



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

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Portland, Oregon 97201  
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Fax 503-823-5630  
TTY 503-823-6868  
[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** February 7, 2011  
**To:** Interested Person  
**From:** Mark Bello, Land Use Services  
503-823-7810 / [mark.bello@ci.portland.or.us](mailto:mark.bello@ci.portland.or.us)

## **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 10-201878 AD SETBACK ADJUSTMENT REQUEST**

#### **GENERAL INFORMATION**

**Applicant**

Frederick G Shervey  
PO Box 86320  
Portland, OR 97286-0320

Donna Keough  
508 W 44th St  
Vancouver, Wa 98660

**Site Address:** 4148 SE 124TH AVE

**Legal Description:** LOT 8, WOODHAVEN

**Tax Account No.:** R925200400

**State ID No.:** 1S2E11CC 01409

**Quarter Section:** 3443

**Neighborhood:** Powellhurst-Gilbert, contact Mark White at 503-761-0222.

**Business District:** None

**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

**Plan District:** Johnson Creek Basin

**Zoning:** R2a Residential 2,000 with "a" alternative design density overlay zone

**Case Type:** AD Adjustment

**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

**Proposal:**

In order to construct a new home, the applicant proposes to reduce the front setback on SE Boise from 10 ft. to 5 ft. and the rear setback (opposite the front setback) from a minimum of 5 ft. to 3 ft. as required by Section 33.120.220 of the Portland zoning code. The proposed new house will orient to SE 124<sup>th</sup> Avenue.

## ANALYSIS

**Site:** The site is a corner lot in the Woodhaven subdivision at the northeast corner of SE 124<sup>th</sup> Avenue and SE Boise. The house was demolished prior to land division approval in 2009. The site has approximately 46.01 feet of frontage on SE Boise and 51.47 feet of frontage along SE 124<sup>th</sup> Avenue. The site is flat. Right-of-way improvements have been constructed as part of the build-out of the subdivision. A 5-ft. high, 8-ft. wide subdivision entrance monument sign has been placed in the southwest corner of the site, adjacent to the public sidewalk.

To the east, Boise Street Condominium is similarly designed with houses accessing a driveway along the west property line. The housing is separated from the front yard by a low masonry wall, about 30 inches high, to which the entrance sign has been attached.

The areas north and west of the site are primarily multi-dwelling housing types and areas to the south single-dwelling residential except areas along SE 122<sup>nd</sup> Avenue.

**Zoning:** The Residential 2,000 (R2) zone is a low density multi-dwelling zone. It allows approximately 21.8 dwelling units per acre. Density may be as high as 32 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one to three story buildings, but at a slightly larger amount of building coverage than the R3 zone. The major types of new development will be duplexes, townhouses, rowhouses and garden apartments. These housing types are intended to be compatible with adjacent houses. Generally, R2 zoning will be applied near Major City Traffic Streets, Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets. Newly created lots in the R2 zone must be at least 4,000 square feet in area for multi-dwelling development, 1,600 square feet for development with attached or detached houses, and 2,000 square feet for development with duplexes. Minimum lot width and depth standards may apply. The regulations of the 'a' overlay zone do not apply to this review.

The Alternative Design Density "a" overlay is in place to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements.

The Johnson Creek Basin Plan District provides for the safe, orderly, and efficient development of lands which are subject to various physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

**Land Use History:** City records indicate preliminary plan approval in 2006 (LU 06-18814). In 2009, the land division plan was amended (LU 09160148 AS).

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **January 6, 2011**. The following Bureaus have responded with no issues or concerns:

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 BDS
6. Bureau of Parks, Forestry Division

The Bureau of Development Services, Life Safety Plans Examiner, has no objections to this application and notes that the eave to the garage near the north property line will meet building code requirements as long as the eave is no greater than 12" deep.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on January 6, 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**

**33.805.010 Purpose of 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 providing certainty and rapid processing for land use applications.

### **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. stated below, have been met.

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

*Purpose:* *The building setback regulations serve several purposes:*

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They 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*
- *They 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.*

**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

**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

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

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

**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 AND CONCLUSIONS**

The applicants' proposal meets all of the relevant approval criteria:

The proposed house will be set back 5 feet from SE Boise, 10 feet from SE 124<sup>th</sup> Avenue, 3 feet from the north property line and 11 feet from the east property line. The house is on the northeast corner of the intersection. One adjustment request asks for a reduced setback from SE Boise Street. Properties to the south are separated by SE Boise Street, a 60-ft. wide right-of-way. Therefore, there will be no impact to light, air, and privacy to residents to the south. The Fire Bureau has no objection to the proposal.

The other setback adjustment request relates to the north property line. In the R2 zone, detached houses may have their side setbacks reduced to 3 feet where the lot is at least 25 feet wide (Section 33.120.270). The site is 51.47 ft. wide and 46.01 deep. Per the zoning code definition of corner lot, and although the house will orient to SE 124<sup>th</sup> Avenue as other houses in the new subdivision will, the north property line becomes a rear property line, not a side property line. However, if the lot were 5 ft. narrower in a north-south direction, the north property line would become the side property line. In that situation, the zoning code allows a 3 ft. setback. Also, the 3 ft. setback between house and north property line will match the side setbacks of the houses to the north.

Like the property to the east, the house will be relatively close to the sidewalk along SE Boise with a subdivision sign marking the entrance to the subdivision. The subdivision sign to the east is incorporated into a low wall and does not interrupt the connection across the front lawn to the residences along the driveway. The Woodhaven entrance sign was built prior to this adjustment request and is at an angle to the sidewalks intersecting at the corner. To reduce the impact of the monument sign, the applicant will be reducing the height of the monument sign to 30 inches (See Exhibit A and condition of approval B). This will prevent the front lawn from being divided by a barrier. It has the added advantage that the monument sign will not block the view into and out of the house from the street.

Two setback adjustments are requested to the front (south) and rear (north) required setback. The house is on a corner and the setbacks differ functionally and visually: the front setback depth affects the public realm along the SE Boise setback. The rear property line setback is perceived as a side yard and is similar to other side yards to the north along SE 124<sup>th</sup> Avenue. So, there is no cumulative effect from reducing the minimum front and rear setback. There are no scenic or historic resources on the site; no impacts have been identified and the site is not located in an environmental zone, so the criteria related to these issues do not apply. Therefore, because all of the relevant approval criteria are met, the proposal can be approved, in substantial compliance with the proposed site plan.

## **ADMINISTRATIVE DECISION**

Approval of a reduction of the front setback (33.120.220) on SE Boise from a minimum of 10 ft. to 5 ft. and the rear setback (opposite the front setback) from a minimum of 5 ft. to 3 ft., per the approved site plans, Exhibits C-1 through C-2, signed and dated February 4, 2011, subject to the following conditions:

- 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-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 10-201878 AD."
- B. The monument sign shall be reduced to a maximum height of 30 inches.

**Staff Planner: Mark Bello**



**Decision rendered by:** \_\_\_\_\_ **on February 4, 2011**

By authority of the Director of the Bureau of Development Services

**Decision mailed: February 7, 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 December 17, 2010, and was determined to be complete on December 30, 2010.

*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 December 17, 2010.

*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. Unless further extended by the applicant, **the 120 days will expire on: April 29, 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 February 22, 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. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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](http://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 **February 23, 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:

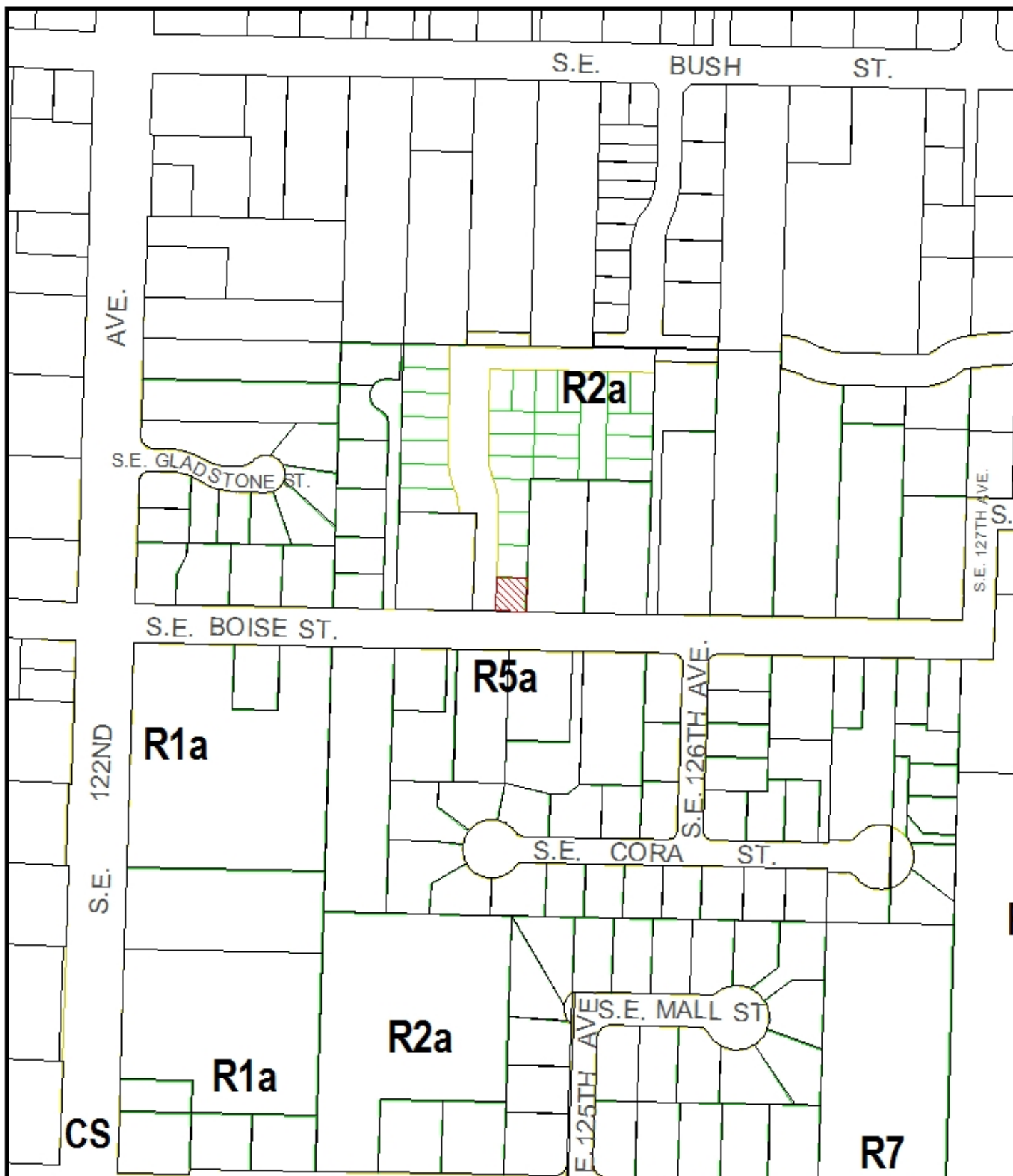
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. 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 Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
- F. Correspondence: (none)
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research

**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

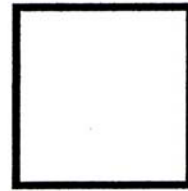


NORTH

This site lies within the:  
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	LU 10-201878 AD
1/4 Section	3443
Scale	1 inch = 200 feet
State_Id	1S2E11CC 1409
Exhibit	B (Jan 04, 2011)





P.O. BOX 86320, PORTLAND, ORE. 97286 cell: 503-705-0708 fax: 503-658-0425

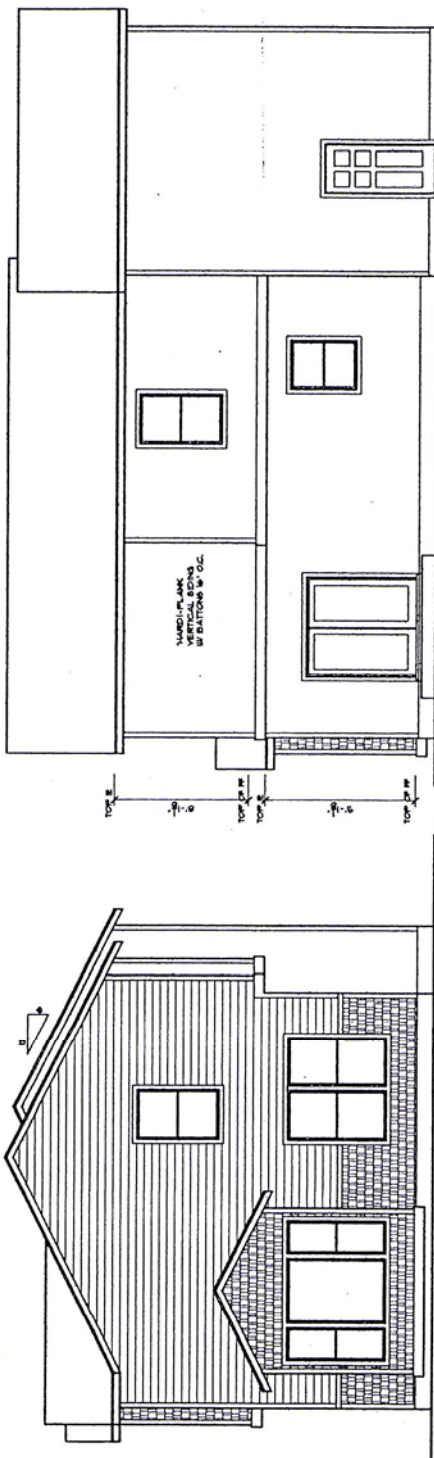
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to the reviews requested and i  
and zoning requirements to

NO. DATE DESCRIPTION BY	
REVISION	
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APPROVED	

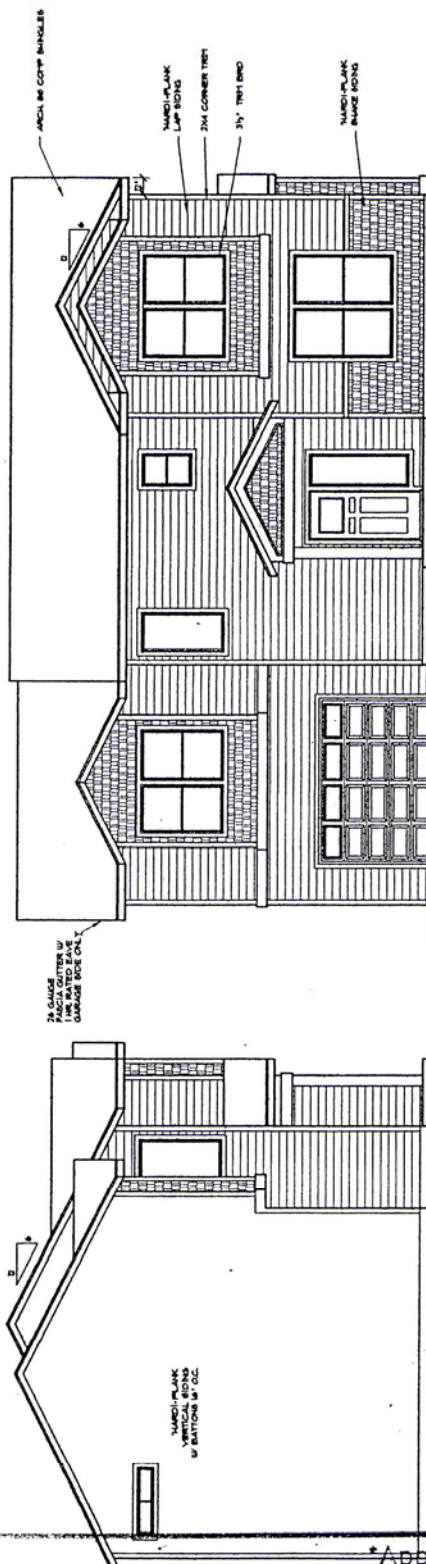


FREDERICK G. SHERVEY, CONTRACTOR  
 P.O. BOX 84330, PORTLAND, ORE. 97286 CALL 503-705-0708 FAX 503-658-0426



REAR ELEVATION  
 1/4"=1'-0"

RIGHT ELEVATION  
 1/4"=1'-0"



FRONT ELEVATION  
 1/4"=1'-0"

LEFT ELEVATION  
 1/4"=1'-0"

APPROVAL OF ADJUSTMENTS TO NORTH & SOUTH SETBACKS

CASE NO. 10-2018784  
 EXHIBIT C2

City of Portland - Bureau of Development Services

Approved: *MS* Date: 2/4/11

This drawing is for informational purposes only to the reviews requested and is subject to additional zoning requirements may apply.