



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

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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** April 23, 2015  
**To:** Interested Person  
**From:** Matt Wickstrom, Land Use Services  
503-823-6825 / [Matt.Wickstrom@portlandoregon.gov](mailto:Matt.Wickstrom@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 mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, 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 15-121027 AD**

#### **GENERAL INFORMATION**

**Applicant:** Andrew T Kappler  
4320 SE Oak St / Portland, OR 97215

**Site Address:** 4320 SE OAK ST

**Legal Description:** BLOCK 97 LOT 10, LAURELHURST  
**Tax Account No.:** R479123970  
**State ID No.:** 1N2E31CC 18200  
**Quarter Section:** 3035  
**Neighborhood:** Laurelhurst, contact Sean Green at 971-998-7376  
**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010  
**Plan District:** Laurelhurst-Eastmoreland  
**Zoning:** R5 (Single-Dwelling Residential 5,000)  
**Case Type:** AD (Adjustment Review)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant proposes to demolish an existing detached garage facing SE Oak Court and replace it with a new two-car garage. The new garage will be attached to another existing single-car detached garage also located on the site. The applicant requests two Adjustments to regulations of the Portland Zoning Code associated with this project. The Zoning Code requires the entrance to a garage to be set back 18 feet from a street property line. The applicant proposes to reduce the 18-foot setback to 2.7 feet. With some exceptions for smaller garages, the Zoning Code requires garages to be setback 5 feet from side property lines. The applicant proposes to reduce the 5-foot side setback to 1-foot.

#### **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 has frontage on two streets – SE Oak Street to the north and SE Oak Court to the south. The right-of-way width of SE Oak Street is comparable to other streets in the area; however, SE Oak Court is much narrower and has a width similar to an alley. The 9,280 square foot lot is developed with a one two-story single dwelling residence fronting on SE Oak Street. The site is also developed with two single-car detached garages. One of the garages fronts on SE Oak Court and is setback 1.1 foot from that street property line. The other garage is located immediately behind this garage. The two garages are located between 1.1 feet and 2.4 feet from the west property line and create an approximately 42-foot long single-story wall in the side setback.

The vicinity is developed with other single-dwelling homes. Many of the homes with frontage on SE Oak Street and SE Oak Court, have detached garages and accessory structures that are located at the SE Oak Court property line.

**Zoning:** The R5 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet. The site is located in the Laurelhurst/East Moreland Plan District. The plan districts enforce special mapped street setback requirements to maintain the established character of the Laurelhurst and Eastmoreland areas, characterized by homes with larger than normal building setbacks from the street.

**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 mailed **March 30, 2015**. The following Bureaus have responded:

The Bureau of Environmental Services responded with information on sanitary service and stormwater management. The response notes no objection to the requested Adjustments (Exhibit E-1).

The Portland Bureau of Transportation responded with an analysis of how the approval criteria pertains to the garage entrance setback Adjustment. The response notes no concerns with the requested Adjustment (Exhibit E-2).

The Water Bureau responded with comments about water service (Exhibit E-3).

The Site Development section of the Bureau of Development Services (BDS) responded with information on erosion control and other site specific details (Exhibit E-4).

The Life Safety section of BDS responded with building code information (Exhibit E-5).

The Fire Bureau responded with no concerns (Exhibit E-6).

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the Notice of Proposal.

## ZONING CODE APPROVAL CRITERIA

### 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 providing 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 applicant requests two Adjustments. The first Adjustment is to reduce the garage entrance setback from 18 feet to 2.7 feet. The second Adjustment is to reduce the side setback for the proposed structure from 5 feet to 1-foot.

The purpose for the setback regulations for single-dwelling zones is found in 33.110.220, which states:

*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.*

The Portland Bureau of Transportation provided a response to the garage entrance setback Adjustment. The response states:

*In accordance with Zoning Code Section 33.120.220, the purpose of the garage setback is to provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

The concern PBOT generally has about garage entrance setback adjustments is whether the location of the door will encourage vehicles to park in front of the door in a manner that would block the sidewalk and extend into the abutting roadway. At this location, SE Oak Ct. is a 19-ft paved roadway with curbs on both sides lacking sidewalks. While not specifically platted as such, this roadway functions as an alley providing primary access for the majority of the lots on either side of the ROW.

Given a typical vehicle length of between 15-ft-19-ft, any vehicle attempting to park in front of the proposed garage would extend entirely into the roadway. Accordingly, the lack of sidewalks and the existing narrow width of the roadway will require that vehicles be parked entirely within the proposed garage. This would preclude a car from being parked in a manner that *overhangs the street* as is typically the concern with a standard pedestrian corridor and wider roadway.

While garage entrances near or at the property line could result in reduced sight lines, reduced garage setbacks also result in very low vehicle speeds when backing out given there is less time/distance for vehicles to accelerate. Additionally, garages constructed at or near the property line is very common along SE Oak Ct. and occurs on almost every lot on both sides of the roadway between SE 41<sup>st</sup> & SE 44<sup>th</sup>. Therefore, drivers accessing this roadway will be traveling at low speeds due to the narrowness of the roadway and the proximity of garages to the property line.

With the exception of SE Oak Ct, this block has fully improved pedestrian corridors that meet or exceed City standards. It can be expected that the majority of pedestrians in this area will utilize the well-connected sidewalks in the area rather than SE Oak Ct. The minimal number of pedestrians expected on SE Oak Ct. will already have an increased awareness due to the configuration of the roadway (lack of sidewalk) and the existing garages within close proximity to the property line.

For the reasons provided herein, PBOT has no objections to the requested adjustment to the garage entrance setback.

PBOT also notes that the side setback Adjustment does not impact the abutting right-of-way or the transportation system in the area and noted that PBOT has no objection.

The proposal to reduce the side setback from 5 feet to 1-foot, meets the relevant approval criteria. The west side wall of the proposed garage/storage structure will be constructed in the same location and at a comparable length as the existing detached garages. Because the existing structures maintain light and air for the adjacent property to the west, there is no reason to think this structure would not. The Life Safety section of BDS stated that fire rating requirements will need to be met to ensure for proper fire protection. The Fire Bureau responded with “no concerns” when asked for comments on the proposal; therefore, access for fire-fighting is acceptable. The location of the garage/storage structure is consistent with others located on SE Oak Court. The garage/storage structure doesn’t conflict with the “front yard” of the house which sits between the house and SE Oak Street. Furthermore, ample back yard outdoor area is preserved by the location of the garage/storage structure.

Based on the information above, this criterion is met.

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

**Findings:** The proposal will not detract from the livability or appearance of the residential area. The existing garage that fronts on SE Oak Court is in poor condition. The new garage/storage structure will be an improvement in terms of appearance. The proposed structure also will not detract from the livability of the area. Two existing detached garage structures are currently located along the west side property line. These existing structures do not detract from livability in terms of privacy, light and air and there is no reason a comparably sized replacement structure would do otherwise. Furthermore, as pointed out by PBOT under criterion A, garages that front on SE Oak Court typically are located with a 0-foot or minimal setback from the street. Based on this information, 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:** Two adjustments are being requested to reduce a side setback and the garage entrance setback. The purpose of the single-dwelling zones is to preserve land for housing and to provide housing opportunities for individual households. The cumulative effect of the two Adjustments is consistent with this purpose. This criterion is met.

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

**Findings:** There are no City-designated scenic or historic resources at the site, therefore this criterion is not applicable.

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

**Findings:** There are no discernible impacts that would result from granting the requested adjustments. 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. 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 applicant requests two Adjustments to standards of the Portland Zoning Code in association with plans to demolish an existing garage and construct a replacement garage/storage structure that incorporates another detached garage on the site. The proposal meets the applicable approval criteria and should be approved.

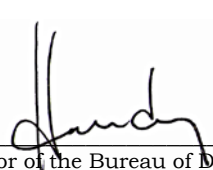
## ADMINISTRATIVE DECISION

Approval of two Adjustments associated with a replacement garage/storage structure:

- Reduce the garage entrance setback from 18 feet to 2.7 feet; and
- Reduce the north side setback from 5 feet to 1-foot (from 4 feet to 0 feet for the eave), per the approved site plans, Exhibits C-1 through C-3, signed and dated April 21, 2015, 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.1-C.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 15-121027 AD."

**Staff Planner: Matt Wickstrom**

**Decision rendered by:**  **on April 21, 2015**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: April 23, 2015**

**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 February 18, 2015, and was determined to be complete on **March 18, 2015**.

*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 February 18, 2015.

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: July 16, 2015.**

**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 May 7, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> 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](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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 **May 8, 2015 – (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.

**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 and Original LU Application
  - 1. Incomplete letter from Matt Wickstrom to Andy Kappler dated March 5, 2015
  - 2. Additional information provided by Andy Kappler on March 18, 2015
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. North and South Elevation Drawings (attached)
  - 3. West and East Elevation Drawings (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
  - 3. Mailing list – Revised Notice
  - 4. Mailed notice – Revised Notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Site Development Review Section of BDS
  - 5. Life Safety Section of BDS
  - 6. Summary sheet of bureau responses
- F. Correspondence: None received

**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



Historic Landmark



NORTH

This site lies within the:  
LAURELHURST PLAN DISTRICT

File No. LU 15-121027 AD  
1/4 Section 3035  
Scale 1 inch = 200 feet  
State\_Id 1N2E31CC 18200  
Exhibit B (Feb 23, 2015)

# Proposed Site Plan

\*Approved\*

City of Portland - Bureau of Development Services

Planner Wickstrum Date 4-21-15

\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional work may be required.

Wood Garage becomes Storage Building.

Conc Brick Garage becomes NEW Garage.

Proposal to construct new 2-car garage attached to existing garage requires two Adjustments:

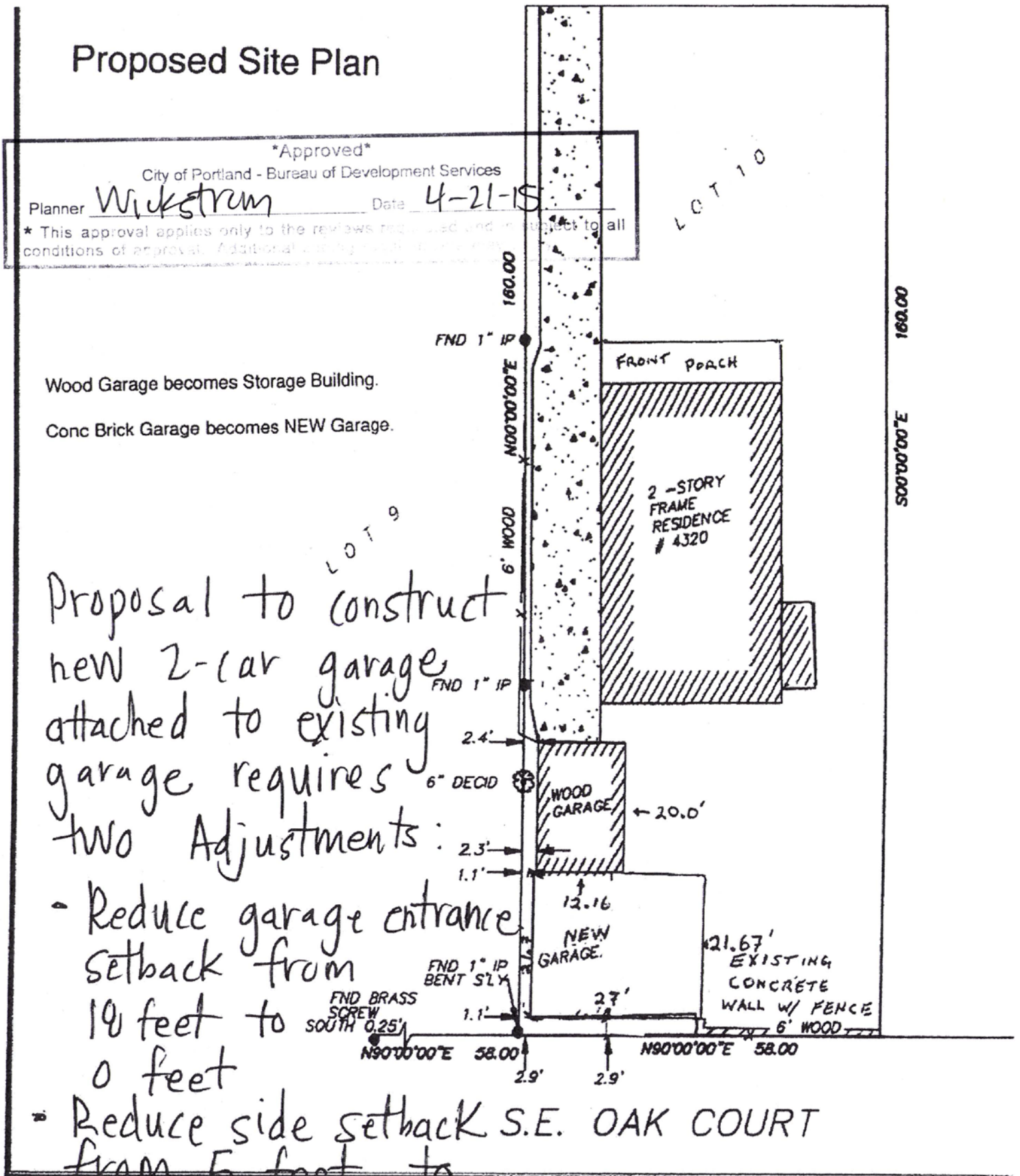
- Reduce garage entrance setback from 18 feet to 0 feet
- Reduce side setback S.E. OAK COURT from 5 feet to 2 feet 4 inches.

**SURVEY**

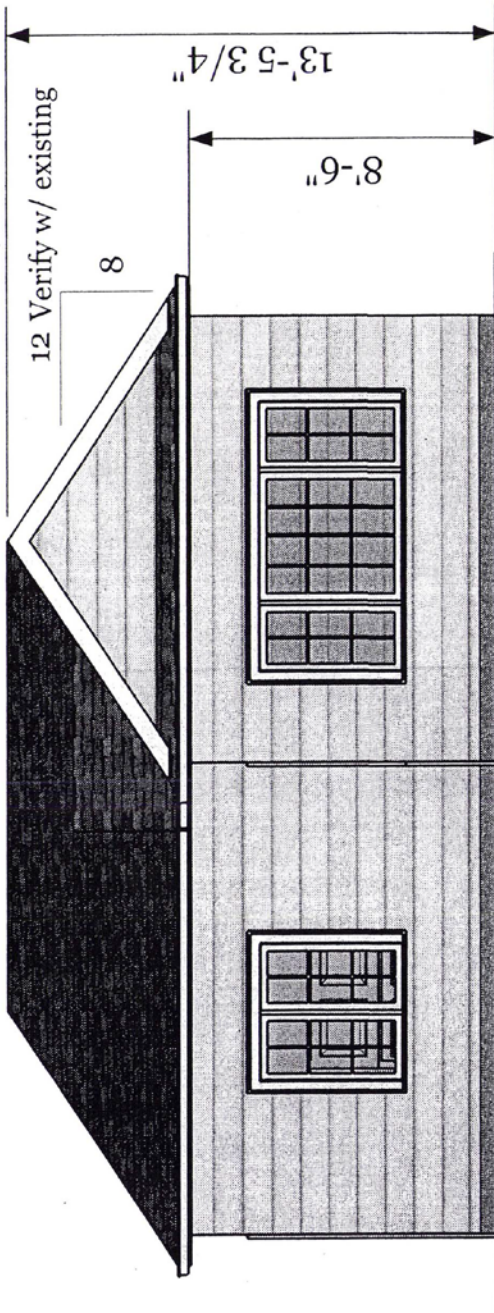
A0001 1" = 20'

LU 15-121027 AD

Exhibit C-1



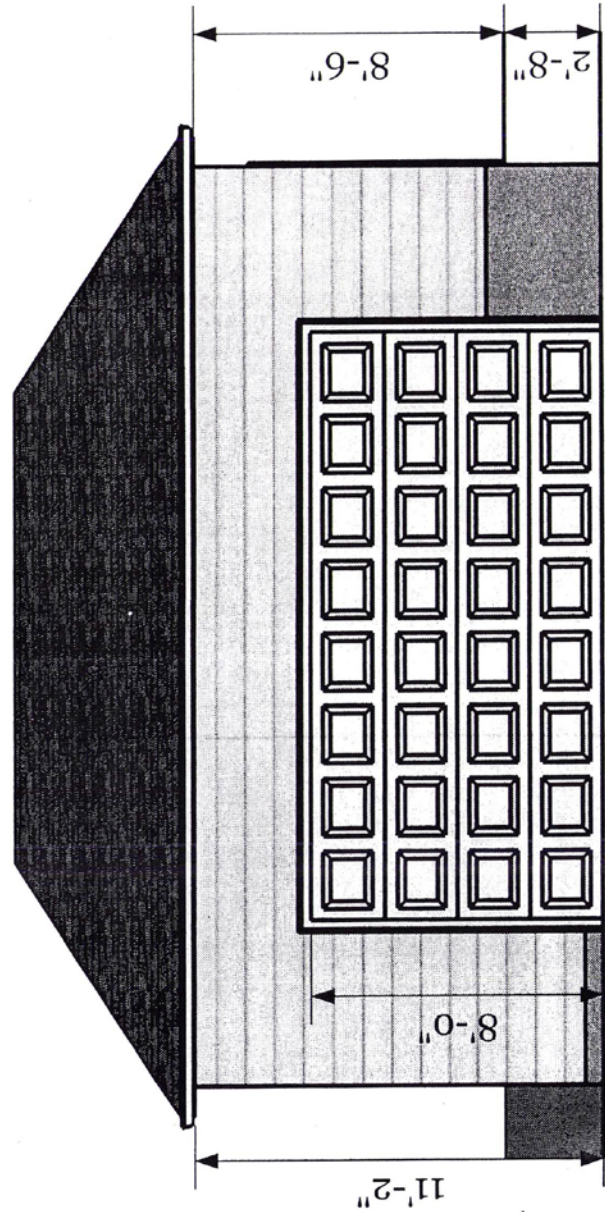




modify existing  
proposed

## NORTH ELEVATION

A1 003 scale: 3/16" = 1'



## SOUTH ELEVATION

A1 004 scale: 3/16" = 1'

City of Pu  
Planner Wickstrom

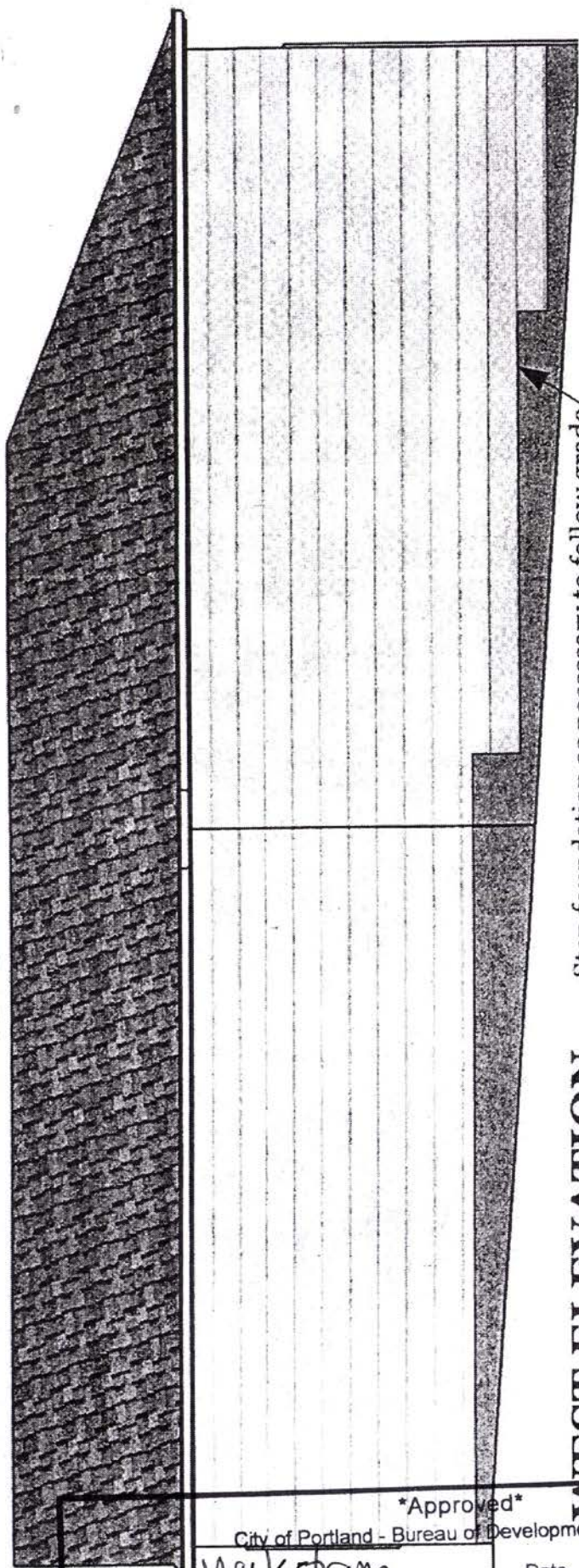
\* This approval appl  
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es and is subject to all  
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LU 15-121027 AD

Exhibit C-2



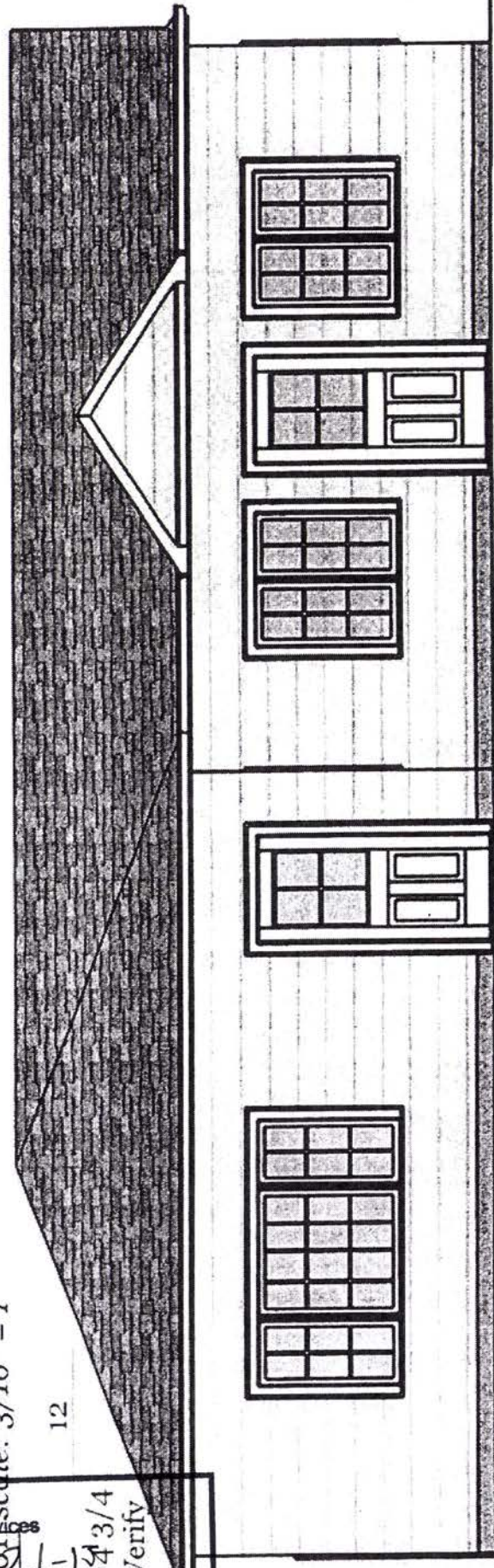


# WEST ELEVATION

Step foundation as necessary to follow grade

Scale: 3/16" = 1'

12



# EAST ELEVATION

Scale: 3/16" = 1'

modify existing

proposed

Planner Wickstrom  
City of Portland - Bureau of Development Services  
Date 4-21-14  
Verify 3/4  
\* This approval is subject to all requirements that may apply.

LU 15-121027 AD

Exhibit C-3