Staff Representative

Eli Spevak, 6325 N Albina Avenue #6, Portland, OR 97217

Zachariah Parrish, 4745 NE Going Street, Portland, OR 97218

Robert Granger, 5946 NE 45th Avenue, Unit A, Portland, OR 97218

Craig Kelley, 6022 NE 45th Avenue, Portland, OR 97218

Michael Troper, 4737 NE Going Street, Portland, OR 97218

Carolyn Matthews, 4922 NE Going Street, Portland, OR 97218

Jonathan Kahrs, 11021 NE Thompson Street, Portland, OR 97220

George Monacelli, 4947 NE Going Street, Portland, OR 97218

Chet Smith, 5004 NE Going Street, Portland, OR 97218

Ben Parzybok, 5131 NE Going Street, Portland, OR 97218

Bruce Nelson, 4922 NE Going Street, Portland, OR 97218

Terri Booze, 4836 NE Going Street, Portland, OR 97218

Chris Guillet, 5022 NE Going Street, Portland, OR 97218

Douglas Jensen, 5102 NE Going Street, Portland, OR 97218

Patricia Sciborski, 4828 NE Going Street, Portland, OR 97218

Andrea Guillet, 5022 NE Going Street, Portland, OR 97218

Brent Fenneman, 4736 NE Going Street, Portland, OR 97218

Wendy Cawley, Portland Bureau Of Transportation (PBOT) Representative, Building 299/Room 5000

Proposal:

Applicants propose a Planned Development without a land division to include 16 units on 1.87 acres comprised of two lots (the "Subject Site"). The 16 units will be located in eight structures. Three will be single detached units, two structures will have two attached units and three structures

will have three attached units. Structures containing three units or more are defined in the City of Portland Zoning Code as multi-dwelling structures. Each unit will be owned individually, but the land and all the site amenities will be in common ownership. Applicants originally (at their application and at the public hearing) proposed 16 on-site parking spaces in one area, separated from the units, allowing for smaller building footprints and creating more opportunities for clustering the houses to create more open space. In an open-record submission, Applicants revised on-site parking from 16 spaces to 22 spaces (including two guest spaces) (Exhibit H.19 and H.19a). Applicants also, in their open-record submission, replaced the garages with carports to increase the probability that those spaces would be used for parking of a vehicle and not used as storage or workspace.

Applicants proposed accessory structures on the Subject Site to include a community building, a bicycle parking shed, a garden shed and garages (modified to carports – See Exhibit H.19) housing four vehicles each. Other features include a community garden, two groups of large trees to be preserved, an internal circulation system, stormwater basins, and extensive landscaping (primarily along the property boundaries) and a grape arbor. The existing two houses on the Subject Site will be removed or, if possible, relocated off-site. A single driveway on the west side of the Subject Site will provide vehicle access to 16 parking spaces. There will be one main pedestrian entrance to the development marked with a trellis flanked by existing pear trees. Half-street improvements, including infiltration swale, are included in the proposal; Applicants noted, at the hearing, that not constructing half-street improvements would also be acceptable. Documents include stormwater calculations and a geotechnical report. Two modifications to site-related development standards are requested:

1. Increase the maximum building coverage for all covered structures to 28% of the site area or 22,752.8 square feet.
2. Increase the maximum building height from 30 feet to 35 feet. This will allow the multi-dwelling structures to have an additional bedroom above a portion of the second storey (see Exhibit C.8).

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, in the Portland City Code ("PCC"), Zoning Code. The applicable approval criteria are contained in:

PCC 33.665.300 Approval Criteria in General

PCC 33.665.310 Approval Criteria for Planned Developments in All Zones

PCC 33.665.320 Additional Approval Criteria for Modifications of Site-Related Development Standards.

PCC 33.665.340 Proposals without a Land Division

This Planned Development proposal is reviewed through a Type III procedure because multi-dwelling development is proposed and it includes more than 10 units. The Zoning Code defines multi-dwelling development as "*a grouping of individual structures where each structure contains 1 or more dwelling units. The land underneath the structures is not divided into separate lots.*"

II. ANALYSIS

Site and Vicinity: The Subject Site consists of two legally divided lots with a total area of 81,620 square feet. It slopes down from the street at a three percent slope toward the northeast. There are 38 trees on the Subject Site, the largest of which is a 47-inch White oak approximately 65 feet from the street lot-line. There is also a large Deodar cedar on the west side of the Subject Site and two groups of large trees including Douglas firs. Other vegetation includes a grape arbor near the northwest corner of the Subject Site, which the Applicants intend to preserve. The two existing houses and accessory structures on the Subject Site will be demolished or relocated off-site. NE 48th is a private street along a portion of the eastern boundary of the Subject Site. NE 48th serves as access for seven private homes. The Subject Site is not within a Landslide or a Flood Hazard Area. Many of the lots along NE Going Street, in the immediate vicinity of the Subject Site, are large and have not been developed to R5 densities, with the exception of the development adjacent to the Site on the east side. Northeast Going Street in this area has no curbs, sidewalks or planting strips.

Zoning: The Subject Site is zoned R5h, Residential 5000 with Airport Landing Overlay. The R5 designation is one of the City's single-dwelling zones. The area along NE Going Street, between NE 47th Avenue and NE 52nd Avenue is zoned R5h. Zoning surrounding this area is R7 except for the area to the south where zoning changes to R3 along the NE Prescott Street corridor. Density is set by zone: In the R5 zone, the maximum allowed density is stated in number of lots per 5000 square feet of site area (PCC 33.610.100). Minimum density requirements must be met in a Planned Development (PCC 33.638.020). Adjustments to minimum density are prohibited. Where the density requirement is expressed as a number of lots, it can be met in the Planned Development by providing the same number of dwelling units. The site is 81,620 square feet, so a maximum of 16 dwelling units would be allowed (16.32 rounded down to 16). The minimum density is 13 units and is calculated as follows:

$$\frac{[\text{Subject Site area} - \text{Area with an Environmental Zone or Landslide Hazard Area}] \times .8}{5000} = \text{minimum units}$$
$$81,620 \text{ sq. ft.} - 0 \text{ sq. ft.} \times .8 / 5000 \text{ sq. ft.} = 13.$$

The Applicants are proposing 16 units, which exceeds the minimum density standard of 13 and meets the maximum density of 16.

The *h* Overlay zone relates to height limitations in the vicinity of the Portland International Airport. The allowed height limit for buildings and vegetation on the Subject Site, per the *h* Overlay, is 180 feet above the lowest base point at Portland International Airport, which is at an elevation of 18.3 feet. Therefore, the topographical elevation of the Site PLUS the proposed building height cannot exceed 198.3 feet. The highest ground elevation on the Site is approximately 193 feet. Therefore, buildings and vegetation on the Subject Site cannot exceed 5 feet in height without an approved exception to the Aircraft Landing zone height limits.

Land Use History: City records indicate there are no prior Land Use Reviews for this site.

Summary of Applicants' Statement: The Applicants intend to create a development with a,

"...farm-in-the-city feel to it – and the practical opportunity for residents to grow and process a significant amount of their own food on site. This would be a community within a community, with a design that fosters both social interaction among residents and a welcoming street presence along NE Going Street to the broader Cully neighborhood."

Parking is proposed to be located at the west edge of the Subject Site with residential structures grouped around a central open space with a large White oak tree as its focal point. The White oak tree is not included in the Tree Preservation Plan because site preparation and construction will encroach into the Root Protection Zone. However, Applicants expressed hope that with careful construction management and root pruning, the tree can survive. A centrally located small community recreation building is proposed where residents can gather for social occasions. The community recreation building will also contain two rooms for overnight guests and a kitchen for food preparation associated with social activities. The existing grape arbor at the rear of the Subject Site will be retained and the community garden located close to it. Bike parking and covered storage is provided to make it easy for residents to choose alternative transportation modes. Proposed structures will incorporate green building features including super-insulated envelopes, efficient heating systems, passive solar design, south-facing roofs and the use of recycled materials.

Agency Review: Several bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Please see Exhibits "E" for details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on August 18, 2010. No written responses were received, prior to the issuance of the Bureau of Development Services Staff Report and Recommendation to the Hearings Officer (Exhibit H.3), from either the Neighborhood Association or notified property owners in response to the proposal. One property owner who owns the house adjacent to the Subject Site telephoned BDS staff prior to the public hearing and expressed concerns about the following issues:

1. Location of trash/recycling area which is located near the dining and living area of the house;
2. Future construction noise;
3. Need for a fence between the two properties for privacy and safety (there is a pond behind the house that could be attractive and dangerous for young children).

BDS Staff comment: (Exhibit H.3, page 3) "The concerns for privacy and screening are related to the approval criteria and are addressed in the findings of fact in the following section, under the related Planned Development approval criteria. The Noise Control Office of BDS enforces the provisions of the Noise Code (Title 18) and Compliance Services will respond to violations, should they occur."

Hearings Officer comments: A number of opponents to the Applicants' proposal appeared and testified at the public hearing (Mr. Troper, Ms. Matthews, Mr. Kahrs, Mr. Monacelli, Mr. Smith, Mr. Parzybok, Mr. Nelson, Ms. Booze, Mr. Guillet, Mr. Jensen, Ms. Sciborski, Ms. Guillet and Mr. Fenneman). Three primary issues were raised by opponents at the public hearing and in open-record written submissions: (1) opposition to requiring the Applicants to construct half-street improvements, (2) concern that the development would create unreasonable on-street parking

demands, and (3) privacy issues created by residential structures proposed to be located in the northerly portion of the Subject Site. The Hearings Officer will address these concerns in the relevant approval criteria below.

ZONING CODE APPROVAL CRITERIA

Planned Developments

The Planned Development regulations provide an opportunity for innovative and creative development, while assuring that the development will complement existing neighborhood character (PCC 33.638.010).

33.665 Planned Development Review

Development standards can be modified if the development proposed is found to be compatible with the surrounding area. The applicant can propose development that would not be allowed under the base zone regulations if the proposal shows that the development meets the approval criteria in Zoning Code section 33.665.310.

33.665.300 Approval Criteria in General

The approval criteria for Planned Developments are stated below. As stated above, Planned Developments in all zones must meet the criteria in Section 33.665.310. Some proposals must also meet additional approval criteria, as follows:

- A. Proposals to modify site-related development standards must meet the criteria in Section 33.665.320.*
- B. Proposals for commercial uses in residential zones must meet the criteria in Section 33.665.330.*
- C. Proposals that do not include a land division must meet the criteria in Section 33.665.340.*

Findings: The proposed 16 unit Planned Development would not be allowed under the R5 base zone regulations, and therefore the approval criteria of PCC Section 33.665.310 (*Approval Criteria for Planned Developments in all Zones*) apply. Under A, above, criteria in PCC 33.665.320 apply because the Applicants have requested modifications to site-related development standards. Under B, the criteria in PCC 33.665.330 do not apply because no commercial uses are proposed in a residential zone. Under C, the approval criteria in PCC 33.665.340 apply because this proposal does not include a land division.

33.665.310 Approval Criteria for Planned Developments in All Zones

Configure the site and design development to:

- A. Visually integrate both the natural and built features of the site and the natural and built features of the surrounding area. Aspects to be considered include:*
 - 1. Orienting the site and development to the public realm, while limiting less active uses of the site such as parking and storage areas along the public realm;*

Findings: The proposed development meets this criterion for the following reasons:

Orientation to the street: Applicants' intention is to relate to the street with a prominent entry, a low fence and ornamental plantings along the site frontage. The residential structures within the development face the internal circulation system, to give a sense of a whole community focused around common areas. The two residential structures closest to the street will each have two entrances, one from NE Going Street and another one that faces the internal green space. Both entries on NE Going Street will be marked with a trellis similar, but smaller, than the main entry trellis. Although the pedestrian's view of the structures nearest the street is from the side, there are windows, a porch and a door which provide visual connection to the street. The front of the Subject Site will be fenced and planted with herbaceous and woody plants (ideally edible) creating a garden-like edge and the feeling of a large yard. This entry point is intended to be generous and welcoming, creating a presence on the street while also allowing the dwellings within to be clustered around common open areas.

Less Active Uses: Parking, a covered trash and recycling area and a mailbox are located at the west end of the site. There is one curb cut for a 20-foot wide driveway as required for both two-way traffic and emergency vehicle access. These uses are deliberately separated from the dwelling units in order to maximize the amount of pedestrian-oriented outdoor spaces for residents. The mailbox, used by all residents, is closest to the street, at the driveway entrance. A trash enclosure, set back approximately 25 feet from the front property line, is behind the mailboxes and it will be screened from the street and the adjacent neighbor by a 6-foot opaque fence. The parking area is set back approximately 45 feet from the front property boundary, north of the trash/recycling area. One of the two carports is placed at the south end of the parking area, so there will be a clear separation from the public realm. While parking and trash/recycling are considered to be less active uses, the fact that they are shared will increase activity.

The Hearings Officer finds that this approval criterion is met because the development will have an attractive presence on the street and less active uses have been separated from the public realm with large setbacks and plantings, which screen the area while still allowing for required visibility.

2. Preservation of natural features on the site, such as stands of trees, water features or topographical elements;

Findings: The most prominent features of the Subject Site are associated with its relatively large size. For example, there are 38 trees of various species and sizes and a grape arbor. While the Subject Site could have been developed into 16 individual lots with a house and garage on each, the Applicants have chosen to take advantage of the size by clustering development into attached units that have relatively small footprints and leaving as much of the Subject Site as useable open space as possible. Native trees include Douglas firs and a mature White oak (47-inches). There is also a large Deodar cedar (32-inches) close to the front property boundary.

Applicants are proposing to protect two groups of trees – one along the east property boundary, at the north end of the Subject Site, and the other near the north end more or less along the property line between the Subject Site's two lots. The two large trees (White oak and Deodar cedar) have been designated as "special consideration trees" meaning that they are not included on the Tree Preservation Plan, but additional efforts will be made to save them. In the original proposal, the

Root Protection Zone of the Deodar cedar will be impacted by the required half-street improvements and the White oak tree is more or less in the middle of the south grouping of dwellings. Applicants revised the proposal (Exhibits H.19 and H.19a) by moving the entry driveway two feet to the west and obtained permission from PBOT to serpentine the frontage sidewalk to better protect the Deodar cedar.

If the trees can be saved, they will be a very positive attribute because of their size and condition. The Applicants prefer to exclude them from the required list of trees to be preserved because of the possibility of damage during site development. Nevertheless, if it survives, the White oak tree will become the focal point of the community, because it is in the central common open area which eight of the units and the community building will face.

This criterion is met because the Applicants are preserving as many trees as possible and is maintaining an open feel to the development, while still meeting required density standards.

3. Inclusion of architectural features that complement positive characteristics of surrounding development, such as similar building scale and style, building materials, setbacks, and landscaping;

Findings: The Applicants have proposed a variety of architectural features to complement the most positive characteristics of surrounding development.

Surrounding neighborhood: In the immediate vicinity, housing stock is disparate in age and style, and all are single dwellings except for a garage/vehicle repair use on a 10,000 square-foot lot at the corner of NE Going Street and NE 47th Avenue. Many lots are 20,000 square feet or larger. Even lots that have been subdivided with flag lots are well over 5,000 square feet. Many houses are set back from street and have large front yards with ornamental plantings. The large house (known locally as the castle) next to the Subject Site on the west side is built in the Craftsman style. It is set well back from the street on a large 40,800 square-foot lot and appears to have three stories. In contrast, there is a one-story house across the street on a 19,600 square-foot lot. On the east side of the Subject Site there is a relatively new development (1990's) of two storey houses on lots ranging from 4,050 to 11,000 square feet. Houses in this development face NE 48th Place and not NE Going Street.

Buildings: The Applicants have stated that structures on the Subject Site will echo the Craftsman style features found on the adjacent house as well as on some of the older houses in the vicinity. These elements include steep gable roofs, lap and shake siding, window detailing and covered front porches. These elements are proposed to be used on the community building and on the carports. The Subject Site is proposed to be landscaped around the edges with a fence and plantings of shrubs and perennials, which will complement the style of surrounding residences. This criterion is met with conditions that buildings are in substantial conformance with the approved building elevations.

4. Mitigation of differences in appearance through means such as setbacks, screening, landscaping, and other design features;

Findings: The main differences in appearance between the proposed and existing development is that there will be attached dwelling units rather than the single dwellings. Also, the proposed residential units will face an internal circulation system rather than face the public street. Features that mitigate for differences in development style include preserving large trees, having only one driveway, and a clearly marked main entryway into the Subject Site. Slab-on-grade construction is proposed to minimize height. Preserving large trees will add continuity with the neighborhood and mitigate for the size of the buildings. The largest residential buildings are 2,050 square feet and the smallest less than 900 square feet, so they are not disproportionate in size compared with nearby houses. Residential buildings are separated by private space and by common areas, which will create a sense of openness characteristic of single-dwelling zones. Trees and landscaping will further knit the development together into a cohesive whole. The Subject Site plans show that all buildings have side and rear setbacks larger than the zone allows.

The parking area will be screened (*L3 standard*)¹ and set back five feet from the west property boundary. Applicants added (Exhibit H.19) to its proposal a six-foot cedar fence "along the shared property line so that "the neighbor to the west" would see that instead of the carport structures from his house's dining/living areas. This fence won't prevent kids from running between the wide open portions of the property to the north (as he had hoped), but it does provide privacy and mitigates the impact of parking structures we have proposed along the west side of our site" (Exhibit H.19).

Applicants also addressed, in modifications of their proposal (Exhibit H.19) issues raised by property owners owning property to the north of the Subject Site. Applicants propose (Exhibit H.19) to rotate Building B by 180 degrees. Applicants state (Exhibit H.19) that rotating Building B "causes the closest corner of Bldg B to the north property line to increase from 8'3" to 16'8" (13'7" to the deck) and increases the distance from the closest corner of the 'tower' element to the north property line from 25'7" to 51'." Applicants also proposed to modify their original plan by shifting Building A approximately 4 feet to the west (Exhibit H.19). Applicants stated that by shifting Building A west it "increases the distance between Bldgs A and B, which should diminish their apparent massing as viewed from the north. The setbacks to the north property line from Bldg A units would remain 11'2" for Unit 1 and 19' for Unit 2. Although neighbors would prefer for these setbacks to increase, we noted that we are proposing more than twice the required 5' setback to the north (rear) property line" (Exhibit H.19).

The Applicants will also be required to meet the T1 standard for tree planting (PCC 33.248.020). Over time, the new trees will help to soften the impact of new development. A stormwater facility will be required that will be located north of the parking area and next to the community garden so that it will not be visible from the street, although trees and other vegetation used in the swale should add to, rather than detract from, the Subject Site's appearance. This criterion is met because the development will have only one main entry and driveway, which is typical of single-dwelling

¹ Applicants provided Exhibit C.6. Exhibit C.6 indicates "landscaping screen to meet L3 standard." Applicants, in Exhibit H.19, stated that "surface parking would be screened to the L2 standard as originally proposed." Exhibit H.19a does not indicate the landscaping to the west of the carports was changed from L3 to L2 standards. The Hearings Officer found that Applicants' reference to the L2 standard to be a typographical error, not consistent with Exhibit C.6. The Hearings Officer found the Applicants' proposal for landscaping adjacent to the carports is to meet the L3 standard.

zones, and the structures are of a similar scale to many of the houses nearby. Each unit will have its own entrance and façades of the structures are broken up with typical single-dwelling house features, so they will not appear to be multi-dwelling structures. The orientation and setbacks of the proposed structures are generally consistent with the surrounding areas.

5. Minimizing potential negative effects on surrounding residential uses; and

Findings: The proposed development may be perceived as having a negative effect because it will add density to an area that is not built out to the R5 zone standards. This is however, what is intended in this zone and what the Planned Development criteria require. Another potential negative impact is spillover parking. Applicants modified their proposal to add six parking spaces (increase from 16 to 22 – including two guest parking spaces). The Hearings Officer notes that only one parking space is required and the Applicants are exceeding this standard. In addition, there is safe and convenient bicycle parking that the Applicants believe will attract people to the development who support alternative transportation modes.

Virtually every opponent who testified at the public hearing and/or submitted written evidence into the record objected to Applicants constructing a half-street improvement on NE Going Street. Applicants concurred with the opponents by objecting to the proposed condition of approval requiring a half-street improvement on NE Going. At the public hearing, a PBOT representative described a process whereby Applicants could request a “waiver” of the PBOT half-street improvement condition. Applicants, subsequent to the public hearing and during the open-record period, submitted a request for the half-street improvement “waiver.” Applicants, in their final evidentiary submission (Exhibit H.19) indicated that Applicants had “appealed, unsuccessfully, for the city to waive or adjust the requirement for a half-street improvement.”

BDS staff, in the BDS staff report (Exhibit H.3) acknowledged that PBOT’s required half-street improvements along the Subject Site frontage would change the appearance of the street, which now has no curbs, sidewalks, or street trees. PBOT staff, in an open-record submission (Exhibit H.14) commented about the proposed half-street improvements. PBOT staff stated, in relevant part, the following:

“In general, comments made at the hearing regarding PBOT’s sidewalk requirements were related to preserving the rural feel of the neighborhood and the community interactions that occur in the street. Concerns were also raised that the required sidewalk would force cars to park on the existing pavement, narrowing the travel way for cars, bicyclists, skateboarders, walkers and the like. While the neighborhood may be reluctant to see change on NE Going Street, this is a close-in neighborhood with high development potential. Of the 38 residential lots on NE Going Street between 47th and 52nd, 24 can be redeveloped with additional units, for a total of 50 additional units on this street. This provides substantial opportunity to gain sidewalk along most of the length of Going Street.

With development comes additional pedestrian, bicycle and auto traffic. Currently, about 300 vehicles travel on NE Going Street each day. The addition of the proposed 16 units will increase traffic by about 100 vehicles per day. When pedestrian and vehicular traffic

increases, so does the potential for conflict between pedestrians and autos. The purpose of the sidewalk requirement is to provide separation between autos and pedestrians in order to minimize conflict. This addresses approval criteria under Title 33.665.340.G – Transportation Impacts which states that ‘the transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include...**safety for all modes**. Additional approval criteria includes Title 33.665.340.A – Services, which requires that Planned unit Developments must be in conformance with the Policies of the Transportation Element of the Comprehensive Plan. Relevant portions of the Transportation Element are cited below.

Policy 6.22, Pedestrian Transportation: **Plan and complete a pedestrian network** that increases opportunities for walking to shopping, schools and parks, employment and transit.

Policy 6.34, NE Transportation District, Objective M: Bring substandard streets up to City standards, including construction of sidewalks, **especially in the Cully neighborhood**.

It should be noted that Policy 6.35 was added to the Transportation Element as a result of the Cully Neighborhood lobbying City Council for increased pedestrian and bicycle improvements in their neighborhood.”

The Hearings Officer finds that requiring a half-street improvement, although currently perceived as a negative effect upon the neighborhood, is in fact a positive impact. The Hearings Officer finds that requiring a half-street improvement, in this instance, will be a long-term positive impact upon the neighborhood by creating a safer transportation system; inclusion of curbs and sidewalks.

This criterion is met because the currently perceived negative impacts are primarily a product of historic conditions and the proposed development will have minimal negative impacts on the surrounding residential uses.

6. Preservation of any City-designated scenic resources; and

Findings: There are no City-designated scenic resources on the Site. Therefore, this criterion does not apply.

B. Provision of adequate open area on sites zoned RF through R 2.5 where proposed development includes attached houses, duplexes, attached duplexes or multi-dwelling structures. Open area does not include vehicle areas

Findings: Applicants requested an increase in building coverage to 28%, or 22,836 square feet, leaving 58,766 square feet on the Subject Site. The open area issue is discussed in more detail in *Modifications To Site-Related Development Standards*, later in the decision. The vehicle area is approximately 10,000 square feet, leaving 48,766 square feet of open area on the site. Each unit has a private outdoor area adjacent to it that exceeds the minimum requirement of 250 square feet for the R5 zone. In addition, each resident will have access to the common open spaces and the community garden. This criterion is met because the Subject Site has both private and common

open spaces that exceed the R5 zone requirements, and a modest requirement for increase in building area can be approved.

33.665.340 Proposals Without a Land Division

The approval criteria of this section apply to Planned Developments that do not include a land division. Due to the specific location and characteristics of the site and proposal, some of the criteria are not applicable, as summarized in the table below:

Criterion	Code Chapter / Section & Topic	Findings
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Landslide Hazard Area	The site is not within the potential landslide hazard area.
F	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site.

The applicable criteria and findings are discussed below:

A. Services

1. *The proposed use must be in conformance with the Arterial Streets Classifications and Policies of the Transportation Element of the Comprehensive Plan*

Findings: PBOT provided two responses to this proposal (Exhibits E.2 and H.14). PBOT addressed the following policies:

Arterial Streets Classifications Designation:

6.18 - Adequacy of Transportation Facilities

6.20 - Connectivity

6.22 - Pedestrian Transportation

6.23 - Bicycle Transportation

6.24 - Public Transportation

6.25, 6.26 and 6.27 - On and Off-Street Parking Management

6.28 - Travel Demand Management

6.35 - Northeast Transportation District

PBOT concluded that the proposed use is consistent with the street classification and the Transportation System Plan (TSP) policies. Those findings are summarized below. Traffic Impacts are discussed under Criterion G, below.

Northeast Going Street is classified as a Local Service Street for all modes in the *Transportation Element of the Comprehensive Plan*. The TSP states that "*Local Service Traffic Streets are intended to distribute local traffic and provide access to local residences or commercial uses.*" The proposed household living use conforms to the Local Street designation of NE Going Street in this area. The Site is 500 feet north of Prescott Street and 1/3 mile east of 42nd Avenue, both of which are designated as Neighborhood Collector Streets in the TSP.

Northeast Going Street has a 28-foot wide roadway within a 50-foot right-of-way. There are no curbs or sidewalks. For a site located along a local street, the *Pedestrian Design Guide* recommends a 15-foot pedestrian corridor that includes a 6-inch curb, 8-foot stormwater management area, a 6-foot sidewalk and a 6-inch setback to the property line. A minimum of four feet will be required at street dedication. Additional dedication may be needed, depending on specific site conditions and stormwater management design. The Applicants will be responsible for providing this right-of-way dedication and street frontage improvements using the City's public street permitting process.

Required street improvements will improve connectivity as well as conditions for pedestrians and bicycles. Transit service is available five blocks east on TriMet bus route #75, which runs along NE 42nd Avenue, and seven blocks south on bus route #72, which runs along NE Killingsworth Street.

2. *The approval criteria of Section 33.654.110, Connectivity and Location of Rights-of-Way must be met;*

Findings: There are four criteria in PCC Section 33.654.110:

- 1 - *Through streets and pedestrian connections*
2. *Dead-end streets in OS, R, C and E zones*
3. *Pedestrian connections in I zones*
4. *Alleys in all zones*

The first criterion applies to this proposal, but the other three do not apply because a dead-end street is not proposed; the Subject Site is not in an Industrial zone and no alley is proposed or required. Generally, through-streets should be provided between 200 feet and 530 feet apart and pedestrian connections no more than 330 feet apart. The east-west street network in the vicinity meets connectivity guidelines (500 feet between NE Going Street and NE Prescott Street), but the north-south oriented streets are 1300 feet apart between NE 47th Avenue and NE 52nd Avenue. However, PBOT has concluded that existing development patterns to the north and to the west along NE 47th Avenue prohibit future street connections. Pedestrian connectivity is poor because NE Going Street has no sidewalks. Pedestrian transportation will improve because required street improvements include meeting Local Service Walkway standards. This criterion is met.

3. *The standard of Section 33.651.020, Water Service Standards, must be met;*

Findings: The water standards of PCC 33.651 have been verified. The existing houses each have metered service from the 6-inch CI main in NE Going Street. The proposed development cannot use these lines except for irrigation purposes. A new service line and meters will be required and will be determined at the time of building permits. The Water Bureau will require the Applicants to consolidate the two lots making up the site into a single tax lot through the Multnomah County Tax Assessor's Office because water services many not cross separate lots or tax lots. As discussed below, the Bureau of Environmental Services (BES) and BDS Site Development have concerns with only a tax lot consolidation. With a condition of approval requiring the tax lots to be consolidated at the time of building permit submittal, this criterion can be met.

4. The standard of Section 33.652.020 Sanitary Sewer Disposal Service Standard must be met; and,

Findings: The sanitary sewer standards of PCC 33.652 have been verified (Exhibit E.3). There is an 8-inch PVC sanitary gravity sewer located in NE Going Street. There is also an 8-inch ductile iron public sanitary gravity sewer within a 15-foot wide public sewer easement located along the west boundary of NE 48th Place, a private street. The Applicants propose to make two connections to the line in NE Going Street. One will connect to the trash area, as required by BES. The other connection will serve all the housing units and the community building.

Both BES and BDS Site Development have raised a concern about the two separate lots that make up the Subject Site. Normally utilities must be set back from property lines and utilities that cross property lines must be within a shared access easement for maintenance. If, for some reason, the two lots were sold separately in the future, setbacks and easements would be required. Such a situation is improbable because everything except the dwelling units will be owned in common and condominium ownership is regulated by the State. In addition, any change in the development resulting from a change in ownership would require land use approval of a modification to the Planned Development. BDS indicated it interpreted the Zoning Code such that the two lots would be considered to be one site and cannot be treated independently.

Nevertheless, BES seeks assurance that in the event that the two tax lots were separated, there would be a mechanism in place to require setbacks, easements and maintenance agreements for the utilities systems. The simplest solution to this would be to consolidate the two lots into one through the City's Lot Consolidation review process. This would remove the property boundary between the lots, making it one. The two separate tax lots could be made into one tax lot through the County Assessor, but from the City's view, the two legal lots would remain. Lot consolidation through the City is not possible at this time because each lot is financed separately through different institutions. The Applicants have no objection to consolidating the lots when financing is in place and are confident that this can occur by the time building permits are submitted. If that does happen, BES will not require a Covenant for easements. In the event that the lots are not consolidated through a City process, BES has requested a condition of approval requiring a Covenant stating that utilities must meet setback requirements and, for those that cross property boundaries, must be placed within easements as necessary and Maintenance Agreements for each to be recorded.

Services are available and can be assured in the future with a condition of approval requiring either: lot consolidation prior to finalization of building permits or the execution of a Covenant that mandates recording of utility easements and Maintenance Agreements for shared utilities, in the event that the two lots are sold to different owners. The Covenant would also require utilities on each lot to meet setback requirements.

5. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater

Findings: There is no public storm-only sewer available to serve the Subject Site. There is a public underground injection control (UIC) system located east of the site in NE Going Street, consisting

of one inlet, one sedimentation manhole, and one infiltration sump. It receives stormwater runoff from the public right-of-way. This proposal includes UIC's so the Applicants will be required to register with DEQ as appropriate.

BES has verified that the stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater (Exhibit E.1). Applicants submitted sufficient infiltration information to demonstrate the onsite infiltration is feasible and drywells can be used. A vegetated stormwater infiltration basin and an infiltration swale are proposed to manage stormwater runoff from non-roof impervious areas (the driveway and the walkway near Building B) and from carport structures (as shown on Exhibit H.19a). Runoff from the trash/recycling area and structure will be directed to the sanitary sewer system for disposal.

Street Improvements: Required street improvements will entail construction of public stormwater management facilities within the public right-of-way. Per BES Development Engineering, the Applicants have provided enough information about the design of facilities to meet the approval criteria (see Exhibit E.1, page 4).

B. Trees. The proposal must meet the requirements of Chapter 33.630, Tree Preservation.

Findings: The regulations of PCC Chapter 33.630 preserve trees and mitigates for the loss of trees. Certain trees are exempt from the requirements of this Chapter.

The Arborist's Report (Exhibit A.4) inventories the trees within the Planned Development site, evaluates their condition and specifies Root Protection Zones. According to the Arborist Report, the total non-exempt tree diameter on the Site is 453 inches. However, this includes two Norway maples which are on the Nuisance Plant List and are exempt. Another anomaly is a 22-inch Ponderosa pine that is listed as exempt, but the condition is listed as "ok." BDS staff revised non-exempt tree diameter to be 459 inches. The Applicants are required to save at least 35% of the total diameter of non-exempt trees, which is 160 inches. Excluding Norway maples, the Applicants propose to preserve 14 trees with a total diameter of 173 inches. This is 37.7% percent of the total non-exempt tree diameter and therefore, meets the requirement. The Root Protection Zones are shown on the Tree Preservation Plan and the report includes measures to protect the trees during construction. Therefore, the proposal meets Option 1 in PCC 33.630.100 and meets this approval criterion.

The Hearings Officer also notes that Applicants have expressed a desire to retain two large trees on the Subject Site even though the trees do not meet the Root Protection Zone requirements of PCC 33.630. Applicants' arborist referred to these two trees (Tree #1-Deodar cedar and Tree #31-White oak) as "special consideration" trees (Exhibit A.4). In its final evidentiary open record submission, Applicants noted that they "moved the entry driveway 2' to the west and obtained permission from PBOT to serpentine the frontage sidewalk to better protect the large deodar cedar tree in the southwest corner of the site" (Exhibit H.19). The Hearings Officer finds, despite meeting the tree requirements of PCC 33.630.100, as indicated above, the neighborhood and Applicants would be benefitted if the "special consideration" trees were retained.

E. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.

Findings: The Subject Site is primarily flat; therefore, no significant clearing or grading will be required on the Subject Site to alter contours and drainage patterns or to make the Subject Site developable. It is anticipated that grading will primarily involve excavating for the foundations of the new houses, trenching for utilities and construction of the parking area, but will not include mass grading of the Site to alter the existing contours. There are a total of 14 trees required to be preserved near areas where new development on the Subject Site is anticipated. Some fill may be required at the northeast end of the lot, which is at the lowest elevation, to create enough depth to the sewer line. There is a group of nine existing trees in this area. If filling is required in this area, any revised grading plans submitted, at the building permit stage grading, must not occur within the Root Protection Zones (PCC 33.630) and must be consistent with the approved Tree Protection Plan (Exhibit C.5 subject to revisions on Exhibit H.19a).

The designated fencing around Root Protection Zones of the trees on the Subject Site that are required to be preserved will limit impacts from trenching and excavation. The arborist recommends leaving the fencing in place until construction is complete. For the “*special consideration*” trees, the arborist recommends further consultation with an arborist when plans for foundations, utilities and other construction impacts are known in more detail. Since these trees are not required to be preserved, this comment is a recommendation only.

The Hearings Officer finds, with conditions of approval requiring conformance with the Tree Protection Plan (Exhibit C.5 subject to revisions on Exhibit H.19a), this approval criterion will be satisfied.

Land Suitability - The Subject Site is currently in residential use and there is no record of any other use in the past. To make the lot suitable for development, the following must occur:

- Required fencing for tree preservation must be clearly indicated on building and site development permit plans, consistent with the approved Tree Protection Plan (Exhibit C.5 subject to revisions on Exhibit H.19a). Fencing must be installed to meet the requirements of PCC 33.630, Tree Preservation.
- Applicants have proposed to remove the existing houses. A permit must be finalized for demolition of all structures on the Subject Site prior to final approval of building or site development permits.
- BDS Site Development Section noted that a cesspool was on the lot at 4745 NE Going Street, which was filled when the house was connected to the public sewer. The house at 4821 has a cesspool that was not decommissioned (the property owner obtained a release) when connected to the public sewer. BDS Site Development will require final approval of a decommissioning permit for this cesspool before construction can occur on the Site.

With conditions of approval for tree protection, cesspool decommissioning, and a finalized demolition permit, the Subject Site can be considered suitable for development and this criterion can be met.

G. Transportation impacts. *The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include:*

- *street capacity and performance standards;*
- *vehicle access and loading;*
- *on-street parking impacts; the*
- *availability of transit service and facilities and connections to transit;*
- *impacts on the immediate and adjacent neighborhoods and safety for all modes.*

A Traffic Impact Study may be required by the City Engineer in order to determine if the criterion is met. In addition, mitigation measures approved by the City engineer may be included in the proposal as a way to meet this criterion.

Findings: PBOT reviewed Applicants' proposal and provided comments (Exhibits E.2 and H.14). PBOT noted that traffic impacts on the nearest signalized intersections will have little, if any, impact upon the transportation system (Exhibit E.2). Applicants submitted a Site Analysis and a Trip Generation Table (Exhibit A.5) showing that the proposed 16 units will generate 10 trips during the PM peak hour. Applicants' Site Analysis projects that 75% of the traffic travels west to the intersection of NE Going Street and NE 47th Avenue, which is a key intersection in the area. The remaining 25% travels east toward the intersection of NE Going Street and NE 52nd Avenue. Both are intersections of Local Service Streets and as such have low entering traffic volumes. Adding three to seven trips during the peak hour will have a negligible impact. Beyond these intersections, traffic is dispersed throughout the street system.

Parking Management: On-street parking will be available when the required half-street improvements are made. A maximum number of on-street spaces will be available along the Subject Site frontage because there will be only one curb cut. PBOT generally agreed with the Applicants' observation that in other Portland area cohousing projects residents share vehicles or use bicycles as much as possible. Therefore, PBOT agreed with Applicants' conclusion that the total number of vehicles used and trips generated will likely be less than for a typical development with the same number of units.

PBOT staff submitted additional written comments, during the open-record period, related to on-site and street parking (Exhibit H.14). PBOT stated, in relevant part, that:

"the applicant has revised the site plan to include 6 additional on-site parking spaces, for a total of 22 on-site spaces. Additionally, the applicant has changed the on-site garages to carports to ensure that these spaces are used for parked cars and not storage. Since the development is accessed through only one driveway, on-street parking is maximized with approximately 10 on-street spaces available for overflow parking. Parking for the proposed development appears to be adequate given the 22 on-site and 10 on-street parking spaces."

A number of opponents submitted written responses during the open-record period expressing general acceptance, including on-site and street parking elements of the proposal, if changes outlined by Applicants, in Exhibits H.19 and H.19a are incorporated into an approval (Exhibits H.15, H.16, H.17, and H.18). The Hearings Officer finds that it is the general policy of the City of Portland to discourage the construction of on-site parking spaces; reduction of paved surfaces and encouragement of occupants to use alternative methods of transportation. The Hearings Officer

finds that Applicants' proposal, as revised by Exhibits H.19 and H.19a, provides adequate on-site parking.

The Subject Site is in the *Northeast Transportation District*, which includes policies concerning bringing public streets up to City standards and using street dedications as a tool to support development. This proposal is consistent with both policies because a street dedication and street improvements will be made. As discussed in the findings for PCC 33.665.310 above, PBOT's recommendation to require a half-street improvement generated significant opposition testimony. Applicants also expressed, at the hearing, objection to requiring the half-street improvement. Applicants' processed a PBOT appeal of the half-street improvements with the appeal being denied by PBOT.

The Hearings Officer finds it appropriate to repeat the PBOT open-record comments (as set forth in the findings for PCC 33.665.310) related to the half-street improvements. PBOT stated, in relevant part in Exhibit H.14, the following:

"Virtually every opponent who testified at the public hearing and/or submitted written evidence into the record objected to Applicant constructing a half-street improvement on NE Going Street. Applicant concurred with the opponents by objecting to the proposed condition of approval requiring a half-street improvement on NE Going. At the public hearing, a PBOT representative described a process whereby Applicant could request a "waiver" of the PBOT half-street improvement condition. Applicant, subsequent to the public hearing and during the open-record period, submitted a request for the half-street improvement "waiver." Applicant, in its final evidentiary submission (Exhibit H.19) indicated that Applicant had "appealed, unsuccessfully, for the city to waive or adjust the requirement for a half-street improvement."

BDS staff, in the BDS staff report (Exhibit H.3) acknowledged that PBOT's required half-street improvements along the Subject Site frontage would change the appearance of the street, which now has no curbs, sidewalks, or street trees. PBOT staff, in an open-record submission (Exhibit H.14) commented about the proposed half-street improvements. PBOT staff stated, in relevant part, the following:

"In general, comments made at the hearing regarding PBOT's sidewalk requirements were related to preserving the rural feel of the neighborhood and the community interactions that occur in the street. Concerns were also raised that the required sidewalk would force cars to park on the existing pavement, narrowing the travel way for cars, bicyclists, skateboarders, walkers and the like. While the neighborhood may be reluctant to see change on NE Going Street, this is a close-in neighborhood with high development potential. Of the 38 residential lots on NE Going Street between 47th and 52nd, 24 can be redeveloped with additional units, for a total of 50 additional units on this street. This provides substantial opportunity to gain sidewalk along most of the length of Going Street.

With development comes additional pedestrian, bicycle and auto traffic. Currently, about 300 vehicles travel on NE Going Street each day. The addition of the proposed 16 units will increase traffic by about 100 vehicles per day. When pedestrian and vehicular traffic increases, so does the potential for conflict between pedestrians and autos. The purpose of the sidewalk requirement is to provide separation between autos and pedestrians in order to minimize conflict. This addresses approval criteria under Title 33.665.340.G –

Transportation Impacts which states that 'the transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include...**safety for all modes**. Additional approval criteria includes Title 33.665.340.A – Services, which requires that Planned unit Developments must be in conformance with the Policies of the Transportation Element of the Comprehensive Plan. Relevant portions of the Transportation Element are cited below.

Policy 6.22, Pedestrian Transportation: **Plan and complete a pedestrian network** that increases opportunities for walking to shopping, schools and parks, employment and transit.

Policy 6.34, NE Transportation District, Objective M: Bring substandard streets up to City standards, including construction of sidewalks, **especially in the Cully neighborhood**.

It should be noted that Policy 6.35 was added to the Transportation Element as a result of the Cully Neighborhood lobbying City Council for increased pedestrian and bicycle improvements in their neighborhood."

In summary, PBOT has concluded that the proposed development will not have a negative impact on pedestrian, bicycle or transit circulation in the adjacent neighborhood, nor are any safety impacts expected. The Hearings Officer concurs with PBOT's comments and finds the on-site parking and required half-street improvements necessary to satisfy this approval criterion.

33.665.320 Additional Approval Criteria for Modifications of Site-Related Development Standards

Applicants have requested two modifications:

1. Increase the maximum building coverage to 28% of the total site area.
2. Increase maximum height by 5 feet to 35 feet for the three multi-dwelling structures. The following criteria apply to modifications of site-related development standards, including parking standards.

Modifications will be approved if the following approval criteria are met.

- A. ***Better meets approval criteria.*** *The resulting development will better meet the approval criteria of Section 33.665.310, above; and*
- B. ***Purpose of the standard.*** *On balance, the proposal will be consistent with the purpose of the standards for which a modification is requested.*

Modification 1. Increase the maximum building coverage to 28% of the total site area.

- A. ***Better meets approval criteria.*** *The resulting development will better meet the approval criteria of Section 33.665.310, above*

Findings: Opposition, at the public hearing, was voiced related to Applicants' request for two modifications (Mr. Kahrs). In addition, a "petition" written submission expressed objections to the granting of the requested modifications (Exhibit H.13).

Mr. Kahrs, representing his mother (owner of residence immediately north of proposed Building "B"), indicated concerns related to his mother's loss of privacy and light with the proposed three-story Building B being located in its proposed location. The loss of privacy and light to owners of properties located to the north of the Subject Site was also raised in the "petition" (Exhibit H.13). Applicants, in their final evidentiary submission (Exhibits H.19 and H.19a), indicated Applicants' met with Mr. Kahrs and some of the neighbors signing the "petition." Applicants stated that as a result of the meeting, the proposal was modified as follows:

- *"Rotated Bldg B by 180 degrees.* This causes the distance from the closest corner of Bldg B to the north property line to increase from 8'3" to 16'8" (13'7" to deck) and increases the distance from the closest corner of the 'tower' element to the north property line from 25'7" to 51'.
- *Shifted Bldg A about 4' to the west.* This increases the distance between Buildings A and B, which should diminish their apparent massing as viewed from the north. The setbacks to the north property line from Bldg A units would remain 11'2" for Unit 1 and 19' for Unit 2. Although neighbors would prefer for these setbacks to increase, we noted that we are proposing more than twice the required 5' setback to the north (rear) property line."

Applicants stated further, in Exhibit H.19, that:

"regarding *building coverage*, we refer to p. 12 of the staff report which calculates that, if this property were being developed as a subdivision, the maximum building coverage on each lot (up to 16) would be 44%. This is significantly higher than the proposed coverage of 28%. The reason this modification request is necessary is not because our development plan would cover more of the site than would typically happen on a site this large. Rather it is because the formula used to determine maximum lot coverage for homes in the R5 zone becomes increasingly restrictive as the site area increases – such that for an extremely large site (in this case, nearly 2 acres) it forces development to have much small footprints than would be allowed through a subdivision style of development on the same site.

Regarding *building height*, we note that the only exception sought to the height limit is for 3 pop-up bedrooms in the entire project. Now that we have proposed rotating Bldg B by 180 degrees, the closest corners of these pop-ups to the nearest property lines are 34', 36' and 51'. Each building is oriented so that the pop-up portion is buffered by the 2-story portion of the building, affording privacy to neighbors from those residing in pop-up bedrooms (and vice-versa). These buildings have relatively large footprints (because they contain 3 side-by-side units), so the third-story pop-ups are consistent with the building scale. Most buildings to the east and north of the site are 2-story, which the house to west is 3+ stories in height, so these buildings will fit in well with the neighborhood. In the context of the entire site that contains large open spaces and mature trees (that will be taller than these tower elements), and where we have provided side and rear setbacks well over the 5' minimums, we believe that this development meets the purpose of the height limit standard and better meets the approval criteria."

A number of persons residing near the Subject Site submitted letters/faxes during the open-record period (Exhibits H.15, H.16, H.17, and H.18). Typical of these letters/faxes is a fax received from

Lauren Chandler, a resident of NE Alberta Court (Exhibit H.16). Ms. Chandler stated the following:

“As a neighbor to the proposed development who lives on NE Alberta Ct., I signed on to a letter expressing concern about this project. Since then, the applicant has:

- Met with me and other neighbors along NE Alberta Ct.
- Rotated Bldg B by 180 degrees
- Shifted Bldg A about 4' to the west

These changes provide greater privacy, increase setbacks, and decrease apparent massing for neighbors to the north. I believe that the applicant has done a reasonable job responding to my concerns and would support approval of this Planned Development application, as adjusted.”

The “petition” referred to by Ms. Chandler, in the quoted material above, is Exhibit H.13.

Exhibits H.15, H.17 and H.18 convey similar comments from persons residing on NE Going Street.

The Hearings Officer finds that the Planned Development approval criteria (PCC 33.665.300, PCC 33.665, 310, PCC 33.665.320 and PCC 33.665.240) encourages innovative and creative development that complements the surrounding area. In this case, Applicants have chosen to provide as much outdoor space as possible in order to compensate for the relatively small size of the individual units and to provide room for common activities. This includes a small community building that will have a kitchen and two sleeping rooms for overnight guests of residents who do not have enough room for them in their units. The Hearings Officer finds that a primary reason that the standard has to be modified is that the standard is intended for single-dwelling houses on individual lots, not multi-dwelling development on a large site. The Hearings Officer finds that allowing 28% building coverage through this Planned Development review results in more outdoor space than is typical in standard R5 development and therefore, better meets the Planned Development approval criteria. This criterion is met.

B. Purpose of the standard. *On balance, the proposal will be consistent with the purpose of the standards for which a modification is requested.*

33.110.225 Building Coverage

A. Purpose. *The building coverage standards, together with the height and setback standards control the overall bulk of structures. They are intended to assure that taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses. Additionally, the standards help define the character of the different zones by limiting the amount of buildings allowed on a site.*

Findings: The Hearings Officer finds that the proposed structures will not overwhelm adjacent houses because, generally, they are not any larger than several others on adjacent properties. The proposed units range from 900 square feet for the single units to 2,100 square feet for the three-unit structures. The large house located on the lot immediately west of the Subject Site has a footprint of 2,400 square feet and is 2½ stories high. There is a second structure behind the main house, on the lot to the west, with a footprint of approximately 1,500 square feet. Houses located immediately

east of the Subject Site have building footprints ranging from 1,500 to 2,600 square feet. The above measurements are estimates based on aerial photographs in the City's GIS system.

The Hearings Officer agrees with Applicants' comments above (Exhibit H.19) and BDS staff comments (Exhibit H.3) related to why the building coverage for a planned development on a large R5 zoned parcel requires such a restrictive building coverage ratio. The Hearings Officer finds that building coverage on surrounding lots is low because all the lots are significantly larger than is typical of the zone. The Hearings Officer finds that if the Subject Site were to be subdivided to its maximum potential density, 16 lots could be created. At an average lot size of 5,000 square feet, each lot would be allowed a maximum building coverage of 44% or approximately 2,250 square feet each. The building coverage for the entire Subject Site would be a minimum 36,000 square feet. The Applicants are proposing 22,753 square feet of building coverage. Thirteen units are clustered into two and three unit structures in order to provide more open space than would be required for the R5 zone.

The Hearings Officer finds that the proposed building coverage is in keeping with the development potential of the R5 zone and the future development potential of surrounding lots. Individual structures are dispersed on the site and are similar in size to adjacent houses. Therefore, the Hearings Officer finds that the proposed modification to building coverage is consistent with the purpose of the standard.

Modification 2. Increase the maximum building height for three three-unit structures (labeled Buildings B, C and E) from 30 feet to 35 feet.

A. Better meets approval criteria. The resulting development will better meet the approval criteria of Section 33.665.310, above

Findings: The proposed development, if the requested modifications are approved, will meet the approval criteria for Planned Developments. Creating attached units and minimizing building footprints to create more open space on the Subject Site is a primary goal of the proposed development. Allowing an additional five feet of height for a partial third storey bedroom on the three-unit structures will better meet the approval criteria, because building footprints can be minimized while increasing the size of the unit. The additional height will have minimal visual impact because (1) Applicants have rotated Building B, moving the pop-up bedroom section further away from the north property line and (2) large trees to be preserved will make the buildings appear smaller in scale and because of the design of the buildings. As noted earlier in this decision, the appearance of the proposed houses is similar to, and compliments, the materials and style of the large Craftsman-style home adjacent to the west. The façades are slightly staggered to break up the front plane of the building making the partial third storey less significant in relation to the overall composition.

B. Purpose of the standard. On balance, the proposal will be consistent with the purpose of the standards for which a modification is requested.

33.110.215 Height

A. Purpose. 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.*

Findings: The proposed modification meets the purpose of the standard for the following reasons:

Building relationships and scale: There will be eight residential structures and one small community building on the Subject Site. The Hearings Officer finds that the structures are varied in size and placement, but are laid out to allow ample private outdoor space as well as common space. The structures are modulated with overhanging eaves, include well-proportioned windows, small-scale horizontal and vertical siding and small projections and porches, all of which break up the volume of the largest structures. Each residential unit will have a separate entry and therefore break down the structure into smaller components. The groves of large fir trees to be preserved will also reduce the apparent size of the structures, both within the development and from the street and adjacent properties.

Privacy: The three structures requiring height modification are located on the east side of the Subject Site, adjacent to the private street (NE 47th Place). One of the structures, Building B, also is located adjacent to the north property line of the Subject Site. Applicants, in their final written evidentiary submission, modified their proposal by rotating Building B 180 degrees upon its axis (Exhibits H.19 and H.19a). This modification increased the "distance from the closest corner of the 'tower' element to the north property line from 25'7" to 51'." There is an existing chain link fence between the properties, which the Applicants propose to make more opaque by adding slats in the fence between the links. The grove of Douglas firs will provide screening for the structure at the rear of the Subject Site. The rear of the structure closest to NE Going Street faces the private street and the garages of the adjacent houses.

The Hearings Officer finds that this criterion is met because the structures requiring height modification provide more separation and privacy than is typical in the R5 zone, the size of the structures are not larger than adjacent houses and privacy will be provided by trees, fencing and physical separation between structures.

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.

OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been made based on other Portland City Code Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new Land Use Review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

Bureau	Code Authority	Topic	Contact Information
Water Works	Title 21	Water availability	503-823-7404 http://www.water.ci.portland.or.us/
Environmental Services	Title 17; 2008 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 http://www.bes.ci.portland.or.us/
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 http://www.fire.ci.portland.or.us/
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 http://www.trans.ci.portland.or.us/
Development Services	Titles 24 –27, Admin Rules for Private Rights of Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 http://www.bds.ci.portland.or.us.

As authorized in PCC Section 33.800.070 of the Zoning Code, conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

- The Applicants must meet the requirements of the Fire Bureau regarding addressing requirements for the driveway, installing a new hydrant, ensuring adequate hydrant flow, and, if needed, recording an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers on structures that don't meet access requirements. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

III. CONCLUSIONS

Applicants requested approval of a Planned Development to allow 16 dwelling units in eight residential structures which will contain one, two or three units. In addition to the residential structures, Applicants proposed a community recreational building, community garden, carports, and bicycle parking. The proposed development has one access driveway serving carports located

away from the residential structures on the eastern boundary of the Subject Site (revised Preliminary Site Plan – Exhibit H.19a).

The public hearing, in this case, included a number of neighboring property owners objecting to the proposal on the grounds that (1) on-site parking, as proposed, was not adequate, (2) PBOT proposed half-street improvements were not necessary and (3) the modifications requested by Applicants were not justified. Applicants met with a number of the objecting property owners and as a result, modified the proposal in an attempt to address the property owner objections. Although not completely satisfying the objecting property owners, Applicants' proposed revisions (Exhibits H.19 and Exhibit H.19a) prompted some of the property owners to withdraw their objections.

The single most often heard criticism of Applicants' proposal related to a condition of approval, recommended by PBOT, that half-street improvements be constructed along NE Going Street. Applicants also expressed the desire that half-street improvements not be a requirement; Applicants submitted a request to waive the half-street improvements with PBOT but such request was denied. The Hearings Officer, after review of comments in opposition to the half-street improvement requirements and PBOT's open-record submission (Exhibit H.14), found that requiring half-street improvements best addressed City policies and the relevant approval criteria.

Many of the persons testifying at the public hearing indicated that the number of on-site parking spots (16 at the time of the public hearing) was not sufficient to accommodate residents and guests of the proposed development. Subsequent to the public hearing, Applicants' increased the number of on-site parking spaces by six (total of 22 on-site spaces). The Hearings Officer found that 22 on-site parking spaces and 10 on street (along Subject Site) parking spaces would be adequate to meet normal parking needs at the Subject Site.

Objections to Applicants' requested modifications (building coverage and height) were primarily made by NE Alberta Court property owners/residents. Applicant, after the public hearing, met with a number of the objecting NE Alberta Court residents. In response to the comments by NE Alberta Court residents, Applicants' modified the proposal by rotating Building B (located in the northeast corner of the Subject Site – adjacent to NE Alberta Court lots) 180 degrees on its axis and also moved Building A (also along the north property line – adjacent to NE Alberta Court lots) approximately 4-feet west to create more space between Buildings A and B. Based upon letters received during the open record period, these modifications, for the most part, adequately addressed the modification requests.

Applicants also met with the property owner of the lot immediately west (adjacent to NE Going Street) and modified the proposal to include, in addition to a hedge along the common boundary, a 6-foot cedar fence. Finally, after the public hearing, Applicants met with PBOT representatives and PBOT agreed to permit Applicants to serpentine the required sidewalk improvements along NE Going Street, in the vicinity of a large Deodar cedar tree to increase the probability that such tree could survive. The Deodar cedar is mature and in a location that if it can survive, the development process will add value to the surrounding neighborhood and Applicants' development.

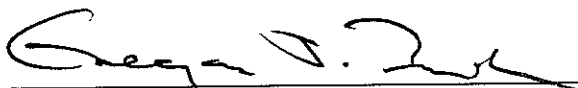
IV. DECISION

Approval of a Planned Development to allow a 16-unit multi-dwelling development in the R5 zone and modification: (1) to allow an increase in building height from 30 feet to 35 feet for the three 3-unit structures (labeled Building B, C and E) and, (2) to allow a 28% building coverage for the Site subject to the following conditions:

- A. As part of the building permit application submittal for each structure, 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 Exhibit H.19a and, to the extent consistent with Exhibit H.19a, also Exhibits C.5, C.6, C.7, C.8, C.9, and C.10. In the event of a conflict, the requirements of Exhibit H.19a shall prevail with the single exception that the landscaping screen on the west side of the Subject Site shall be installed and maintained at the L3 standard (per Exhibit C.6).
- B. Before approval of any permits, the Applicants must receive final approval of the demolition or relocation of existing structures on the Site.
- C. The Applicants shall meet the requirements of the City Engineer for right-of-way dedication and improvements along the frontage of NE Going Street:
 - 1. Prior to issuance of any permits, adequate right-of-way shall be dedicated to improve NE Going Street.
 - 2. As a condition of development, the Applicants shall construct standard half-street improvements meeting the requirements of the City Engineer along the NE Going Street frontage.
 - 3. Prior to issuance of any permits, a contract and financial guarantee must be provided to the City Engineer to ensure that the improvements will be completed.
- D. Development on the Subject Site shall be in conformance with the Tree Preservation Plan (Exhibit C.5), as modified by Exhibits H.19 and H.19a, and the Applicants' Arborist Report (Exhibit A.4). Tree protection fencing is required along the Root Protection Zone of each tree to be preserved. The fence must be a 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Encroachment into the specified Root Protection Zones may only occur under the supervision of a Certified Arborist. Planning and Zoning approval of development in the Root Protection Zones is subject to receipt of a report from an arborist, explaining that the arborist has approved the specified methods of construction and that the activities will be performed under his/her supervision.
- E. The Applicants must meet the requirements of the Fire Bureau regarding fire apparatus access, fire flow, hydrant spacing, and no parking and turning radius standards at the time of building permit application.
- F. The Applicants shall meet the requirements of the Water Bureau concerning timing of water meter purchase - specifically, water meter service cannot be purchased for the development until

the two tax lots making up the Subject Site are consolidated into one tax account through the Multnomah County Tax Assessor Office.

- G. Prior to approval of Site Development permits for construction, final approval of a decommissioning permit for the cesspool at 4821 NE Going Street will be required.
- H. If a City lot consolidation is not recorded prior to issuance of permits, the Applicants shall execute a Covenant to record a future sewer easement if one of the properties is sold separately from the other. The Covenant shall be reviewed by BDS Land Use Services, BES and the City Attorney prior to recording.



Gregory J. Frank, Hearings Officer

11/2/10

Date

Application Deemed Complete:	July 21, 2010
Report to Hearings Officer:	August 27, 2010
Decision Mailed:	November 3, 2010
Last Date to Appeal:	4:30 p.m., November 17, 2010
Effective Date (if no appeal):	November 18, 2010

Decision may be recorded on this date.

Conditions of Approval. 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 applicants 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.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201 (823-7526. Until 3:00 p.m., Tuesday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., and on Mondays, the appeal must be submitted at the Reception Desk on the 5th Floor. **An appeal fee of \$3,905.50 will be charged (one-half of the application**

fee for this case). Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicants. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chairperson or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

BDS may also grant fee waivers to low income applicants appealing a land use decision on their primary residence that they own in whole or in part. In addition, an appeal fee may be waived for a low-income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Individuals requesting fee waivers must submit documentation certifying their annual gross income and household size (copies of tax returns or documentation of public assistance is acceptable). Fee waivers for low-income individuals must be approved prior to filing your appeal; please allow three working days for fee waiver approval.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicants for recording the documents associated with their final land use decision.

- A building or zoning permit will be issued only after the final decision is recorded.

The applicants, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents, please call the Bureau of Development
Services Land Use Services Division at 503-823-0625.

Expiration of this planned development approval. This approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun. If the approved project includes more than one component, such as multiple buildings, or multiple phases that will be broken into separate building permit applications, at least one permit must be obtained within 3 years of the date of this decision, and all permits must be obtained within ten years of the date of this decision. After that ten-year period, a new land use review will be required before permits will be issued for any remaining project components that have not yet been permitted, subject to the Zoning Code in effect at that time.

Applying for your 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. Applicants' Statement
 - 1. Narrative addressing approval criteria
 - 2. Neighborhood contact verification
 - 3. Preliminary Storm Drainage Report
 - 4. Arborist Report
 - 5. Transportation Analysis
 - 6. Additional Stormwater Information – Presumptive Approach
 - 7. Photographs of vicinity
 - 8. 120-day waiver
- B. Zoning Map (**attached**)
- C. Plans and Drawings
 - 1. Preliminary Site Plan, dated 7/15/10 (**attached**)
 - 2. Existing conditions
 - 3. Grading Plan
 - 4. Utilities Plan
 - 5. Tree Preservation Plan (**attached**)
 - 6. Preliminary Landscape Plan, dated 7/15/10 (**attached**)
 - 7. Building elevations – 3-unit structures (Buildings B, C and E), dated 4/14/10 (**attached**)
 - 8. Building elevations – 2-unit structures (Buildings A and D), dated 4/14/10 (**attached**)
 - 9. Building elevations – single units (Buildings E, G, H), dated 4/14/10 (**attached**)
 - 10. Building elevations – garages and community building, dated 7/15/10 (**attached**)
 - 11. Perspective sketch
- D. Notification information
 - 1. Request for response
 - 2. Posting letter sent to Applicants
 - 3. Notice to be posted
 - 4. Applicants' statement certifying posting
 - 5. Mailing list
 - 6. Mailed notice
- E. Agency Responses
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of Bureau of Development Services
 - 6. Life Safety
 - 7. Bureau of Parks, Forestry Division
- F. Letters: None
- G. Other
 - 1. Original LUR Application
 - 2. Pre-application Notes

H. Received in the Hearings Office

1. 120-day extension - Donaldson, Sue
2. Hearing Notice - Donaldson, Sue
3. Staff Report - Donaldson, Sue
4. PowerPoint - Donaldson, Sue
5. Letter (2 pages) - Matthews, Carolyn
6. Written testimony - Smith, Chet
7. Letter - Conkle, Bruce
8. Letter - Nelson, Bruce
9. Letter (also signed by Casey Whisler) - Leddy, Erin
10. Letter - Whisler, Casey
11. Letter - Hansen, Barbara
12. 9/8/10 memo with attachment - Donaldson, Sue
 - a. 9/8/10 E-mail, Spevak to Donaldson - Donaldson, Sue
 - b. Map - Donaldson, Sue
13. Petition - Kahrs, Katherine S.
14. 10/7/10 Memo from Wendy Cawley, PBOT - Donaldson, Sue
15. Letter also signed by Carolyn Matthews - Nelson, Bruce
16. Letter - Chandler, Lauren
17. Letter - Fenneman, Brent
18. Letter with attachment - Parzybok, Ben
 - a. Petition - Parzybok, Ben
19. Letter dated 10/13/10 with attached plans - Spevak, Eli
 - a. 11" x 17" Revised Preliminary Site Plan - Spevak, Eli (attached)
 - b. Full-size Revised Preliminary Site Plan - Spevak, Eli
20. Letter - Spevak, Eli
21. Letter - Spevak, Eli

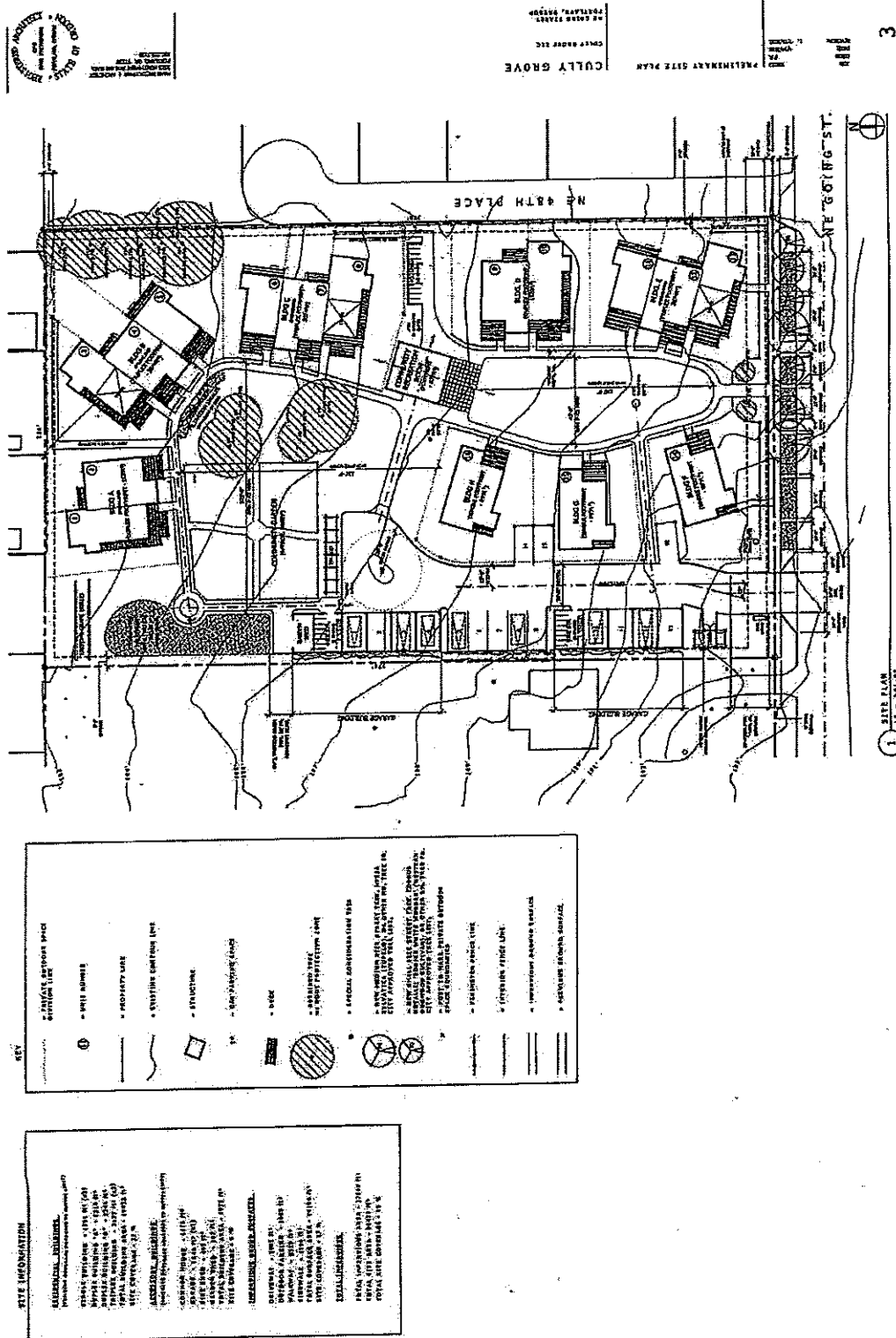


ZONING

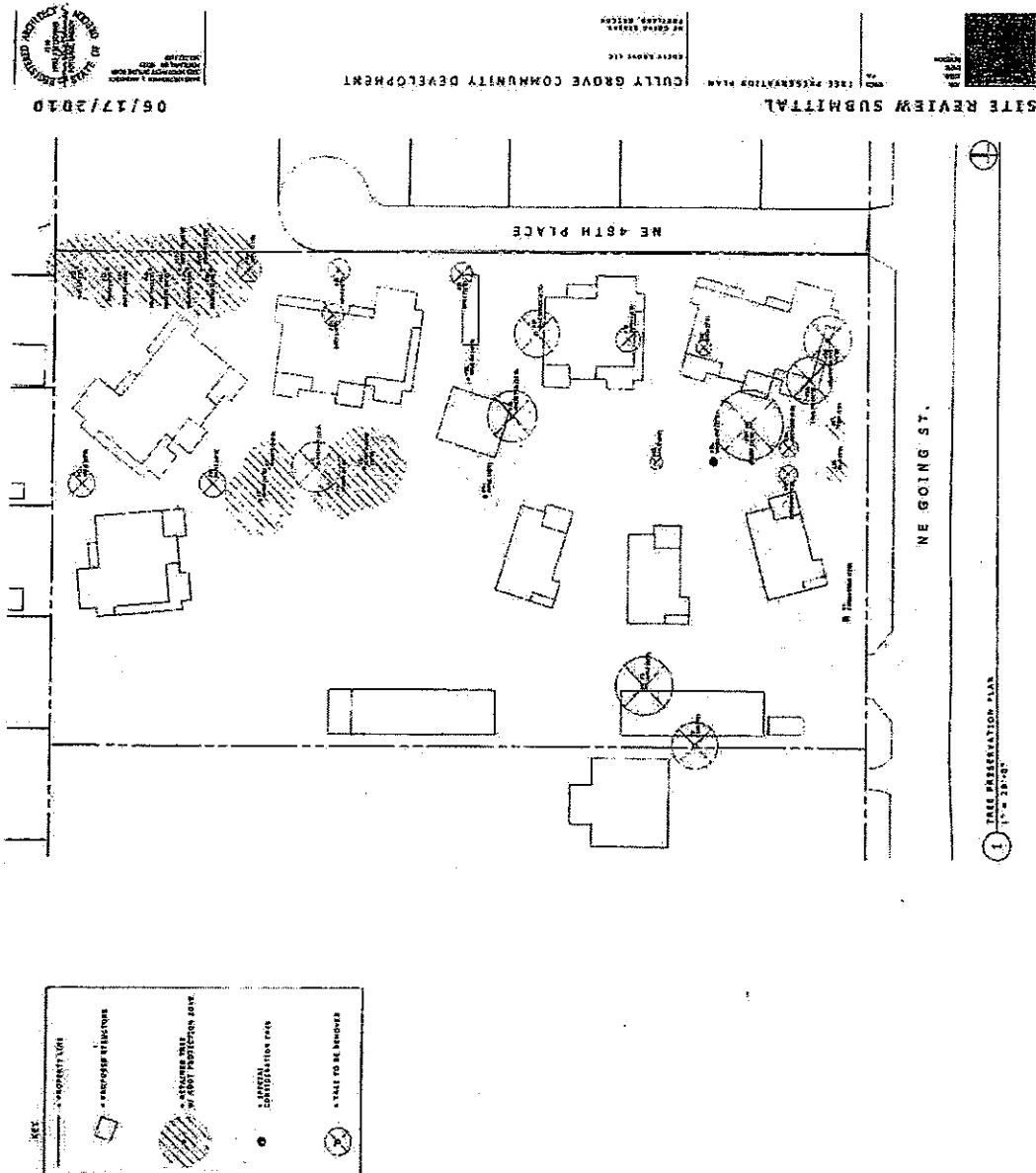
 Site



File No.	LU 10-148328 PD
1/4 Section	2535
Scale	1 inch = 200 feet
State Id	1N2E19BD 8000
Exhibit	B (Jun 23, 2010)



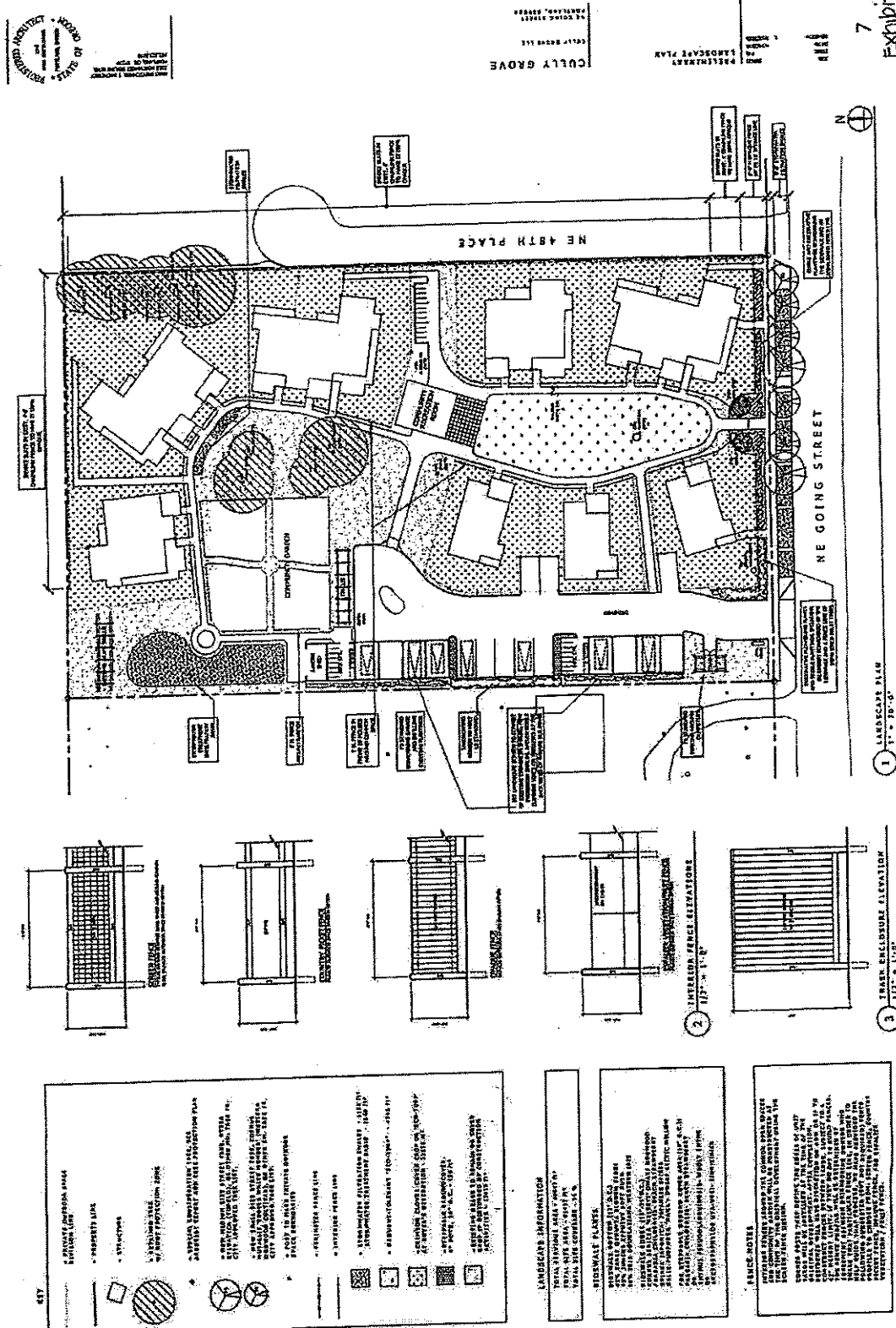
3
Exhibit C.1



Tree Preservation
 LU10-148328 PD

LU 10-148328 PD
 EXHIBIT # C.5

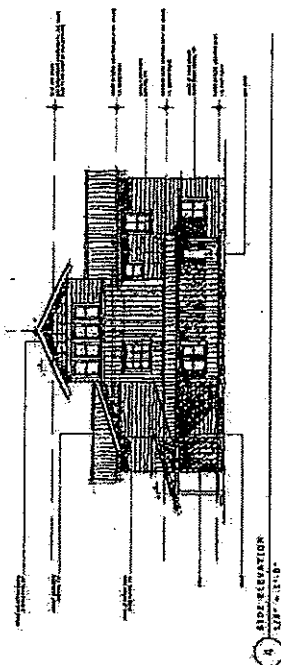
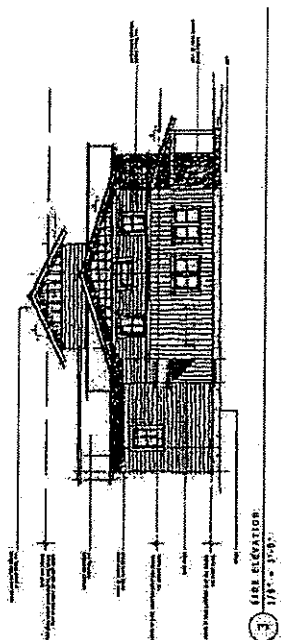
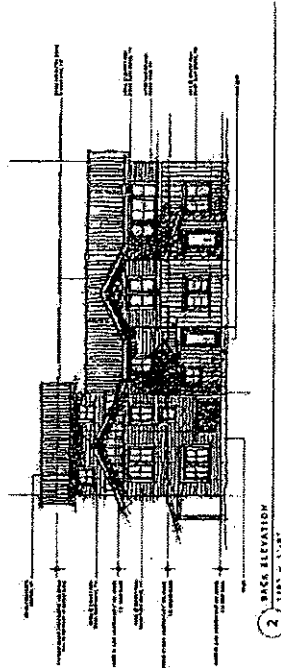
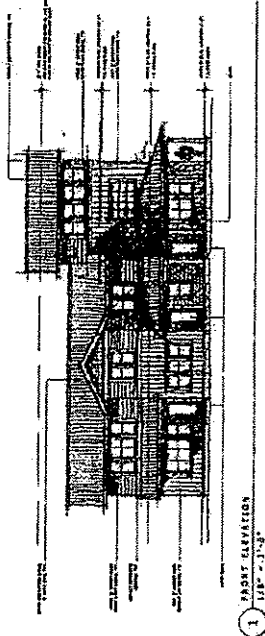
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Exhibit C.6



CULLY GROVE COMMUNITY DEVELOPMENT

SITE REVIEW SUBMITTAL

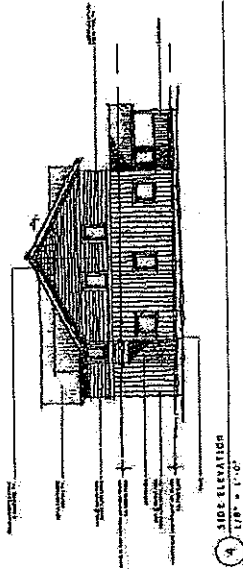
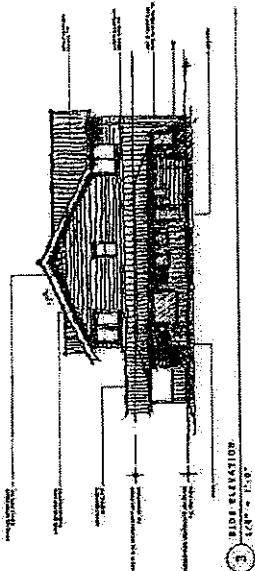
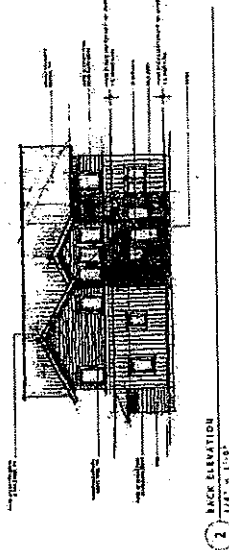
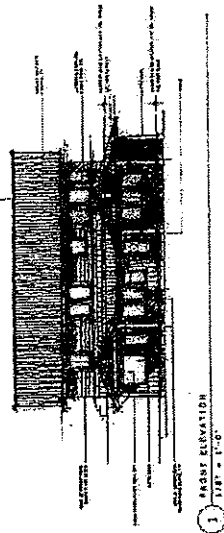
DATE	
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ADDRESS	
CITY	
STATE	
ZIP	
PHONE	
FAX	
E-MAIL	
WEBSITE	
REMARKS	
REVISIONS	



Attached
LU 10-148328 PD
EXHIBIT # C.7



CULLY GROVE COMMUNITY DEVELOPMENT



LU 10-148328 PD

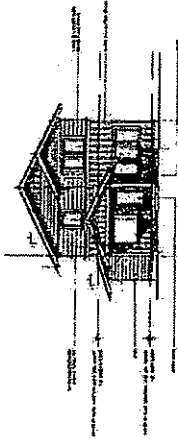
Double attached

LU 10-148328 PD
 EXHIBIT # C-8

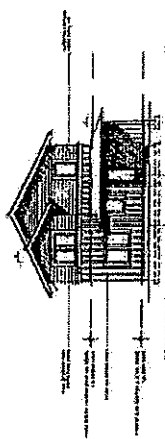


COLLY GROVE COMMUNITY DEVELOPMENT
 10000 WOODBURN LANE
 CULY GROVE, MARYLAND 21032
 410-326-1100
 CULY GROVE, INC.

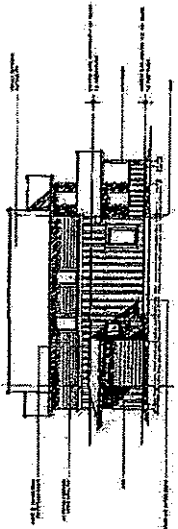
SITE REVIEW SUBMITTAL
 PRELIMINARY
 SINGLE ELEVATIONS
 REGION
 DATE



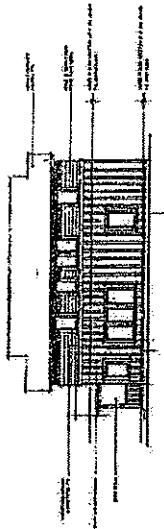
1 FRONT ELEVATION
 17'6" x 31'6"



2 BACK ELEVATION
 17'6" x 31'6"



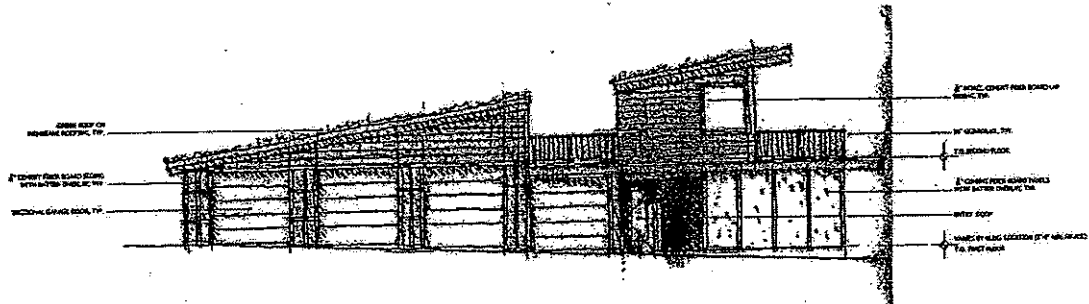
3 SIDE ELEVATION
 17'6" x 31'6"



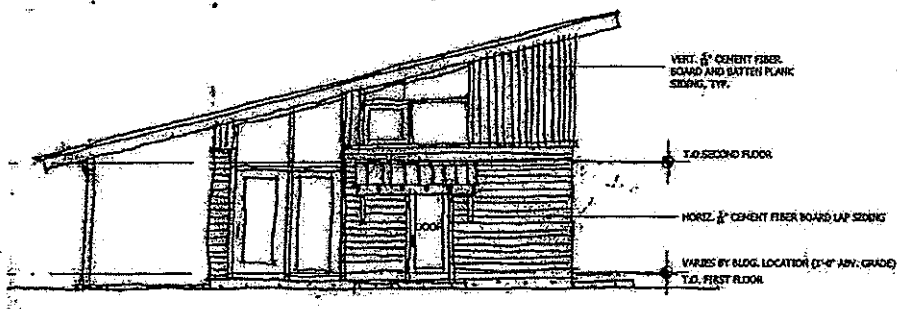
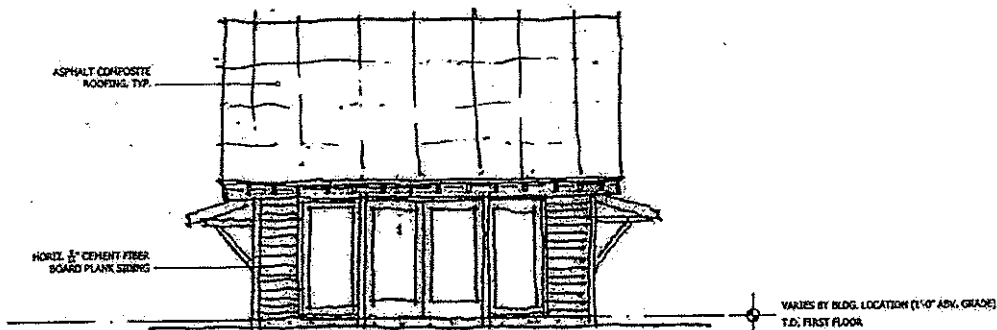
4 OTHER SIDE ELEVATION
 17'6" x 31'6"

Singles

LU 10-148328 PD
 EXHIBIT # C.9



3 GARAGE - FRONT ELEVATION
 1/8" = 1'-0"



2 COMMUNITY RECREATION BUILDING - SIDE ELEVATION

LU 10-148328 PD
 EXHIBIT # C.10

