



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

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
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Date: October 30, 2012
To: Interested Person
From: Shawn Burgett, Land Use Services
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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 12-176647 AD

GENERAL INFORMATION

Applicant: Aaron M Hartman & Alicia Rabins
2036 N Bryant St
Portland, OR 97217

Site Address: 2036 N BRYANT ST

Legal Description: INC VAC ST-W 1/2 OF LOT 10-12, BERNARD
Tax Account No.: R071900120
State ID No.: 1N1E16AC 01000
Quarter Section: 2328
Neighborhood: Arbor Lodge, contact Chris Duffy at 971-506-0541.
Business Districts: Interstate Corridor BA, Aleksandra Johnson at 503-735-4420.
District Coalition: North Portland Neighborhood Serv, Mary Jaron Kelley at 503-823-4099.

Zoning: R5 (Single Family Residential 5,000 sq. ft.)
Case Type: AD (Adjustment)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant has proposed to convert the existing living area on the second floor of the detached garage on the site into an Accessory Dwelling Unit (ADU). The applicant has requested three adjustments to standards found in Zoning Code section 33.205.030.C (requirements for all Accessory Dwelling Units):

- 1) Zoning Code section 33.205.030.C.6 limits accessory dwelling units in size to no more than 75 percent the size of the living area of the primary dwelling unit or 800 feet, whichever is less. Based on the size of the primary dwelling unit on the site, the ADU would be limited to 800 feet. The proposed ADU has approximately 840 square feet of living area (not counting the interior stairway).
- 2) The applicant has requested an adjustment to the ADU height standards. Zoning Code section 33.205.030.D.2 requires Accessory Dwelling Units (ADU) to be less than 18 feet in

height. The existing detached garage is approximately 20 feet in height (measured at the mid-point of the roof). Converting the existing living area to an ADU moves the detached garage out of conformance with the ADU height standards.

The applicant has also requested an adjustment to the side setback standards which was stated in the public notice sent out on September 14, 2012. It has been determined that since the existing living area (with no Kitchen) in the garage was approved in 1992 as a “mother in law” apartment under permit number 92-003455 (exhibit A-4), that a side setback adjustment is not necessary since the living area within the garage is a pre-existing non-confirming situation. The ADU standards being adjusted still apply.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:

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 10,590 square foot lot is developed with a single dwelling residence that was built in 1928. An existing detached garage is located along the eastern property boundary of the site, behind the existing house. North Bryant Ave is improved with sidewalks, planter strips, curbs and a paved road. The area is made up of predominantly single family homes of various types. The City approved a permit (92-003455) in 1992 that allowed the second floor of the detached garage on the site to be developed with living area with no kitchen.

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 **September 14, 2012**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Police Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on September 14, 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

33.805.010 Purpose (Adjustments)

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

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

33.805.040 Approval Criteria

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

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

Findings:

Section 33.205.030 identifies the purposes of the ADU design standards, as follows:

- *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.*

Adjustment 1: The applicant proposes to remodel the second floor living area of the existing detached garage and use the space as an Accessory Dwelling Unit [ADU]. The proposed second floor ADU is 840 square feet, 35% the size of the main living area of the house which measures approximately 2,386 sq. ft. The Zoning Code limits the size of ADU's to 800 square feet. Therefore the applicant requests an Adjustment to allow the second floor ADU to exceed the 800 square foot limit.

Because the proposed ADU is located on the second floor of the existing detached garage, and no exterior changes are proposed, the dwelling unit will have no visual impacts. The ADU will have no impact on the desired character or livability of the residential neighborhood and will be consistent with the general building scale of the surrounding residential development. The detached garage also has a smaller footprint than the house and is located behind it, both of which indicate the prominence of the house. Therefore, because the proposed ADU is completely internal to the detached garage, the adjustment request equally meets the purpose of the ADU regulations. For these reasons, this criterion is met.

Adjustment 2: The proposal will equally meet the purpose of the ADU design (height) standards based on the following findings:

The ADU is being proposed within an existing living area in a detached garage. The living area within the detached garage was constructed under a building permit issued in 1992 (92-003455). The detached garage is currently 20 feet in height. No exterior alterations are proposed to the building, including no changes in building height. The building and site will appear no different with the addition of the ADU than the current conditions that exist on the site today. The proposed conversion of living area to an ADU allows the proposal to meet the scale and character of the zone.

The intent for limiting ADU's to a maximum height of 18 feet is to ensure that they appear physically (and visually) smaller than the primary dwelling on the site. In this case, the primary dwelling unit (29 feet in height) on the site is approximately 9 feet taller than the detached garage (exhibit A-3). Thus, allowing the primary dwelling on the site to remain the primary structure physically and visually. The existing detached garage will only exceed the ADU height limitation by 2 ft. which allows it respect the scale of the neighborhood.

The floor area of the proposed ADU will still be considerably smaller than that of the primary dwelling on the site, further ensuring that the ADU remains “accessory” to the primary dwelling. As indicated above, while the ADU will have a floor area of approximately 840 square feet, the primary residence on the site has a floor area of approximately 2,386 square feet, almost three times that of the floor area of the ADU.

As proposed, the Adjustment request equally meets the intent of the ADU design standards, 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:

Adjustment 1: The site is in a residential zone. Because the proposed ADU will be on the second floor of the existing detached garage, no exterior changes are proposed. The ADU provides an additional unit in the residential zone. The proposed adjustment to allow in an increase in ADU floor area will have no adverse impacts on livability or appearance of the residential area. For these reasons, this criterion is met.

Adjustment 2: The requested Adjustment to the ADU height standards will not result in a proposal that detracts from the livability or appearance of the surrounding residential area. The scale of the building in which the ADU is proposed within is consistent with building heights throughout this area. At 20 feet, the building is considerably less than the maximum 30 foot height allowed for building in this zone. In addition, it has a rear setback (approximately 25 feet) substantially deeper than the minimum five feet required in this zone.

The proposal will not significantly detract from the livability or appearance of the 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: The applicant is requesting two Adjustments (height and size) to allow the existing living area on the second floor of the detached garage to be converted to an ADU. The site is in a residential zone, which allows one ADU per single family home. The purpose statement for the zone says “Single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.”

Allowing the ADU to be within an existing detached garage, allows the addition of housing in a single family zone, meeting the purpose statement without impacting the character of the surrounding single family neighborhood. This criterion is met

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

Findings: City designated resources are shown on the zoning map by the ‘s’ overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

Findings: As found under criterion A and B, the requested Adjustments will not create impacts and therefore do not require mitigation to lessen their effect. This approval criterion is satisfied.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: The site is not within an environmental zone. This criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

Based upon the findings of this report, each applicable approval criterion is met.

ADMINISTRATIVE DECISION

Approval of Adjustments to: (1) to allow the ADU to exceed maximum height standards of 18 feet per Zoning Code section 33.205.030.D.2 by allowing the ADU within a structure that is approximately 20 feet in height; and (2) to allow the ADU to exceed the maximum size limitation of 800 square feet per 33.205.030.C.6, by allowing the ADU to have approximately 840 square feet in living area per the approved plans, Exhibits C.1 and C.2 signed and dated October 26, 2012, 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 and C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 12-176647 AD".

Staff Planner: Shawn Burgett

Decision rendered by:  **on October 26, 2012**

By authority of the Director of the Bureau of Development Services

Decision mailed: October 30, 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 August 28, 2012, and was determined to be complete on **September 11, 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 August 28, 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.

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 November 13, 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.

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 **November 14, 2012.**
- 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
 2. Photos of site
 3. Elevations/floor plan of ADU
 4. Building Permit documentation for 92-003455
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Elevations of ADU (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
 7. Life Safety
- F. Correspondence: (None received)

G. Other:

1. Original LU Application
2. Site History Research
3. E-mail from applicant dated 9/28/12, documenting size of primary house

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



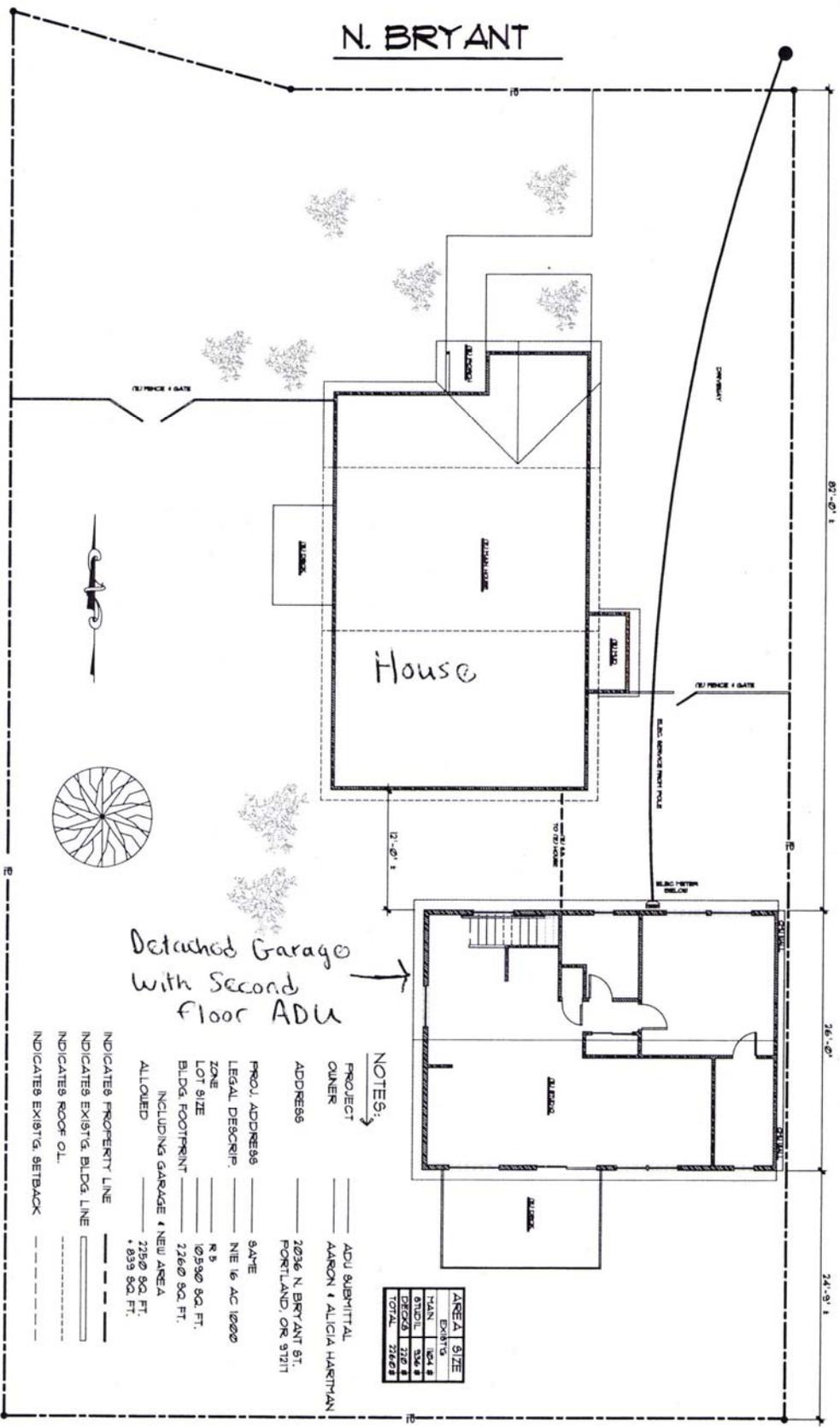
File No. LU 12-176647 AD
 1/4 Section 2328
 Scale 1 inch = 200 feet
 State_Id 1N1E16AC 1000
 Exhibit B (Aug 28, 2012)



Approved
 City of Portland - Bureau of Development Services
 Planner Sawyer
 Date 10/26/12

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

N. BRYANT



Detached Garage
 with Second
 Floor ADU

NOTES:

- INDICATES PROPERTY LINE
- INDICATES EXIST'G. BLDG. LINE
- INDICATES ROOF OL.
- INDICATES EXIST'G. SETBACK

AREA SIZE	
MAIN	1044.8
DETACHED	2260.0
ADU	839.0
TOTAL	2143.8

SITE PLAN
 SCALE: 1" = 10'



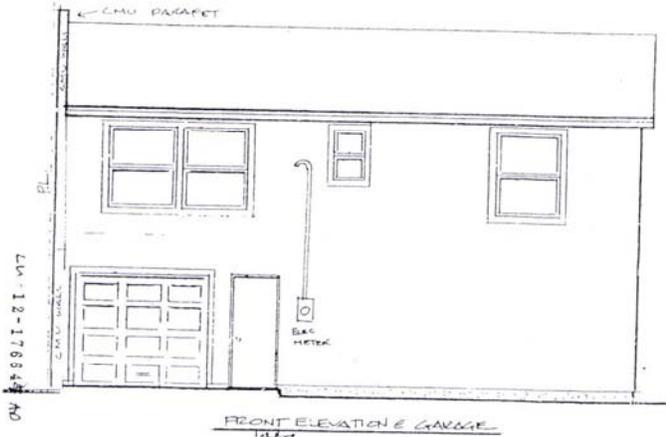
PROJECT
**THE HARTMAN FAMILY
 ADU SUBMITTAL**

ENDPOINT DESIGN
 4000 NE SANDY BLVD. SUITE 200 PORTLAND, OR 97218
 (503) 251-8000 FAX: (503) 251-8001
 E: info@endpointdesign.com

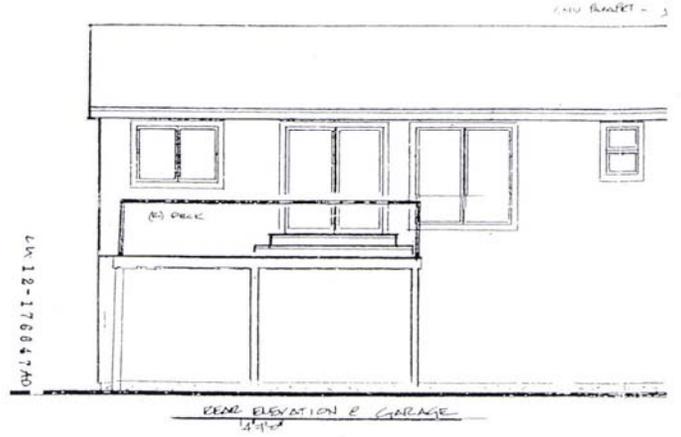
NO 12-176647
 EXHIBIT C-1

Elevation

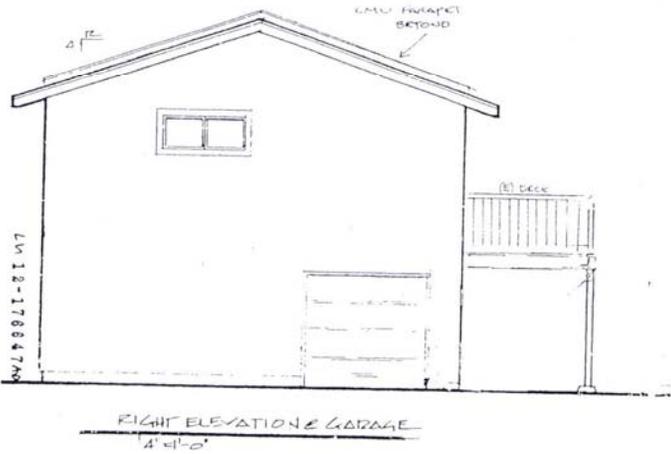
Approved
 City of Portland - Bureau of Development Services
 Planner J. Buegler Date 10/29/12
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



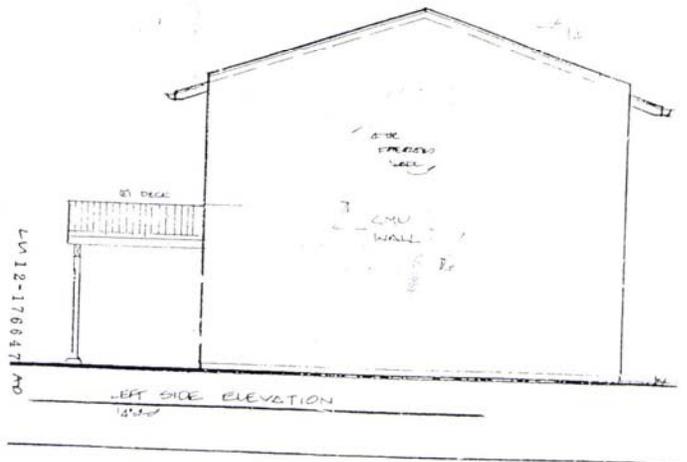
FRONT



REAR



RIGHT



LEFT

Not to Scale

CASE NO. 12-176647
 EXHIBIT C-2