



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
Paul L. Scarlett, Director
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www.portlandoregon.gov/bds

Date: July 25, 2013
To: Interested Person
From: Douglas Hardy, Senior Planner
503-823-7816 / Douglas.Hardy@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 13-110211 AD

GENERAL INFORMATION

Applicant: Richard Ellison
Richard Ellison Remodel And Repair
2828 SE Ankeny Street
Portland, OR 97214

Property-Owner: Kevin B. Coleman
5105 SE 41st Avenue
Portland, OR 97202

Site Address: 5105 SE 41st Avenue

Legal Description: Block 10, Lot 4, Porters Add
Tax Account No.: R667201290
State ID No.: 1S1E13AD 00400
Quarter Section: 3534

Neighborhood: Woodstock, contact Terry Griffiths at 503-771-0011
Business District: Woodstock Community Business Association, contact Sean Daugherty at 503-754-2636
District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010

Plan District: None
Zoning: R5 Single-Dwelling Residential 5,000

Case Type: Adjustment (AD)
Procedure: Type II, Administrative decision with appeal to Adjustment Committee

Proposal:

The applicant is requesting an Adjustment Review to allow the construction of a one-story, 198 square foot accessory building within the south side setback of this property. Because of the slope of the site, the street-facing building wall (measured to the eave line) is approximately

7'6" in height, with the rear wall approximately 9'8" in height. The building, which will be used as a meditation room for the property-owner, is built on the foundation of a former garage. The building is located approximately 40 feet back from the front lot line, approximately 35 feet from the rear lot line, and zero feet from the south side lot line.

Regulations of the R5 zone require the structure to be placed a minimum of five feet from side lot lines. The applicant is therefore requesting an Adjustment to reduce the minimum required south side setback for the building from five feet to zero feet.

[Note: The original Notice of Proposal for this project identified an eave on the building which extended over the south side lot line. The applicant has since modified the proposal so that neither the eave nor gutter extends over this lot line.]

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The 4,800 square foot lot is located on the west side of SE 41st Avenue, between SE Raymond Street and SE Mitchell Street. The site is developed with a two-story single-dwelling residence that is located approximately 10 feet back from the street lot line. A paved driveway extends along the south side lot line, leading to the accessory building that is the subject of this Adjustment Review. A fully sight-obscuring fence, between five and six feet in height, extends across the driveway, screening much of the accessory building from the street. A shorter fence, possibly three feet in height, extends along the south side lot line. A retaining wall, approximately two feet in height, extends along a portion of the south side lot adjacent to the driveway. The subject site is approximately two feet lower than the adjacent property to the south.

The surrounding area within a block radius of the site is also developed with single-dwelling residences, one to two stories in height. Many homes along this blockfront (fronting SE 41 Avenue, between SE Raymond Street and SE Mitchell Street) have attached or detached garages that are located at or close to the side lot line, and close to the rear wall of the house.

Zoning: The subject site is located in an R5 (Single-Dwelling Residential 5,000) zone. The use regulations of the Single-Dwelling zones are intended to create, maintain and promote single-dwelling neighborhoods. They allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood. The development standards of the Single-Dwelling zones work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed. The development standards are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.

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

Agency Review: A Notice of Proposal was mailed June 10, 2013. The following City service bureaus have responded to the proposal:

- Bureau of Environmental Services (BES): BES responded that they have no objections to the requested Adjustment, and no recommended conditions of approval (Exhibit E.1). BES indicated stormwater management associated with the accessory building will be reviewed for conformance with the City's Stormwater Management Manual at the time of building permit review. BES also noted that the property historically has been served by a private sewer line ("party sewer"). Based on City records, it appears that this sewer line ran beneath the proposed accessory building. However, the applicant has since relocated the sewer line serving the house (per Building Permit 13-173730 PT), and capped the old line that ran under the garage. A plan identifying the location of the relocated sewer line has been provided by the plumbing contractor (Exhibit G.4).
- Portland Bureau of Transportation (PBOT): PBOT has reviewed the proposal for its potential impact on transportation facilities and has no objections or recommended conditions of approval related to the requested Adjustment (Exhibit E.2).
- Portland Water Bureau: The Water Bureau has no concerns regarding the requested Adjustment (Exhibit E.3).
- Portland Fire Bureau: The Fire Bureau has reviewed the proposal and responded with no concerns regarding the land use review request (Exhibit E.4).
- Bureau of Development Services (BDS) Site Development Section: Site Development responded with no objections or recommended conditions for the requested Adjustment. Site Development noted that City records did not show that the septic system/cesspool on the site had previously been decommissioned when the site was connected to the City sewer system in 1920. Furthermore, the cesspool is located beneath the accessory building that is the subject of this land use review. However, the applicant has since provided documentation that a Decommissioning Waiver has been recorded (Exhibit E.5).
- Portland Parks & Recreation Urban Forestry Division: Urban Forestry responded with no objections to the requested Adjustment, and noted that existing street trees are to be protected and preserved (Exhibit E6). A written permit from Urban Forestry is required to remove, destroy, cut, break, injure or plant a tree of any size in the public right-of-way.

Neighborhood Review: One letter has been received from two area residents in response to the mailed Notice of Proposal (Exhibit G.1). The neighbors note that construction of the accessory building required removing a "canopy-sized" tree, which has depleted a "neighborhood scenic resource." Additionally, the residents speak to the recent fires in the surrounding area, noting that the radiant heat from the fire on one property resulted in a fire on the adjacent property. The residents find that given the old, wood building materials on the house on the subject site and on the adjacent house to the south, the reduced setback places these structures at greater risk of a catastrophic fire. Lastly, the residents note that the accessory structure that is the subject of this land use review was built without the benefit of permits and inspection, providing no assurance that the structure is safe. The residents request that the structure fully comply with City codes that were intended to promote safety.

BDS Comment: While it is unknown to BDS staff whether the tree in question was removed due to the construction of the accessory building, there is no current requirement that a permit be issued to remove a tree on this property. Because the tree could be removed regardless of whether the accessory building was constructed in this location, this issue is not pertinent to the Adjustment Review. Regarding the impact of the reduced setback on fire separation and general safety, as noted above, the Fire Bureau has reviewed the proposal and has no objections. Furthermore, because the accessory structure will be used as a habitable space, a building permit will be required following the land use review process. As part of the building

permit review process, the applicant must demonstrate that the structure meets all relevant City codes, including those for fire, life and safety, followed by an on-site inspection by building inspectors.

ZONING CODE APPROVAL CRITERIA

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 is requesting an Adjustment to reduce the minimum required side setback for an accessory building from five feet to zero feet. The purpose for the minimum required building setback, as stated in Zoning Code Section 33.110.220.A, is as follows:

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.*

The Adjustment to decrease the minimum side setback for the accessory building equally meets the stated intent of the regulation based on the following findings:

- The accessory structure will not have significant impacts on light and air reaching adjacent properties. As the structure will be set back approximately 40 feet from the (east) front lot line, 35 feet from the (west) rear property line, and 37 feet from the north side lot line, there will be no impact on light and air reaching properties to the north, west or east.

Even though the accessory building is built up to the south side lot line, the building is limited to only 18 feet in length (measured parallel to the side lot line) and approximately 10 feet in height measured to the roof ridgeline. At only 18 feet in length, there is 82 feet along the remainder of the south lot line through which light and air can pass to the property to the south. Additionally, the house on the subject site, at two stories in height and located approximately 17 feet from the south lot line, has a far greater impact on light and air reaching the property to the south than does the one-story accessory building.

- Regarding separation for fire protection and access for fire fighting, the Portland Fire Bureau has reviewed the Adjustment request and has no objections. There is adequate access to the structure from the front and rear, and from the north side of the structure. Additionally, as a building permit will be required for the structure, all current fire life safety code requirements will have to be met.

- As for the intent of the setback regulation to ensure development reflects the general scale and placement of buildings in the City's neighborhoods, the typical pattern in this neighborhood is to have separate accessory structures (for garages) in the side setback. Unlike many areas of the City where these accessory structures are placed in the rear corner of the site, along this portion of SE 41st Avenue the typical pattern for such structures is to place them at or near the back wall of the house (within the side setback), possibly due to the downward slope at the rear of these properties. The placement of the accessory building on the applicant's site reflects this pattern, with the scale as viewed from the street being comparable to that seen elsewhere in the neighborhood. Additionally, the accessory building has been placed on the foundation of a former garage that was on this property, therefore reflecting what was historically built on this site. Because the accessory building is built in the same location as the former garage that existed on the site, there is no substantive change in the historical relationship between development on this site and on the adjacent site.
- Given the reduction in setback is only from the south lot line, any potential impacts on privacy would be limited to the property to the south of the subject site. However, as there are no windows or doors on the south facing facade of the accessory building, privacy for the adjacent neighbors is not impacted.
- The proposal has no impact on the intent of the setback regulation to maintain larger open, visually pleasing front yards. The Adjustment request is limited to reducing the south side building setback, and a setback of approximately 40 feet will be maintained between the accessory building and the front lot line.
- The setback standards are intended to allow adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, and allow for required outdoor areas. As noted above, there is a pattern along this block frontage to have an accessory building in approximately the same place as that proposed on the applicant's site. This pattern in part was likely due to the topography of the area, where the lots slope downward from SE 41st Avenue. This topography forced the placement of the accessory structures closer to the mid point of the side lot lines as opposed to the rear corner of the sites as seen in other neighborhoods. As for required outdoor areas, an area of approximately 2,000 square feet will remain in the backyard of the site, substantially exceeding the minimum 250 square feet of outdoor area required in the R5 zone.
- The Adjustment request will have no impact on the intent of the setback regulation to provide room for a car to park in front of a garage door without overhanging the street or sidewalk, or on the intent to enhance driver visibility when backing onto the street. While no garage is being proposed, the accessory building is built on the foundation of a former garage on the site, and at the western terminus of an existing driveway. Even with the building in this location, there will still be approximately 40 feet between the front of the accessory building and the front lot line, allowing more than adequate room for a car to park in the driveway without overhanging the street or sidewalk.

Based on these findings, the request to decrease the minimum required south side setback equally meets the intent 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 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.

The accessory building has been constructed on the foundation of a former garage that was originally built on the site in the 1920s. As such, the location and footprint of the new accessory structure will not change from what historically existed on the site. Zoning regulations currently allow without a land use review the reconstruction of a garage on the same footprint as the original garage, even when the original garage was located in a required setback (Zoning Code Section 33.110.253.C.2). Additionally, zoning regulations allow without a land use review the conversion of an existing garage, even when within a required side or rear setback, to living area (Zoning Code Section 33.110.250.C.4.c). The only reason the applicant's proposal requires a land use review is because the original garage (in the same location as the proposed accessory building) was demolished some time ago. If that garage had not been demolished, the applicant could have converted the structure to the same use proposed today without the need for the Adjustment Review.

Based on what is allowed by right under existing zoning regulations, it is found that the applicant's proposal has no greater impact on the appearance or livability of the surrounding residential area.

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: As 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. As there are no scenic or historic resource designations 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 indicated in responses to Approval Criteria A and B:

- the proposal is consistent with the intended purposes of the regulation being adjusted; and
- the proposal has no adverse impacts on the livability or appearance of the surrounding residential area.

As the proposal is consistent with these approval criteria, there are no identified adverse impacts for which mitigation would be required.

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). As there are no environmental overlay zones mapped on 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 via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant has demonstrated that the applicable approval criteria have been met. The proposal to reduce the south side setback for an accessory building equally meets the intent of the regulation, and does not have adverse impacts on the livability and appearance of the surrounding residential neighborhood.

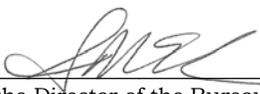
ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum required south side setback (Zoning Code Section 33.110.220.B) for an accessory building from five feet to zero feet, per the approved site plan and in substantial conformance* with the building elevations, Exhibits C.1 through C.3, signed and dated July 22, 2013, and subject to the following condition:

- A. As part of the building permit application submittal, each of the four required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated on the site plan (Exhibit C.1) and building elevations (C.2 and C.3). The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-110211 AD."

* "Substantial Conformance" means that the height of the structure shall reflect that identified in Exhibits C.2 and C.3, and the exterior siding identified in Exhibit C.3 being required. Other exterior changes to the façade that are in conformance with Title 33 are allowed without further land use review.

Staff Planner: Douglas Hardy

Decision rendered by:  **on July 22, 2013.**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 25, 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 29, 2013, and was determined to be complete on June 6, 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 29, 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 requested that the 120-day review period be extended for a total of 16 days. Unless further extended by the applicant, **the 120 days will expire on October 20, 2013.**

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 August 8, 2013**, at 1900 SW Fourth Avenue. 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 775 Summer St NE, Suite 330, Salem, OR 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 **August 9, 2013 – 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.

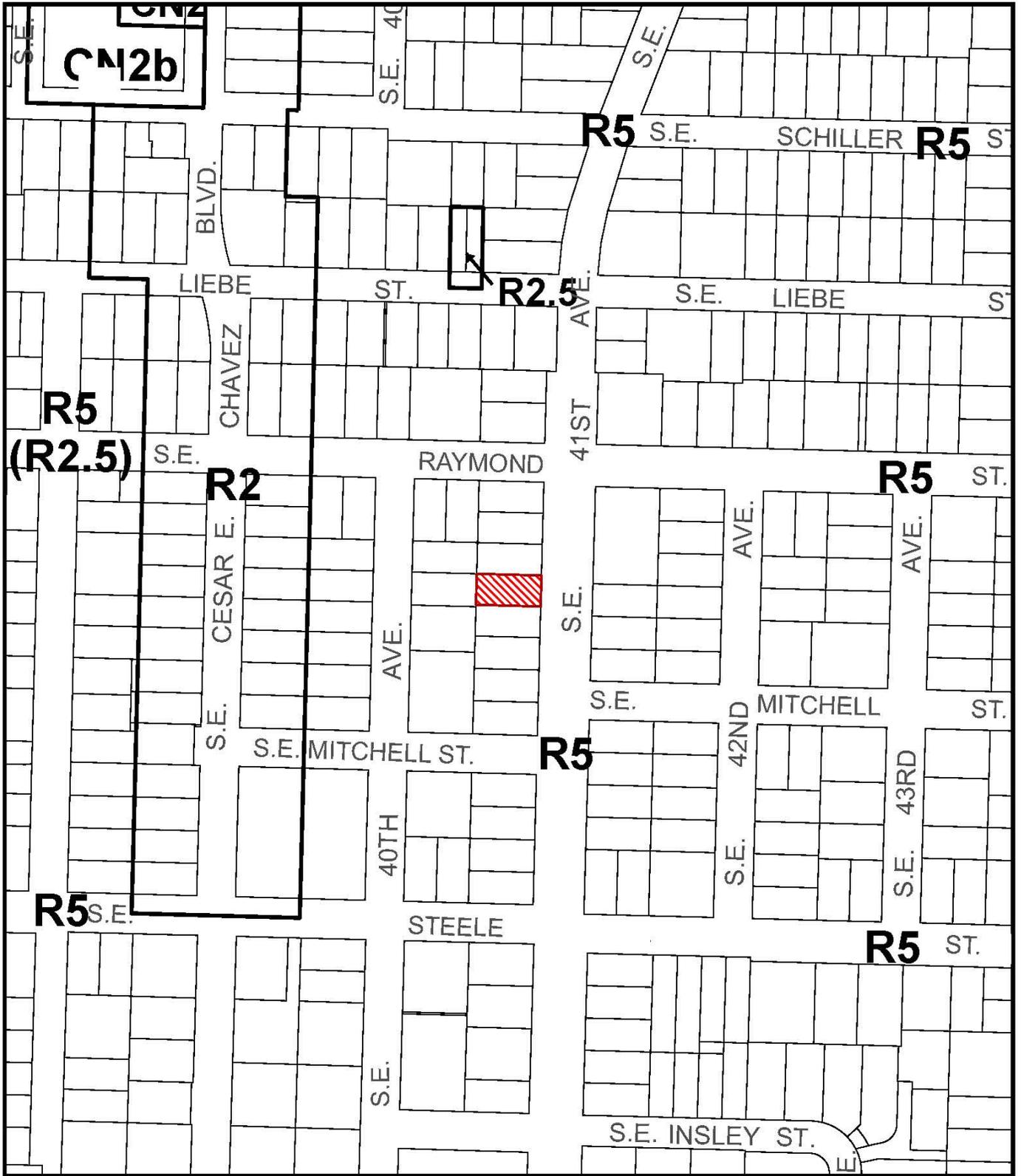
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Written statement, received January 29, 2013

2. Additional information, received May 28, 2013
 3. Additional information, received July 16, 2013
- B. Zoning Map (attached)
- C. Plans/Drawings:
1. Site Plan (attached)
 2. West, North and East Building Elevations (attached)
 3. South Building Elevation (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. Bureau of Parks, Forestry Division
- F. Correspondence:
1. Letter from Vince Bolster and Kate Thorton Scrivener, received July 1, 2013
- G. Other:
1. Original LU Application
 2. Letter of Incompleteness, dated February 11, 2013
 3. Email from Douglas Hardy requesting additional information, dated July 11, 2013
 4. Email from Environmental Works regarding relocated sewer line, received July 10, 2013
 5. Sanborn Map identifying location of former garage

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



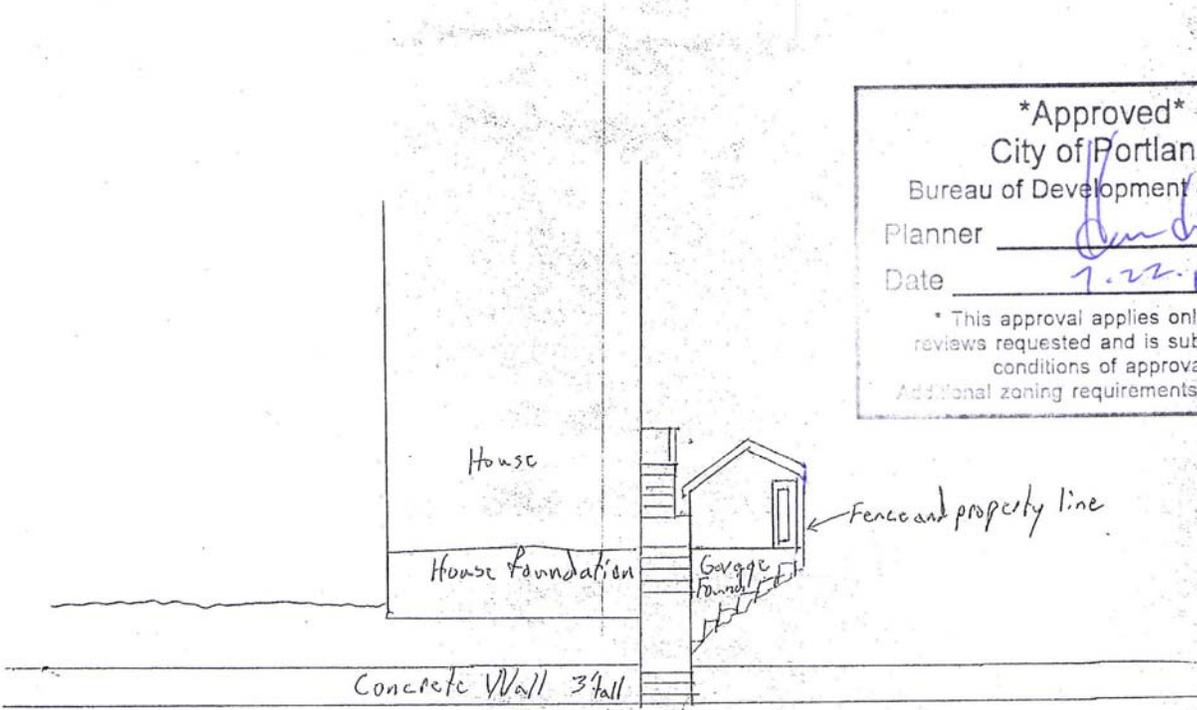
Site



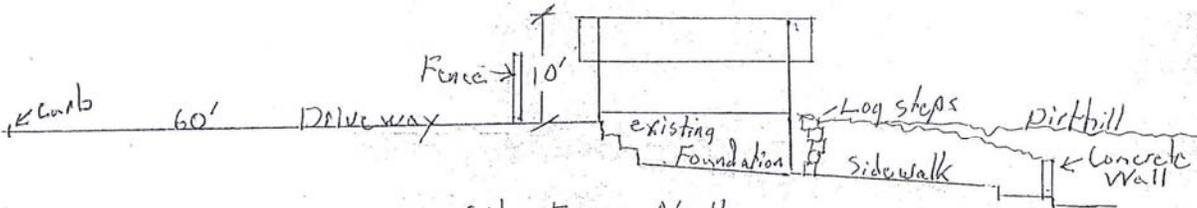
File No. LU 13-110211 AD
 1/4 Section 3534
 Scale 1 inch = 200 feet
 State_Id 1S1E13AD 400
 Exhibit B (Jan 29, 2013)

Approved
City of Portland
 Bureau of Development Services
 Planner [Signature]
 Date 7.22.13

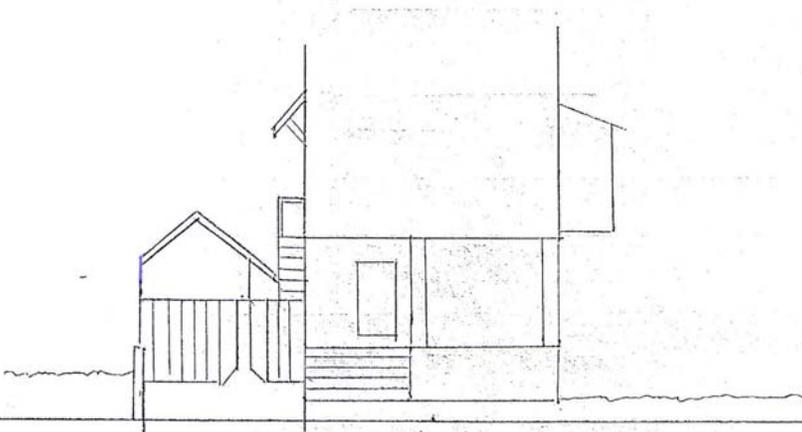
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



Back of house Facing **West**



Side Facing North



Front of House
(East)

CASE NO. 13-110211
 EXHIBIT C.2

LIN 13-110211 AD

Building to Be Sided with $\frac{1}{2}$ " x 2.5" Lap Siding same as existing house, Roofing in Grey/Black architectural.

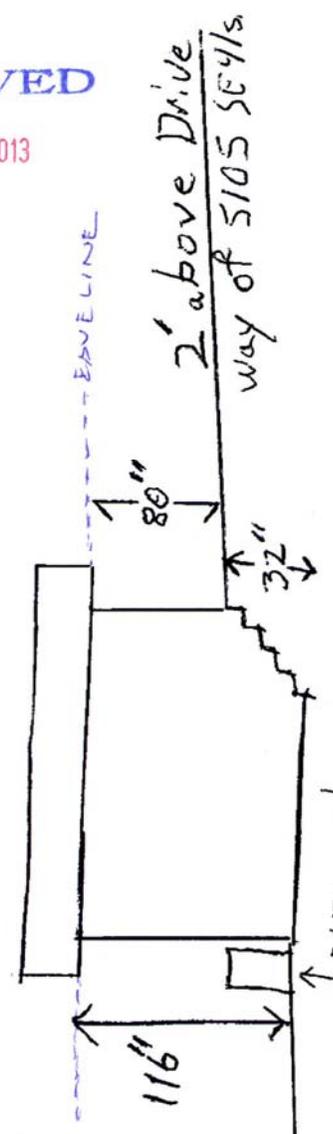
REQUIRED

4' Between the 80" Southeast Front Corner of Building and the outside stairs on 5111.
89" Between the Southeast front corner and the Outside North wall of house 5111.

RECEIVED

JUL 17 2013

Approved	
City of Portland	
Bureau of Development Services	
Planner	<i>[Signature]</i>
Date	7.22.13
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.	



South View looking North from property 5111 SE 41st.

CASE NO. 13110211
EXHIBIT C-3