



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

Dan Saltzman, Commissioner
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Date: February 23, 2016
To: Interested Person
From: Kathleen Stokes, Land Use Services
503-823-7843 / Kathleen.Stokes@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 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 15-280826 AD

GENERAL INFORMATION

Applicant: Wilfred E Pickens Jr.
Bridgeport Construction
PO Box 6543
Aloha, OR 97007

Owner: Darrell W Kuffler
9014 NE Webster St
Portland, OR 97220

Site Address: 9014 NE WEBSTER ST

Legal Description: BLOCK 5 LOT 3 EXC PT IN ST, LOCHKNOWE
Tax Account No.: R503001166
State ID No.: 1N2E21BA 05900
Quarter Section: 2539

Neighborhood: Sumner, Jacob Warren at 971-340-7479.
Business District: Parkrose Business Association, David Ableidinger at 503-258-2607.
District Coalition: Central Northeast Neighbors, Alison Stoll at 503-823-3156.

Zoning: R7h - Residential 7,000, Medium Density Single-Dwelling, with an Aircraft Landing (height) Overlay

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

Proposal: The owner of this property built an attached garage, which extends into the required 5-foot wide west side building setback on this R7-zoned site. Prior to construction, approval for the location of the addition within the setback was granted through an Adjustment Review (LU 96-013813/LUR 96-00926 AD). Two building permits were issued. Permit No. 96-052795 RS was for an attached garage. Permit No. 96-055457 RS was for an addition to the house with garage below and shop/storage/sleeping above. Neither permit was finalized and so have been cancelled. In order to gain new permits to legalize this 10-year old addition, the process must be started over and so a new Adjustment Review is required. Therefore, the proposal is to

request an Adjustment to Zoning Code Section 33.110.220 B, to the reduce the required minimum building setback from the west side property line, from 5 feet to 3 feet for the building wall and from 4 feet to 2 feet for the roof eave for the addition, which consists of an attached garage with living area above.

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

ANALYSIS

Site and Vicinity: The site is a 9,240 square-foot property that is located on the south side of NE Webster Street, and is the third lot to the west of the intersection with NE 91st Avenue. The site is developed with a single-dwelling residence that was constructed in 1926. The house and the attached garage that is the subject of this review are set back approximately 80 feet from the street lot line on NE Webster. The area around the site is developed with other single-dwelling structures that vary widely in age of construction, spanning from at least 1915 to 2008. The property to the west of the site has a wood fence that runs along the shared common property line, with an average setback area between the fence and the residence on this abutting property.

Zoning: The site is zoned R7, or Residential 7,000, Medium Density Single-Dwelling. This zone designation is intended for areas with adequate public services but minor development constraints. Single-dwelling residential will be the primary use. The maximum density is generally 6.2 units per acre or an average of one lot for every 7,000 square feet.

This site also has an “h” or Aircraft Landing Overlay. The provisions of this overlay zone, that limit the height of structures within the aircraft landing approach patterns for the Portland International Airport, are not relevant to this proposal.

Land Use History: City records indicate that prior land use reviews include the following: LUR 96-00926 AD approved an Adjustment to the minimum building setback for the attached garage that is the subject of the current land use review. (The garage was built in accordance with the 1996 approval, but the building permits were never given final inspection and so expired. The applicant is now looking to gain new building permits to finalize approval of the structure).

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **January 22, 2016**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services provided information on the existing sanitary infrastructure and on the requirements for stormwater management (Exhibit E-1).
- Water Bureau described the existing water service for the site (Exhibit E-2).
- Life Safety Plan Review Section of BDS noted requirements for building permits (Exhibit E-3).
- Site Development Section of BDS commented that a cess pool that existed prior to the sewer connection on the site will need to be decommissioned (Exhibit E-4).

The following bureaus each provided a response of “no concerns,” without any additional comments: Fire Bureau, Portland Office of Transportation (Exhibit E-5).

Neighborhood Review: Three written responses have been received from notified property owners in response to the proposal. All these responses stated that there were no objections or concerns with this proposal (Exhibits F-1 through F-3).

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of Adjustments The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's

regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Adjustment Approval Criteria

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

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

Findings: Adjustment to Code Section 33.110.220, to reduce the minimum building setback for the attached garage, with living area above, from 5 feet to 3 feet from the west side property line for the building wall, and from 4 feet to 2 feet for the roof eave.

The purpose of building setback requirements are to maintain light, air, separation for fire protection, and access for fire fighting. Setback standards also reflect the general building scale and placement of development in the City's neighborhoods and promote a reasonable physical relationship between residences. They promote options for privacy for neighboring properties and 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.

The separation of the garage, with living area in the finished upper portion, maintains light and air for the abutting neighbor to the west. The building measures about 16.5 feet tall, from grade level to the average height of the predominant gable, and about 20 feet tall at the roof peak. The dormers, which provide the second level living area extend at a 3.5 to 12 pitch from the spine of the main roof. This forms the wall facing the west property line, which is 24 feet long.

As noted in the description of the site and vicinity, the neighboring property has a wood fence that extends along the property line and an accessway between the fence and the neighbor's house. The applicant's house and attached garage are set back farther than the house on the neighbor's property, so that the garage addition that is the subject of this review is adjacent to the rear yard of the neighbor's lot. This ensures that adequate separation for fire protection and access for fire fighting is maintained.

To maintain the reasonable building scale and placement of development in the City's neighborhoods requires that buildings do not crowd one another too tightly. This is also maintained, due to the juxtaposition of the relationship of structures on the two lots.

Options for privacy for neighboring properties are promoted in this case because the west wall of the garage contains only one small window in the living area on the second level and this would be overlooking the rear yard of the adjacent house and not offering any opportunities to see into the adjacent residence.

The consideration of flexibility to site a building so that it may be compatible with the neighborhood can be understood as the ability to create additional infill development, on properties with vintage homes such as this, within the allotted remaining space. The addition to the side of the house, in a location that causes no apparent impacts to the abutting neighbor allows the addition to offer greater utility to the residence while respecting the existing topography of the site, preserving the outdoor area and allowing for architectural diversity. Therefore, the proposal equally meets the purpose of the regulation and 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: Approval of the request to reduce the required setback for the structure, from 5 feet to 3 feet from the west property line will not significantly detract from the appearance or the livability of the residential area.

The house and the attached garage are set back about 80 feet from the street lot line, placing the structure adjacent to the neighbor's rear yard, which ensures that there are no impacts on appearance. Landscaping and existing trees at the front of the site screen the view from the adjacent street. The addition matches the architectural features of the main part of the house and is consistent with the scale and placement of structures in this largely single-dwelling residential area. Therefore, no potential impacts on livability or appearance, based on the reduced setback from the west side property line have been noted and 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 being 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 City's zoning maps by an "s" or Scenic Overlay Zone. City-designated historic resources are shown on the City's zoning maps, either as an adopted landmark, or as a site that is located within the boundaries of a Historic Conservation or Historic Design District. There are no City-designated scenic or historic resources on the site. Therefore, this criterion does not apply.

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

Findings: No potential impacts from approval of the requested Adjustment have been identified by staff. Therefore, no mitigation is needed and 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: Environmental zones are designated with either a lower case "c," for the Environmental Conservation Overlay, or "p," for the Environmental Protection Overlay. The site is not located in an environmental zone. Therefore, this criterion does not apply.

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

All of the relevant approval criteria have been met for the requested Adjustment to reduce the minimum building setback from the west side property line. The purpose for building setbacks will be equally met because the proposed building will not significantly impact light, air or privacy and will not cause fire safety issues. It will be in keeping with the scale and placement of structures in the area and will not significantly detract from the appearance or the livability of the surrounding area. The proposal can be approved in general compliance with the site plan and elevation drawings.

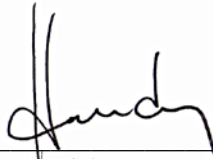
ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.220 B, to the reduce the required minimum building setback from the west side property line, from 5 feet to 3 feet for the building wall and from 4 feet to 2 feet for the roof eave for the addition, which consists of an

attached garage with living area above, in general compliance with the approved site plan and elevation drawings, Exhibits C-1 through C-3, signed and dated February 19, 2016, and 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 15-280826 AD."

Staff Planner: Kathleen Stokes

Decision rendered by:  **on February 19, 2016**
By authority of the Director of the Bureau of Development Services

Decision mailed: February 23, 2016

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on December 23, 2015, and was determined to be complete on January 19, 2016.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on December 23, 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: May 18, 2016.**

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 8, 2016**, 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 5th 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 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 **March 9, 2016 (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:

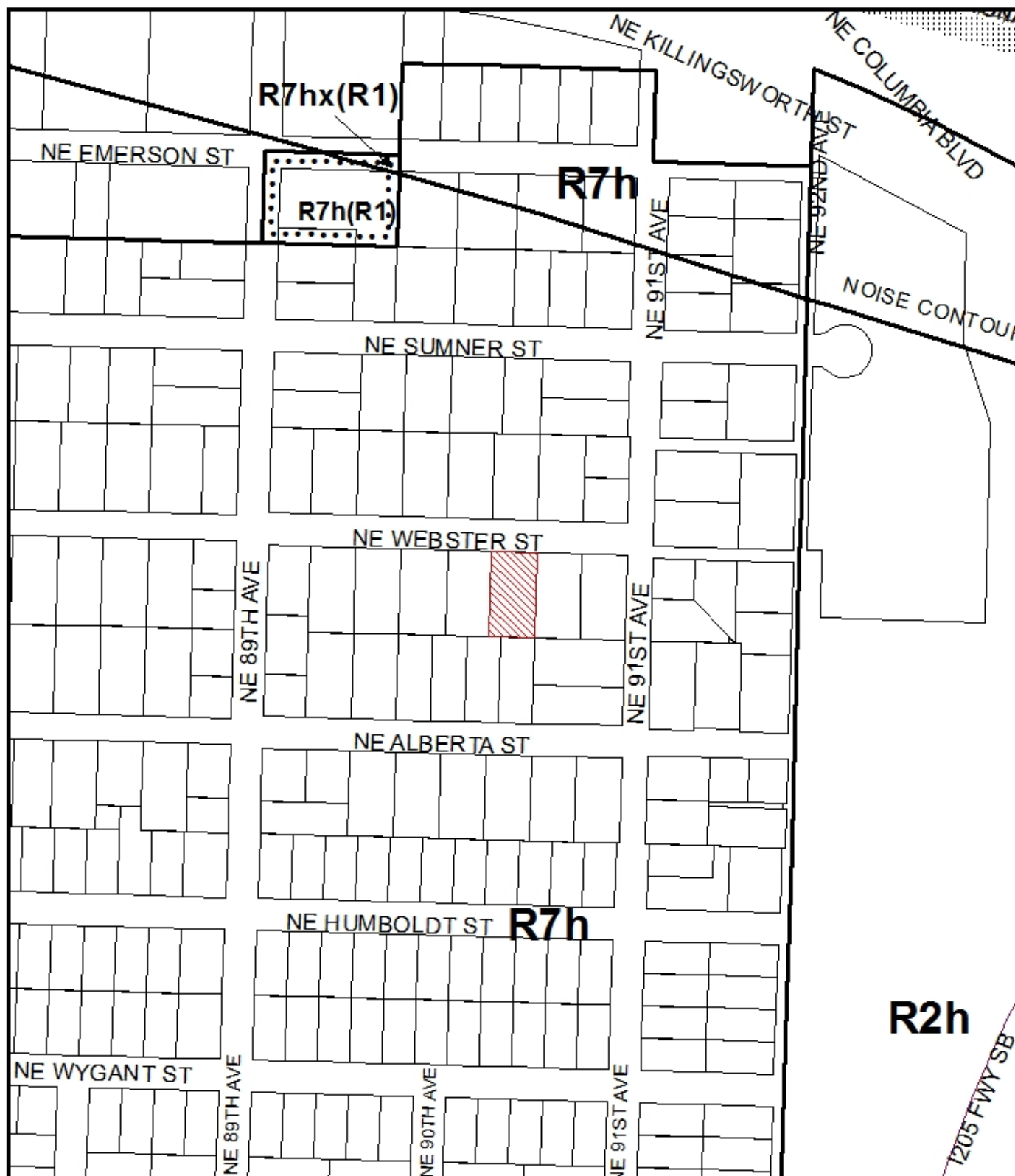
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS


NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Application, narrative, drawings and photographs
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation Drawings (north and west, attached)
 - 3. Elevation Drawings (south, attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
 - 3. Life Safety Plan Review Section of BDS
 - 4. Site Development Review Section of BDS
 - 5. Summary of City service agency responses (including Bureau of Transportation Engineering and Development Review and Fire Bureau)
- F. Correspondence:
 - 1. Chris Clement, 9002 NE Webster
 - 2. John and Sharon Kruger, 9019 NE Webster
 - 3. Tavern E. Snell, 9029 NE Webster
- G. Other: (none)

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.	<u>LU 15-280826 AD</u>
1/4 Section	<u>2539</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1N2E21BA 5900</u>
Exhibit	<u>B</u> (Dec 31, 2015)

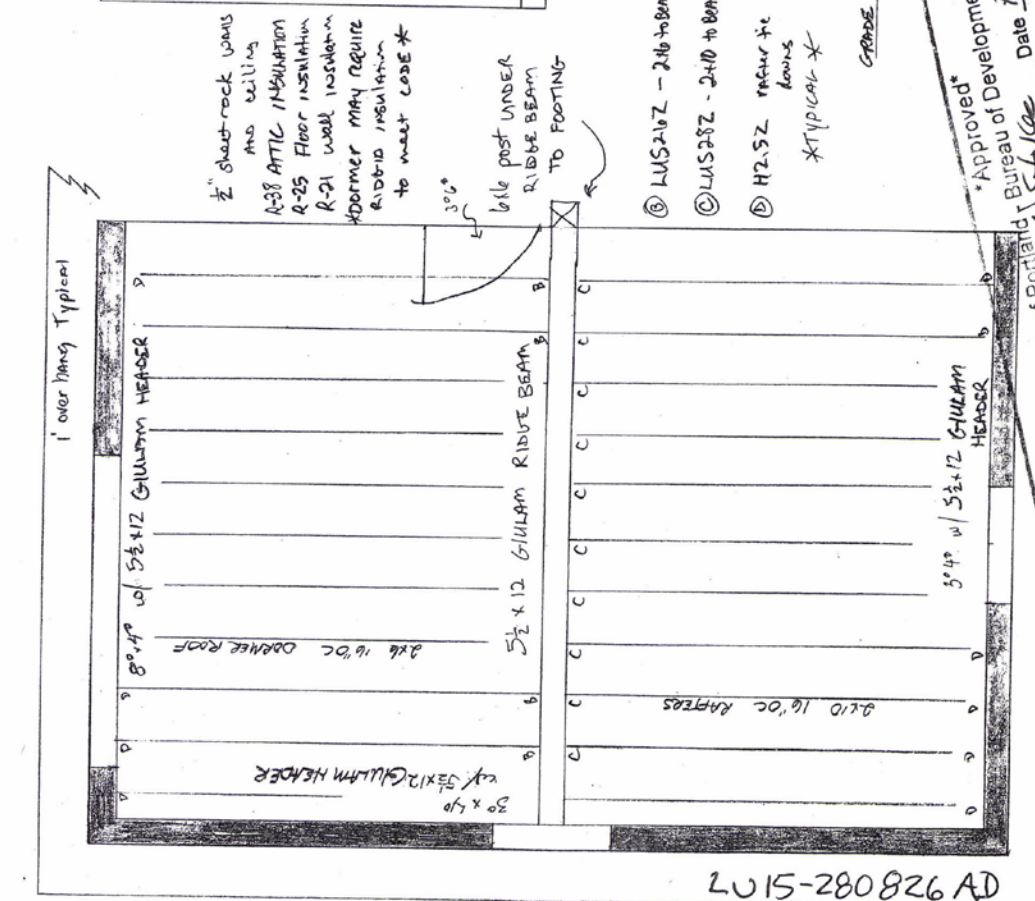


Exhibit
C-3

2015-280826 AD

LV15-280826AD