



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
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Date: December 12, 2013
To: Interested Person
From: Amanda Rhoads, Land Use Services
503-823-7837 / Amanda.Rhoads@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 13-221252 AD

GENERAL INFORMATION

Applicant/Owner: Roman McCloskey, 3705 SE 63rd Ave, Portland, OR 97206-3669
Site Address: 3705 SE 63RD AVE
Legal Description: BLOCK 10 LOT 29&30, LAURELWOOD PK
Tax Account No.: R480803070
State ID No.: 1S2E08CB 14000
Quarter Section: 3437
Neighborhood: Foster-Powell, contact Lynden Evans at 541-633-3187.
Business District: Eighty-Second Ave of Roses Business Association, contact Frank Harris at 503-774-2832.
District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.
Plan District: None
Zoning: R5a – Residential 5,000 with “a” Alternate Design Density Overlay Zone
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant has proposed to convert the existing detached garage into an accessory dwelling unit (ADU). The conversion of the garage into living area moves the parking pad on the site out of conformance with the Zoning Code’s standards. Zoning Code section 33.266.120.C.1.a states that required parking spaces are not allowed within the required side street setback on corner lots. In this case the side setback required is five feet. Zoning Code section 33.266.120.D.1 states that a parking space must be at least 9 feet wide by 18 feet in depth. Given these two standards, a driveway of at least 23 feet in depth would be required on the applicant’s site.

In this case, the applicant’s driveway is 17 feet in depth. The applicant has requested an Adjustment to allow car parking within the five-foot required side street setback and to shorten the required parking pad length to 17 feet.

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 located one block south of Powell Blvd. in the Foster-Powell neighborhood of SE Portland. The site is a corner, double-wide lot at the southwest corner of SE 63rd and SE Rhone, with dimensions of 80 feet wide by 100 feet deep. There is an alley on the west side of the property. The house on the site was built in 1927. The immediate neighborhood is made up of a mixture of older two- or one-and-a-half-story homes interspersed with more modest homes from the mid-20th century. Both Rhone and 63rd are classified as Local Service Bikeways and Pedestrianways.

Zoning: The site is located in a Single-Dwelling Residential 5,000 (R5) Zone, with an Alternative Design Density (“a”) Overlay Zone.

The R5 zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 5,000 square feet of site area.

The purpose of the “a” Overlay Zone is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements. The provisions of the “a” overlay are not proposed to be used on this site.

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 **November 8, 2013**. The following Bureaus have responded with no issues or concerns:

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

The Bureau of Transportation Engineering responded with the following comments and one recommended condition: Please see Exhibit E.2 for additional details.

The only applicable transportation related purpose for setbacks as identified in Code Section 33.110.220.A is stated as follows:

“They (setbacks) 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.”

As shown on the submitted site plan, the existing garage on the subject site is located 17-ft from the SE Rhone property line. The subject Adjustment request would result in the required on-site parking space (pad/driveway) only being 17-

ft in length, as opposed to the Zoning Code's 18-ft required length. PBOT has no concerns relative to this request for the following reasons:

- There is currently sufficient driveway length to accommodate an average sized passenger vehicle without overhanging onto the abutting sidewalk.
- SE Rhone and SE 63rd Ave are paved and improved with curbs/sidewalks making it more likely that additional vehicles or guest vehicles will be parked along the site's frontage (and not across the sidewalk, in front of the existing garage).
- With regard to a vehicle backing onto the street from the proposed 17-ft long driveway, exiting speeds onto abutting SE Rhone will be slower than if there was a lengthier driveway that a vehicle would have to also cross.
- Considering potential impacts with pedestrians, the proposed 17-ft long driveway will match the existing conditions of the site; the location of the existing garage on the subject site relative to its location near the back of the existing sidewalk will not be changed. The existing condition along this segment of SE Rhone provides pedestrians with a garage orientation that should be expected in relation to the pedestrian environment. Otherwise stated, pedestrians in the area will not find the proposed garage conversion/17-ft long driveway length to be any different than current condition.

PBOT does have one concern relative to the requested Adjustment. The current 6-ft curb-tight sidewalk along the site's SE Rhone frontage does not satisfy current City standards. The sidewalk corridor that is required along this frontage pursuant to the City's Pedestrian Design Guide should be 11-ft in width and comprised of a 0.5-ft curb, 4-ft wide furnishing zone, 6-ft wide sidewalk and 0.5-ft wide frontage zone. In the event of future development on the site that will likely trigger Title 17 thresholds, PBOT will be able to require this site frontage to be brought up to current City standards. Said sidewalk corridor improvements would also require a 5-ft dedication of property.

If the current conditions with the existing sidewalk/driveway were to be retained with future development on the site, the required property dedication would reduce the driveway length from 17-ft to 12-ft. The resulting driveway length could not accommodate a vehicle without spill-over onto the sidewalk. This is not a condition that PBOT could support. Accordingly, to address this concern and to support the subject Adjustment request, PBOT will recommend that the following condition be included in the land use decision for this matter:

- In the event of future frontage improvement/property dedication requirements along the site's SE Rhone frontage, the current on-site parking pad (17-ft long driveway) must be replaced.

Because of the reasons stated above, PBOT has no objections to the proposed Adjustment request.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 8, 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 (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

The applicant is asking for an adjustment to the setback standards in order to locate the required off-street parking within the 5-foot side setback. The purpose statement for setbacks in the single-dwelling zones is as follows:

33.110.220 Setbacks

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.*

Additionally, the parking requirements do not allow parking in the side setback on corner lots and do require parking spaces of a minimum depth of 18 feet. The relevant purpose statement for these regulations is below:

33.266.120 Development Standards for Houses and Duplexes

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

- 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 for A and B: Because the existing garage is being converted to living space, the applicant proposes to maintain existing parking in between the converted space and the side property line. Neither the home nor the converted garage is not getting any closer to the right of way, and the driveway will remain its existing length (17 ft.) so light, air, separation for fire protection and access for fire fighting will be maintained. The Fire Bureau has no objection to this request.

Several nearby properties access their driveways and garages from SE Rhone while their primary houses face another street. Maintaining parking in front of the garage on the subject site maintains the existing physical relationships of houses and garages and continues the existing pattern of development to allow for compatibility with the neighborhood.

The proposed adjustment will not detract from the livability or appearance of the area. In fact, the improvements made to the garage by converting it to an ADU will improve the appearance of the street and improve the relationship between the garage and the street.

There is adequate room to allow the existing driveway to function as a parking space. Since cars are currently parking in the driveway, there will be no change to the appearance of the property or to the street in general. Most importantly, the Adjustment if granted still allows for enough room for a vehicle to park in the driveway without hanging into or blocking the sidewalk.

PBOT noted in their comments that future changes to the sidewalk corridor along SE Rhone could further reduce the depth of the parking space. The resulting depth (12 feet) would not accommodate a parking space. To address this, a condition of approval will require that, in the event of future right-of-way frontage improvements which would require the five-foot property dedication, a legal parking space must be provided on the site or another Adjustment would be required.

With this condition, these criteria are 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: Both Adjustments address the same issue: using the existing parking pad as the legal off-street parking spot for the site. Since both Adjustments accomplish the same goal, legalizing the parking pad, there is no cumulative effect for the two Adjustments.

- 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

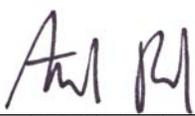
The applicant proposes to maintain off-street parking using an existing 17-foot-long parking pad that, instead of leading to a garage, will now lead to the accessory dwelling unit (ADU). Approval of the Adjustments to the side setback requirement and parking pad length will not necessitate any changes to the current site. The appearance of the neighborhood will not be affected, and since few houses front onto SE Rhone where the driveway is located, and many nearby properties do have garages and driveways on Rhone, the proposal is consistent with neighboring conditions while maintaining off-street parking. The proposed Adjustments will not detract from the livability of the neighborhood because additional residential use of the garage will not reduce the amount of on-site parking provided. All of the approval criteria have been met for the requested Adjustments and they should be granted.

ADMINISTRATIVE DECISION

Approval of an Adjustment to 33.266.120.C.1.a to allow the parking pad to encroach 5 feet in the 5-foot side setback; and an Adjustment to 33.266.120.D.1, parking space sizes, to allow the parking pad to be 9 feet wide by 17 feet long to allow parking in front of the converted garage per the approved site plan, Exhibits C.1 through C.2, signed and dated December 9, 2013, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition B must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 13-221252 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. In the event of future right-of-way frontage improvement/property dedication requirements along the site's SE Rhone frontage, a parking space meeting the requirements of 33.266.120.D and all applicable base zone standards (33.110) must be provided on site or an Adjustment will be required.

Staff Planner: Amanda Rhoads

Decision rendered by:  **on (December 9, 2013.)**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 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 October 25, 2013, and was determined to be complete on November 6, 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 October 25, 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 further extended by the applicant, **the 120 days will expire on: March 6, 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 December 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.

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 775 Summer St NE, Suite 330, Salem, OR 97301-1283, 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 **December 27th, 2013 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

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. ADU Elevations (attached)
 3. ADU Floor Plans
- D. Notification information:
 1. Mailing list

2. Mailed notice

E. Agency Responses:

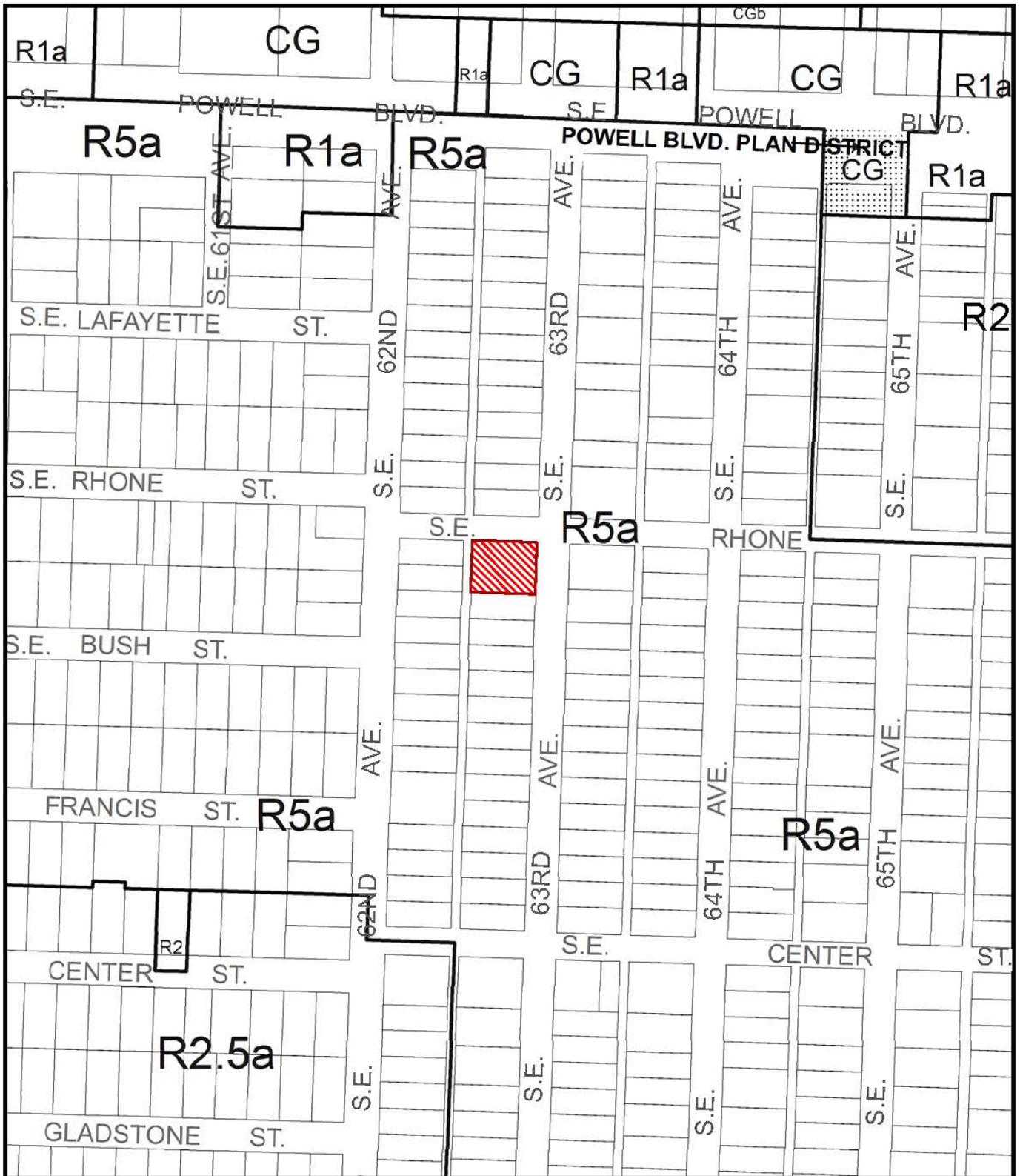
1. Bureau of Environmental Services
2. Bureau of Transportation Engineering and Development Review
3. Water Bureau
4. Fire Bureau
5. Site Development Review Section of BDS
6. Bureau of Parks, Forestry Division
7. Life Safety

F. Correspondence: none received

G. Other:

1. Original LU Application
2. 1996 building permit drawings to move garage 5 feet further from Rhone

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



NORTH

File No. LU 13-221252 AD
 1/4 Section 3437
 Scale 1 inch = 200 feet
 State_Id 1S2E08CB 14000
 Exhibit B (Oct 30, 2013)

PROJECT DESCRIPTION
 CONVERSION OF THE EXISTING GARAGE IN
 TO AN ADU. 1-STORY WITH LOFT ABOVE.

EXISTING GARAGE: 360 SQFT
 PROPOSED ADU: 360 + 120 = 480 SQFT

EXISTING HOUSE FOOTPRINT: 1677 SQFT

PROPERTY DESCRIPTION

3705 SE 63rd Ave.
 PORTLAND, OR 97206

ZONING: R5a
 TAX ROLL: LAURELWOOD PK. LOTS 29 & 30 ; BLK 10
 PROPERTY ID: R205000
 LOT AREA: 0.18 ACRES OR 8,000 SQFT

McCloskey A.D.U.
 3705 SE 63rd Ave.
 PORTLAND, OR 97206

SITE PLAN

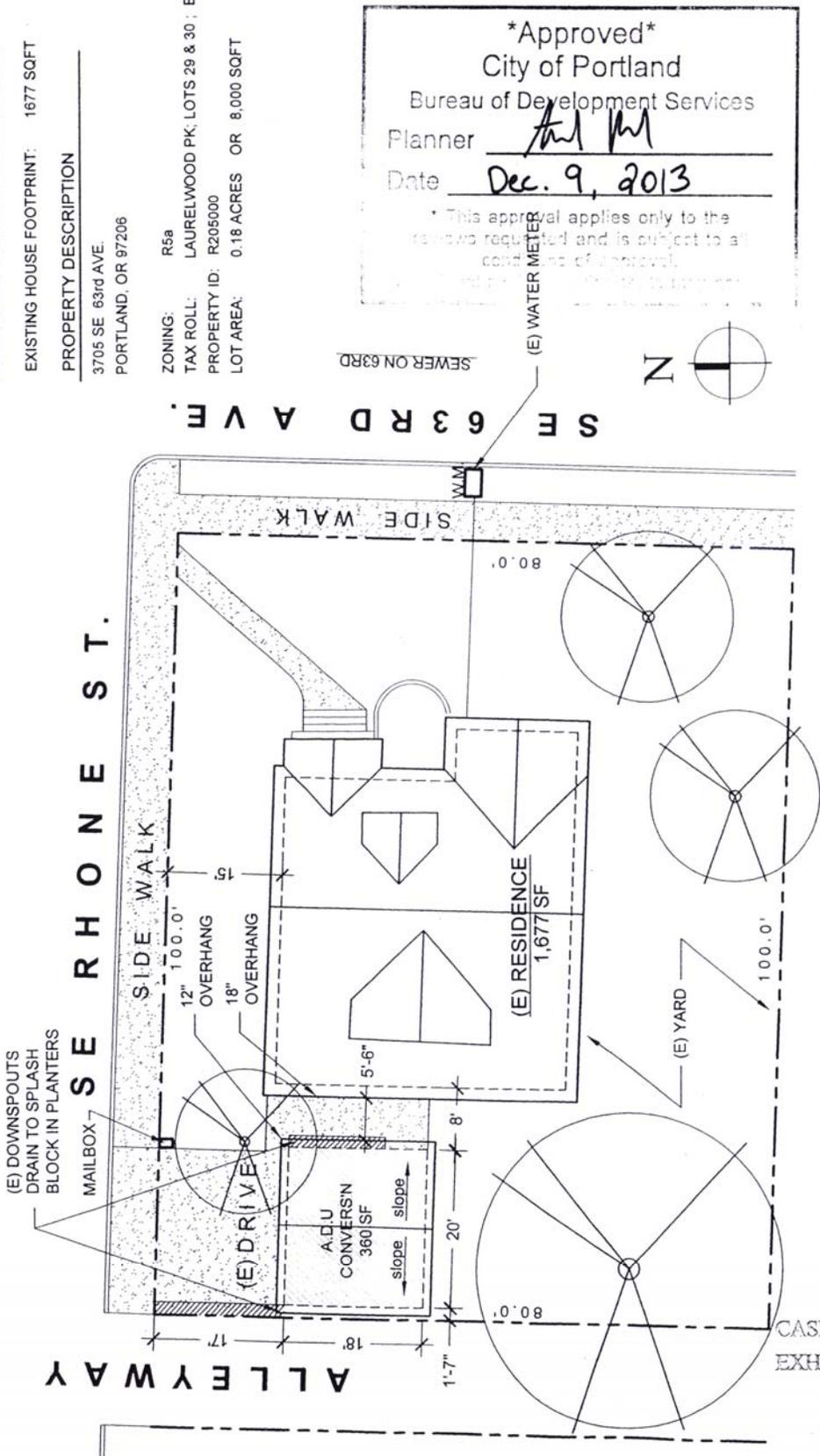
Date: 10-22-13
 Rev:

A0.1

LU13-221252AD

Approved
 City of Portland
 Bureau of Development Services
 Planner And M
 Date Dec. 9, 2013
 * This approval applies only to the
 permits required and is subject to all
 conditions of approval.

LEGEND
 [---] NEW CONVERSION
 [---] PROPERTY LINE
 [---] SETBACKS



PLOT PLAN
 SCALE: 1" = 20'-0"

CASE NO. LU13-221252AD
 EXHIBIT C.1

PROPERTY DESCRIPTION

3705 SE 63rd AVE.

PORTLAND, OR 97206

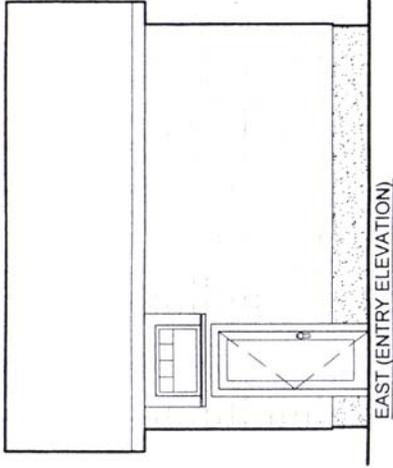
ZONING: R5a

TAX ROLL: LAURELWOOD PK; LOTS 29 & 30; BLK 10

PROPERTY ID: R205000

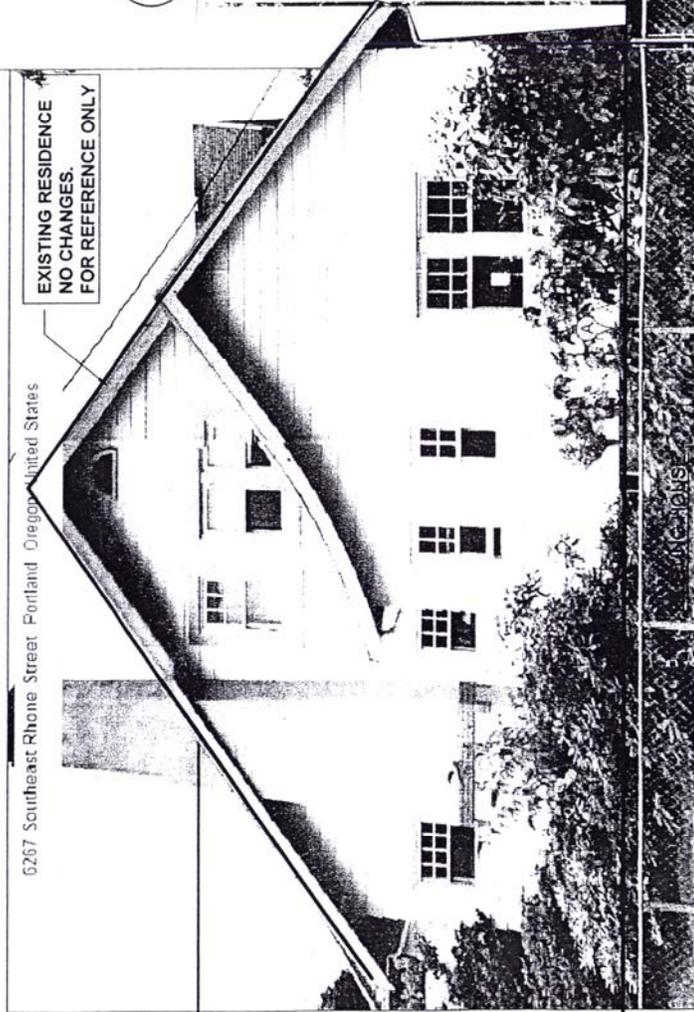
LOT AREA: 0.18 ACRES OR 8,000 SQFT

McCLOSKEY A.D.U.
3705 SE 63rd AVE.
PORTLAND, OR 97206



3 PROPOSED ADU EAST ELEVATION

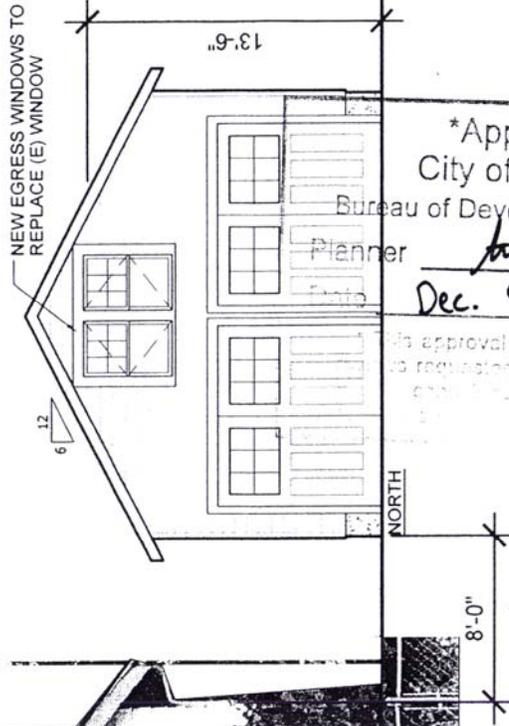
SCALE: 1/8" = 1'-0"



1 PROPOSED NORTH ELEVATION FROM RHONE ST.

SCALE: 1/8" = 1'-0"

CASE NO. LU 13-221252AD
EXHIBIT C.2



SITE PLAN

Date: 10-22-13
Rev:

A3.1

Approved
City of Portland
Bureau of Development Services
Planner *[Signature]*
Dec. 9, 2013

This approval applies only to the project as requested and is not to be construed as a general approval.

LU13-221252AD