



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

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Date: July 11, 2011
To: Interested Person
From: Susan McKinney, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 11-145458 AD

GENERAL INFORMATION

Owners: Joshua and Beryl Bar-Lev
775 SE Forest Way #666
Pullman, Wa 99163-5599

Applicant: Carrie Strickland
Works Partnership Architecture
524 E Burnside St, Suite 320
Portland OR, 97214

Site Address: 800 NE 53RD AVE
Legal Description: LOT G TL 1600, JENNE TR
Tax Account No.: R428000810
State ID No.: 1N2E31AC 01600
Quarter Section: 2936
Neighborhood: Rose City Park, contact Ed Gorman at 503-425-1611.
Business District: Hollywood Boosters, contact Greg Mistell at 503-459-4887.
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.
Zoning: R5 – Residential 5,000
Case Type: AD - Adjustment
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant is requesting an adjustment to allow a portion of a proposed house to extend 2 feet into the required 5-foot side setback along the north property line. The proposed dwelling unit is sited to accommodate existing site features including a curb cut and driveway, a large cedar tree, and steps leading from the sidewalk to the proposed main entrance. In order to take advantage of these features a portion of the house is pushed farther north than is normally allowed. As such the applicant is seeking approval of an Adjustment to allow approximately 15 feet of the 2nd story to locate 3 feet from the north property line.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are: Approval Criteria for Adjustments – 33.805.040 A-F.

ANALYSIS

Site and Vicinity: The site currently contains approximately 8,000 square feet of site area, one small dwelling unit situated at the back of the lot and several trees and shrubs. This dwelling unit will be demolished and some of the trees removed prior to new construction. An accessory dwelling unit may be proposed at a later date but is not part of this review. The existing driveway is approximately 125' long running almost the entire length of the southern boundary of the property. A large 30-inch Deodora Cedar tree is located approximately 5 feet north of the driveway and 68 feet from the front property line. A single dwelling unit is located on the neighboring property to the north. The property abuts the R1, multi-dwelling zone to the south and east. Multi-dwelling development is located on these adjacent lots.

Zoning:

The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The property is located in the **Residential 5,000 (R5) zone**. The R5 zone is a high density single-dwelling zone. The R5 zone allows attached and detached single-dwelling structures and duplexes.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **June 14, 2011**. The following Bureaus have responded with no issues or concerns. Agencies that provided information relevant to the building permit are shown with an exhibit number below:

- Bureau of Environmental Services (Exhibit E.1)
- Portland Bureau of Transportation
- Water Bureau (Exhibit E.3)
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division
- Life Safety Section of BDS

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 14, 2011. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA**Title 33.805.010 Purpose (Adjustments)**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

Title 33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. have been met.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The purposes of the setback standards are to: maintain light, air, separation for fire protection, and access for fire fighting; reflect the general building scale and placement of houses in the city's neighborhoods; promote a reasonable physical relationship between residences; promote options for privacy for neighboring properties; require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards; provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.

The proposal to reduce the side setback of the second story of a new house for approximately 15 feet along the north property line would have no impact on light, air, separation for fire protection, and access for fire fighting as the existing dwelling unit on the neighboring property is set back approximately 60 feet from the front property line. The proposed house is approximately 1,900 square feet leaving plenty of open space on this 8,000 square foot lot. This reflects the general building scale of the single family dwelling units in this area. The proposed setback reduction would have no negative impact on the physical relationship between either the multi-dwelling or single dwelling development that make up this neighborhood. The percentage of encroachment into the setback is minimal in relation to the length of the property line (approximately 15%). The building façade area that encroaches into the setback contains no windows, so privacy will not be impacted. Even if there were windows in that façade, privacy for neighboring properties would not change since there are no buildings that parallel the proposed dwelling either to the north.

The dwelling will meet the required 10 foot front building setback thus maintaining an open, visually pleasing front yard. The setback Adjustment would have no impact on the room available for a car to park in front of the garage as the garage will face the side/south, property line rather than the front/west property line.

For these reasons, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The proposal to reduce the side building setback will not detract from the livability or appearance of the residential area. In fact a new dwelling at this location will improve the overall appearance of the neighborhood by infilling what appears from the street to be a vacant lot. In addition the applicant is proposing to preserve the existing 30" Deodora Cedar. A report from a certified arborist (Exhibit G.3) was submitted with the application. The report provides requirements to ensure the continued viability of the tree including root pruning and installing root protection fencing. According to the arborist's report the recommended root protection zone is typically 1 foot for every inch of tree diameter. However, a corner of the foundation will be 11 feet from the tree trunk, which will encroach into the desired root protection area. The arborist report supports a decreased root protection zone at this location with managed excavation and hand pruning the roots. A condition of approval is required to ensure that this tree is preserved in accordance with the arborist's tree preservation requirements. Preserving this tree will help maintain the overall appearance and character of the neighborhood.

Since this tree will be preserved in accordance with the recommendations of the arborist report it can count toward meeting the T1 standards at the time of development.

For these reasons, and with the condition that the applicant install the required root protection

fencing in accordance with arborist report (Exhibit G.3) and tree preservation plan (Exhibit G.4), this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is requested. This criterion is not applicable.

- D.** City-designated scenic resources and historic resources are preserved; and

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot. There are no such resources present on the site. Therefore, this criterion is not applicable.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: As shown in the previous findings, no impacts will occur by reducing the side setback from 5 feet to 3 feet for a portion of the second story of the proposed dwelling. There are no dwelling units adjacent to the proposed dwelling and the existing 30" Cedar tree will be preserved.

For these reasons, this criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: The site is not within an environmental zone, which is designated on the zoning map by either a "c" or "p" overlay. Therefore, this criterion is not applicable.

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.

CONCLUSIONS

All of the applicable approval criteria have been met. The applicant's proposal to adjust the north side setback to allow the second story of the house to be reduced from 5 to 3, for a length of approximately 15 feet, does not present any negative impacts on adjacent properties or the neighborhood. Preserving the 30" Deodora Cedar will help maintain the overall appearance and character of the neighborhood. The Adjustment merits approval.

ADMINISTRATIVE DECISION

Approval of an Adjustment to 33.110.220 to reduce the second story, north side building setback from 5 feet to 3 for an approximately 15-foot length in accordance with Exhibits C.1-C.2, signed and dated July 7, 2011.

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 and C-2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 11-145458 AD.

- B. Root protection fencing must be installed according to the arborist report, Exhibit G.3, and Tree Preservation Plan, Exhibit G.4 prior to any site disturbance, and must remain in place until construction is completed.
- C. Root pruning must be completed by a certified arborist or landscape architect. The pruning must be completed prior to clearing and grading the site.

Staff Planner: Mieke Keenan

Decision rendered by:  **on July 7, 2011**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 11, 2011

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on June 3, 2011, and was determined to be complete on **June 10, 2011**.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on June 3, 2011.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. **The 120 days will expire on: October 8, 2011.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, 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 applicant 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.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on July 25, 2011** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development

Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

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 applicant for recording the documents associated with their final land use decision.

- *Unless appealed,* The final decision may be recorded on or after **June 26, 2011 – (the day following the last day to appeal)**. A building or zoning permit will be issued only after the final decision is recorded.

The applicant, 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 approval. An 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.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a

new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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:

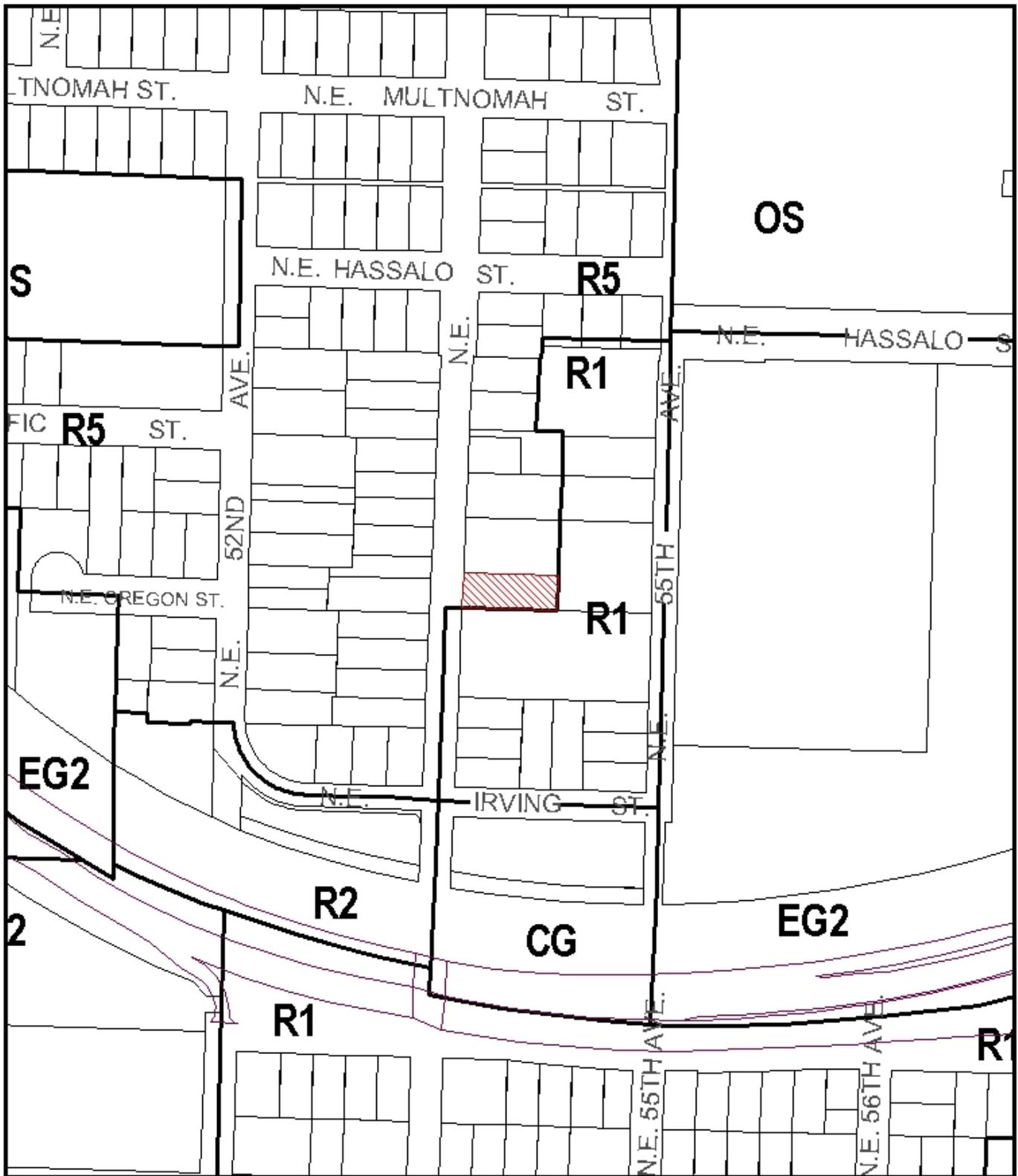
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. North, South, East and West Elevations (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. 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 Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety Section of BDS
- F. Correspondence: None
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Arborist Report
 - 4. Tree Preservation Plan (attached)

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).

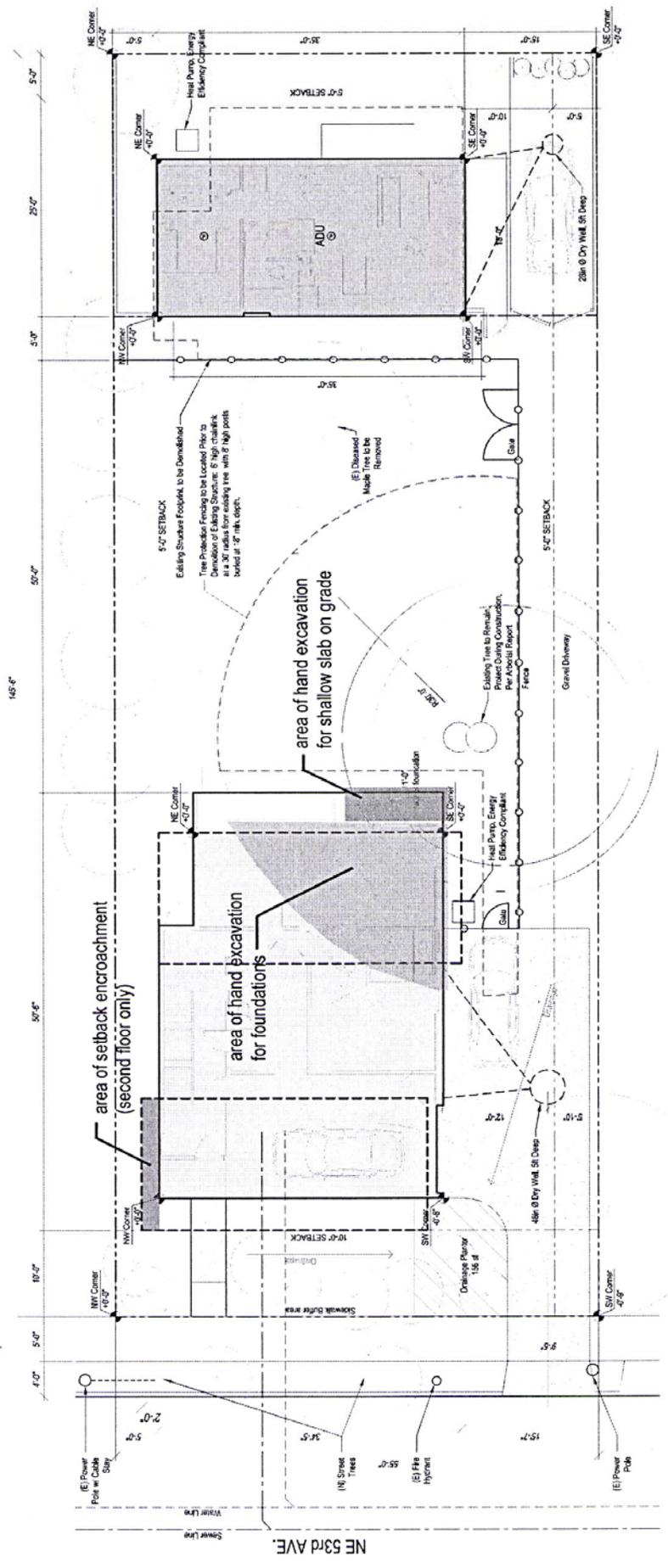


ZONING

 Site



File No.	<u>LU 11-145458 AD</u>
1/4 Section	<u>2936</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N2E31AC 1600</u>
Exhibit	<u>B (Jun 10,2011)</u>



1 Site Plan - 800 NE 53rd Avenue
a1.01
1" = 20'0"

Exhibit
C-1

This report is regarding the lot south of NE Hassalo St. 800 NE 53rd Ave and is for the purposes of providing construction management recommendations to protect the tree on the property during new home construction.

My recommendation is based on information and measurements provided to me by Carrie Strickland, applicant, and my walking of the property and inspecting the tree.

ID #1 Deodor Cedar, *Cedrus deodora* D.B.H. = 30"

The generally recommended root protect zone for this tree would be 1 foot for every inch of diameter. For this tree that would be 30 feet or 706 square feet.

The current plans for the home bring the corner of the foundation within 11 feet of the tree trunk, however, with it being the corner of the foundation, approximately 28 - 35 (4 - 5%) square feet of the root protection zone are affected. It is my opinion that with managed excavation and hand pruning of the roots that the impact to the tree will be minimal.

I advise that tree protection fencing be installed around the root zone of the tree before construction and maintained through completion per recommended standards.

Where the corner of the foundation does encroach into the protection zone, excavation should be performed with an air spade and the roots hand pruned.

Prepared by Cory Davis

I.S.A. Certified Arborist #PN5764A

Arborist's Report

CASE NO. LU 11-145458 AD

EXHIBIT G.3

