



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: November 8, 2013
To: Interested Person
From: Kathleen Stokes, Land Use Services
503-823-7843 / Kathleen.Stokes@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 13-204822 AD

GENERAL INFORMATION

Applicant: Stephen Smith, Design Build Portland
1333 NE 47th Ave / Portland OR 97213

Owners: Kelii H and Katie H Haraguchi
3525 NE 26th Ave / Portland, OR 97212-1522

Site Address: 3525 NE 26TH AVE

Legal Description: BLOCK 2 LOT 3, ALAMEDA PARK
Tax Account No.: R007600190
State ID No.: 1N1E24CC 13800
Quarter Section: 2633
Neighborhood: Alameda, Jim Brown at 503-284-6455.
Business District: North-Northeast Business Assoc, Joice Taylor at 503-445-1321.
District Coalition: NE Coalition of Neighborhoods, Shoshana Cohen at 503-388-5004.
Zoning: R5h, or R5000, High Density single-dwelling Residential, with an Aircraft Landing (height) Overlay

Case Type: Adjustment Review
Procedure: Type II, administrative decision with appeal to Adjustment Committee.

Proposal: The applicant is proposing conversion of the existing garage on this site for use as an accessory dwelling unit (ADU), that will have a living area of about 625 square feet. The existing structure is one-story and the main part of the building is 23 feet, 1 inch wide by 18 feet deep. A side entry way projects out from the south side of the building in a small ell that measures 6 feet, 7 inches from north to south and 8 feet from east to west. This ell, together with the main part of the building, creates a western wall for the structure that is 29 feet, 8 inches wide and is located at the west property line, with no setback. The north wall of the structure is 18 feet wide and is located 20 inches (1.67 feet) from the north property line. The conversion of the building includes the addition of dormers that will be set back the required 5-foot distance from the property lines and will create usable living area in an upper level for the proposed ADU. A small storage area will be retained on the ground floor to partially serve the purposes that are now fulfilled by the garage.

The Portland Zoning Code, Title 33, requires structures to be located 5 feet from the side and rear property lines in the R5 zone. There is an exception for garages that meet certain

thresholds, including a requirement that they are no more than 24 feet wide or deep. Garages that meet all of the threshold requirements for this exception can be converted to use as an ADU or other accessory structure. When structures do not meet these thresholds, they can be approved for an exception to the setback requirements through an Adjustment Review. Adjustments are approved if they meet the approval criteria or if the approval criteria can be met through conditions of approval. Therefore, the applicants are requesting approval of Adjustments to Code Section 33.110.220, to reduce the required minimum building setbacks from the western and northern property lines, in order to allow the conversion of the garage for use as an ADU.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

ANALYSIS

Site and Vicinity: The applicants' site is a 5,000 square-foot lot that is located on the west side of NE 26th Avenue, three lots to the north of the intersection with NE Fremont Street. The property is developed with a single dwelling residence, and a detached garage that is located in the northwest corner of the lot. The location of the garage, with its reduced building setbacks, was approved under a 1991 Adjustment Review, LUR 91-00294. The area around the site is similarly developed with single-dwelling residences that were mainly built in the early 1900s.

Zoning: The site is zoned R5, High Density Single-Dwelling Residential. This zone is intended to accommodate single-dwelling development, with an average of one unit per 5,000 square feet of site area. The site also has an "h" or Aircraft Landing Overlay. The provisions of this overlay zone, that limit the height of structures within the aircraft landing approach patterns for the Portland International Airport, are not relevant to this proposal.

Land Use History: City records include one prior land use review for this site: LUR 91-00294 approved an Adjustment to reduce the minimum required building setbacks for construction of a two-car garage with a storage area.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **October 10, 2013**. The following Bureaus have responded with no issues or concerns. Agencies that provided written comments that included information for building permit requirements are noted with exhibit numbers, below:

- Environmental Services and Transportation Engineering each provided an electronic response of "no concerns."
- Water Bureau provided information on the existing water service and stated that a fixture count will need to be submitted by the applicant at the time of building permit review to appropriately size the domestic water service and meter for this location (Exhibit E-1).
- Fire Bureau reminded the applicant that all fire codes must be met for building permits (Exhibit E-2).
- Site Development Section of BDS provided information regarding the general characteristics of the site and some information from historical records regarding plumbing connections. The response noted that the erosion prevention and sediment control requirements of Title 10 must be met (Exhibit E-3).
- Life Safety Plan Review Section of BDS noted some of the building permit requirements, including regulations for fire-rated materials for walls that are closer than three feet from a property line (Exhibit E-4).
- Parks-Forestry Division cited the requirements of City Code Title 20.40 for the provision of new street trees and the protection of existing trees (Exhibit E-5).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on October 10, 2013. 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 of 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 to provide certainty and rapid processing for land use applications.

33.805.040 Adjustment Approval Criteria

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

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and
- 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
- 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
- D. City-designated scenic resources and historic resources are preserved; and
- E. Any impacts resulting from the adjustment are mitigated to the extent practical.
- 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 AND CONCLUSIONS

The applicants' proposal meets all of the relevant approval criteria: The purpose of building setback requirements are to maintain light, air, separation for fire protection, and access for fire fighting. Setback standards also reflect the general building scale and placement of development in the City's neighborhoods and promote a reasonable physical relationship between residences. They promote options for privacy for neighboring properties and 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.

The proposed conversion of the detached garage, to create an ADU, will not create any substantial changes for the adjacent neighbors to the north and west of the site. The existing garage walls will not be altered, in regards to length or height. The proposed dormers will be set back the required distance from the adjacent property lines. Therefore, no changes should be seen in impacts on light, air, separation for fire protection or access for fire fighting. In fact, building code requirements for fire-rated materials should improve the situation, in regards to fire protection. Because the building was previously approved and now has been situated in its present location for a little over twenty years, it can be determined that the general building scale and placement of development and the reasonable physical relationship between residences is also maintained. The building code regulations will ensure that there will be no openings on the portions of the structure that are within the setback areas, so there should be no impacts on privacy for the neighbors.

Two adjustments are being requested, in order to reduce the minimum building setbacks from both the western and the northern property lines. However, as noted above, these setback

reductions were previously approved in a 1991 Adjustment Review. The allowance for the conversion of the existing structure, for use as an ADU, is intended to further the purpose of the single-dwelling zone, which is to preserve land for housing and to provide housing opportunities for individual households. This is accomplished by creating more flexible living arrangements for various life situations and by helping homeowners to be able to address changing family needs and demands.

There are no scenic or historic resources on the site; no impacts have been identified and the site is not located in an environmental zone, so the criteria related to these issues do not apply. Therefore, because all of the relevant approval criteria are met, the proposal can be approved, in substantial compliance with the proposed site plan and elevation drawings.

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.

ADMINISTRATIVE DECISION

Approval of Adjustments to Code Section 33.110.220, to reduce the required minimum building setbacks, from 5 feet from the west property line to zero, and from 5 feet from the north property line to 20 inches, for the conversion of the former garage to use as an ADU, in general compliance with the approved site plan and elevation drawings, Exhibits C-1 through C-3, signed and dated November 6, 2013, 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-C.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-204822 AD."

Staff Planner: Kathleen Stokes



Decision rendered by: _____ **on November 6, 2013**

By authority of the Director of the Bureau of Development Services

Decision mailed: November 8, 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 September 13, 2013, and was determined to be complete on October 8, 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 September 13, 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: February 5, 2014.**

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 22, 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.

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 25, 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:

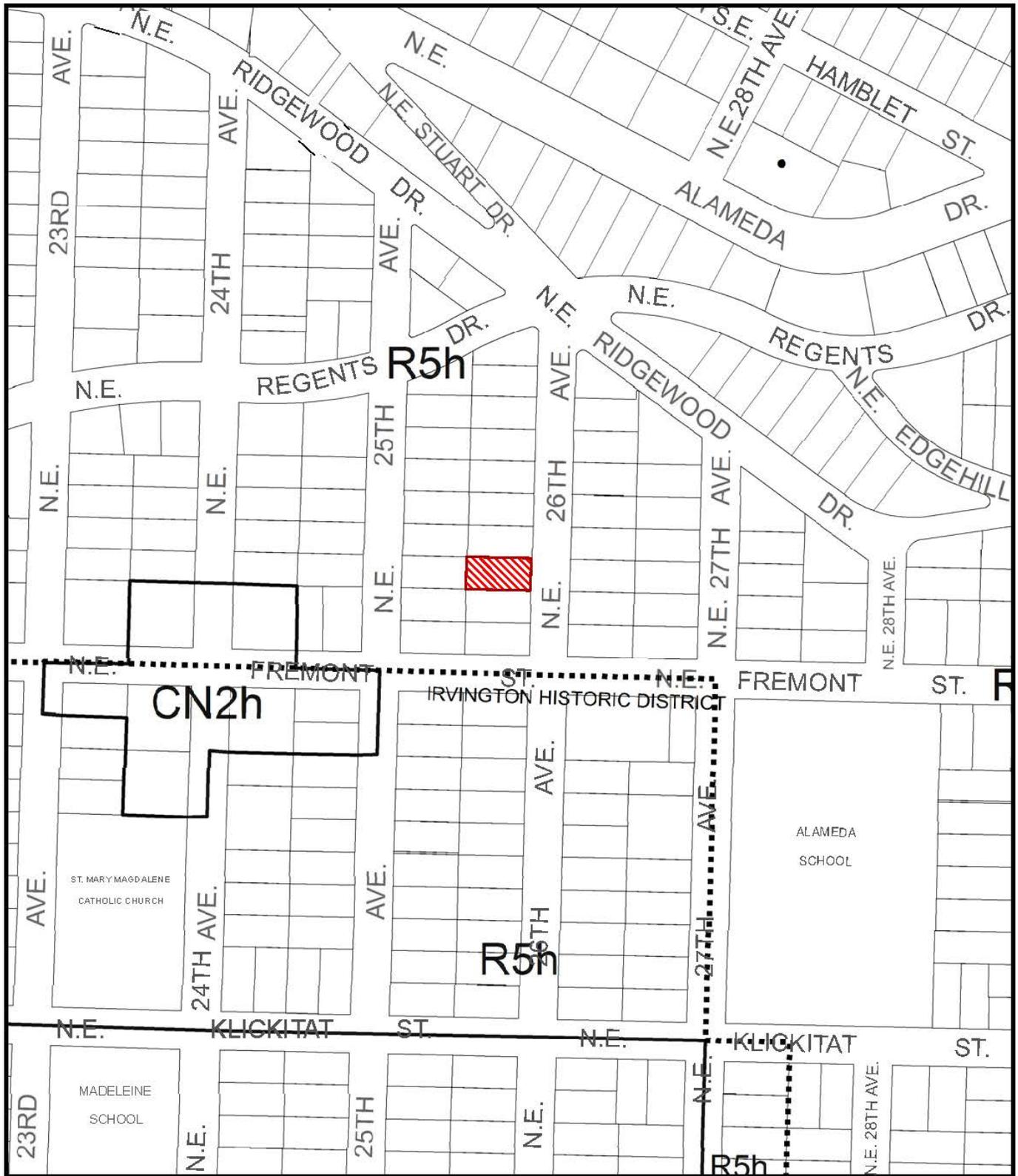
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Application form and original plans and narrative
 2. Supplemental information, dated October 2, 2013
 3. Revised site plan (with dimensions), received October 4, 2013
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Elevation Drawings (East and West, attached)
 3. Elevation Drawings (South and North, attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Water Bureau
 2. Fire Bureau
 3. Site Development Review Section of BDS
 4. Life Safety Plan Review Section of BDS
 5. Bureau of Parks, Forestry Division
 6. Summary of electronic responses from City service agencies
- F. Correspondence: (none received)
- G. Other:
 1. Letter from Kathleen Stokes to Stephen Smith, September 30, 2013

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



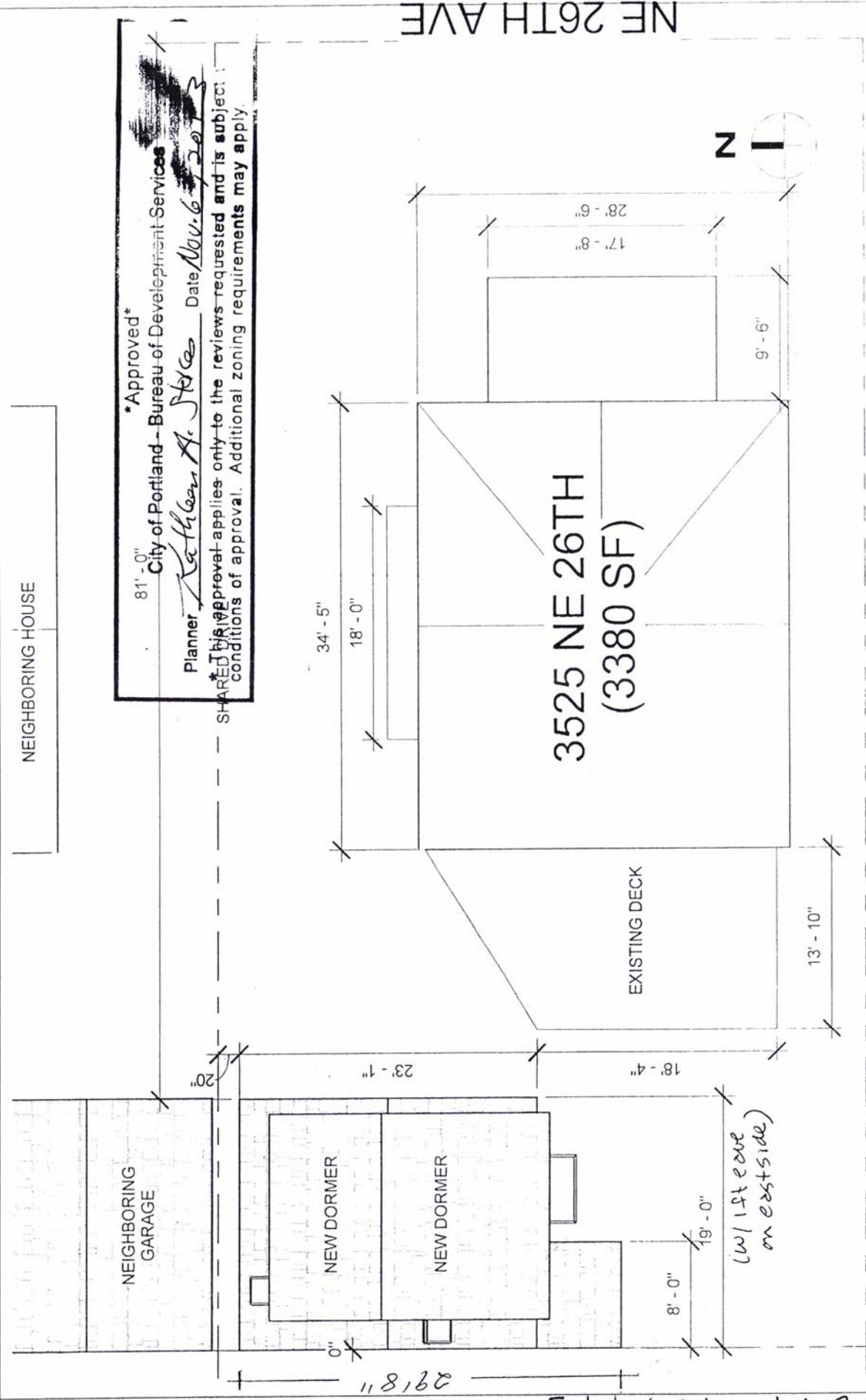
Site



Historic Landmark



File No. LU 13-204822 AD
 1/4 Section 2633
 Scale 1 inch = 200 feet
 State_Id 1N1E24CC 13800
 Exhibit B (Sep 16, 2013)



81'-0"
City of Portland - Bureau of Development Services
Planner *Kathleen A. Stice* Date *Nov. 6, 2013*
Approved
SHARED: This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

DESIGN BUILD
PORTLAND

PORTLAND, OREGON 97213
PHONE: 503.536.2777
stephen@designbuildportland.com

A1

SITE PLAN

10/03/13

HARAGUCHI ADU
3525 NE 26TH
PORTLAND, OR

Exhibit C-1 LU 13-204-822 AD



1 EAST ELEVATION
A2 SCALE: 1/4" = 1'-0"

HARAGUCHI ADU
3525 NE 26TH
PORTLAND, OR

EAST ELEVATION

10/02/13

A2

DESIGN BUILD
PORTLAND

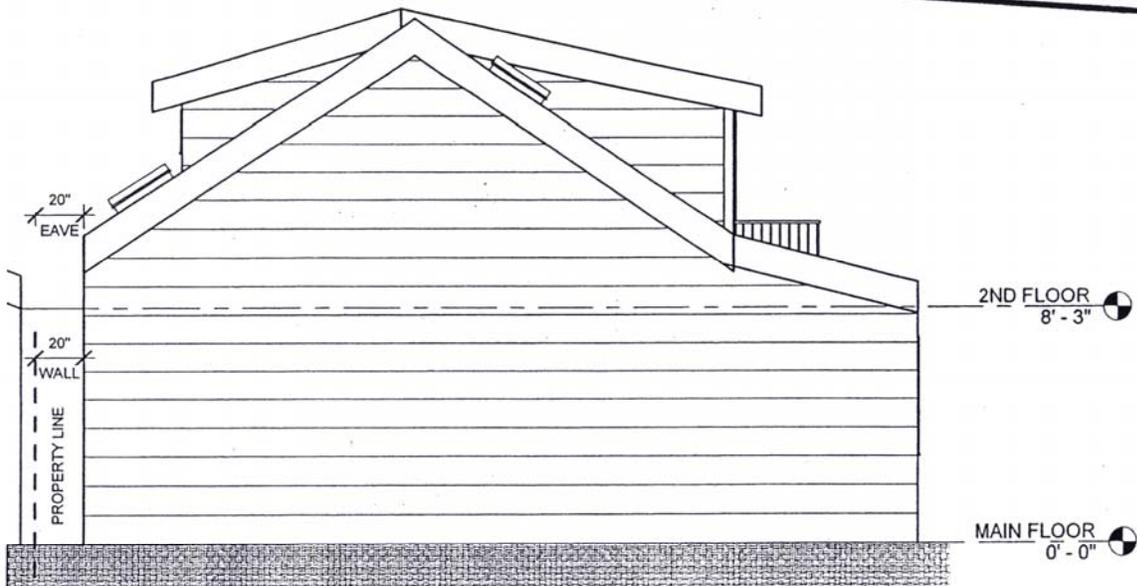
PORTLAND, OREGON 97213
PHONE: 405.599.2277
stephen@designbuildportland.com

Approved

City of Portland - Bureau of Development Services

Planner Kathleen A. Stokes Date Nov. 6, 2013

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



1 WEST ELEVATION
A3 SCALE: 1/4" = 1'-0"

HARAGUCHI ADU
3525 NE 26TH
PORTLAND, OR

WEST ELEVATION

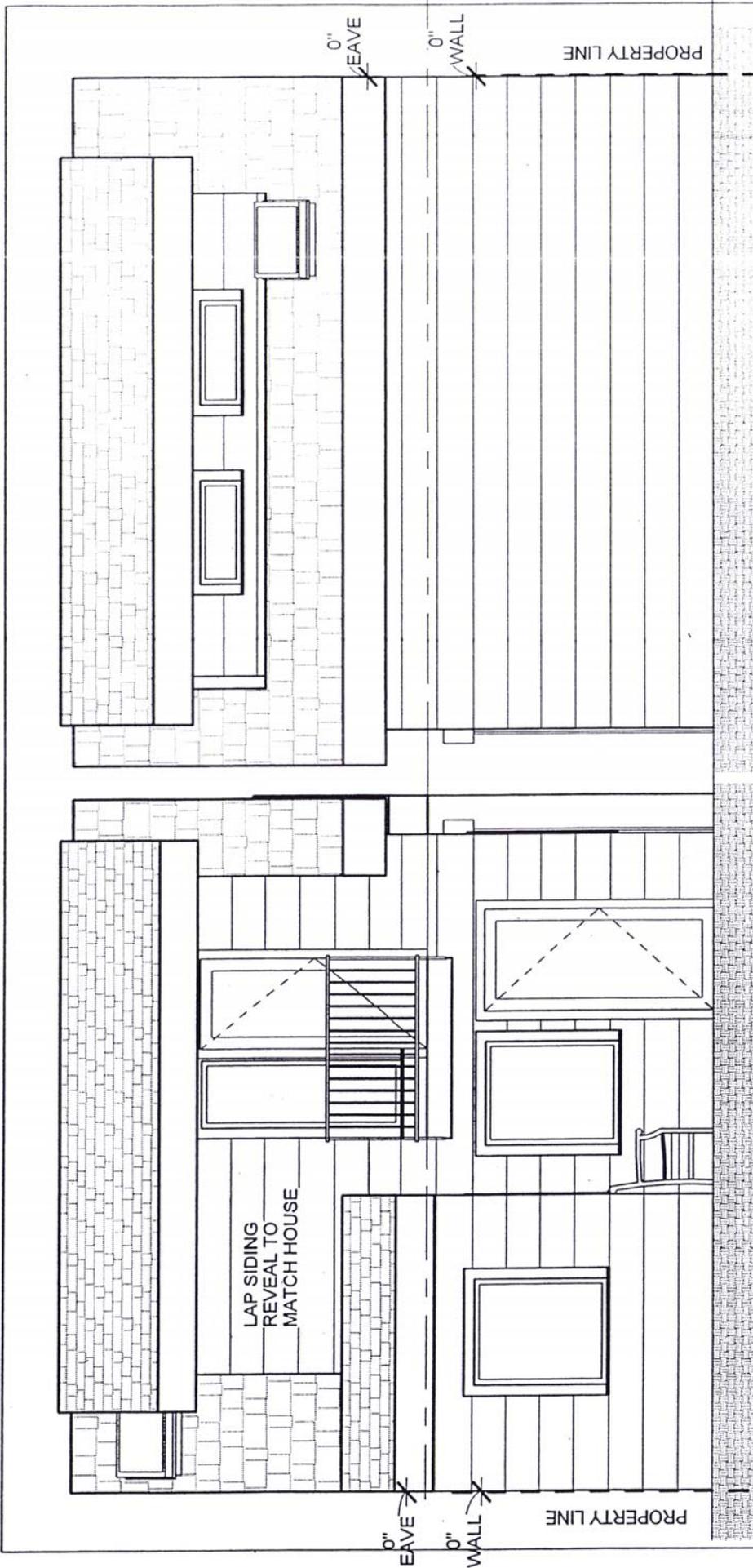
10/02/13

A3

DESIGN BUILD
PORTLAND

PORTLAND, OREGON 97213
PHONE: 405.599.2277
stephen@designbuildportland.com

Exhibit C-2 LU 13-204822 AD



1 SOUTH ELEVATION
1/4" = 1'-0"

2 NORTH ELEVATION
1/4" = 1'-0"

EX-16-C-3

LU 13-204822 AD

Approved
 City of Portland - Bureau of Development Services
 Planner *Ruthleen A. Stokes* Date *Nov 6, 2013*
 * This approval applies only to the reviews requested and is subject to additional zoning requirements that may apply.
NORTH ELEVATION

HARAGUCHI ADU
 3525 NE 26TH
 PORTLAND, OR

DESIGN BUILD
 PORTLAND

PORTLAND, OREGON 97213
 PHONE: 406.595.2277
 stephen@designbuildportland.com

10/02/13