



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

Charlie Hales, Mayor  
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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** February 12, 2013  
**To:** Interested Person  
**From:** Sylvia Cate, Land Use Services  
503-823-7771 / [Sylvia.Cate@portlandoregon.gov](mailto:Sylvia.Cate@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 13-100117 AD**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Jeanne M Niemer,  
2418 SE Ivon St / Portland, OR 97202-1261

**Site Address:** 2418 SE IVON ST

**Legal Description:** BLOCK 3 LOT 4, SIMONS ADD  
**Tax Account No.:** R771000350, R771000350, R771000350  
**State ID No.:** 1S1E11AA 07100, 1S1E11AA 07100, 1S1E11AA 07100  
**Quarter Section:** 3332  
**Neighborhood:** Hosford-Abernethy, contact Joanne Stainbrook at 503-231-9245.  
**Business District:** Division-Clinton Business Association, contact Darice Robinson at 503-233-1888.

**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.  
**Zoning:** R2.5, Single Dwelling Residential 2,500  
**Case Type:** AD, Adjustment  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant proposes to convert an existing garage into an Accessory Dwelling Unit [ADU]. The conversion will include a second-story addition. Because the existing garage does not currently meet the 5 foot side and rear setbacks that are required for dwellings in the R2.5 zone, the applicant requests an Adjustment to the setback standard [33.110.220] to allow the existing setbacks to remain. The garage is set back 3 feet from the east [side] property line, with an eave extending to 1 foot from the property line. The garage is set back 4 feet 6 inches from the south [rear] property line with the eave extending to 3 feet 4 inches from the property line. The applicant notes that the requested Adjustment would allow utilizing the existing garage foundation and walls for the conversion to an ADU. The second story addition walls will be inline with the existing garage walls and will also be within the setback.

#### **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 site is a 4,750 square foot lot developed with a 2 story home built in 2003. The site has frontage on SE Ivon Street, a designated Local Service Street, within a 60-foot wide public Right of Way improved with curbs and sidewalks on both sides in a 4-6-2 configuration. The site is a block west of SE 26<sup>th</sup> and a block south of SE Division Street, both designated as Neighborhood Collectors. SE Clinton, south of the site, is a designated City Bikeway. The immediately surrounding area [200 feet in all directions] contains lots zoned R2.5 and developed with residential uses.

**Zoning:** The site is zoned R2.5, one of several zones that implement the Comprehensive Map designation for residential. The R2.5 zone is a high density single-dwelling zone. The R2.5 zone allows attached and detached single-dwelling structures and duplexes.

**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 **January 15, 2013**. The following Bureaus have responded with no issues or concerns:

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

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on January 15, 2013. One written response was received from a notified property owner in response to the proposal. The letter expresses no objection to the adjustment and includes several comments regarding aesthetics. *Staff comment:* the zoning code has specific standards for ADU’s [see 33.205.030, *Design Standards*] that must be met at time of building permit, or receive an Adjustment prior to building permit issuance. The suggestions appear to not conflict with these standards, and the letter has been provided to the applicant for their consideration; however there is no zoning code requirement that the suggestions must be implemented. The applicant has submitted both plans and photographs documenting that the proposed ADU meets the design standards.

## 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:** The purpose for the setback regulations for single dwelling zones is found at 33.110.220, which states:

*Purpose: The building setback regulations 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 proposed reduction in setbacks for the converted garage and second story addition still results in a modest separation of the ADU structure from the east and south property lines, thus not significantly impinging on light or air. The Fire Bureau has no concerns.

Because an existing garage will be converted to the ADU, the existing setbacks for the garage are both allowed and typical of garage placement in the general area. However, with the change of use from garage to dwelling unit, the 5 foot side and rear setbacks apply. The proposed ADU is modest in size and will not be out of scale with allowed residential development in the immediate area.

The east setback is reduced to 3 feet, thus fire and building codes allow windows in the east facing façade. These windows are placed relatively high on that façade to allow natural light while avoiding larger windows situated at the normal height that would provide direct views into adjacent homes. Immediately east of the existing garage is another garage, set forward of the subject structure, a configuration which also blocks direct views into the adjacent home. The existing development pattern to the south of the proposed ADU consists of open backyards and garden areas. The placement of the ADU in relation to other existing residences is reasonable because there is sufficient open area immediately adjacent to the existing garage footprint, despite the modest reduction in setbacks.

The front yard of the existing residence on the site will remain unchanged, thus preserving the visually pleasing and open front yard. The applicant notes that with an approval of the adjustment request, the existing garage foundation and walls can be utilized for the conversion, thus allowing siting flexibility as is reasonable. All other applicable standards are met. The request will have no impact on onsite parking or sightlines for drivers. For all of these reasons, 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:** The proposal is consistent with the purpose of a residential zone, i.e., providing an additional dwelling unit in the R2.5 zone. Given the relatively modest reduction in setbacks, the development pattern on abutting lots, and the considered placement of glazing on the east facing façade of the ADU, there are no aspects of the proposal that would impinge on the livability of the area. By meeting all of the design standards required for ADU's there will be no negative impact on the appearance of the residential area. Staff notes that the applicant submitted, along with the application, a letter in support of the proposal signed by five neighbors, including the 3 abutting property owners to the site. For these reasons, 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 requested. This criterion is not applicable.

- 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:** There are no discernible impacts that would result from granting the requested adjustment. 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:** 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

The applicant has requested an Adjustment to the side and rear setbacks in order to convert an existing garage into an ADU with a second story addition. All applicable approval criteria are met, and therefore the proposal should be approved.

## ADMINISTRATIVE DECISION

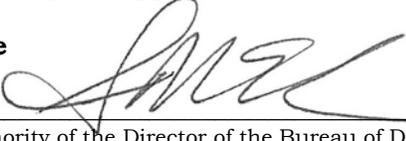
Approval of:

- An Adjustment to 33.110.220 to reduce the side and rear [south] setbacks as follows: to 3 feet from the east [side] property line, with an eave extending to 1 foot from the property line and to 4 feet 6 inches from the south [rear] property line with the eave

extending to 3 feet 4 inches from the property line, per the approved site plan, Exhibit C-1, signed and dated February 8, 2013, 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 Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-100117 AD."

**Staff Planner: Sylvia Cate**

**Decision rendered by:**  **on February 8, 2013**

By authority of the Director of the Bureau of Development Services

**Decision mailed: February 12, 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 2, 2013, and was determined to be complete on January 11, 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 2, 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 did not waive or extend the 120-day review period. Unless extended by the applicant, **the 120 days will expire on: May 3, 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 February 26, 2013** 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 **February 27, 2013.**
- 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:

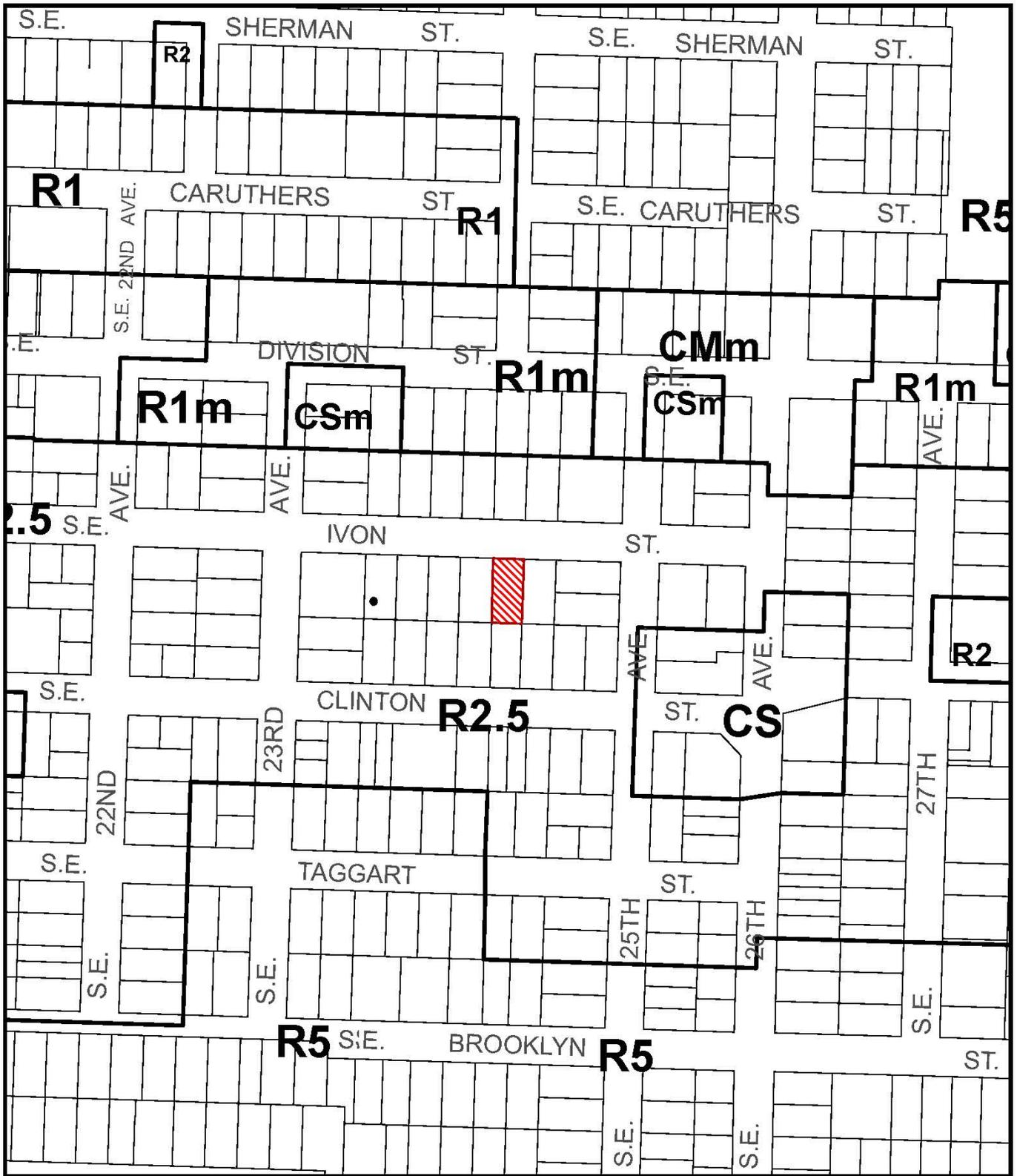
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevations
- 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. M. Korinek, February, 5, 2013, no objections, aesthetic suggestions
- 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



Historic Landmark



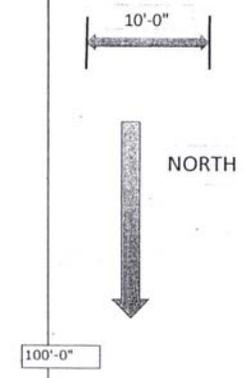
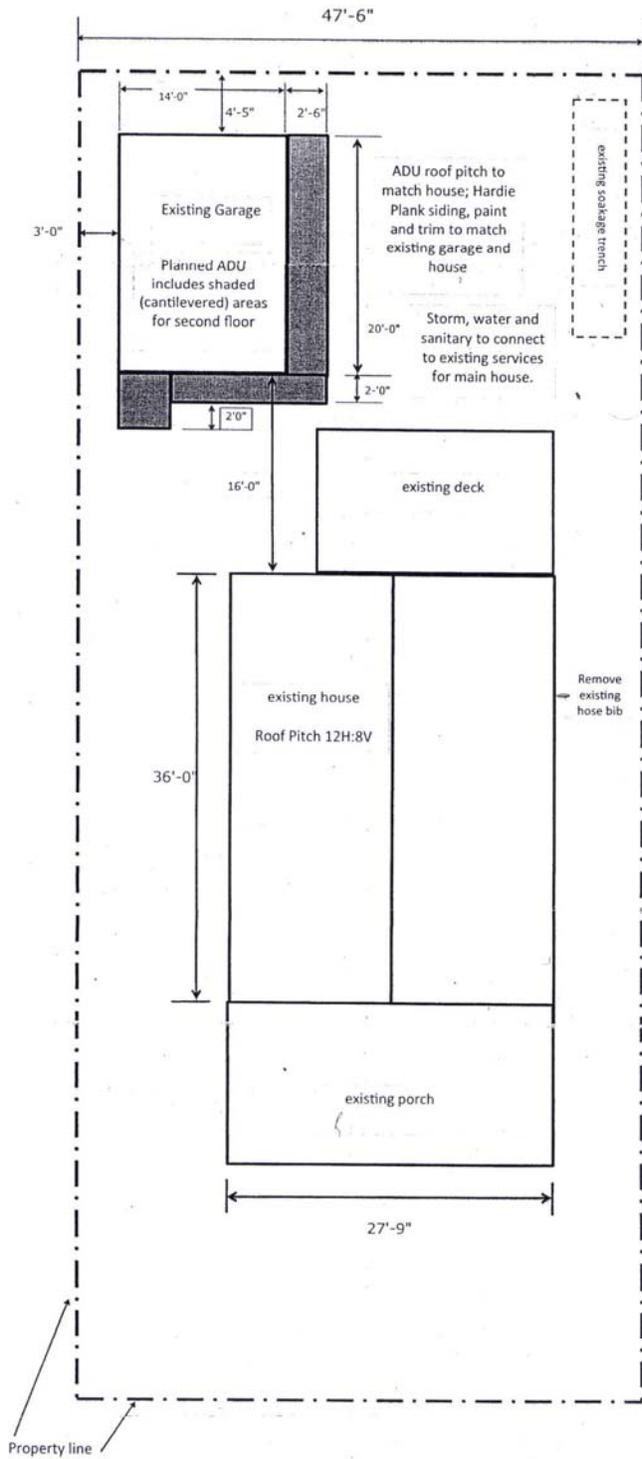
File No. LU 13-100117 AD

1/4 Section 3332

Scale 1 inch = 200 feet

State\_Id 1S1E11AA 7100

Exhibit B (Jan 03, 2013)



**\*Approved\***  
**City of Portland**  
 Bureau of Development Services  
 Planner *[Signature]*  
 Date **28/2013**

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

IVON STREET

SITE PLAN

1" = 10'

LN 13-100117 AD

EXHIBIT C-1

2418 SE Ivon Street  
 Planned ADU  
 Permit Number 12-180838