



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

FROM CONCEPT TO CONSTRUCTION

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Date: January 16, 2014
To: Interested Person
From: Andrew Gulizia, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 13-226098 AD

GENERAL INFORMATION

Applicant: David Spitzer / DMS Architects
2325 NE 19th Avenue / Portland OR 97212

Owners: Craig and Lisa Switalla
126 NE Monroe Street / Portland, OR 97212

Site Address: 126 NE Monroe Street

Legal Description: BLOCK 11 LOT 22, WILLIAMS AVE ADD
Tax Account No.: R916404270
State ID No.: 1N1E27AA 19700
Quarter Section: 2730
Neighborhood: Eliot, contact Mike Warwick at 503-284-7010.
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321.
District Coalition: NE Coalition of Neighborhoods, Claire Adamsick at 503-388-9030.
Plan District: Albina Community
Other Designations: Eliot Conservation District
Zoning: R2a - Multi-Dwelling Residential 2,000 with Alternative Design Density Overlay Zone

Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant proposes to construct a new Accessory Dwelling Unit (ADU) in the southeast corner of the lot. The walls will be three feet from the side and rear property lines, and the eaves will be two feet from the side and rear property lines. Zoning Code Section 33.120.220 (Table 120-4) requires a five-foot minimum setback from the side and rear property lines to the walls, and pursuant to Section 33.120.220.D.1 a four-foot minimum setback is required for the eaves. Because the proposed ADU doesn't meet these setback requirements, an Adjustment is requested.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The 5,000 square-foot lot is located on the south side of NE Monroe Street, between NE Rodney Avenue and NE Martin Luther King, Jr. Boulevard. The site is developed with a two-story single-family residence that is set back approximately 18 feet from the street lot line. Surrounding lots are also developed with single-family residences, most of which are two stories.

Zoning: The R2 designation is one of the City's multi-dwelling zones, which are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing.

The site is also within the boundaries of the "a" Alternative Design Density Overlay Zone, the Albina Community Plan District, and the Eliot Conservation District. The purpose of the Alternative Design Density 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 Albina Community Plan District implements the Albina Community Plan, and is intended to ensure that new higher density commercial and industrial developments in the neighborhood do not overwhelm nearby residential areas. The Eliot Conservation District is a Historic Resource Overlay Zone in which new structures require either Historic Resource Review or compliance with the Community Design Standards of Zoning Code Section 33.218.120.

None of these Districts have regulations which affect the Adjustment to setbacks requested by the applicant. However, the applicant understands that the design-related requirements of the Eliot Conservation District will apply at the time of Building Permit application.

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 December 12, 2013. The following Bureaus have responded with no issues or concerns:

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

Neighborhood Review: A "Notice of Proposal in Your Neighborhood" was mailed on December 12, 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**33.805.040 Approval Criteria**

Adjustment requests will be approved if the applicant has demonstrated 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 applicant is requesting an Adjustment to the minimum setback requirement for structures in the R2 zone. The purpose of the setback requirement is stated in Zoning Code Section 33.120.220.A:

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 multi-dwelling development 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*
- *Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users.*
- *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 ADU will be located nine feet back from the house on the subject property and more than 50 feet from the nearest house on neighboring property; therefore the proposal maintains a reasonable physical relationship between residences and adequate space for light, air, and fire protection. The Building Code requires that exterior walls less than three feet from the property lines must be one-hour fire rated with no openings. The underside of eaves less than three feet from the property lines must also be one-hour fire rated. These requirements will apply at Building Permit review.

Since the ADU will be fairly low (17 feet in height from the ground to the peak of the roof) and in the back yard, it will have little impact on the overall scale and placement of structures in the neighborhood. Since no windows are proposed on the south and east building walls, the reduced setbacks from the property lines will not impact neighbors' privacy. And, as the ADU would be located behind the house, the proposal would not affect the open front yard.

Placement of the ADU in the southeast corner of the lot will maximize the usable outdoor area of the property. As the existing driveway into the back yard will remain unchanged, the proposal will not affect visibility for drivers backing onto the street and there will be ample space for cars to park on the driveway without overhanging the street or sidewalk.

Based on these reasons, the proposed Adjustment equally meets the intent of the regulation and this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: Because the site is located in a multi-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. The proposed ADU will be one story, relatively small in size (352 square feet), and 74 feet from the street lot line. Further, the ADU will be compatible in design with the primary house and with the surrounding area. Since no windows are proposed on the south or east walls of the ADU, the reduced setbacks will not negatively impact neighbors' privacy.

For these reasons, no significant negative impacts to neighborhood livability or appearance are anticipated. 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: As only one Adjustment is being requested, this criterion is not applicable.

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

Findings: City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. This site is located within the Eliot Conservation District, one of the Historic Resource Overlay Zones. The applicant’s proposal does not modify any existing structure, and pursuant to Zoning Code Section 33.205.030.C, the roof pitch and façade details of the new ADU will match the roof pitch and façade details of the existing house on the lot. As mentioned above, new structures within the Eliot Conservation District require either Historic Resource Review or compliance with the Community Design Standards of Zoning Code Section 33.218.120. The application of these requirements at the time of Building Permit submittal will ensure that the design of the new structure will be consistent with the purpose of the Historic Resource Overlay Zone. This criterion is met.

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

Findings: As discussed in the findings for approval criterion B, the proposal will have no adverse impacts on the livability of the surrounding residential area. As there are no identified adverse impacts for which mitigation would be required, this criterion is not applicable.

- 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: Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on site, 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 demonstrated that the applicable approval criteria have been met. The proposal to reduce the rear and side setbacks for an ADU equally meets the intent of the regulation, and does not have adverse impacts on the livability and appearance of the surrounding residential neighborhood.

ADMINISTRATIVE DECISION

Approval of the Adjustment to reduce the minimum rear and side setback for an accessory building from five feet to three feet for the walls, and from four feet to two feet for the eaves, per the approved site plans, Exhibits C-1 through C-5, signed and dated January 3, 2014, subject to the following condition:

- A. As part of the building permit application submittal, each of the 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 through C-5. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-226098 AD. No field changes to the south and east building elevations are allowed."

Staff Planner: Andrew Gulizia



Decision rendered by: _____ **on January 10, 2014.**

By authority of the Director of the Bureau of Development Services

Decision mailed: January 16, 2014

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 November 8, 2013, and was determined to be complete on December 10, 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 November 8, 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: April 9, 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 January 30, 2014** 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, Oregon 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 **January 31, 2014.**
- 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:

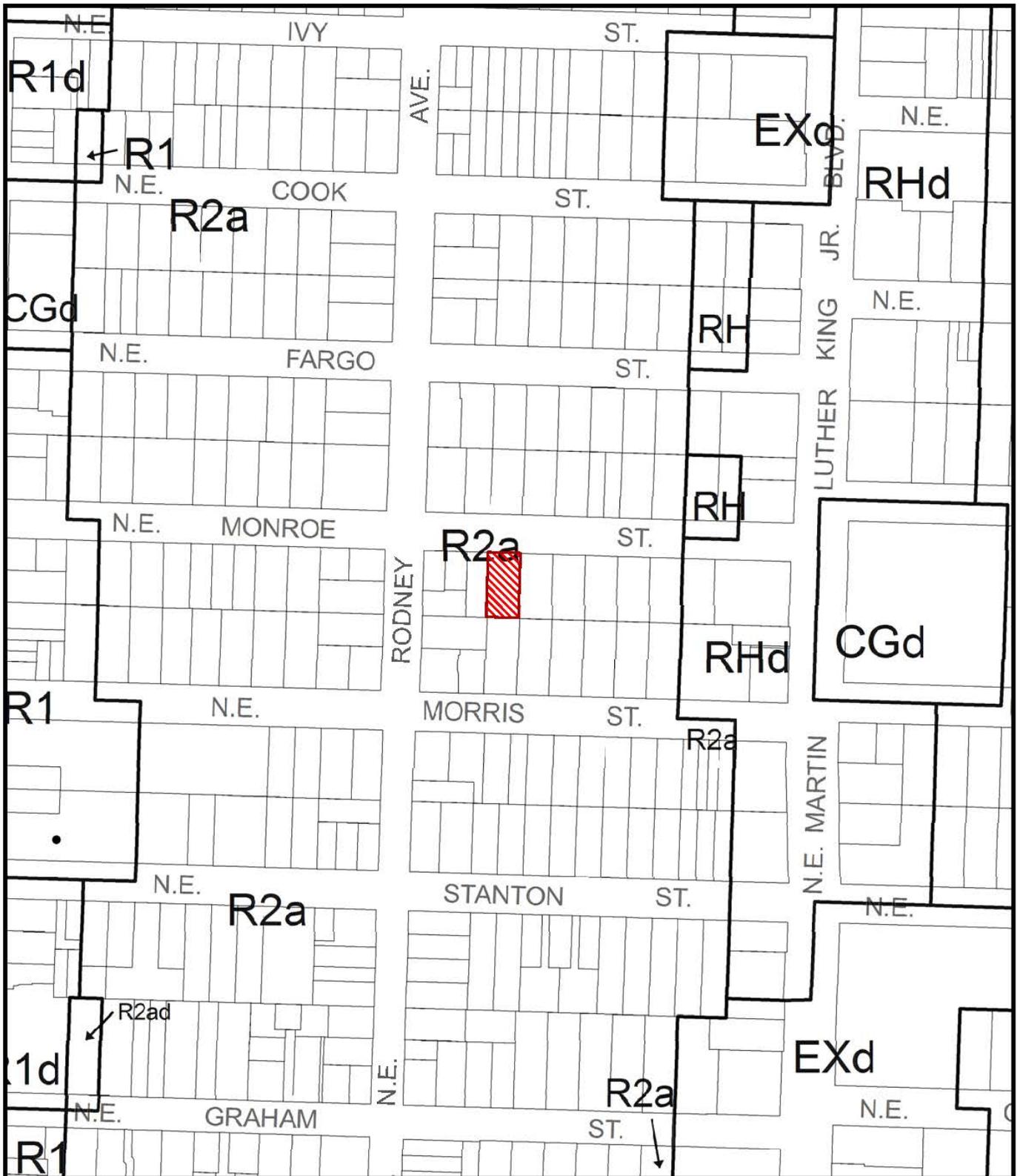
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Written narrative, dated October 4, 2013
 - 2. Response to incompleteness determination letter, received November 26, 2013
 - 3. Photo of existing primary structure (main house)
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan (attached)
 - 2. ADU front building elevation (attached)
 - 3. ADU east side building elevation (attached)
 - 4. ADU west side building elevation (attached)
 - 5. ADU rear building elevation (attached)
 - 6. ADU floor plan
 - 7. ADU section drawing
 - 8. Main house floor plans
 - 9. Main house section drawing (to demonstrate roof pitch)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
 - 3. Fire Bureau
 - 4. Site Development Review Section of BDS
 - 5. Life Safety Review Section of BDS
 - 6. Parks Bureau, Urban Forestry Division
- F. Correspondence – none received
- G. Other:
 - 1. Original LU Application
 - 2. Incompleteness determination letter, dated November 20, 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



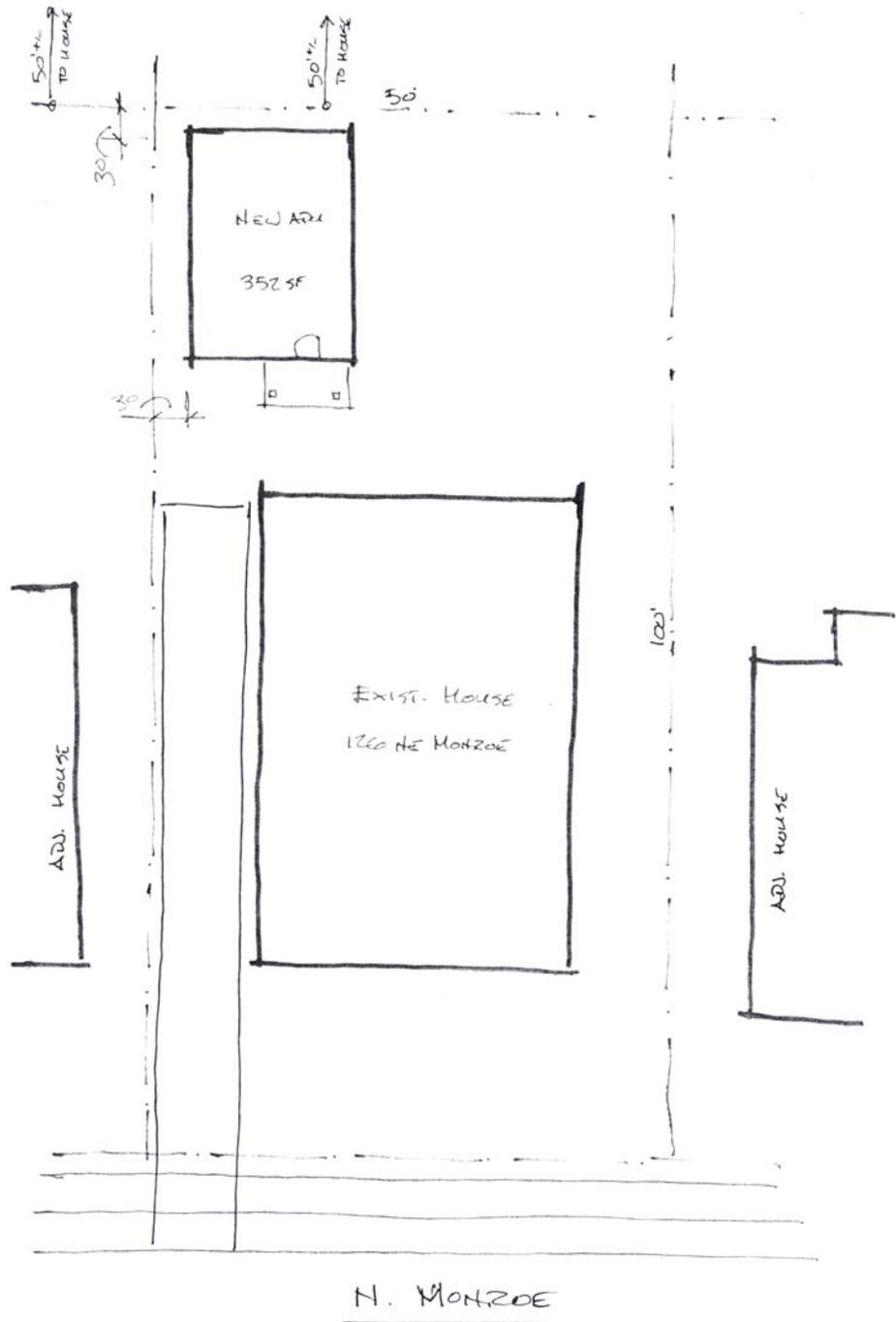
Site



NORTH

This site lies within the:
ALBINA COMMUNITY PLAN DISTRICT
ELIOT CONSERVATION DISTRICT

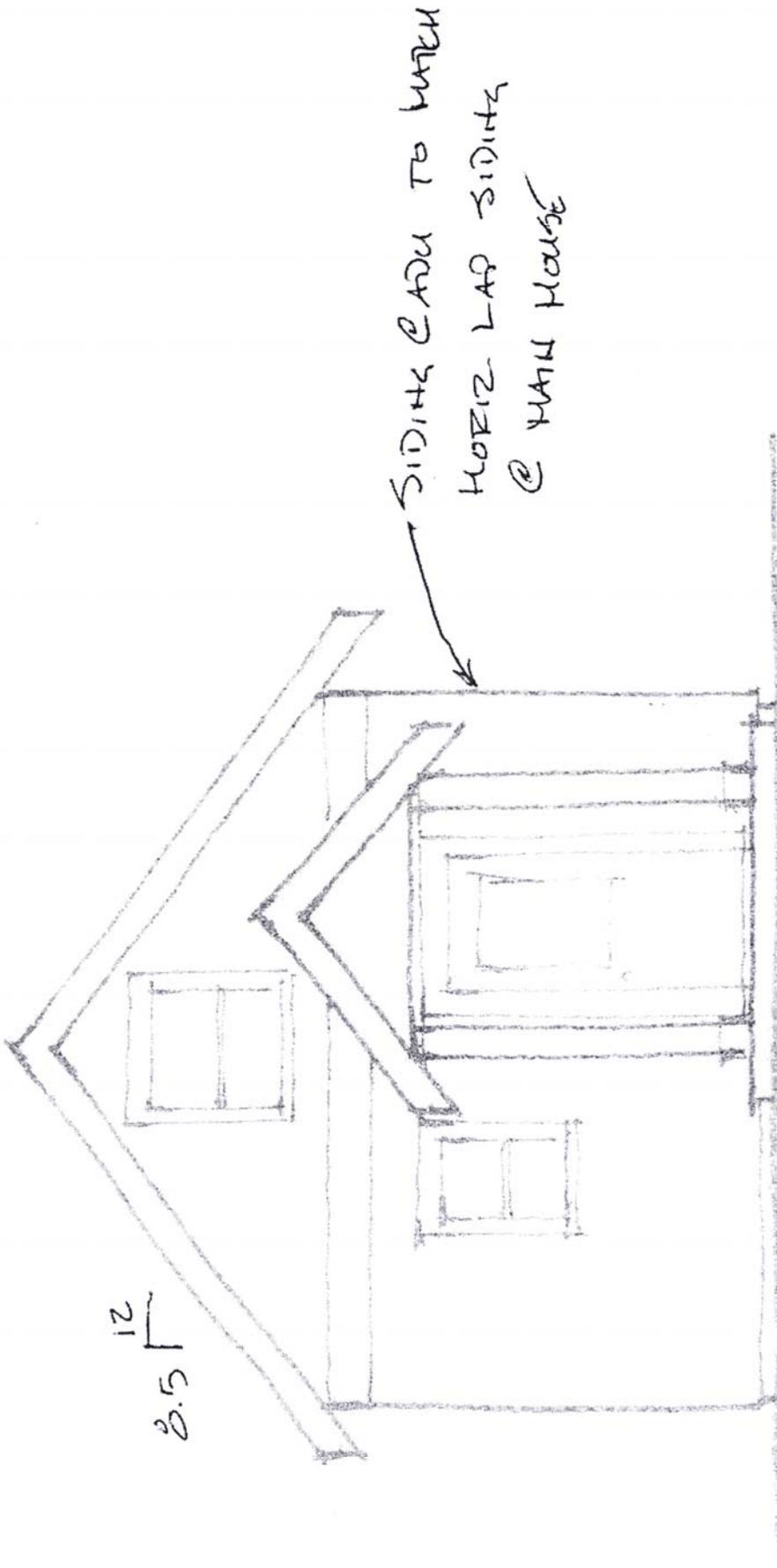
File No. LU 13-226098 AD
 1/4 Section 2730
 Scale 1 inch = 200 feet
 State_Id 1N1E27AA 19700
 Exhibit B (Nov 13, 2013)



H ↓
SITE PLAN
 1"=10'

Approved
 City of Portland - Bureau of Development Services
 Planner AG Date 1/3/14
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

Exhibit C-1
 LU13-226098 AD



FRONT ELEVATION
(NORTH)

RECEIVED
DEC 9 2013

City of Portland - Bureau of Development Services
 Planner AC *Approved* Date 1/3/14
 This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

Exhibit C-2
 LU 13-226098 AD

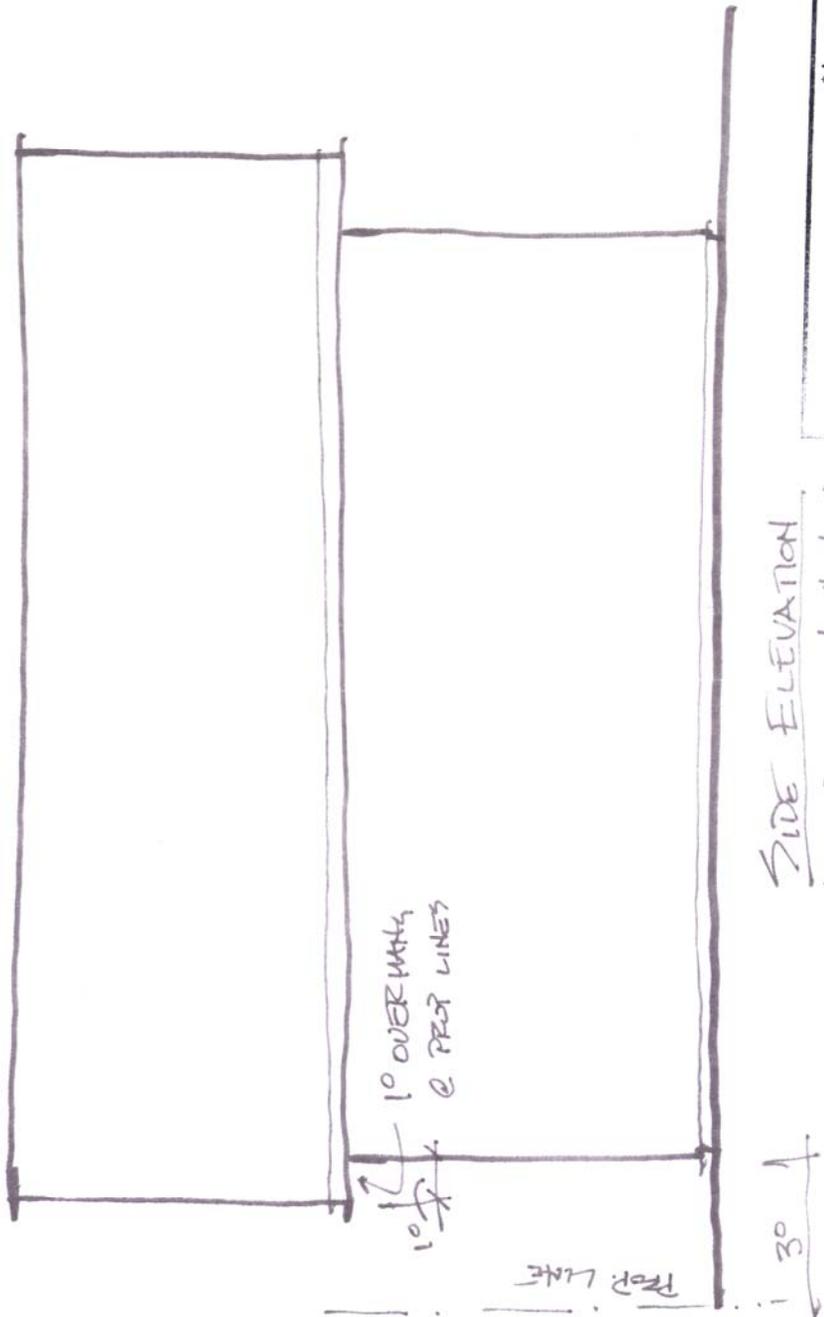


Exhibit C-3

LM 13-226098 AD

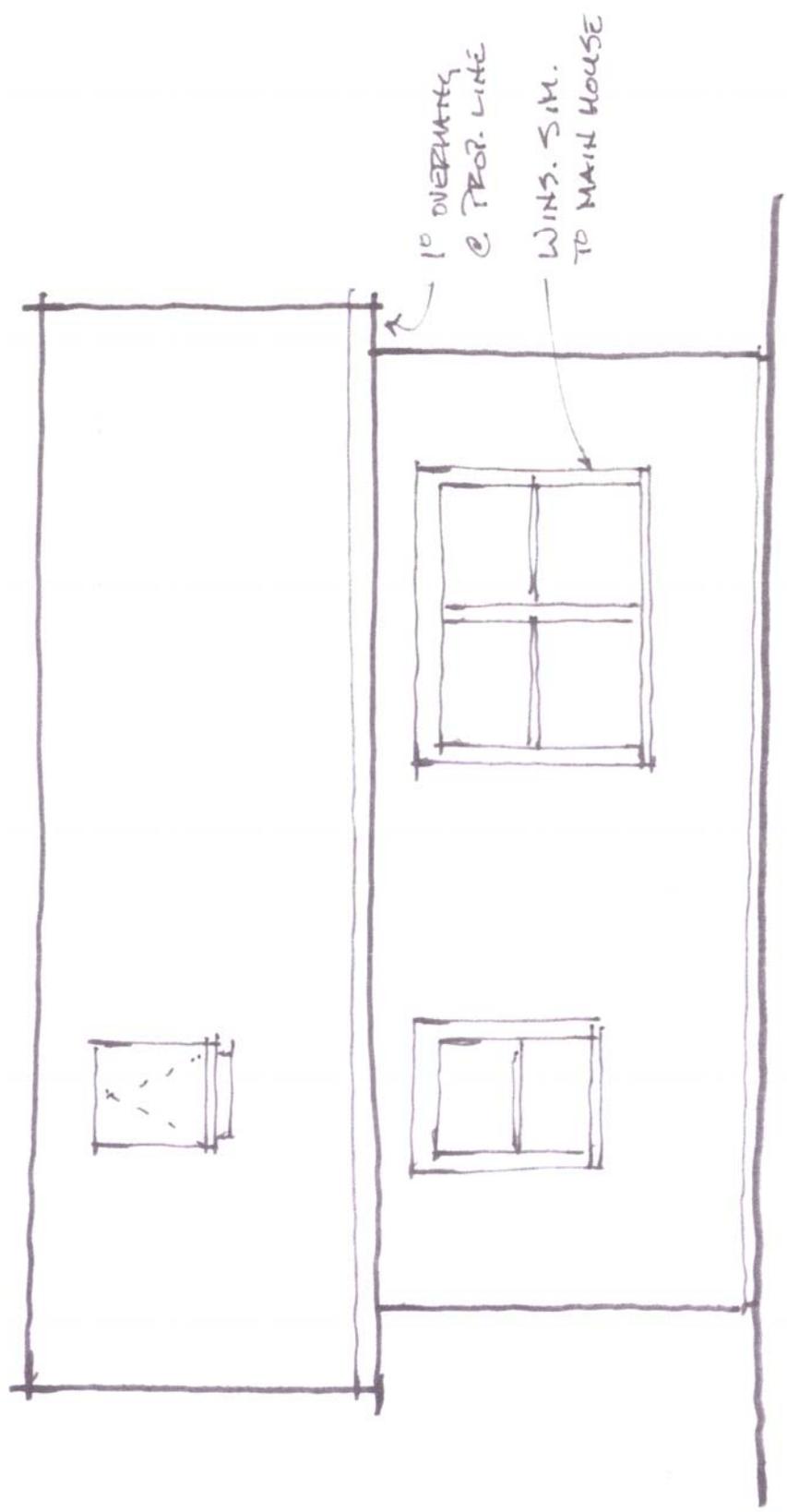
Approved
 City of Portland - Bureau of Development Services
 Planner AG Date 1/31/14
 This approval applies only to the reviews requested and is subject to the conditions of approval. Additional zoning requirements may apply.

Approved
City of Portland - Bureau of Development Services

Planner AG

Date 1/3/14

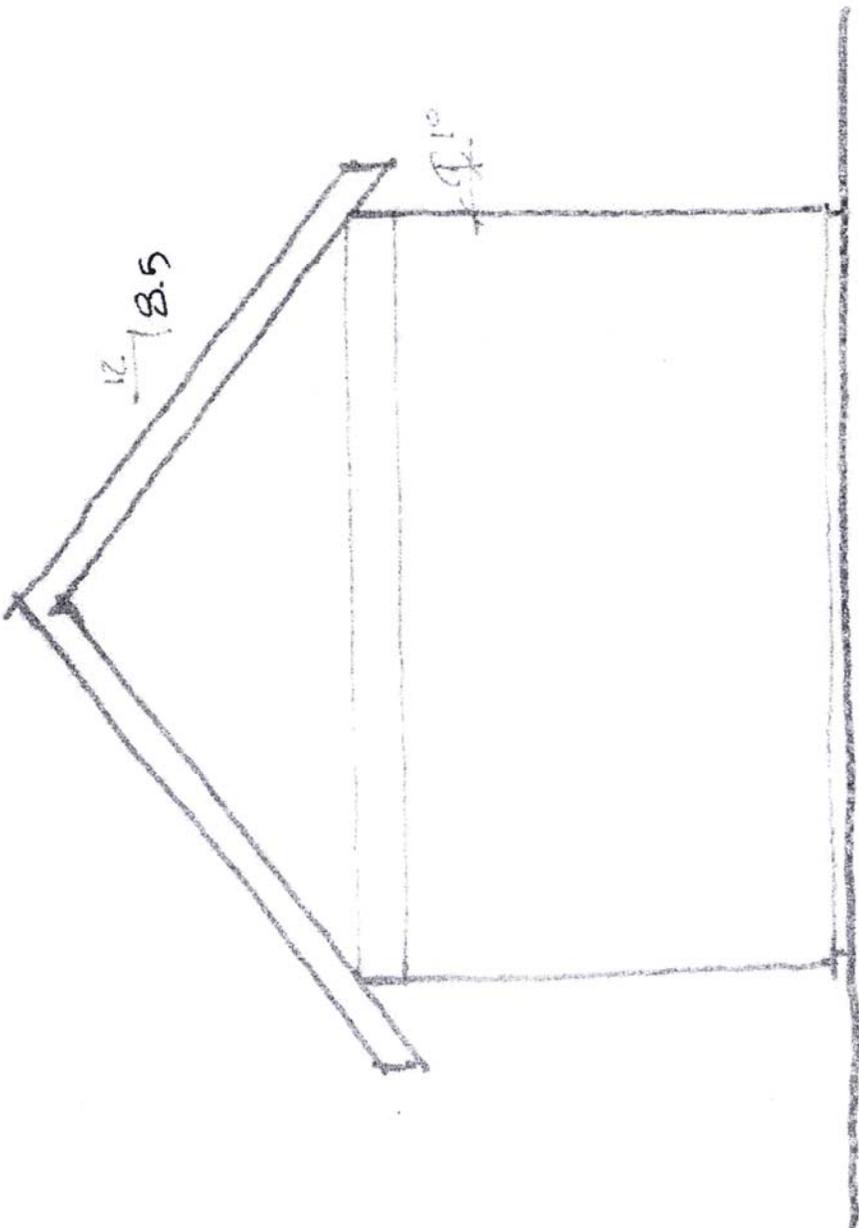
This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.



SIDE ELEVATION
(WEST) 1/4" = 1'-0"

Exhibit C-4

LM 13-226098AD



REAR ELEVATION
(South) 14' x 14'

RECEIVED
JAN 9 2013

Approved
City of Portland - Bureau of Development Services

Planner AG Date 1/3/14

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

Exhibit C-5
LU 13-226098 AD