



CITY OF PORTLAND  
Bureau of Development Services  
1900 SW Fourth Avenue, Suite 5000  
Portland, OR 97201 **P524**  
**Decision on Land Use Appeal**  
**Case # LU 10-107682 AD**

16

**Return Service Requested**



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

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Portland, Oregon 97201  
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**NOTICE OF FINAL  
FINDINGS, CONCLUSIONS AND DECISION  
OF THE ADJUSTMENT COMMITTEE  
ON AN  
APPEALED ADMINISTRATIVE DECISION  
(Type II Process)**

**CASE FILE: LU 10-107682 AD  
LOCATION: 7910 N Denver Avenue**

The administrative decision for this case, published on May 18, 2010, was appealed to the Adjustment Committee by the Kenton Neighborhood Association. A public hearing was held on July 6, 2010. The original administrative analysis, findings and conclusions were adopted by the Adjustment Committee. The administrative decision can be found on line at:

<http://www.portland.com/bds/index.cfm?c-36652>

**GENERAL INFORMATION**

**Applicant:** James A Schindler (owner of record)  
1935 N Winchell St  
Portland, OR 97217-6562  
  
Kimco Properties, LTD  
PO Box 1540  
Sandy, OR 97055

**Representative:** Lisa Barker, LMB Permit Services  
307 NW 16th Avenue  
Battleground WA 98604

**Appellant:** Steven M. Rupert  
Land Use Chair, Kenton Neighborhood Assn.  
PO Box 17646  
Portland OR 97217

**BDS Staff Representative:** Kathleen Stokes, City Planner II

**Public Hearing:** The public hearing was held on July 6, 2010, in Conference Room 2400 A, 1900 SW fourth Avenue, Portland, Oregon. Kathleen Stokes showed pictures of the site and the surrounding area and gave an overview of the staff decision on the case. The appellant, Steven Rupert, on behalf of the Kenton Neighborhood Association, stated that he believed that the proposed structure had wall plane areas that exceed 1,000 square feet and so would require a setback of more than five feet. He further noted that he did not believe that the proposed structure was compatible with the mix of surrounding development, in regards to the general building scale and placement, and that it was not consistent with the character of Denver Avenue or the Kenton Conservation District. Supporters of the appeal elaborated on these themes in their testimony.

The applicant's representative discussed the elements of the proposal that were incorporated to meet the Community Design Standards and still allow the proposed infill housing to be developed. Ms. Barker also noted that the plans had been modified, lowering the building height, to ensure that the wall plane areas did not exceed the 1,000 square-foot threshold that allows a five-foot setback from the side property lines.

The Adjustment Committee discussed the parameters of what can be considered under an Adjustment Review and clarified the process, which does not involve a discretionary Historic Design Review for this project. The Committee determined that the encroachment of the porch into the setback meets all of the relevant approval criteria.

**Testified at the Hearing:** Kathleen Stokes, BDS, City Planner II; Steven M. Rupert, appellant and Land Use Chair, Kenton Neighborhood Association; Angela Moos, Chair, Kenton Neighborhood Association; Susan Abe; Ryan Pittel; Peter Teneau; Lisa Barker, LMB Permit Services, representative for the applicant.

**Site Address:** 7910 N DENVER AVE

**Legal Description:** BLOCK 20 LOT 36, KENTON

**Tax Account No.:** R445907676

**State ID No.:** 1N1E09DD 02101

**Quarter Section:** 2228

**Neighborhood:** Kenton, Steve Rupert at 503-317-6573.

**Business District:** Kenton Business Association, Echo Leighton at 503-285-7234.

**District Coalition:** North Portland Neighborhood Services, Mary Jaron Kelley at 503-823-4099.

**Other Designations:** Kenton Historic Conservation District

**Zoning:** R2a (R2,000, Low Density Multi-Dwelling Residential with an Alternative Design Density Overlay)

**Case Type:** Adjustment Review

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

**Proposal:** The applicant is proposing construction of a new single-dwelling residence on this lot. The design for the proposed house includes a front entry porch that extends to three feet, six inches from the south side property line. The R2 zone requires that the proposed structure be set back a minimum of five feet from the side property line. The roof eave is required to be set back four feet from the side property line. Exceptions to these requirements can be approved through Adjustment Review, if all of the approval criteria are met or can be met through conditions of approval. Therefore, the applicant is requesting approval of an Adjustment to Code Section 33.120.220, to reduce the south side setback from five feet to three feet, six inches for the porch and from four feet to two feet, six inches for the porch roof eave.

**Relevant Approval Criteria:** To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments.

## **II. ADJUSTMENT COMMITTEE DECISION**

*The Adjustment Committee determined that the information submitted into the record during the public hearing that was held on July 6, 2010 did not persuade them to vary from the original staff findings, conclusions and decision, as long as the areas of the wall planes of the proposed structure did not exceed the threshold that requires a minimum building setback of five feet from the side property lines. The Adjustment Committee voted, four to two, to*

Deny the appeal and uphold the administrative decision of approval, subject to the following conditions:

Approval of an Adjustment to Code Section 33.120.220, to reduce the south side setback from five feet to three feet, six inches for the porch and from four feet to two feet, six inches for the porch roof eave, in substantial compliance with the approved site plan and elevation drawings, Exhibits C-1 through C-2, signed and dated May 14, 2010, 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 10-107682 AD."
- B. The building permit plans must reflect that the wall planes on the south and the north sides of the proposed structure do not exceed the threshold for the proposed five-foot setback, in accordance with Code Section 33.120.215, Table 120-4.

**Staff Planner: Kathleen A. Stokes**

**The original staff findings, conclusions and decision were adopted by the Adjustment Committee on July 6, 2010.**

By:   
Adjustment Committee  
Jeffrey Cole

**Date Final Decision Effective/Mailed: July 14, 2010**  
**120<sup>th</sup> day date: August 15, 2010**

**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 January 29, 2010, and was determined to be complete on April 16, 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 January 29, 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. The 120<sup>th</sup> day is August 15, 2010.

**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.

**Appeal of this Decision.** This decision is final and becomes effective the day the notice of decision is mailed (noted above). This decision may not be appealed to City Council; however, it may be challenged by filing a "Notice of Intent to Appeal" with the State Land Use Board of Appeals (LUBA) within 21 days of the date the decision is mailed, pursuant to ORS 197.0 and 197.830. A fee is required, and the issue being appealed must have been raised by the close of the record and with sufficient specificity to afford the review body an opportunity to respond to the issue. For further information, contact LUBA at the Public Utility Commission Building, 550 Capitol Street NE, Salem, OR 97310. [Telephone: (503)373-1265]

**Recording the Final Decision.**

If this Land Use Review is approved, the final decision must be recorded with the Multnomah County Recorder. A building or zoning permit will be issued only after the final decision is recorded. The final decision may be recorded on or after the Mailed Date of this decision.

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

- By Mail: Send the two recording sheets (sent in a separate mailing) and the final Land Use Review Decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, PO 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 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.** This decision expires three years from the date the Final Decision is rendered unless:

- A building permit has been issued, or
- The approved activity has begun, or
- In situations involving only the creation of lots, and the land decision has been recorded.

**Applying for permits.** A building permit, occupancy permit, or development permit must be obtained before carrying out this project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

**Copies**

Applicant

Appellant

All Parties who wrote or submitted testimony at the public hearing

Kenton Business Association

North Portland Neighborhood Services

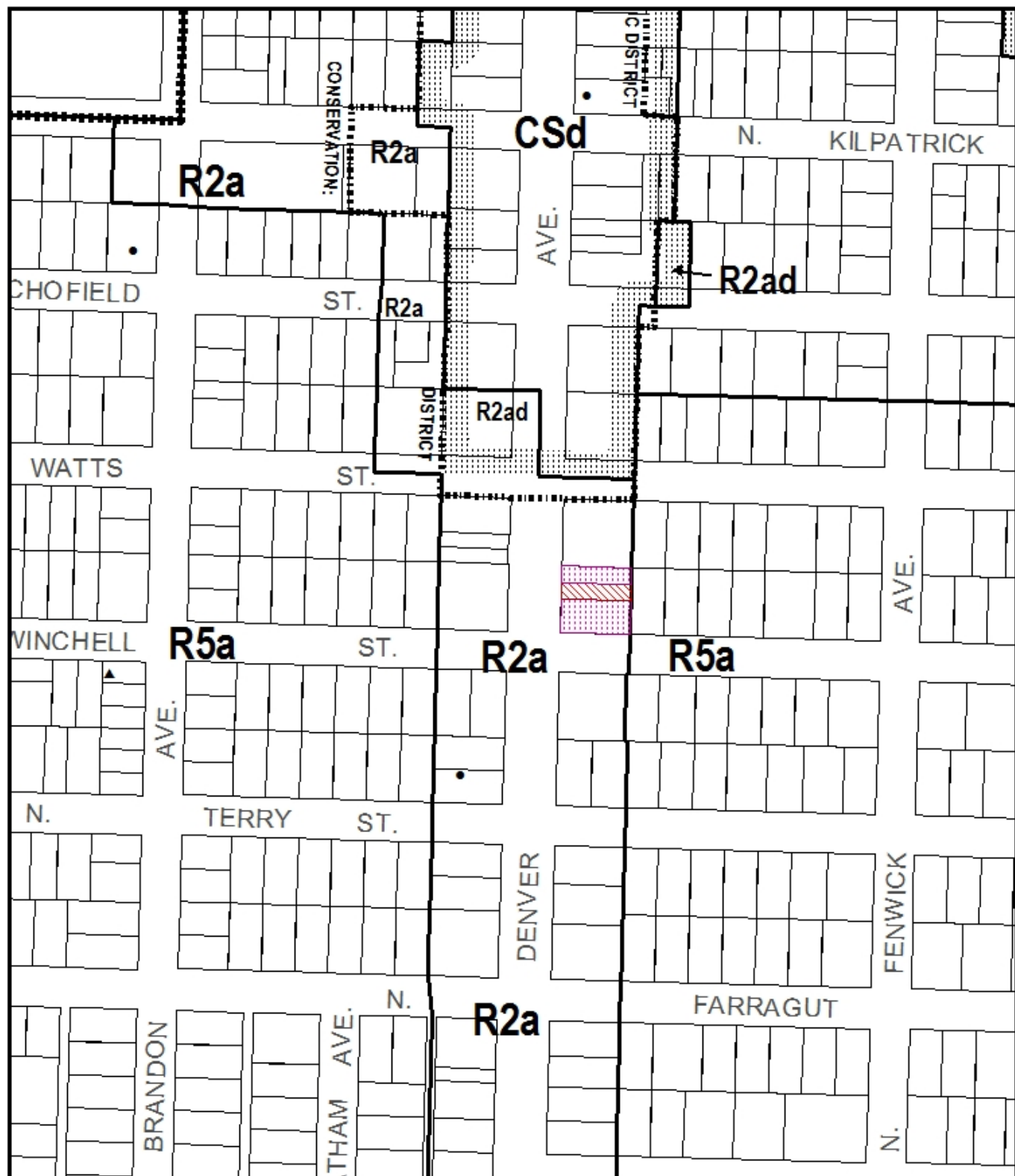
BDS, Planning and Zoning

**EXHIBITS NOT ATTACHED UNLESS INDICATED**

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
    - 1. Application and original submittal
    - 2. Revised plan and elevation drawings, received April 16, 2010
  - B. Zoning Map (attached)
  - C. Plans/Drawings:
    - 1. Site Plan (attached)
    - 2. Elevation Drawings (attached)
  - D. Notification information:
    - 1. Mailing list
    - 2. Mailed notice
  - E. Agency Responses:
    - 1. Water Bureau
    - 2. Summary of electronic responses from City agencies
  - F. Correspondence:
    - 1. Steven Rupert, Kenton Neighborhoods Association
  - G. Other:
    - 1. Letter from Kathleen Stokes to Lisa Barker, February 12, 2010
  - H. Adjustment Committee Appeal
    - 1. Appeal Submittal
    - 2. Appealed Decision
    - 3. Notice of Appeal Mailing list
    - 4. Notice of Appeal
    - 5. Cathy Galbraith letter, received June 30, 2010
    - 6. Ryan Pittel letter, received July 1, 2010
    - 7. Aaron S Gray letter, received July 2, 2010
    - 8. Peter Teneau letter, received July 2, 2010
- Received at Hearing July 6, 2010**
- 9. Staff Power Point Presentation
  - 10. Steve Rupert, testimony statement and photos
  - 11. Angela Moos, testimony statement
  - 12. Susan Abe, testimony statement with photos
  - 13. Doretta Schrock, written testimony
  - 14. Lisa Barker, revised site plan
  - 15. Lisa Barker, photos



# ZONING



Site



Historic Landmark



NORTH

This site lies within the:  
KENTON CONSERVATION DISTRICT

File No.	LU 10-107682 AD
1/4 Section	2228
Scale	1 inch = 194 feet
State_Id	1N1E09DD 2101
Exhibit	B (Feb 01,2010)

# LANDSCAPE

\*\* PRECISE LOCATION AND SPECIES TO BE DETERMINED IN FIELD BY CONTRACTOR

- F - FLOWERING PEAR (1 1/2" CALIPER)  
"PYRUS CALLERYANA"
- D - DOUGLAS FIR (1 1/2" CALIPER)  
"PSEUDOTSUGA MENZIESII"
- R - RED MAPLE (1 1/2" CALIPER)  
"ACER RUBRUM"
- P - PACIFIC DOGWOOD (1 1/2" CALIPER)  
"C. NUTALLI"

- TREE MIN 1 1/2" CALIPER 6' TALL @ PLANTING
- SHRUBS AT LEAST 1-GALLON SIZE @ PLANTING
- EDGING BOXWOOD "BUXUS SEMPERVIRENS" - (26 TOTAL)
- BUMALD SPIRAEA "SPIRAEA X BUMALDA CVS." - (8 TOTAL)
- DAVID VIBURNUM "VIBURNUM DAVIDI" - (8 TOTAL)

- REQUIRED MANUAL WATERING FOR THE FIRST YEAR

## ENTIRE SITE COVERED IN:

- GROUND COVER
- KINNIKINNICK, BEARBERRY "ARCTOSTAPHYLOS UVA URSI"
- SUN ROSE "HELIANTHEMUM CVS."
- BARK DUST
- MULCH
- RIVER ROCK
- GRASS (WESTERN FESCUE)

NO IRRIGATION (SELF WATERING)

## IMPERVIOUS SURFACE AREA

DRIVEWAY	162 SQ FT
PATIO	100 SQ FT
PORCH	98 SQ FT
HOUSE (INC. EAVES)	1024 SQ FT
<b>TOTAL</b>	<b>1384 SQ FT</b>

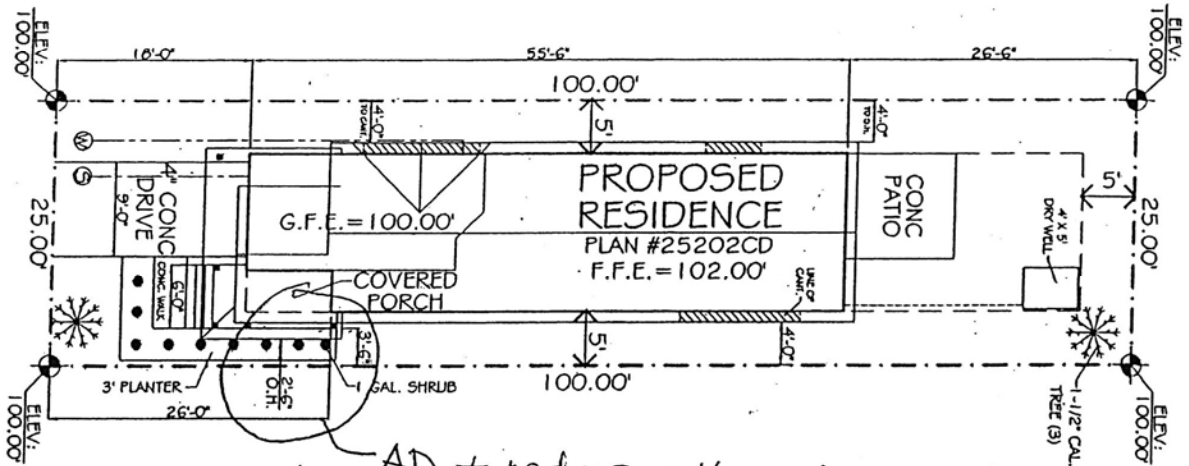
## LOT COVERAGE

LOT AREA	2500 SQ FT
BLDG. AREA (NIC. EAVES)	905 SQ FT
905 / 2500 =	36.2%
GARAGE=	231 SQ FT

LEGEND	
⊙	3" SEWER
⊙	1" WATER
⊙	GAS
⊙	POWER
---	RAIN DRAIN

NORTH ↑

N DENVER AVE.



AD to reduce setback to 3'6" for porch and 2'6" for porch roof eave.

APPLICANT CONTACT:  
LMB PERMIT SERVICES  
LISA BARKER  
307 NW 16th AVE  
BATTLEGROUND, WA 98604  
(360) 921-6899  
(360) 666-6117 FAX  
EMAIL: LMBPERMITSERVICE@COMCAST.NET

IT IS THE SOLE RESPONSIBILITY OF THE BUILDER TO VERIFY ALL SITE CONDITIONS, INCLUDING ANY UTILITIES PLACED ON THE SITE, AND INFORM OWNERS OF ANY POTENTIAL NEEDS FOR MODIFICATIONS.

\*Approved\*

City of Portland - Bureau of Development Services

Planner Kathleen A. Stokes Date May 13, 2010

This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

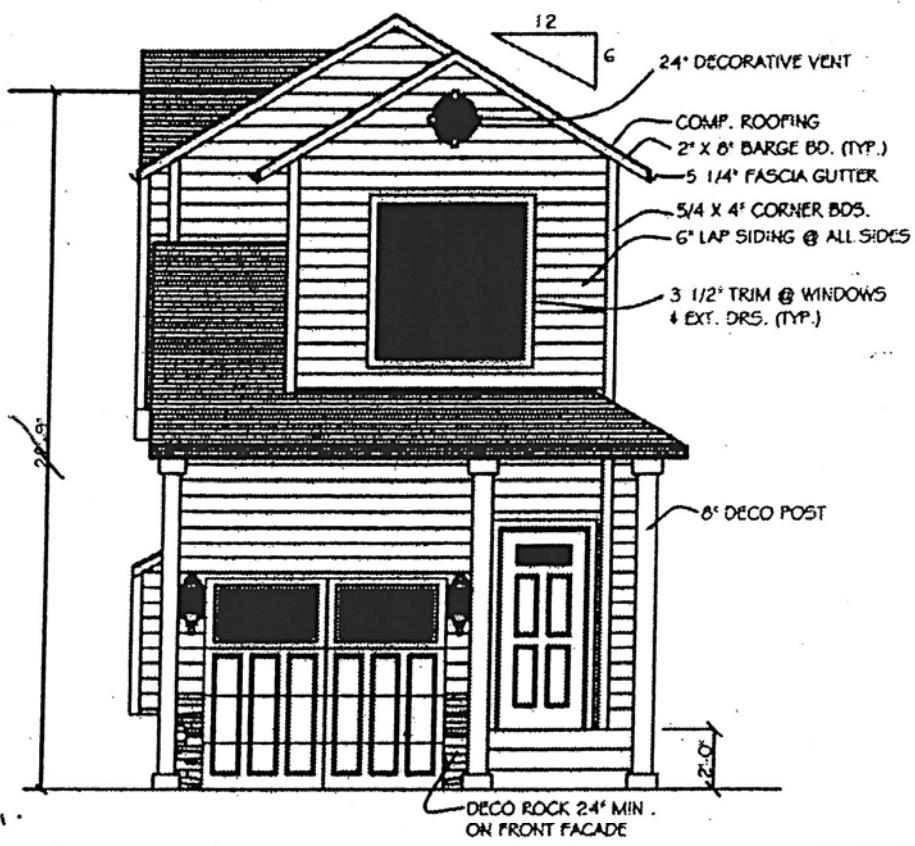
<b>TROXEL'S HOME DESIGN</b>	
SCALE: 1" = 10.00'	1217 NE BURNSIDE #303 GRESHAM, OREGON 97030 (503) 665-2604
DATE:	DESIGNED BY: NICK POVEY
NAME:	LOT:
ADDRESS:	
THIS PLAN SET HAS BEEN AUTHORIZED FOR THE CONSTRUCTION OF ONE BUILDING BY THE ORIGINAL SUBMITTER. AUTHORIZED COPIES OF THIS PLAN MUST HAVE A RED INKED STAMP ON ALL SHEETS.	
SHEET: 1	PLAN NUMBER: # 25202CD

Exhibit C-1

LU10-107682AD-7910 N. Denver



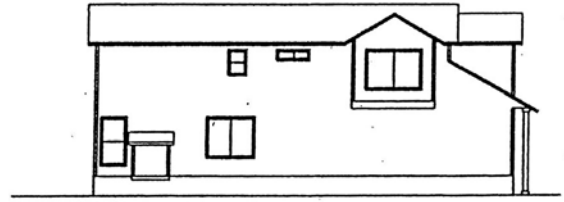
TBD  
(must have wall plane of no more than 1,000 sq. ft. @ 5' setback on north and south.)



CITY OF PORTLAND INFO.  
FRONT WALL WINDOW AND FRONT DR. AREA REQD. = 15%  
FRONT WALL AREA = 257.9 S.F.  
15% OF 257.9 S.F. = 38.68 S.F.  
WINDOW AREA PROVIDED = 46 S.F.

# FRONT ELEVATION

Not to scale  
SCALE: 1/4" = 1'-0"



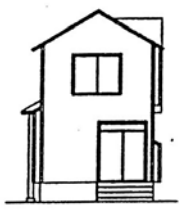
CITY OF PORTLAND INFO  
SIDE WALL AREA = 116.46 S.F.  
SIDE WALL AREA REQD. = 30% = 34.9 S.F.  
SIDE WALL AREA PROVIDED = 35 S.F.

# LEFT SIDE ELEVATION

SCALE: 1/8" = 1'-0"

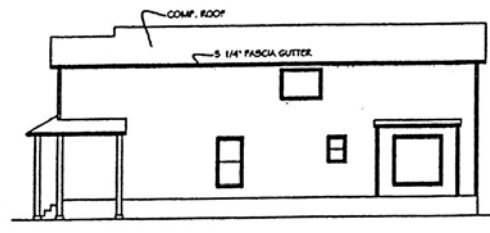
Note:  
Elevations may not accurately reflect position of front porch stairs - see site plan

LU10-107682 AD  
Exhibit C-2



# REAR ELEVATION

SCALE: 1/8" = 1'-0"



CITY OF PORTLAND INFO  
SIDE WALL AREA = 60 S.F.  
SIDE WALL AREA REQD. = 30% = 18 S.F.  
SIDE WALL AREA PROVIDED = 36 S.F.

# RIGHT SIDE ELEVATION

SCALE: 1/8" = 1'-0"

TROXEL'S HOME DESIGN			
SCALE: NOTED	1212 NE BURNING BROS	DESIGNED BY: DENNIS TROXEL	
DATE: 1/2/00	CLACKAM, OREGON 97030		
MAIN: 506 SQ. FT.		TOTAL: 1355 SQ. FT.	
UPPER: 769 SQ. FT.			
NO PLAN TO USE ANY ADDITIONAL FLOOR		PLAN NUMBER: #25202-CD	
COMPLETION OF THE HOUSE BY THE OWNER		SHEET: 1	
PURCHASER, ADDRESS OF THE HOUSE			
DATE WHEN A SET MUST BE SUBMITTED TO THE CITY			

\*Approved\*  
City of Portland - Bureau of Development Services  
Planner Kathleen A. Stokes Date May 14, 2010  
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.