



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

FROM CONCEPT TO CONSTRUCTION

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Date: December 30, 2016
To: Interested Person
From: Lauren Russell, Land Use Services
503-823-7817 / Lauren.Russell@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 16-267465 AD

GENERAL INFORMATION

Owner/Applicant: Robert S and Lisa M Healy
1524 SE Marion St
Portland, OR 97202-7237

Site Address: 1524 SE MARION ST

Legal Description: BLOCK 63 LOT 14, SELLWOOD
Tax Account No.: R752710330
State ID No.: 1S1E26AB 14000
Quarter Section: 3932
Neighborhood: Sellwood-Moreland, contact David Schoellhamer at d.dchoellhamer@comcast.net
Business District: Sellwood-Westmoreland, contact Emily Pinkstaff at emily.pinkstaff@newseasonsmarket.com
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010.
Zoning: R5a – Single-Dwelling Residential 5,000, Alternate Design Density Overlay
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant proposes to remove the existing 9-foot by 13-foot, 117 square foot one-story den located on the east side of the existing house and construct a new 13'-9" by 29-foot, 399 square foot one-story master suite. Per Zoning Code Section 33.110.220.B and Table 110-3, the minimum side building setback is 5 feet. Eaves are allowed to encroach 1 foot into the side setback. Because the proposed master suite addition would extend into this setback, the applicant requests an Adjustment to reduce the required side setback from the east property line from 5 feet to 3 feet for the building wall and from 4 feet to 2 feet for the eave.

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 subject site is a 5,000 square foot lot located on the south side of SE Marion Street between SE 15th Avenue and SE 16th Avenue. The site is currently developed with a one-story single-dwelling residence and a detached shed. Adjacent properties are similarly developed with one- to two-story single-dwelling residences and accessory detached structures.

Zoning: The R5 designation is one of the City's single-dwelling residential zones, which are intended to preserve land for housing and provide housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The Alternative Design Density (a) overlay zone is an optional overlay zone that provides opportunities for increased density in limited situations, provided that additional design compatibility requirements are met for the project. The overlay zone does not apply to this proposal.

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 December 1, 2016. The following Bureaus have responded with no issues or concerns regarding the requested Adjustment:

- Bureau of Environmental Services (BES) responded that they do not object to approval of the Adjustment and that the proposed development will be subject to BES standards and requirements during the permit review process (Exhibit E-1);
- Bureau of Transportation Engineering responded that there are no transportation-related approval criteria associated with the proposed land use request and that if the scope of work remains the same at the time of the anticipated building permit, there will be no transportation-related requirements (Exhibit E-2);
- Water Bureau responded with no concerns (Exhibit E-3);
- Fire Bureau responded with no concerns (Exhibit E-4);
- Site Development Section of BDS responded with no concerns (Exhibit E-5); and
- Life Safety Review Section of BDS responded that a separate building permit is required for the work proposed and the proposal must be designed to meet all applicable building codes and ordinances; and that eaves fewer than two feet to a property line must be protected on the underside as required for one-hour fire-rated construction (Exhibit E-6).

Neighborhood Review: Two written responses have been received, one from a notified property owner and one from the Neighborhood Association, in response to the "Notice of Proposal." The property owner stated that she has reviewed the proposal and supports the Adjustment request. The Sellwood Moreland Improvement League Land Use Committee states that they have reviewed the proposals and have no objections to the Adjustment request.

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 applicant has demonstrated 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 is requesting an Adjustment to reduce the required side setback from the east property line from 5 feet to 3 feet for the building wall and from 4 feet to 2 feet for the eave.

The purpose of the setback requirement in the R5 zone is stated in Zoning Code Section 33.110.220.A:

Purpose. *The setback regulations for buildings and garage entrances 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.*

Maintain light, air, and separation: The proposed master suite addition would have 11-foot high walls and an overall height of 14 feet as measured to the midpoint of the addition's gabled roof. It would be located approximately 10 feet from the house on the property to the east and over 80 feet from the houses on the properties to the south and southeast. Although the addition would be taller than the existing attached den, it would not increase the overall height of the house. Therefore, the location of the master suite addition would maintain light and air. The Fire Bureau reviewer had no concerns about the requested Adjustments and access to the structure for fire fighting would be available from the front and side. Therefore, the location of the addition would also maintain separation for fire protection and access for fire fighting.

Reflect general building scale and placement: There are several neighboring properties that also have only about 10 feet between two houses across a shared property line. There appears to only be about 5 feet between the houses located at 1517 SE Marion Street and 1523 SE Marion Street, 10 feet between the houses located at 1514 SE Marion Street and 1524 SE Marion Street (the subject site), and 10 feet between 1586-1588 SE Marion Street and 1580 SE Marion Street. The length of the walls of these houses that are close to their neighboring houses are similar to the approximately 29-foot long wall of the proposed master suite addition. Therefore, the size and placement of the 399 square foot master suite addition on the subject site would reflect the general building scale and placement of development in the neighborhood.

Promote a reasonable physical relationship between residences: The proposed master suite addition would be located approximately 10 feet from the house on the property to the east and over 80 feet from the houses on the properties to the south and southeast. Each of these distances is equal to or greater than if both the addition and neighboring houses only met the minimum 5-foot side or rear setback for a total of 10 feet. Therefore, despite being located within the side setback, the addition would maintain a reasonable physical relationship between residences.

Promote options for privacy: The north side of the proposed master suite addition that faces SE Marion Street would contain two new windows. These windows would be located about 28 feet back from the front property line and be screened by the existing maple trees within the front yard. The south side of the proposed master suite addition that faces the rear property line would contain a new door leading to the deck. This door would be located about 41 feet from the rear property line. The east side of the proposed master suite addition that faces the side property line would contain three new windows. These windows would be located 3 feet from the side property line and about 10 feet from the house on the property to the east. The top of the windows would be about 9 feet above grade. According to the applicant's landscape plan (Exhibit C-5), there is an existing 6-foot high chain link fence along the eastern side property line that begins at the northern wall of the existing den and runs south to the rear property line. On the portion of the fence that runs from the northern wall of the den to the rear deck, there is an established grape vine growing on the fence that provides screening and privacy. The proposed master suite addition would extend 10 feet further north than the existing den and there is no existing fence here to provide any screening. In order to find that the proposal equally meets the privacy purpose statement of the 5-foot setback standard, a condition of approval will require that the existing 6-foot high chain link fence be extended 10 feet north and that screening be provided by privacy slats. With this condition of approval, the proposed master suite addition would promote options for privacy for neighboring properties.

Require larger front setbacks: The applicant's proposal would not affect the front setback.

Provide adequate flexibility: As stated above, the proposed master suite addition would reflect the general building scale and placement of development in the neighborhood so it is therefore compatible with the neighborhood. Additionally, the proposed addition would fit with the topography of the site, maintain the required 250 square feet of outdoor area that fits a 12-foot by 12-foot square within it, and allow for architectural diversity.

Provide room for a car: The applicant's proposal would not affect the existing on-site parking area.

Based on these reasons and with the condition of approval that the existing 6-foot high chain link fence be extended 10 feet north and include privacy slats to screen the full length of the new addition from the abutting property to the east, the proposed Adjustment 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: Because the subject site is located in a single-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. As discussed in the findings for Approval Criterion A, the location of the proposed master suite addition would maintain light, air, and separation; reflect general building scale and placement; promote a reasonable physical relationship between residences; and promote options for privacy with the condition of approval that the existing 6-foot high chain link fence be extended 10 feet north and include privacy slats to screen the full length of the new addition from the abutting property

to the east. For these reasons and with the condition of approval, the proposal will not detract from neighborhood livability or appearance. 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: Because only one Adjustment is being requested, this criterion is not applicable.

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

Findings: City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. Because there no scenic or historic resource designations are mapped on the subject site, this criterion is not applicable.

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

Findings: As discussed in the findings for Approval Criteria A and B, the condition of approval that the existing 6-foot high chain link fence be extended 10 feet north and include privacy slats to screen the full length of the new addition from the abutting property to the east would mitigate for the potential negative impact on the abutting neighbor’s privacy. With this condition of approval, 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 overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). Because no environmental overlay zone is mapped on subject site, 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 proposal to reduce the side setback equally meets the intent of the regulations and does not have any adverse impacts on the livability and appearance of the surrounding residential neighborhood, with the condition of approval that the existing 6-foot high chain link fence be extended 10 feet north and include privacy slats to screen the full length of the new addition from the abutting property to the east. The applicant has demonstrated that the applicable approval criteria have been met. Because the approval criteria are met, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the side setback from the east property line from 5 feet to 3 feet for the building wall and from 4 feet to 2 feet for the eave (Zoning Code Section 33.110.220.C.2.b) per the approved site plans, Exhibits C-1 through C-5, signed and dated December 23, 2016, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 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-5, except as modified in Condition B below. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-267465 AD."
- B. The applicant is required to extend the existing 6-foot high chain link fence along the eastern side property line north 10 feet in order to screen the entire length of the new master suite addition from the neighbor to the east. This extended portion of the fence must be screened at a minimum by privacy slats. In addition, any portion of the existing fence along the master suite addition must be screened by privacy slats if the existing grape vines are removed for any reason. This condition of approval does not preclude the applicant from replacing the existing fence with a new fence that is even more sight-obscuring in the future, as long as the new fence is at least 6 feet in height. This fence extension must be shown on the final building permit plans.

Staff Planner: Lauren Russell

Decision rendered by: Lauren Russell **on December 23, 2016.**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 30, 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 November 1, 2016, and was determined to be complete on November 21, 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 November 1, 2016.

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: March 21, 2017.**

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 January 13, 2017** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 **January 17, 2017**.
- 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:

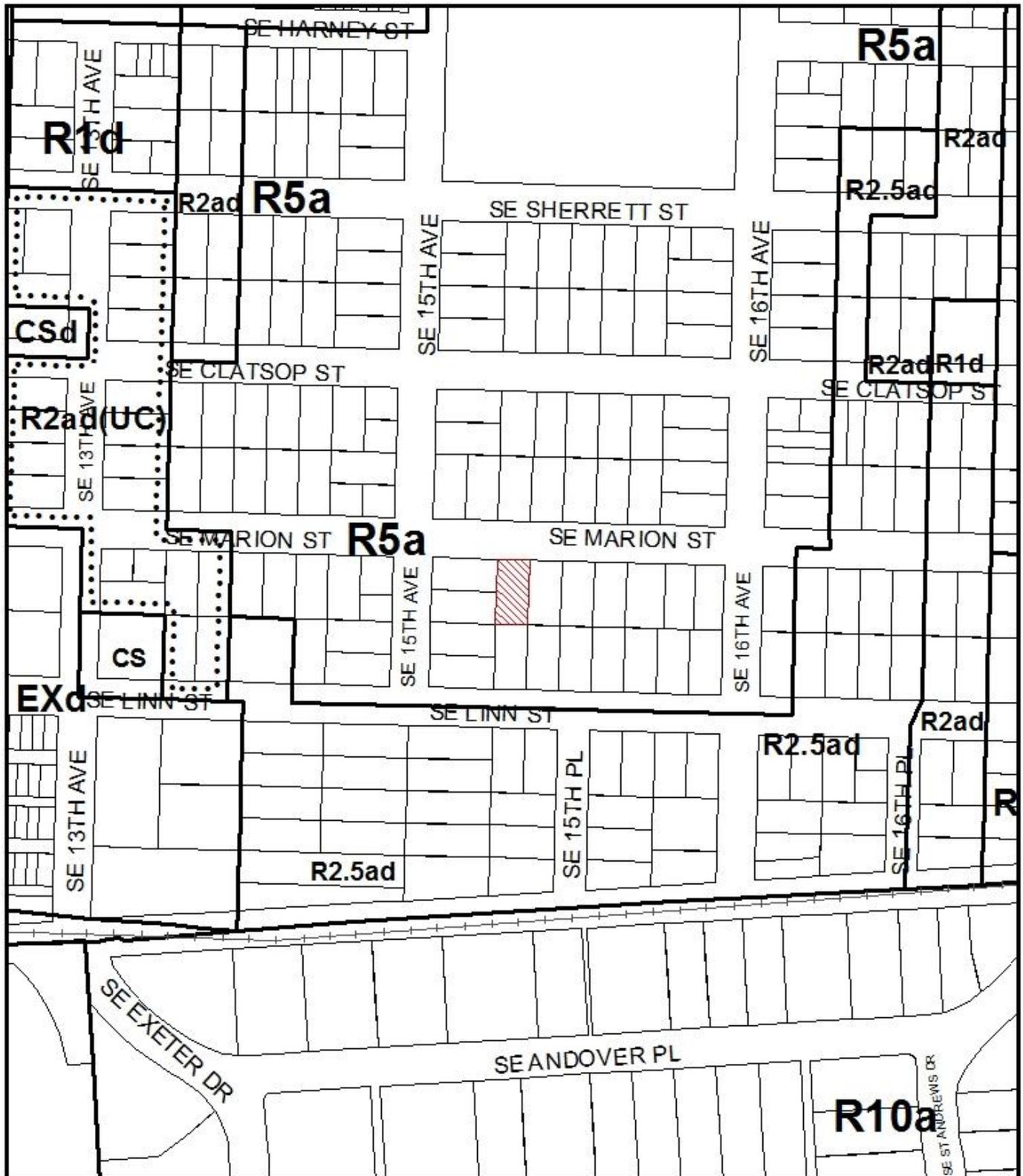
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Narrative and Plans 11/1/16
 2. Revised Plans 11/21/16
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Front Elevation (attached)
 3. Side Elevation (attached)
 4. Rear Elevation (attached)
 5. Landscape Plan (attached)
- 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. Life Safety Section of BDS
- F. Correspondence:
 1. Mary Vander Linden, 12/3/16, email in support
 2. Sellwood Moreland Improvement League Land Use Committee, 12/21/16, no opposition
- G. Other:
 1. Original LUR Application
 2. Incomplete Letter

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

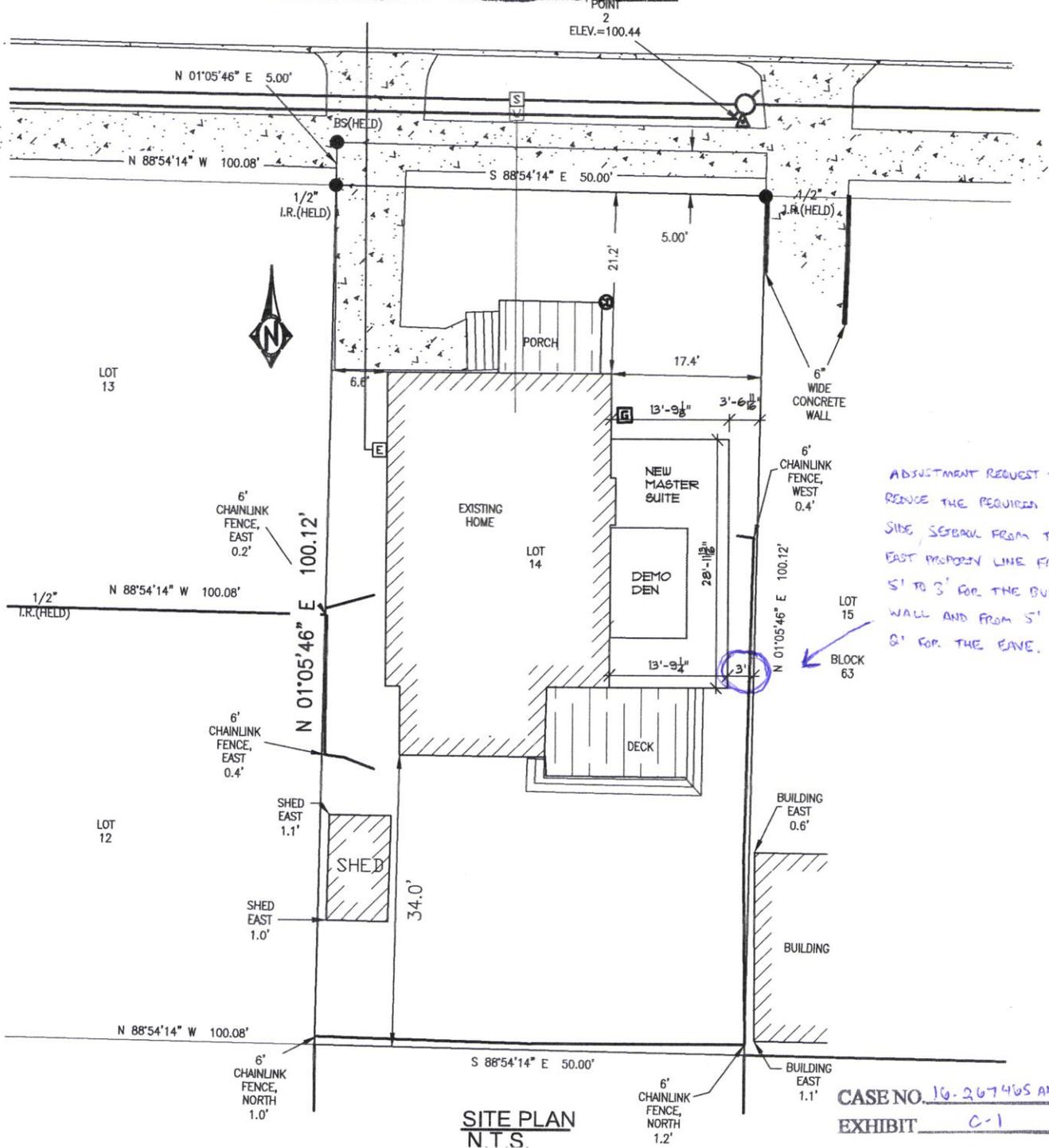


File No. LU 16-267465 AD
 1/4 Section 3932
 Scale 1 inch = 200 feet
 State_Id 1S1E26AB 14000
 Exhibit B (Nov 04, 2016)

Approved
City of Portland - Bureau of Development Services

Planner Lauren Russell Date 12/23/16
 S.E. MARION STREET

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



**SITE PLAN
 N.T.S.**

**CASE NO. 16-267465 AD
 EXHIBIT C-1**

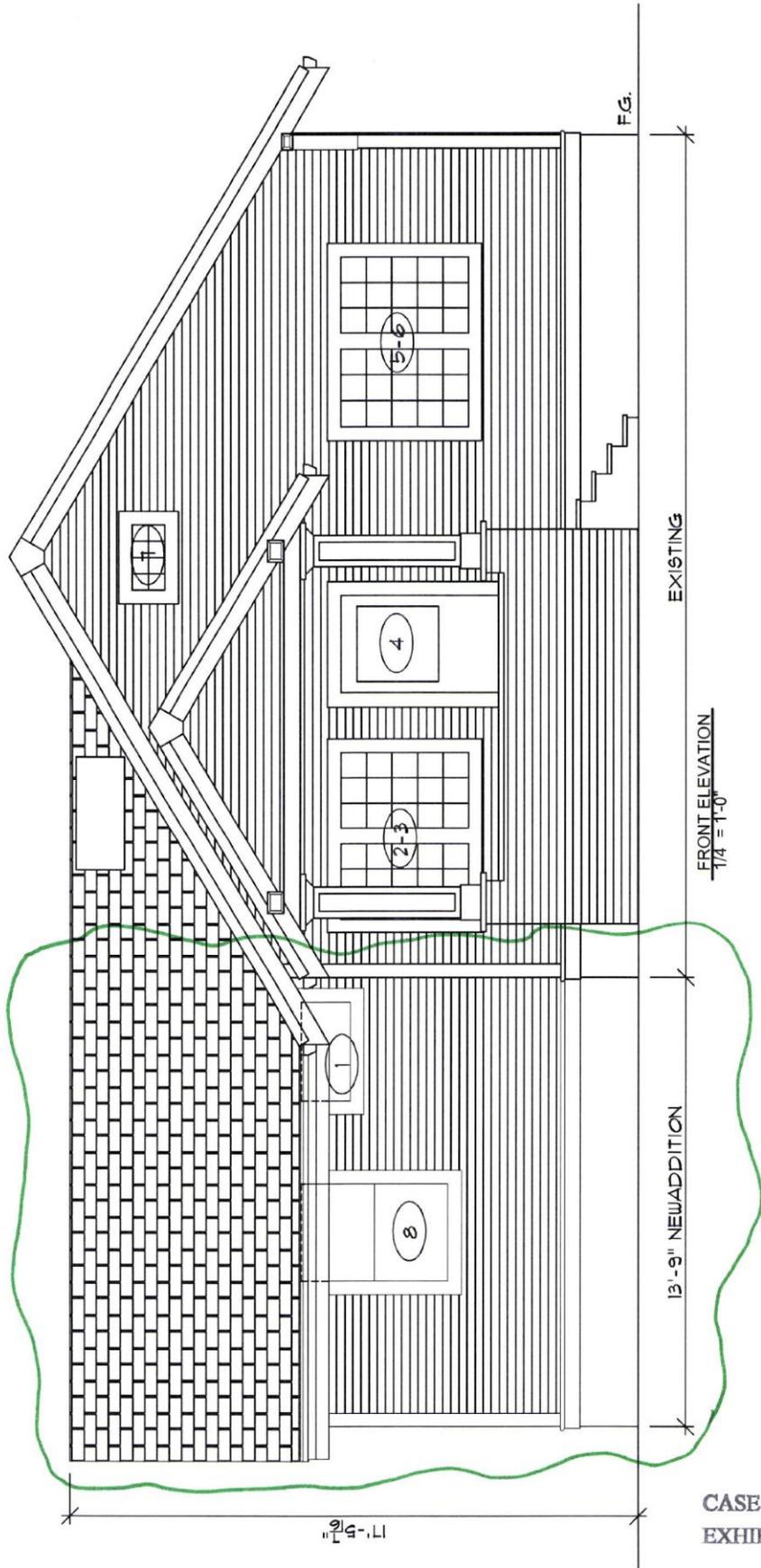
LU 16 - 2 67 46 5 AD

Approved
 City of Portland - Bureau of Development Services

Planner Jane Russell Date 12/23/16

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

APPROVAL PERTAINS TO SIDING MATERIAL OF NEW ADDITION MATCHING THAT OF EXISTING HOUSE. OTHER CHANGES ALLOWED.



CASE NO. 16-267465 AD
 EXHIBIT C-2

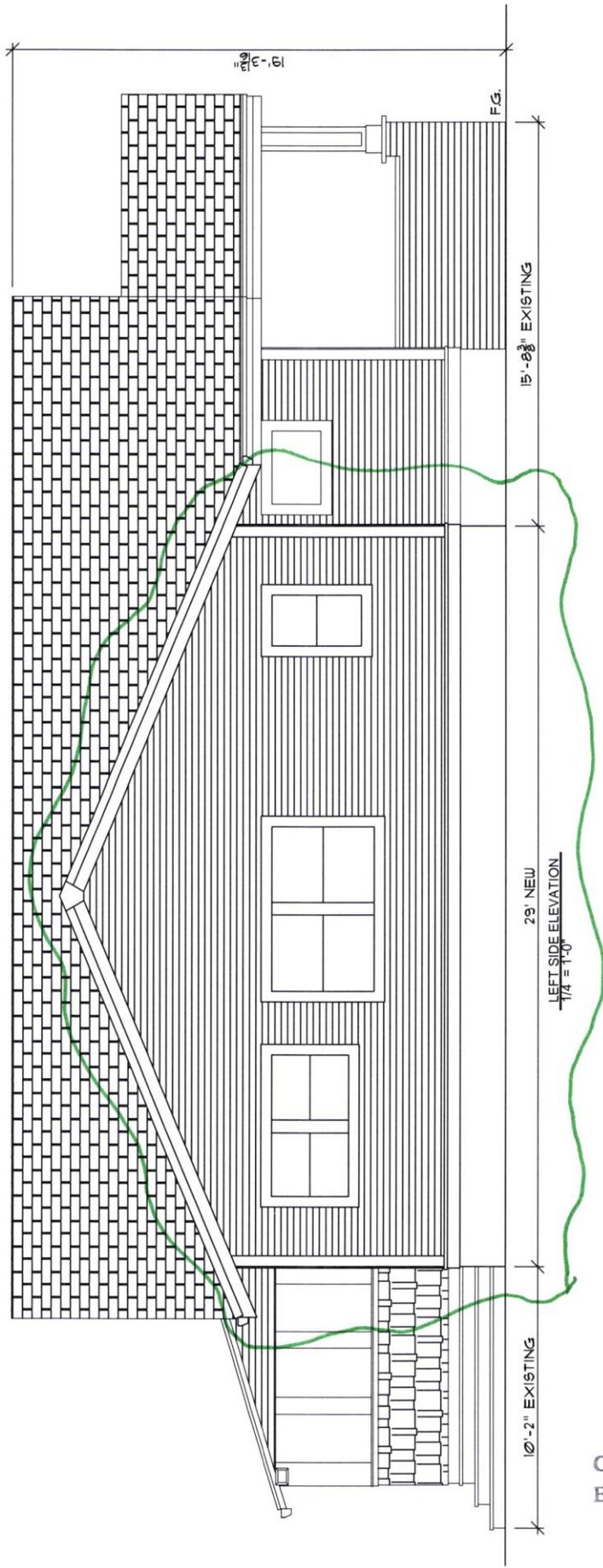
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 LV 16-207465 AD

Approved
City of Portland - Bureau of Development Services

Planner Laura Russell Date 12/23/16

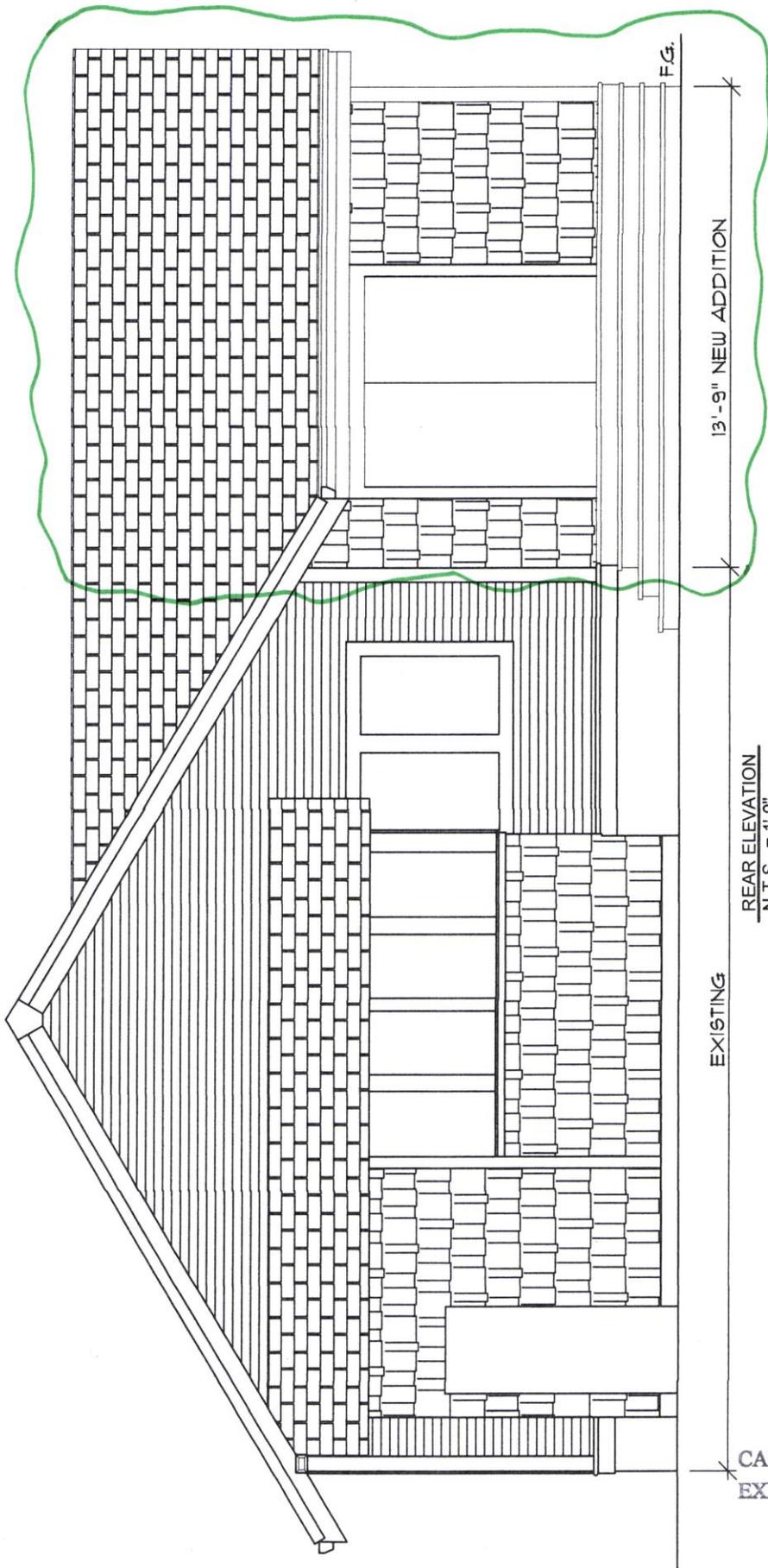
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

APPROVAL PERTAINS TO SIDING MATERIAL OF NEW ADDITION MATCHING THAT OF EXISTING HOUSE AND HEIGHT OF NEW WINDOWS ABOVE GRADE. OTHER CHANGES ALLOWED.



CASE NO. 16-267405 AD
 EXHIBIT C-3

⊕ N LU 16-267405 AD



EXISTING

REAR ELEVATION
N.T.S. = 1'-0"

13'-9" NEW ADDITION

F.G.

CASE NO. 16-267465 AD
EXHIBIT C-4

⊕^N LV16-267465AD

