



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

Dan Saltzman, Commissioner  
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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** April 19, 2012  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
503-823-7612 / [Sean.Williams@portlandoregon.gov](mailto:Sean.Williams@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 this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

### **CASE FILE NUMBER: LU 12-116366 AD**

#### **GENERAL INFORMATION**

**Applicant:** Cynda L Herbold  
2705 NE 37<sup>th</sup> Avenue  
Portland, OR 97212-2841

**Representative:** Mike Montgomery  
Simpl Home Designs  
5531 SW Buddington Street  
Portland, OR 97219

**Site Address:** 2705 NE 37<sup>th</sup> Avenue

**Legal Description:** BLOCK 27 LOT 10, BEAUMONT  
**Tax Account No.:** R060804510  
**State ID No.:** 1N1E25AD 08300  
**Quarter Section:** 2734  
**Neighborhood:** Grant Park, contact Ron Laster at 503-282-9923.  
**Business District:** None  
**District Coalition:** Northeast Coalition of Neighborhoods, contact Shoshana Cohen at 503-823-4575.

**Plan District:** None  
**Zoning:** Residential 5,000 (R5)  
**Case Type:** Adjustment (AD)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant is requesting an adjustment to the maximum size (33.205.030.C.6) of an Accessory Dwelling Unit (ADU) from 800 to 922 square feet. The adjustment will facilitate the conversion of an existing finished basement to an ADU.

#### **Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Section **33.805.040 A.-F., Approval Criteria for Adjustments.**

## ANALYSIS

**Site and Vicinity:** The site is located on the northwest corner of the intersection of NE 37<sup>th</sup> Avenue and NE Knott Street. Existing improvements consist of a single family home that is centrally located within the site and a detached garage located within the northwest corner of the site that is accessible via a driveway from NE Knott Street. The surrounding vicinity is primarily comprised of R5 single dwelling zoning with comparable development. Grant High Scholl is located approximately 400 feet south of the site.

**Zoning:** The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

**Land Use History:** 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 1, 2012**. All of the Service Bureaus have responded with no issues or concerns (Exhibits E.1-E.4).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on March 13, 2012. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### APPROVAL CRITERIA FOR ADJUSTMENTS

#### 33.805.010 Purpose

**The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations. They also 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.**

#### 33.805.40 Approval Criteria

**The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met. Adjustments to the ground floor window requirements of this Title must also meet the additional requirements stated in the ground floor window sections in the base zones.**

- 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 the maximum size (33.205.030.C.6) of an Accessory Dwelling Unit (ADU) from 800 to 922 square feet to facilitate the conversion of a basement. Standards (33.205.030) for creating accessory dwelling units address the following purposes:

- **Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;**
- **Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;**

- **Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and**
- **Provide adequate flexibility to site buildings so that they fit the topography of sites.**

The applicant desires to exceed the maximum size limitation for an ADU in order to convert the existing basement of a single family home that was recently purchased with the intent to accommodate extended family members. The only design requirements applicable to an accessory dwelling unit internal to a single family home are the location of entrances and the maximum size. An existing entrance to the basement exists on the rear (west) elevation, which complies with applicable requirements. Therefore, no exterior alterations are necessary to convert the basement of this single family home to an accessory dwelling unit. The character and livability of this residential zone will not be affected as there will be no physical appearance of an additional unit within this home. The common space on this site, including a yard, driveway and detached garage will not be compromised as a result of this proposal. The modest increase in size will still result in a unit that is much smaller than houses within the vicinity of this site. As shown by the findings above, the increase in maximum size equally or better meets the purpose of design standards for accessory dwelling units while also allowing the homeowner to provide a housing opportunity for extended family members.

- 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 subject property is in a residential zone and is located within the Grant Park Neighborhood. As previously identified, there will be no exterior alterations to the existing single family home as a result of this proposal. There will be no detrimental impacts to the livability or appearance of the residential area as the single family home will remain the same in terms of appearance as viewed from the public realm. 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 is not applicable.

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

**Findings:** The site is not located within a scenic or historic overlay zone. Therefore, this criterion is not applicable.

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

**Findings:** There are no discernable impacts as a result of the proposed adjustment. Therefore, no mitigation is necessary.

- 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 overlay zone. Therefore, this criterion is not applicable.

## **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans

submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## CONCLUSIONS


The applicant is requesting an adjustment to the maximum size of an Accessory Dwelling Unit from 800 to 922 square feet to facilitate the conversion of a basement. As noted in this report, the project is able to meet the adjustment approval criteria based on substantial conformance with applicable standards and established situations in the surrounding neighborhood. With approval requiring that the permit drawings substantially conform to the site plan and floor plan drawings attached, the request meets the applicable criteria and should be approved.

## ADMINISTRATIVE DECISION

**Approval** of an adjustment to the maximum size of an accessory dwelling unit from 800 to 922 square feet, per the approved site plans, Exhibits C.1 and C.2, signed and dated April 16, 2012, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1 and C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 12-116366 AD. No field changes allowed."

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on April 16, 2012**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: April 19, 2012**

**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 March 1, 2012, and was determined to be complete on March 9, 2012.

*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 March 1, 2012.

*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 7, 2012.**

**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 3, 2012** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](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 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the final decision.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed,* The final decision may be recorded on or after **May 4, 2012 (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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**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.

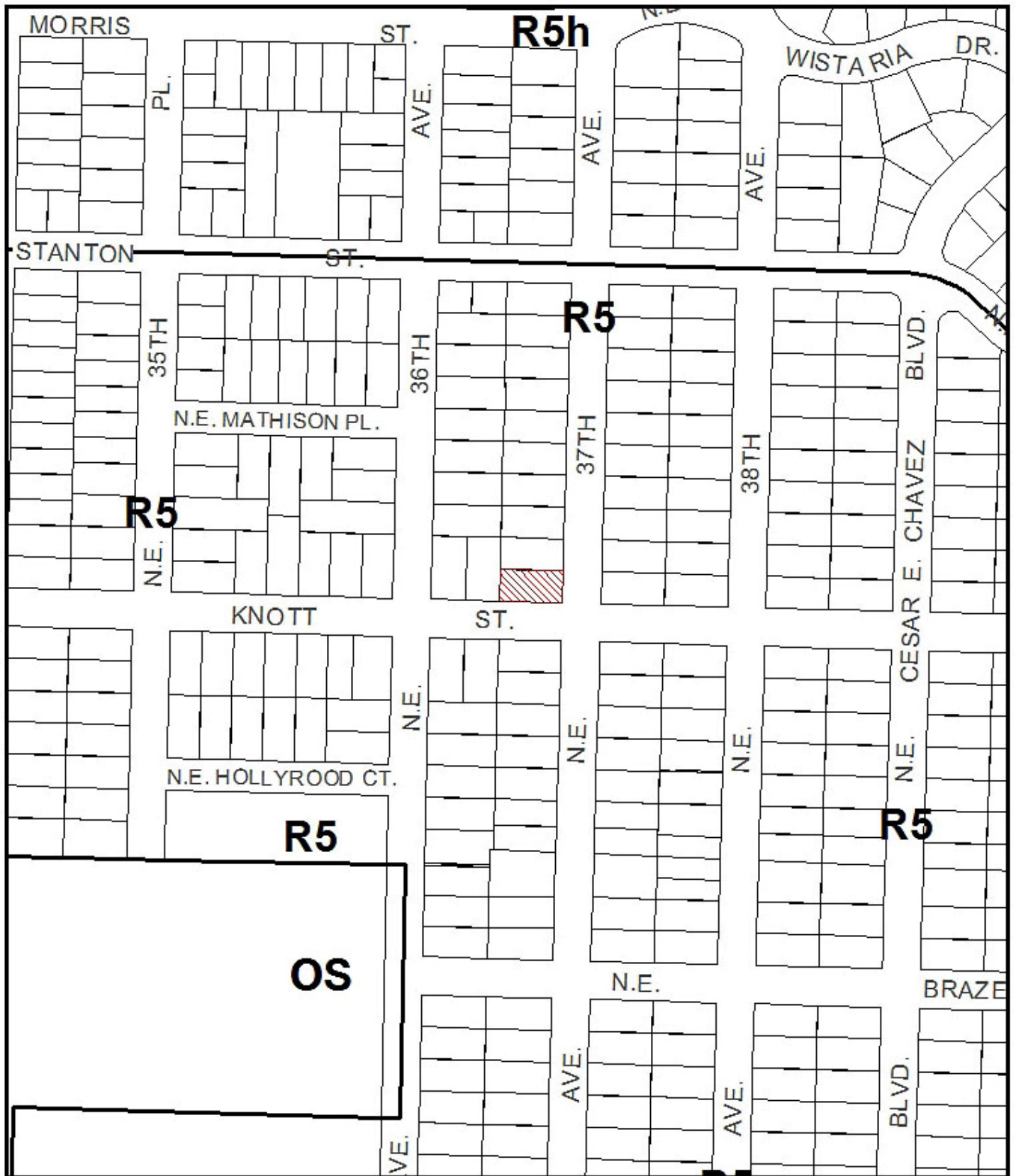
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. Floor Plan (attached)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Transportation Engineering and Development Review
  2. Water Bureau
  3. Life Safety Plans Examiner
  4. Fire Bureau; Bureau of Environmental Services; Site Development Review Section of BDS; Bureau of Parks, Forestry Division
- F. Correspondence: NONE
- G. Other:
  1. Original LU Application

2. Site History Research

**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



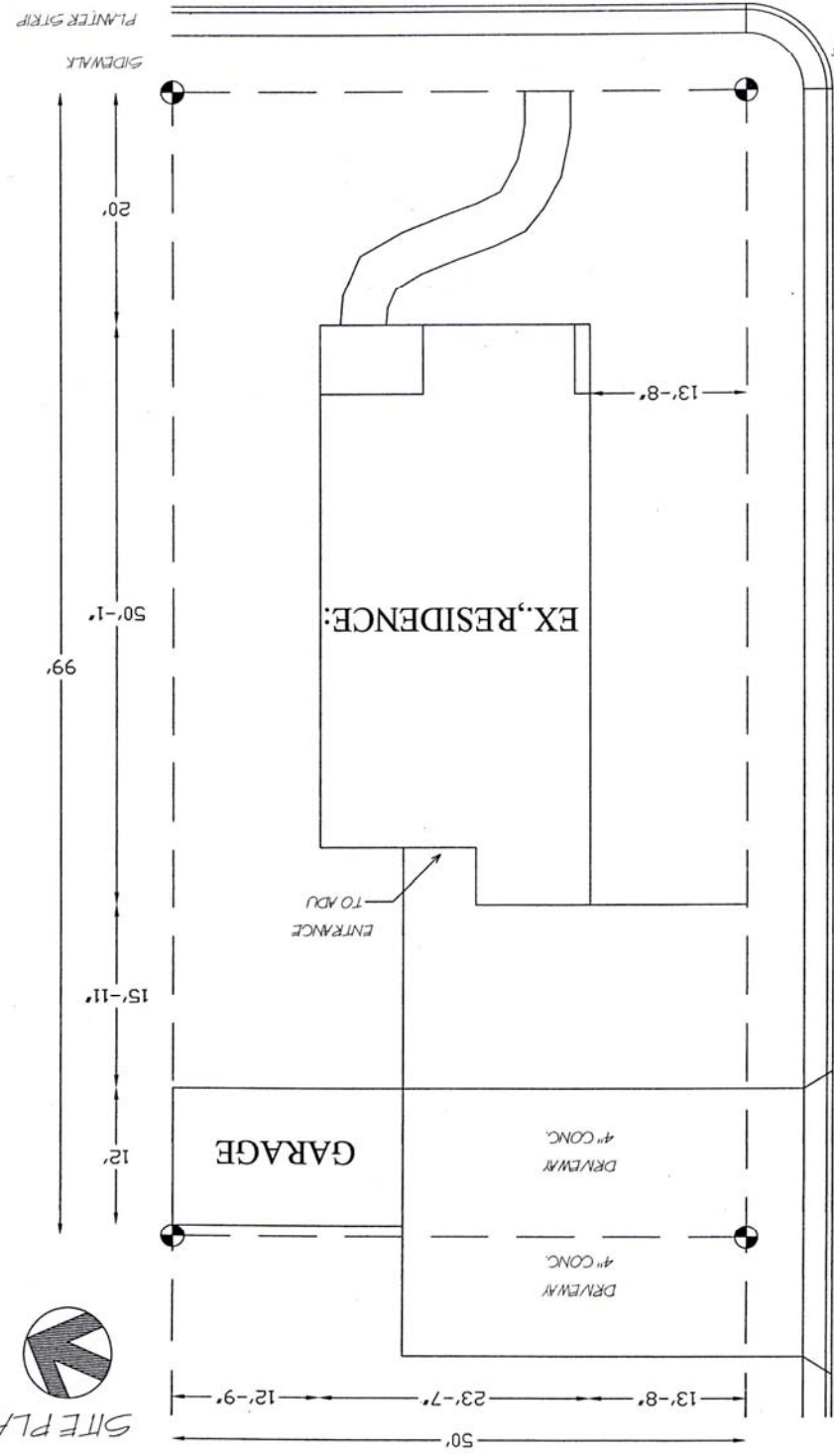
File No.	<u>LU 12-116366 AD</u>
1/4 Section	<u>2734</u>
Scale	<u>1 inch = 203 feet</u>
State_Id	<u>1N1E25AD 8300</u>
Exhibit	<u>B</u> (Mar 02, 2012)



	DESIGNED: <i>mm</i> DATE: 02/25/12 SCALE: 1"=100' 2705 NE 37TH STREET PORTLAND OR 97212
	SHEET 1 OF 1 Simple Home Designs 555 SW BROADWAY ST, PORTLAND OR 97209

LOT COVERAGE:  
 LOT AREA 4,900 SQ FT  
 BUILDING AREA 1,293 SQ FT  
 GARAGE 200 SQ FT  
 (NOT INCLUDING OVERHANGS)  
 PROPOSED PROJECT FOR:  
 Owner(s) Name HERBOLD, CYNDA L  
 Owner Address 2705 NE 37TH AVE  
 City/State/Zip PORTLAND OR 97212-2841  
 PROJECT LEGAL DESCRIPTION:  
 EASTMORELAND, BEAUMONT, BLOCK 27,  
 LOT 10  
 Property ID R112925  
 State ID INE25AD 8300

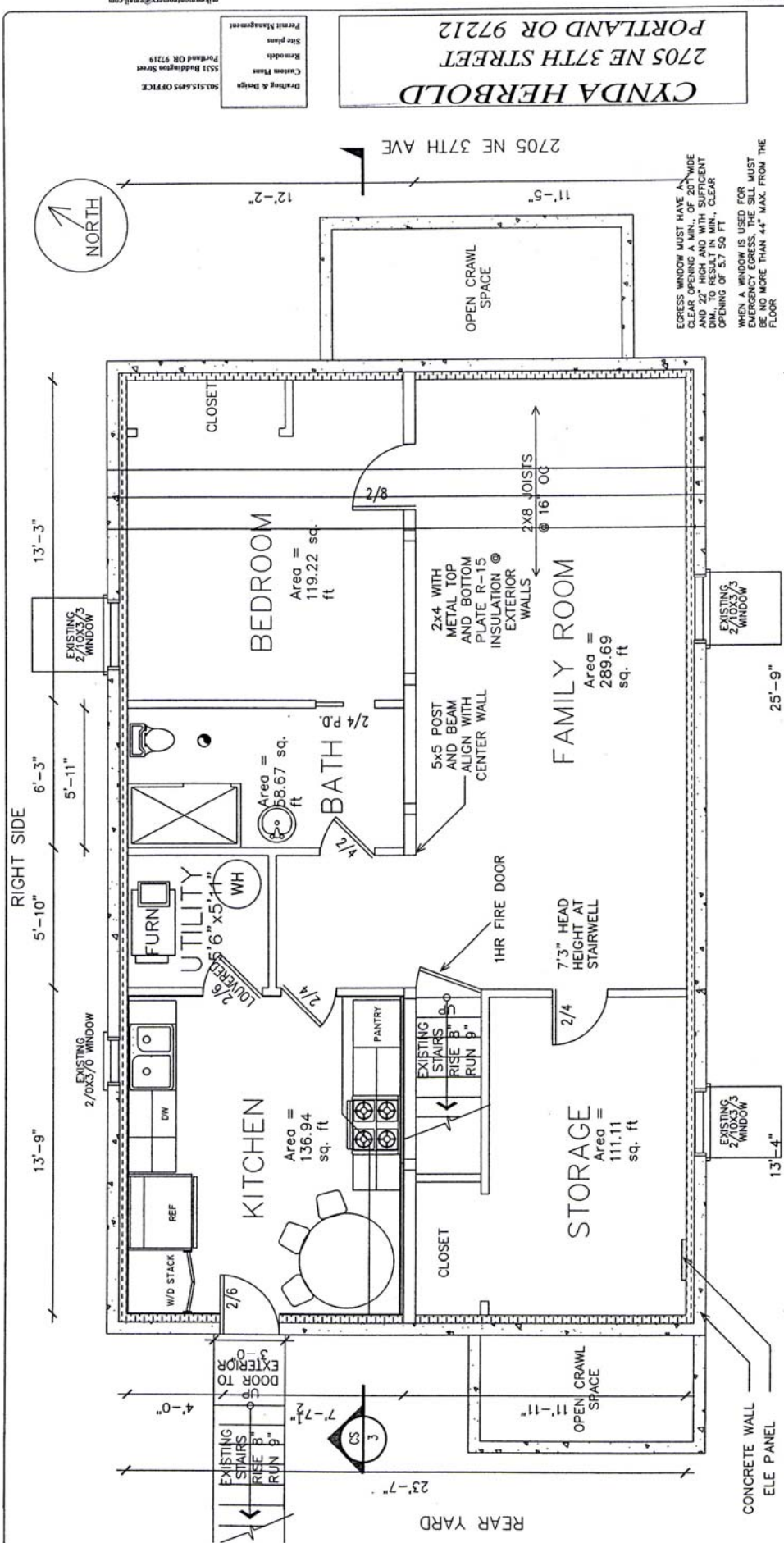
2164 NE 37TH AVE.



\*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner *Be willi* Date *4/16/12*  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

CASE NO. 993911-21  
 EXHIBIT 1-7

SIMPLHOME DESIGNS IS NOT LIABLE FOR THE CONSEQUENCES OF ANY DECISIONS MADE BY THE CITY OF PORTLAND OR ANY OTHER AGENCY BASED ON THIS PLAN. THE USER OF THIS PLAN ASSUMES ALL LIABILITY FOR ANY SUCH DECISIONS.



**CYNDA HERBOLD**  
 2705 NE 37TH STREET  
 PORTLAND OR 97212

Permit Management  
 Site Plans  
 Construction  
 5551 Bridgeway Street  
 Portland OR 97115  
 503.555.6975 OFFICE  
 503.555.6975 CELL

**BASEMENT PLAN(s)**

DATE	04/16/12
SCALE	1/4" = 1'-0"
DRAWN	FP
CHECKED	FP

1 of 1

**NOTE:**  
 NO HVAC / PIPING OR OTHER OBSTRUCTIONS IN CONVERTED AREA (6'8")  
 EGRESS: DOOR MIN 6'2" HIGH 2'6" WIDE

EGRESS WINDOW MUST HAVE A CLEAR OPENING A MIN. OF 20" WIDE AND A MIN. OF 20" CLEAR DIM. TO RESULT IN MIN. CLEAR OPENING OF 5.7 SQ FT.  
 WHEN A WINDOW IS USED FOR EMERGENCY EGRESS, THE SILL MUST BE NO MORE THAN 44" MAX. FROM THE FLOOR.

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EXISTING WALLS TO REMAIN  
 EX., FURR OUT WALLS (R-13 INSUL. REFER TO DETAIL)  
 DEMO WALLS  
 NEW INTERIOR WALL

**EX. BASEMENT PLAN**  
 SCALE: 1/4" = 1'0"  
 NE KNOTT ST.

<b>AREA:</b>	1,293' SF.
MAIN FLOOR	578' SF.
FND ATTIC	922' SF.
FND BASEMENT	922' SF.
NEW ADU	922' SF.

**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner *Son Williams* Date *4/16/12*  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

CASE NO. *12-116366*  
 EXHIBIT *C-2*