



**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:** June 17, 2013  
**To:** Interested Person  
**From:** Shawn Burgett, Land Use Services  
503-823-7618 / [shawn.burgett@portlandoregon.gov](mailto:shawn.burgett@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 13-139938 AD**

#### **GENERAL INFORMATION**

**Applicant:** Dave Spitzer / DMS Architects  
2106 NE Milk Blvd / Portland OR 97212

**Owner:** Cynthia L Dettman  
4720 NE Mason St. / Portland, OR 97211-7729

**Site Address:** 4720 NE MASON ST

**Legal Description:** BLOCK 1 TL 10000, IRVINGTON ACREAGE TR  
**Tax Account No.:** R420700140  
**State ID No.:** 1N2E19CA 10000  
**Quarter Section:** 2635  
**Neighborhood:** Cully, contact Evans Martin at 503-784-1494.  
**Business District:** Beaumont Business Association, Dan Johnson at 503-445-2157.  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.  
**Zoning:** R5h (Single Family Residential 5,000 square feet with "h" Aircraft Landing Overlay Zone)

**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 garage into an Accessory Dwelling Unit (ADU). The conversion of the garage into an ADU moves the parking pad out of conformance with the Zoning Code's setback standards. Zoning Code section 33.266.120.C.1.a states that required parking spaces are not allowed within the first 10 feet from a front lot line or in a required front setback. In this case the front setback required is 10 feet. Zoning Code section 33.266.120.D.1 states that a parking space must be at least 9 feet wide by 18 feet deep.

The Zoning Code requires a garage with an associated driveway to be set back a minimum of 18 feet from a front property line in this zone. However, if a garage is not located at the end of a driveway, the Zoning Code requires the 18 foot deep parking pad to be located entirely outside

of the required 10 foot front setback. This standard requires driveways not leading to garages to be at least 28 feet in depth.

In this case, the applicant's driveway is 24 feet in depth between the garage and the front property line. Since 28 feet is required, the applicant has requested an adjustment to allow the parking pad to encroach within the front setback. It should be noted that the applicant is proposing a 22 foot setback between the front property line and the end of the driveway in order to convert 2 feet of the existing 24 foot long driveway to landscaped area adjacent to the garage façade area proposed for conversion to an ADU.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are located in Section 33.805.040 of the Zoning Code.

## ANALYSIS

**Site and Vicinity:** The 6,180 square foot lot is developed with a single dwelling residence that was built in 1955. NE Mason Street is fully improved with sidewalks, curbs, planter strip and a paved road. Every home located along NE Mason Street between NE 47<sup>th</sup> Avenue and NE 49<sup>th</sup> Avenue has a driveway which provides off street parking.

**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.

The Aircraft Landing ("h") overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. This proposal does is not effected by the regulations found in the "h" overlay zone.

**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 **May 10, 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 Plans Examiner

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on May 10, 2013. One written response has been received from a notified property owner in response to the proposal. The neighbor asks that the Adjustment request be denied because she is opposed to change in the single family neighborhood. She is also concerned about impacts on parking.

**Neighbor Letter** (exhibit F-1): The neighbor was opposed to the adjustment request because they were opposed to change in there single family neighborhood which they felt would open the door for more changes. The letter also expressed a concern about parking.

**BDS response:** Please see the findings below (criterion B) for a response to these comments and concerns.

## 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 of the standards for parking and loading standards related to the development of houses and duplexes is explained under Section 33.266.120.a as follows:

*The size and placement of vehicle parking areas are regulated in order to enhance the appearance of neighborhoods.*

The proposed adjustment is for existing development. The applicant has proposed to convert the existing garage into living area (Accessory Dwelling Unit). The conversion of the garage into living area moves the parking pad on the site out of conformance with the Zoning Code's setback standards. The Zoning Code requires a garage with an associated driveway to be set back a minimum of 18 feet from a property line in this zone. However, if a garage is not located at the end of a driveway, the Zoning Code requires the 18 feet deep parking pad to be located entirely outside of the required 10 feet front setback. This standard requires driveway that doesn't lead to a garage to be at least 28 feet in depth in this zone.

In this case, the applicant's driveway is 24 feet in depth between the converted living area and the front property line. The applicant has proposed to convert 2 feet of driveway area adjacent to the garage door (where a large picture window will be added) into a landscaped buffer, providing a 22 foot setback. Since 28 feet is required, the applicant has requested an adjustment allow the parking pad to encroach 6 ft. within the required 10 ft. front setback.

Because the owner of the home is converting the existing garage to living space, they will maintain existing parking in-between the converted space and the front property line. The home is not getting any closer to the right of way, although the driveway will be 2 feet shorter at 22 feet than its existing length (24 ft.) in order to provide room for 2 feet of landscaping at the end of the driveway. The 22 feet of driveway area provided allows light, air, separation for fire protection and access for fire fighting will be maintained. The Fire Bureau has no objection to this request. It should also be noted that there is approximately 2 feet between back of the sidewalk and the front property line, so there will be 24 feet in which to park a car without overhanging onto the sidewalk. The Portland Bureau of Transportation had no concerns.

The general building scale and placement will also be maintained. Converting the garage into living space (Accessory Dwelling Unit) allows a window to replace the garage door. A better connection between the residence and the sidewalk results from this change. In addition, the front yard of the home will become more open and visually pleasing, which will be enhanced with the 2 feet of landscaping proposed at the end of the driveway (adjacent to the garage conversion).

For the reasons stated above, 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 proposed adjustment will not detract from the livability or appearance of the area. There is adequate room to allow the existing driveway to continue to function as a parking space, which is consistent with the character in the area. In addition, the applicant has proposed to replace the garage door with a large picture window, while also installing 2 feet of landscaping near the base of the home along its front façade where the garage door is being removed. The addition of a new window and landscaping allows the conversion of the garage to living space to blend in nicely with the residential character of the existing neighborhood. In response to the neighbors concerns regarding change and parking, as indicated by this approval criteria, change is not a factor that can be considered and parking is not required for an Accessory Dwelling Unit. 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:** Not applicable, only one adjustment has been requested.

- 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 applicant has proposed to replace the garage door with a large picture window, while also installing 2 feet of landscaping near the base of the home along its front façade where the garage door is being removed. The combination of these improvements mitigate the impacts of the encroachment of the parking pad into the front setback. For these reasons, 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

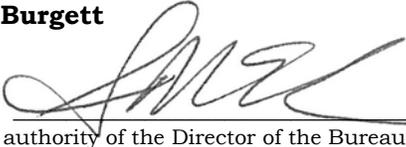
All of the approval criteria have been met for the requested Adjustment. The proposed adjustment will not detract from the livability of the neighborhood because on-site parking will still be provided and the appearance of the neighborhood will remain the same or improve due to the addition of windows and landscaping. For these reasons, the Adjustment should be approved.

### ADMINISTRATIVE DECISION

In order to allow conversion of the existing garage space to an ADU, approval of an adjustment to 33.266.120.C.1.a to allow the 22 foot long parking pad to encroach 6 ft. within the front setback in substantial conformance with the approved site plan Exhibits C.1 and C.2, signed and dated June 13, 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 setback 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 as approved in Case File # LU 13-139938 AD."
- B. The applicant shall install 2 feet of landscaping adjacent to the garage conversion as shown on exhibit C.1 in conjunction with the installation of the new window replacing the garage door as shown on exhibit C.2

**Staff Planner: Shawn Burgett**

**Decision rendered by:**  **on June 13, 2013**

By authority of the Director of the Bureau of Development Services

**Decision mailed: June 17, 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 April 16, 2013, and was determined to be complete on May 7, 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 April 16, 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.

**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 July 1, 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 **July 2, 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:

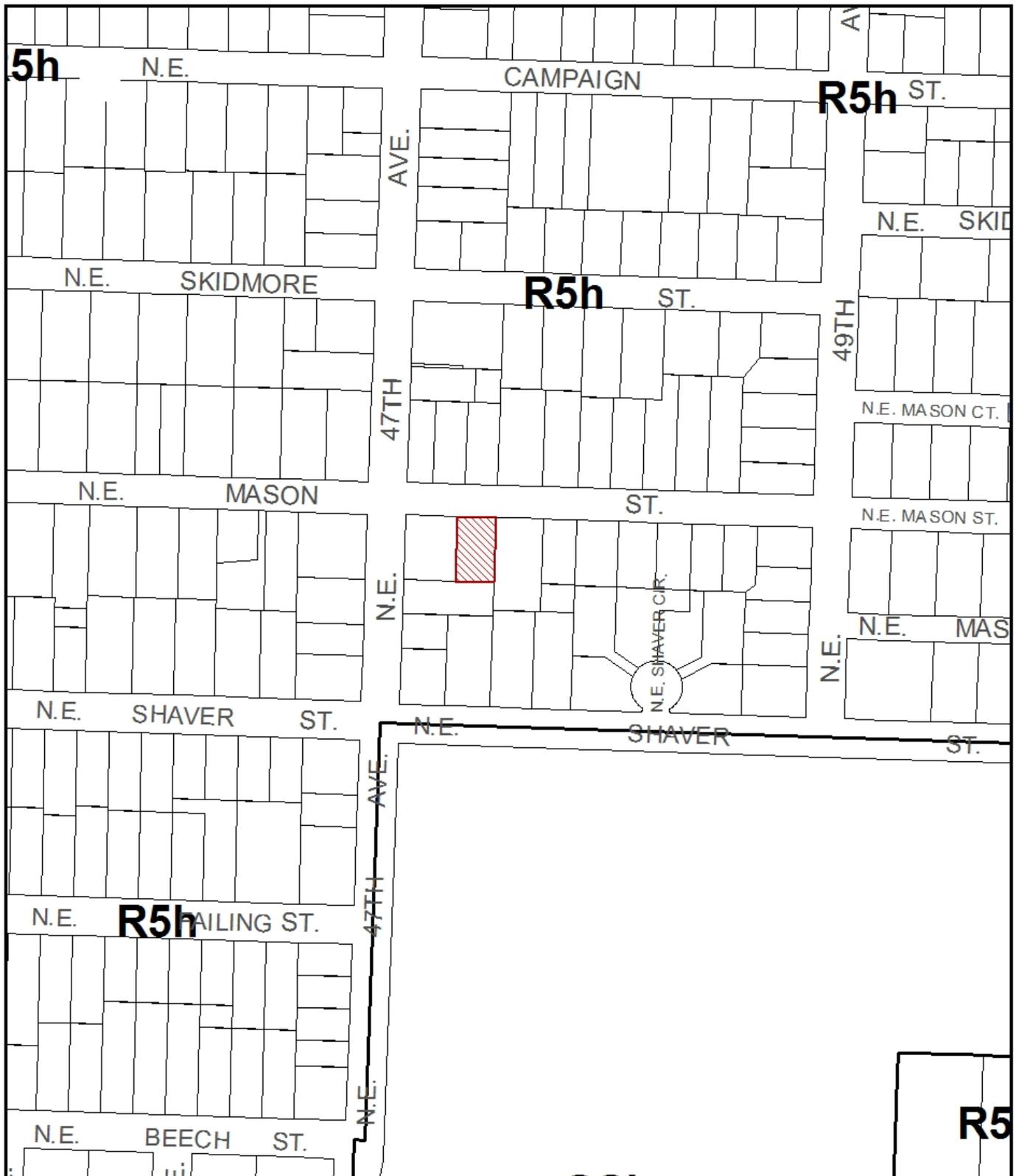
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Applicants narrative
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation (attached)
  - 3. ADU floor plan
- 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:
  - 1. Athena Hall, 4725 NE Mason, Portland, OR 97218
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Google street view image of existing house
  - 4. Incomplete Letter dated 5/1/13

**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).**

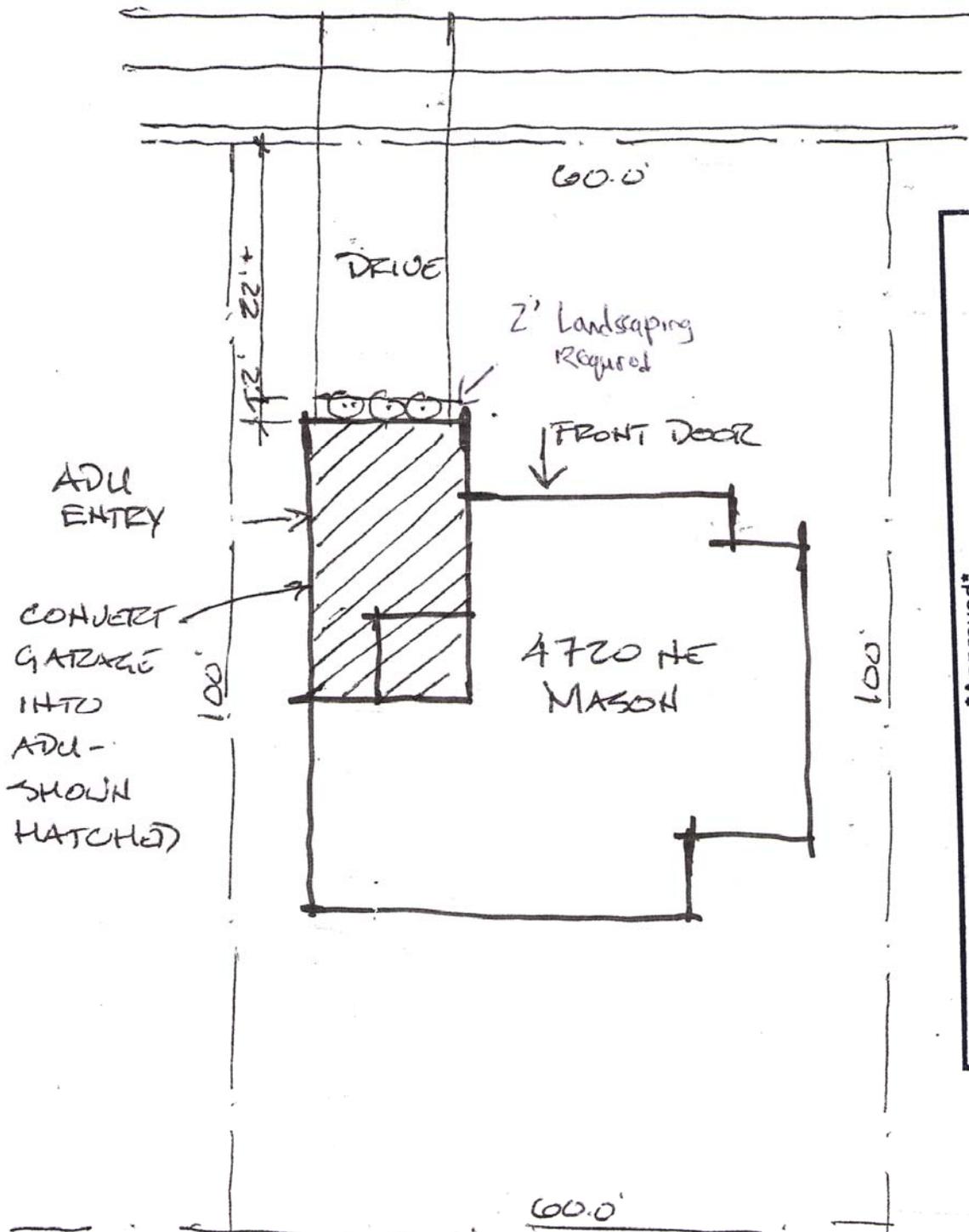


# ZONING



File No. LU 13-139938 AD  
 1/4 Section 2635  
 Scale 1 inch = 200 feet  
 State\_Id 1N2E19CA 10000  
 Exhibit B (Apr 18, 2013)

NE MASON ST.



"Approved"  
 City of Portland - Bureau of Development Services  
 Planner S. Berg Date 6/13/13  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

North ↑

SCHEMATIC SITE PLAN

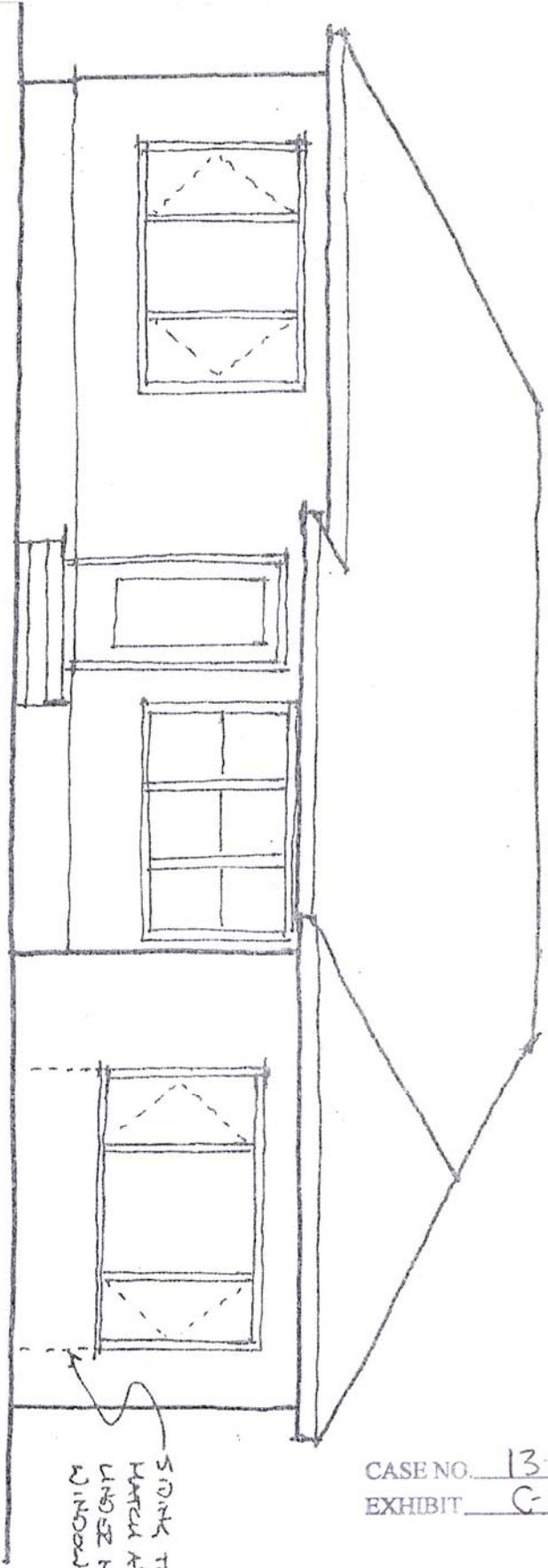
1/16" = 1'-0"

FRONT ELEVATION  
4729 NE WYSON  
1/4" = 1'-0"

NOTE: NO CHANGES TO FRONT ELEV.  
EXCEPT @ REMOVED GARAGE DR. TO  
BE INCLUDED PER ABOVE

REMOVE GARAGE DR.  
NEW WINDOWS

SYNCH TO  
MATCH ADJ.  
WINDOWS  
WINDOWS



\*Approved\*  
City of Portland - Bureau of Development Services  
Planner SBwqf Date 6/13/13  
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

CASE NO. 13-139938  
EXHIBIT C-2