



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

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
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www.portlandoregon.gov/bds

Date: November 21, 2012
To: Interested Person
From: Susan McKinney, Land Use Services
503-823-7809 / Susan.McKinney@portlandoregon.gov

NOTICE OF A TYPE II AMENDED DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

On January 20, 2011 a decision was rendered on a request to adjust the maximum transit street setback (to SW Naito) for development on this site. Subsequent to that decision, the property has changed ownership and a new, but similar project has been proposed. Because the new proposal increases the maximum transit street setback over what was previously approved, this modified decision is necessary.

The Bureau of Development Services has **approved** a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 10-190386 AD

GENERAL INFORMATION

Applicant: Brian Lessler / PDG Construction Services, Inc.
500 SE Butler Rd / Gresham, OR 97080

Owner: Glen Leier / Yoshida Real Estate Holdings X LLC
8440 NE Alderwood Rd Suite A / Portland, OR 97220

Site Address: 3745 SW Water Avenue

Legal Description: BLOCK 164 TL 500, CARUTHERS ADD
Tax Account No.: R140915330
State ID No.: 1S1E10CB 00500
Quarter Section: 3429
Neighborhood: South Portland NA., contact Jim Davis at 503-248-9820.
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Zoning: R1, Medium-density multi-dwelling 1,000
Case Type: AD, Adjustment
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

In 2010, the previous owner of the subject property proposed a 2-building, 14-unit multi-dwelling development, with 6-onsite parking spaces. The smaller building associated with the previous proposal was located west of the larger building and 50 feet from SW Naito Parkway. SW Naito, a transit street, is adjacent to only a portion of the site's western property line (see attached zone map depicting site shape and relationship to SW Naito). Where the site is adjacent to the SW Naito right-of-way a maximum 20-foot building setback from the property

line applies (Zoning Code Section 33.120.220.C). The Adjustment approving the increased maximum transit street to 50 feet was granted on January 20, 2011.

The current owner of this site is proposing the development of a single multi-dwelling structure with a total of 12 units and 13 on-site parking spaces. The new site plan shows parking located in the area of the smaller building of the previous proposal that includes one ADA space. The new proposal locates the building approximately 74'-9" from the SW Naito Parkway property line. Because the proposed building is now even further from the transit street, this modified decision is necessary.

Relevant Approval Criteria:

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

ANALYSIS

Site and Vicinity: The site is 14,625 square-feet in area, with frontage on SW Naito Parkway to the west and SW Lane Street and SW Water Avenue to the east. The developed rights-of-way for both Lane and Water end at the site, with no east/west connection to SW Naito. The westerly portion of the site is constrained by unusual geometry, steep slopes and subsurface soil conditions making that area unsuitable for development. There is a 27-foot grade difference between the north and south property corners along the SW Naito property line. Naito Parkway itself is a raised Viaduct, which sits 20 feet above the grade of the site along the west property line; it is improved with a sidewalk and a one-way, two-lane street that branches off from Barber Blvd one block south of the site. There appears to be approximately 43 feet between the Naito Parkway sidewalk and the top point of the site's western property line. In other words, the Naito Parkway right-of-way extends for some distance to the east beyond the paved roadway and sidewalk. Pedestrian or vehicular access to Naito is impractical, if not impossible. In addition, ODOT has reserved a 50-foot slope easement over the westerly portion of the site, which disallows placement of permanent structures within that portion of the site. There is also a deed restriction, which prohibits any access to the Naito Parkway right-of-way.

Apartment complexes are on the properties abutting or adjacent to the site to the south and east. The vicinity consists primarily of multi-dwelling development. The abutting lot to the north is vacant. A large electric transformer station is located to the north of that vacant lot and it extends to the north to Curry Street.

Zoning: The site is zoned R1, designated by the Comprehensive Plan as medium density multi-dwelling, which allows a maximum density of one unit per 1,000 square feet of site area. The maximum allowed density on the site is 14 units; the proposal is for 12 units complies with the minimum density requirement of 10 units.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A "Notice of Proposal in Your Neighborhood" was originally mailed **December 23, 2010**. The following bureaus responded at that time with no issues or concerns: Water Bureau, Fire Bureau, the Site Development Sections of BDS, Bureau of Parks-Forestry Division and Bureau of Environmental Services.

The Portland Bureau of Transportation responded with no concerns, but had indicated in a previous Inquiry folder (10-155203 IQ) that the terminus of SW Water at SW Lane would need to be completed and that in lieu of providing frontage improvements along the SW Water frontage of the site, that a pedestrian connection would need to be constructed along SW Water from SW Lane to SW Gaines (Exhibit E-2). The current applicant states that he has been working with the city regarding the requirement for this connection.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed for the original proposal on **December 23, 2010**. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal. For the current modified proposal, the applicant has fulfilled the requirements of 33.120.050, Neighborhood Contact.

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.

33.805.040 Approval Criteria

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

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

Findings: *The purpose of the standard requiring a maximum setback along transit streets is to create an environment that is inviting to pedestrians and transit users. Naito Parkway is classified as a Transit Access street in the City's Transportation System Plan.*

The site is not a standard shaped rectangular lot, and is positioned adjacent to three streets, but only one of those streets (Naito Parkway) is improved. As mentioned previously SW Naito is a raised viaduct, located approximately 20 feet above the western property line of the site and, also, approximately 50 feet above the lowest grade on the site on the northeast side. Due to the distance from the SW Naito Parkway to the western property line (ranging between 30 feet at the south and 43 feet at the north) and due to the 50-foot wide slope easement disallowing permanent structures (including access to Naito) on the westerly portion of the site, the requested 74-foot 9-inch setback will not diminish the pedestrian environment. SW Naito does not provide a high quality pedestrian environment in this location because of fast-moving vehicles on both Naito and Barbur Blvd., and a fairly narrow sidewalk and railing on only the east side of the street. Whether the proposed development meets the maximum setback of 20 feet, or is built at the proposed 74-foot 9-inch setback, the pedestrian/transit experience on Naito Parkway would be about the same; separated from the western property line of the site by between 30 and 43 feet, and a slope.

The development of the site, as proposed, will transform the appearance of the property from an overgrown blackberry patch, to a fully landscaped and architecturally pleasing layout, which will be well integrated into the existing neighborhood to the north, south and east. Thus, 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 requested increase to the maximum transit street setback is reasonable given the topography, soil conditions and geometry of the site relative to Naito Parkway. Naito Parkway is an elevated viaduct where it abuts the site on the west side of the subject property. Pedestrian access to SW Naito is not only impractical due to the elevation differential (minimum 20 feet), but prohibited by a deed restriction reserved by ODOT, which eliminates all access to Naito. Residential areas west of the site are separated by the combined width of the Naito and Barbur Blvd rights-of-way, which have high traffic volumes and velocity. Topography also creates a barrier to pedestrian access from the west.

Vehicle access to this site will be from Water Avenue and Lane Street, not from Naito. The proposed development will provide a pedestrian corridor along the Water Avenue frontage connecting SW Lane with SW Gaines. Street trees and landscaping will enhance the neighborhood, provide an attractive pedestrian corridor, and improve livability for the neighborhood. Thus, 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

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

Findings: Only one adjustment is requested. City designated resources are shown on the zoning map by the Scenic ('s') overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, these criteria are not applicable.

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

Findings: There are no discernable impacts that would result from granting the requested adjustment to allow the increased setback. Development of this site utilizes a somewhat unique infill site that will result in a pedestrian connection between it and the street below, to the north, as required by PBOT. 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 "d" 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

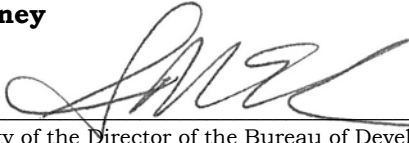
The site is a somewhat unique, topographically challenged property that the owner wishes to develop to the minimum required density. The proposed adjustment upholds the purpose of the maximum street setback standard and will not detract from or create impacts to the surrounding residential area. The analysis shows that all of the relevant approval criteria are met and an affirmative decision can be made.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code standard 33.120.220.C. (maximum transit street setback) to allow the 12-unit multi-dwelling structure to be located approximately 74' 9" from the SW Naito Parkway property line. This approval is subject to the approved site plan, Exhibit C.5, and with general conformance with the elevation drawings, Exhibits C.6 and C.7, signed and dated November 16, 2012, subject to the following condition:

- 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.5-C.7. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 10-190386 AD, Amended Decision".

Staff Planner: Susan McKinney

Decision rendered by:  **on November 16, 2012**
By authority of the Director of the Bureau of Development Services

Decision mailed: November 21, 2012

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 November 3, 2010, and was determined to be complete on **December 17, 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 November 3, 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.

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 December 5, 2012** 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 **December 6, 2012.**
- 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.

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.

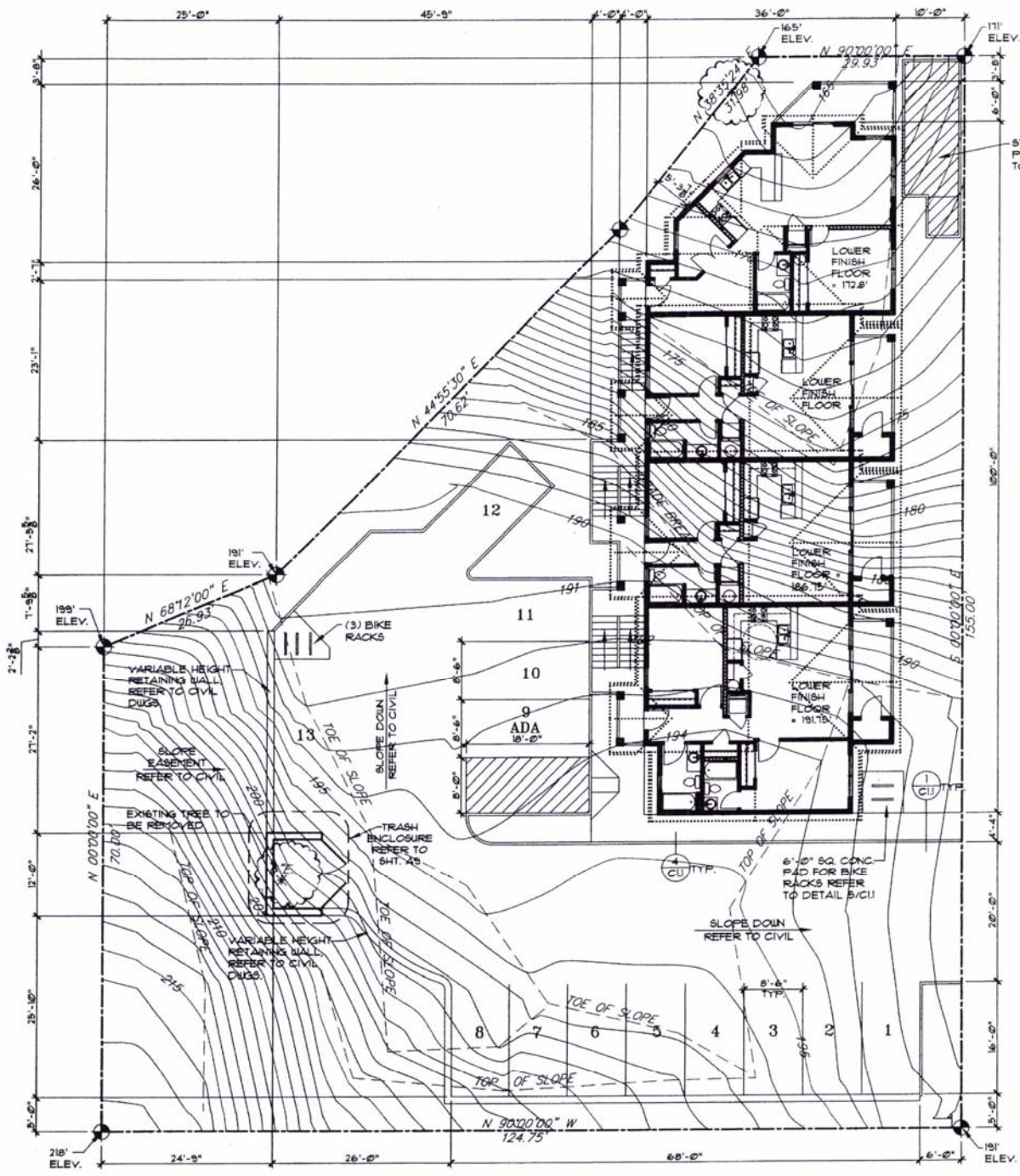
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Statements
 - 1. Applicant's Original Statement
 - 2. Revised statement for Amended decision
- B. Zoning Map **(attached)**
- C. Plans/Drawings:
 - 1. Original Site Plan
 - 2. Original Elevation drawings, Buildings A and B
 - 3. Original landscape plan
 - 4. Original utility plan
 - 5. Amended Site Plan **(attached)**
 - 6. Amended Elevation drawings; west and south **(attached)**
 - 7. Amended Elevation drawings; east and north **(attached)**
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses
 - 1. BES, no concerns or conditions
 - 2. PBOT, no concerns re: Adjustment, comments re: pedestrian connection SW Water
 - 3. Water Bureau, no concerns or conditions
 - 4. Fire Bureau, no concerns
 - 5. BDS Site Development, no concerns
 - 6. Parks Bureau, Urban Forestry, no concerns
- F. Correspondence - None
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete letter, Stark to Maloney, Nov 19, 2010
 - 3. Emails, Maloney and Stark, Nov 22 and Dec 3, 2010
 - 4. Deed History
 - 5. Additional Deed History submitted Nov 15, 2012

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).

S.W. WATER AVE. APARTMENTS
PORTLAND, OREGON



REFER TO CIVIL DRAWINGS
FOR SITE DETAILS

SITE PLAN

SCALE: 1"=10'



DATE: 10/25/12
SHEET NO:

AC

Approved

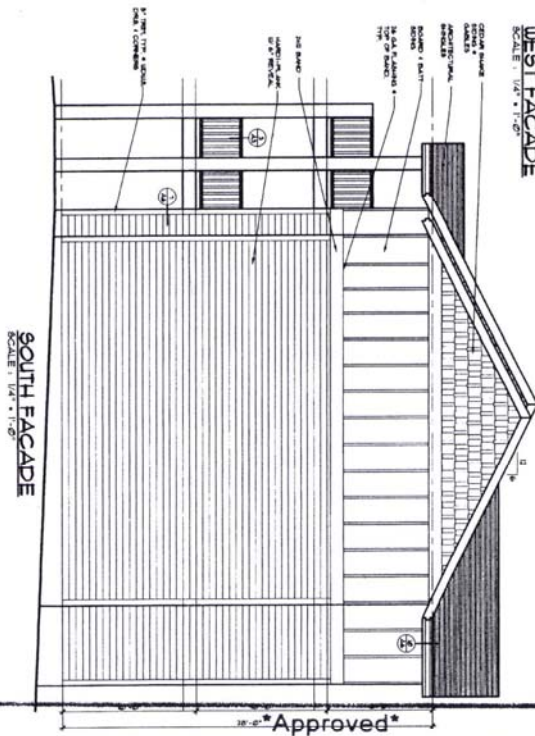
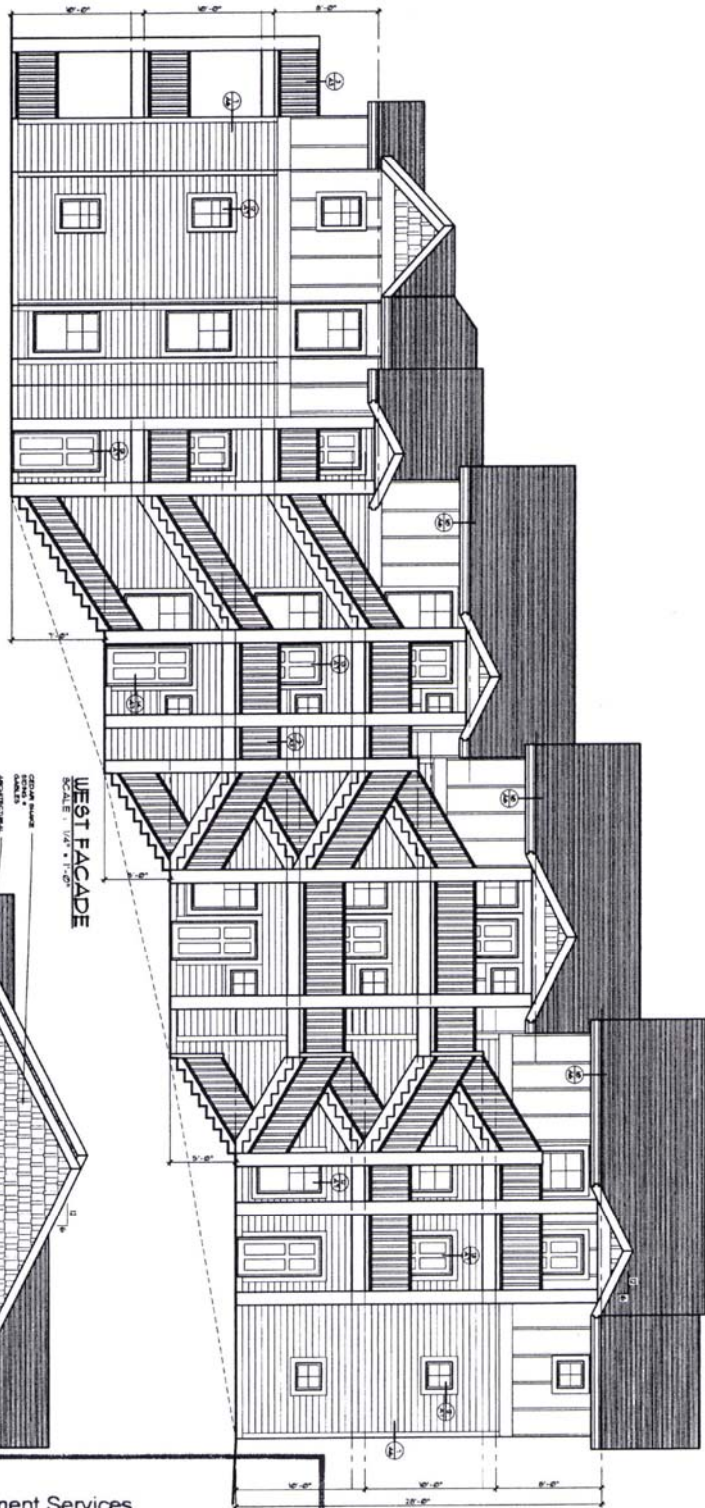
City of Portland - Bureau of Development Services
LU # 10-190386 AD

Planner Susan K. McKinney Date 11-16-12

* Approved Monitoring/Maintenance Plan

CASE NO. 10-190386 AD
EXHIBIT C.5

USE BASIC RADON PROTECTION METHOD
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City of Portland - Bureau of Development Services
 LU # 10-190386 AD
 Planner Susan K. McConny Date 11-16-12
 * Approved Monitoring/Maintenance Plan

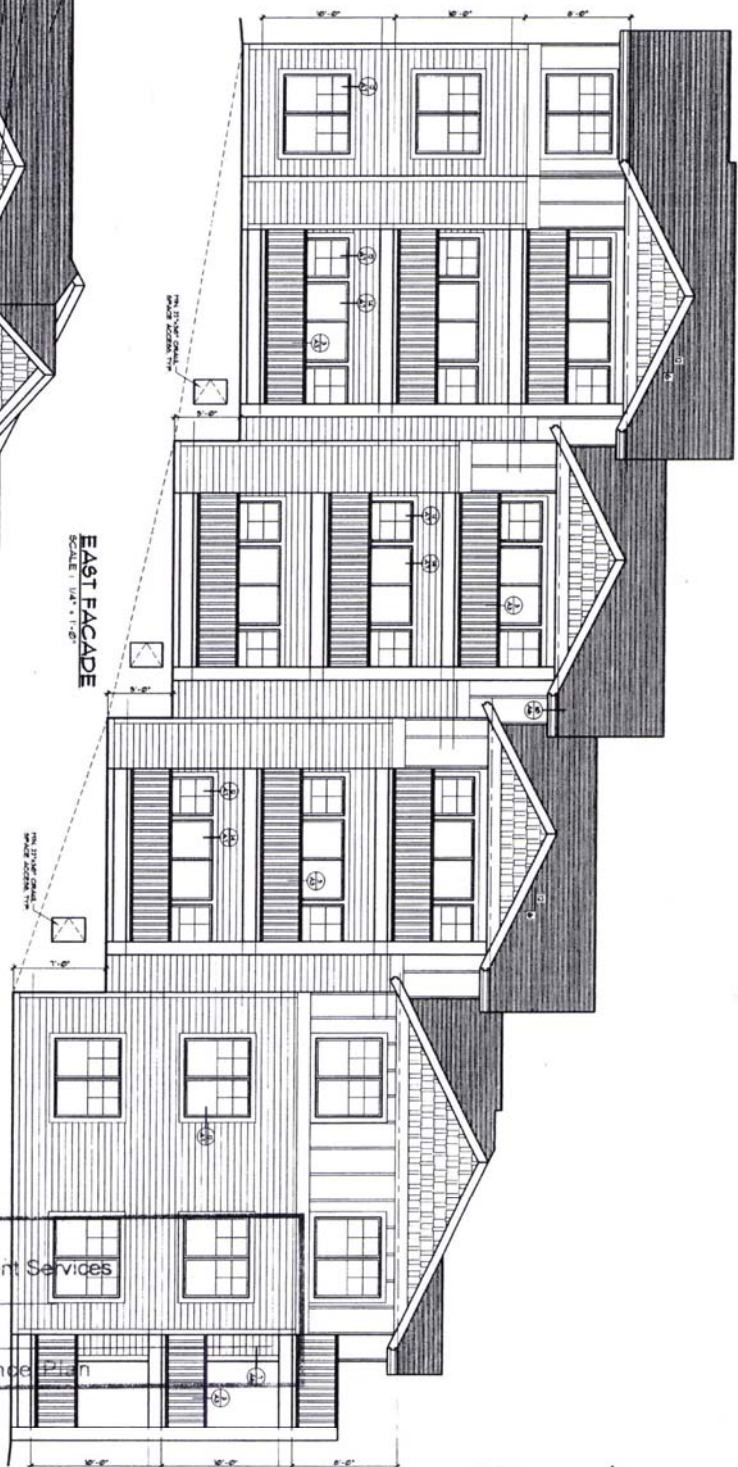
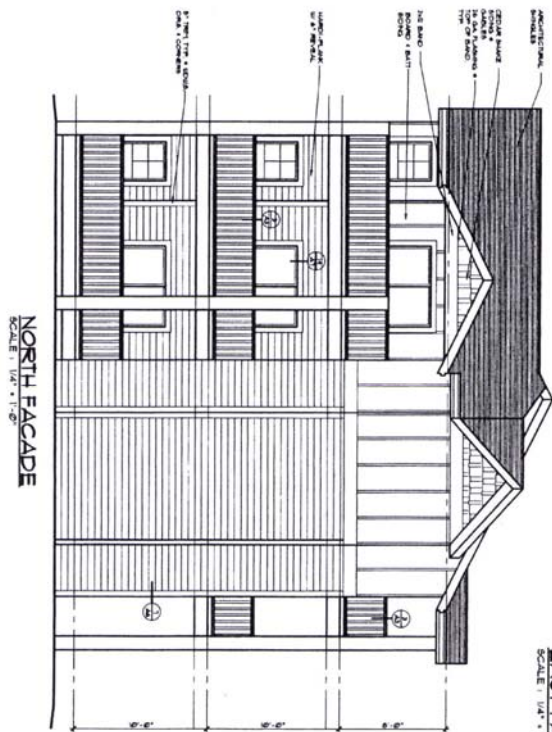
CASE NO. 10-190386 AD
 EXHIBIT C.6

A1

DATE: 02/25/13
 SHEET NO.

S.W. WATER AVE. APARTMENTS
 PORTLAND, OREGON





Approved

City of Portland - Bureau of Development Services

LU# 10-190386 AD

Planner

LU # 10-10-10
Susan L. McKenney

11-16-12
Date

Date _____

* Approved Monitoring/Maintenance Plan

CASE NO. 10-190386 AD
EXHIBIT C.7

S.W. WATER AVE. APARTMENTS
PORTLAND, OREGON

2A

DATE: 10/25
SHEET NO:

