



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

FROM CONCEPT TO CONSTRUCTION

Charlie Hales, Mayor
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Date: March 5, 2013
To: Interested Person
From: Shawn Burgett, Land Use Services
503-823-7618 / shawn.burgett@portlandoregon.gov

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 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 13-102610 AD

GENERAL INFORMATION

Applicant: Donna L. Wolf
Po Box 2803
Portland, OR 97208

Site Address: 3404 SW PALATINE ST

Legal Description: LOT 2, PARTITION PLAT 1994-171
Tax Account No.: R649746820
State ID No.: 1S1E32AC 01402
Quarter Section: 4126
Neighborhood: Arnold Creek, contact Liz Marantz at 503-823-3161.
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Zoning: R10 (Single Family Residential 10,000 sq. ft.)
Case Type: AD (Adjustment)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

A attached garage/shed addition has been constructed along the northern façade of the existing home on the site approximately 6.25 ft. from the northern property line within the required setback (see attached site plan). Zoning Code section 33.110.240.F.1 requires flag lots to have a 15 ft. setback within this zone. The applicant has requested an adjustment to this standard to allow the existing addition along the northern facade to remain within the setback area. The applicant is proposing to convert the existing garage located within the north setback area to an open porch (see attached façade elevations) and demolish the existing shed located adjacent to the northern façade of the house. No changes are proposed to increase the height or building footprint of the existing structure.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria have been met.

ANALYSIS

Site and Vicinity: The site is sloped upward from the street and is relatively flat and heavily forested. The area surrounding the site is made up of a variety of architectural styles. The existing home on the subject site was constructed in 1995. The home located directly north of the subject site was constructed in 1952. The properties abutting the subject site to the west, east and south are all zoned R20 (Single Family Residential 20,000 sq. ft.). At this location, SW Palatine Street is a rather narrow paved roadway with no sidewalks or curbs. Due to the forested nature of the area, homes located adjacent to the roadway are not easily identifiable from SW Palatine Street.

Zoning: The R10 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

Land Use History: LUR 94-011172 resulted in a zone change from R20 (Single Family residential 20,000 sq. ft.) to R10 (Single Family Residential 10,000 sq. ft). LUR 94-011173 was a 2 lot partition which included the existing lot to the north and resulted in the creation of the subject site (flag lot).

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **January 31, 2013**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division
- Life Safety

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on January 31, 2013. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

Adjustments

33.805.010 Purpose

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., have been met.

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

Findings: Section 33.110.240. F and Section 33.110.220.A of the Zoning Code identifies the purpose of the flag lot development standards and the building setback standard as follows:

33.110.240. F, Flag lot development standards. *The development standards for flag lots include specific screening and setback requirements to protect the privacy of abutting residences.*

33.110.220.A, Setback. *The setback regulations for building and garage entrance 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 neighborhood;*
- 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.*

This proposal is to reduce the setback from 15 feet to 6.25 feet (with an additional 1.5 feet for the proposed roof eave) is requested in order to allow the existing non-permitted garage addition along the northern façade of the home to be converted to an open porch (see attachment C-2). Even though the request is relatively significant, the characteristics of the site and actual improvements allow this proposal to remain consistent with the intent of the setback requirement. The site, like numerous other lots located on the south side of SW Palatine St. between SW 33rd Avenue and SW 35th Avenue is heavily forested with mature fir trees providing screening between lots. The lot east of the subject site is 30,000 sq. feet and zoned R20 (Single Family Residential 20,000 sq. ft.) so it is not dividable. Therefore an additional flag lot cannot be constructed in the rear of this lot at this time. The home on the lot to the east is located approximately 75 feet northeast of the home on the subject site based on the City's GIS mapping and aerial photography, which provides more than adequate separation. In addition, the home on the subject site is setback approximately 26.5 feet from its eastern property boundary. In addition, the home located west of the subject site is located approximately 80 feet from the area where the additions were constructed within the setback area. The home on the subject site is set back approximately 30.5 feet from the western property boundary.

The home which would be most impacted by the adjustment request is located on the lot to the north of the subject site. This home is located approximately 26 feet north of the additions. Currently there are several large fir trees and a wooden fence separating the subject garage from the property to the north (exhibit A-2). Converting this existing garage into a covered porch will not change the footprint or increase the height or size of the existing encroachment within the setback area.

It could be argued that opening up the garage wall to create a covered porch within the setback area will lessen the privacy for the adjacent lot to the north, however, based on the presence of the existing large fir trees located between the subject site and the property to the north, along with a large wooden fence and the

existing 20 foot setback between the home to the north and its southern property boundary, the proposed encroachments into the setback area can meet the approval criteria.

The garage currently has 19 feet of façade area 6.25 feet from the northern property line. The conversion of the garage will essentially remove the garage door facing east, and remove portions of the garage wall facing north to provide an open covered porch under the existing garage roof (see exhibit C-2).

In addition, the applicant has proposed to demolish an existing 15 foot deep shed which is currently located within the required setback. The removal of this shed will reduce the amount of building area within the setback from 34 feet to 19 feet. Overall, the distance between the two homes will not be changing. The proposed conversion will not substantially alter the current situation. Even though the home on the site will no longer have a garage, adequate vehicle parking is maintained on the site. It should also be noted that no correspondence was received from any adjacent neighbors who were notified regarding this proposal.

Overall, the home will maintain a reasonable physical relationship with the abutting house to the north. There will be adequate separation as the addition will not restrict light, air and access for fire fighting. The addition is consistent with the scale of other nearby homes. The improvements to the house will not cause the home to stand out as being unusual or excessively large.

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: As stated above, the homes in the immediate area are set back a substantial distance from the subject site and are screened by mature fir trees from any impacts. The proposed addition and exterior remodel is consistent with the architecture of the house. The home is located on a flag lot; therefore, the addition will not dominate the public street/pedestrian experience. The addition will not create new privacy impacts and therefore should not detract from the livability of the abutting neighbors. Therefore, 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. Therefore, this criterion does not apply.

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

Findings: City designated scenic 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 does not apply.

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

Findings: There are no detrimental impacts created by the addition. Therefore, no mitigation is needed. 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: This site is not within an environmental zone, which is designated on the zoning map by either a “c” and “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 characteristics of the site and actual improvements make this proposal remain consistent with the intent of the setback requirement. Although the setback requirement is not met, the proposed 6.25 feet of separation will still allow adequate light, air and fire separation between the addition and the property to the north. All applicable criteria are met and therefore the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the required building setback on the north side of the residential flag lot from 15 feet to 6.25 feet and to allow the eave to extend within 4.75 feet of the north property line (33.110.240.F.1 & 33.110.220.C) for a 14 foot by 19 foot open porch, per the approved site plan, Exhibits C.1 and C.2, signed and dated February 28, 2013, 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 and C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 03-102610 AD.

Staff Planner: Shawn Burgett

Decision rendered by:  **on February 28, 2013**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 5, 2013

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 9, 2013, and was determined to be complete on **January 29, 2013**.

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 9, 2013.

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.

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 March 19, 2013** 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 **March 20, 2013**.
- 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.

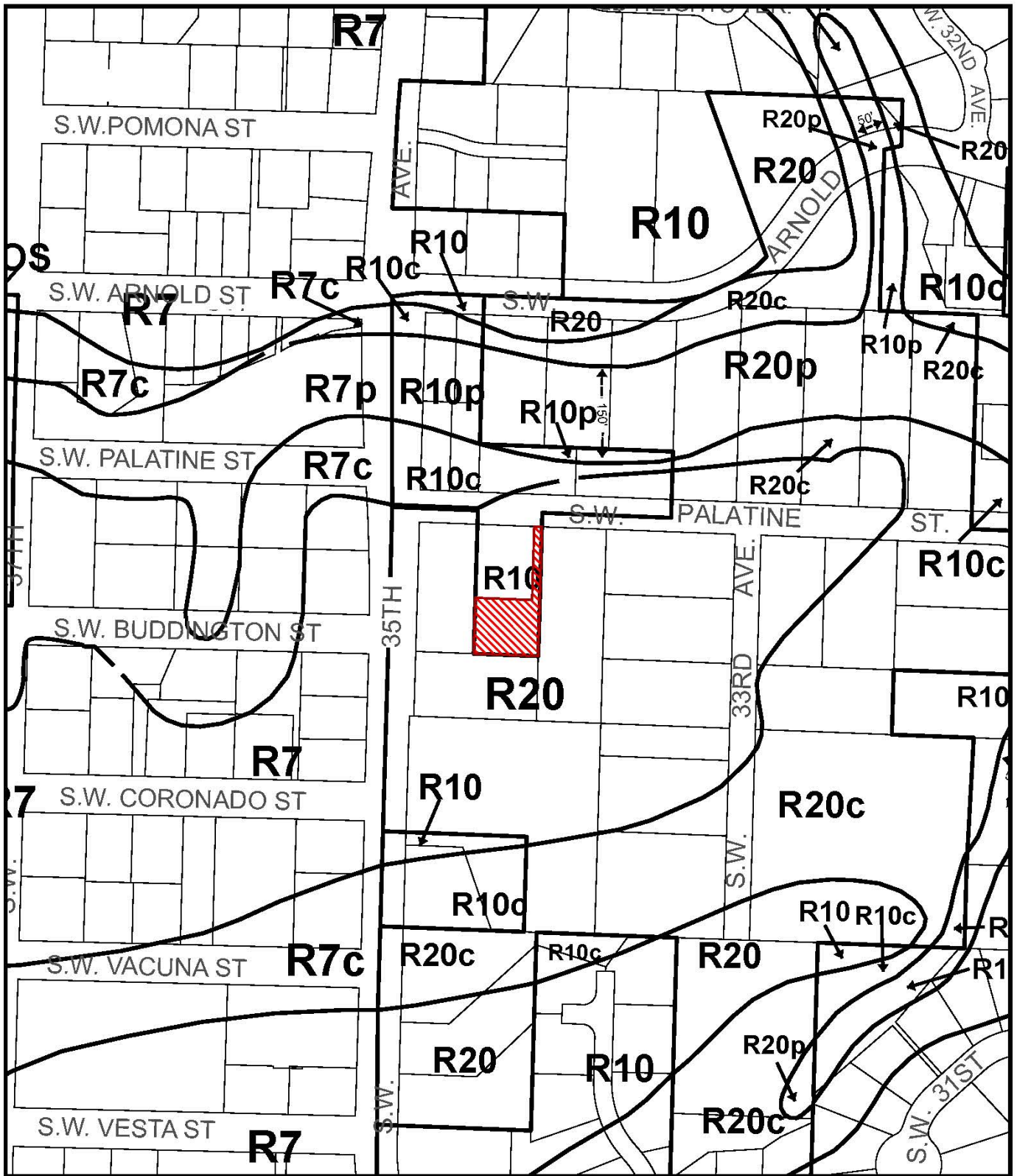
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Applicants narrative
 2. Photos of site
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Elevations
- 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
 7. Life Safety
- F. Correspondence: (None Received)
- G. Other:
1. Original LU Application
 2. Site History Research
 3. Incomplete Letter dated 1/24/13
 4. GIS aerial photo

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

File No. LU 13-102610 AD
 1/4 Section 4126
 Scale 1 inch = 200 feet
 State_Id 1S1E32AC 1402
 Exhibit B (Jan 10, 2013)

Approved

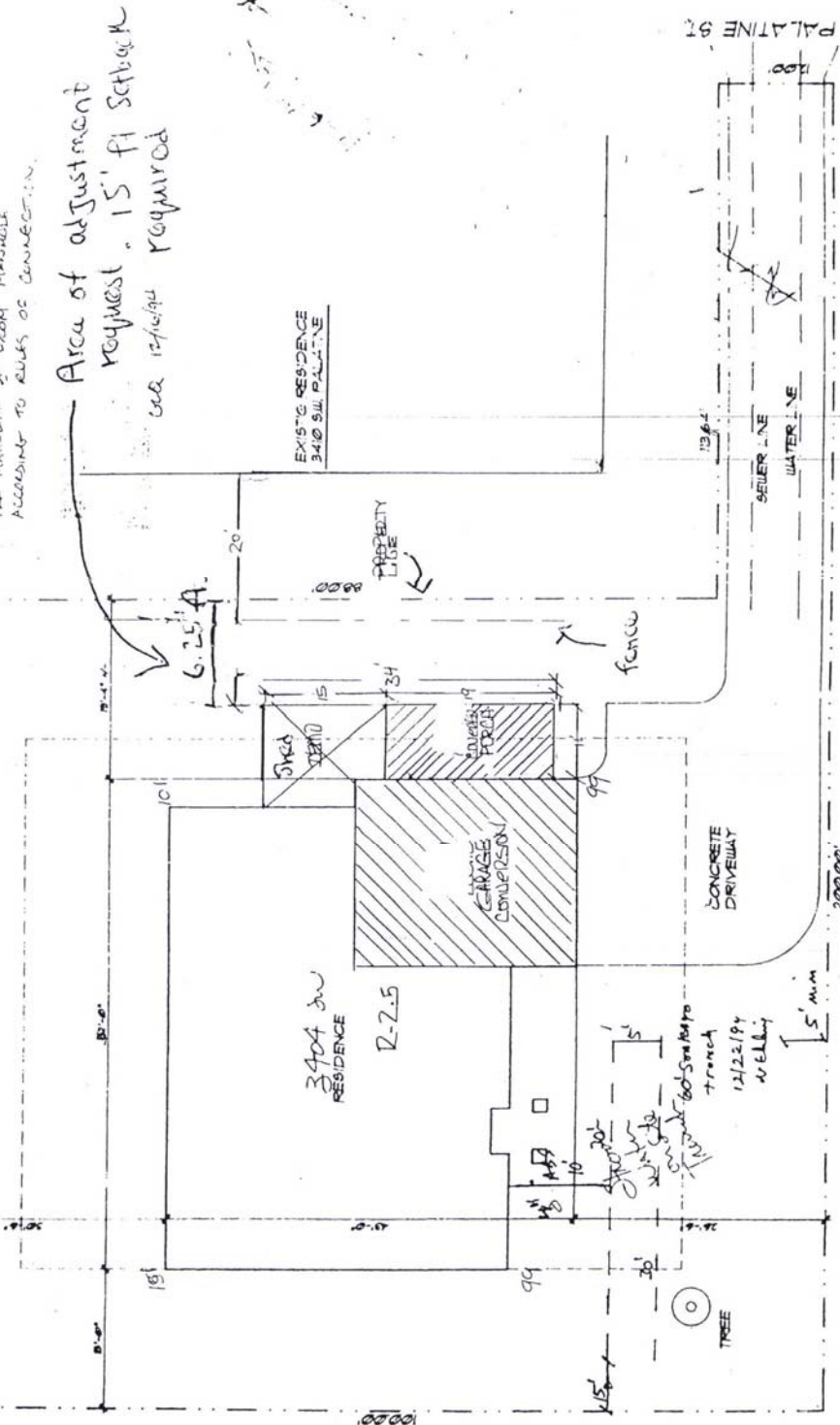
City of Portland - Bureau of Development Services

Planner S. B. G. H. Date 2-28-13

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

OWNER: 341' OF 9' C/SF GARAGE IN SW PALATINE ST. CONVEYED TO THE MAINLINE 8' FROM MAINLINE ACCORDING TO RULES OF CONNECTION.

Area of adjustment request - 15' ft setback use required



SITE PLAN

SCALE: 1" = 10' ⁴¹¹⁵
PARCEL 2 LOT 3 MAP ⁴¹¹⁵
FOREST BROOKS
CITY OF PORTLAND, OREGON

COVERAGE AREA: 2250 SQ. FT.
TOTAL AREA: 10000 SQ. FT.
PERCENTAGE: 22.5%

CASE NO. 13-102610 AD
EXHIBIT C-1

LN 13-102610 AD

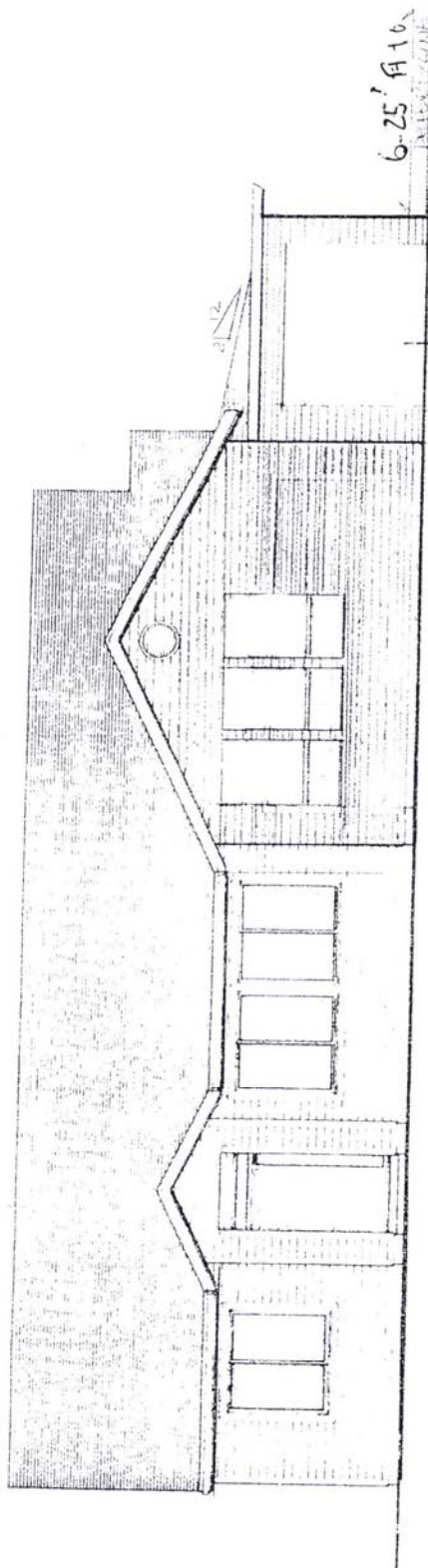
Approved

City of Portland - Bureau of Development Services

Planner S. Bugach

Date 2/28/13

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



FRONT ELEVATION

SCALE 1/4" = 1'-0"

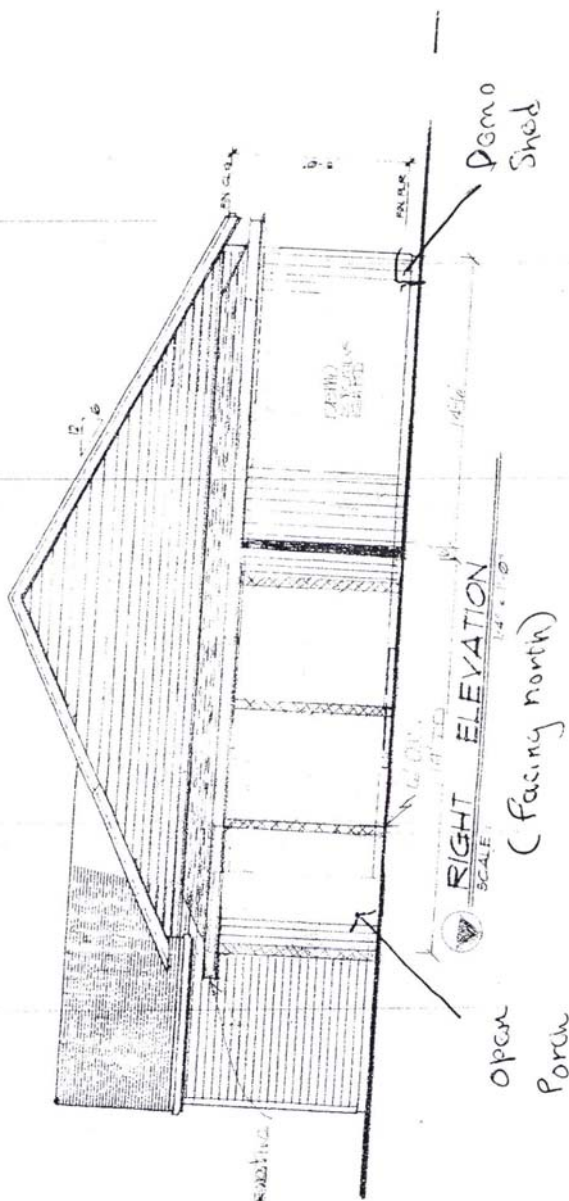
(facing east)

Open area
(No door)
(proposed)


6-25' A10

CASE NO. 13-102610
EXHIBIT C-2

LN 13-102610 AD



N ↑

Approved 
 City of Portland - Bureau of Development Services
 Planner S. Ruych
 Date 2/28/13
 * This approval applies only to the reviews requested and is subject to the conditions of approval. Additional zoning requirements may apply.

CASE NO. 13-102610
 EXHIBIT Exhibit C-2 (page 2)

LN 13-102610 AD