



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: February 3, 2014
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 13-213220 AD

GENERAL INFORMATION

Applicants/Owners: Tracy Davis and Janel Hanson
2203 SE 60th Ave / Portland, OR 97215-4020

Site Address: 2203 SE 60TH AVE

Legal Description: BLOCK 3 LOT 11, HUTCHINSONS ADD **Tax Account No.:** R410900690
State ID No.: 1S2E06DD 11100 **Quarter Section:** 3236

Neighborhood: Mt. Tabor, contact Stephanie Stewart at 503-230-9364.

Business District: Division-Clinton Business Assoc, Darice Robinson at 503-233-1888.

District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.

Zoning: R5 – Single-Dwelling Residential 5,000

Case Type: AD – Adjustment Review

Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant proposes to expand an existing Accessory Dwelling Unit (ADU), constructed earlier this year in the basement of the primary home, from 797 square feet to 1,151 square feet. The expansion is occurring within the footprint of the basement, and expands the ADU to the entire basement area. No changes to the exterior, to entries or exits, or to any utilities are proposed.

Zoning Code Section 33.205.030.C.6 states that ADUs may be no more than 75 percent of the living area of the primary dwelling unit or 800 square feet, whichever is less. While the proposed size of the ADU will be approximately 50 percent the size of the primary dwelling unit, expanding to 1,151 square feet requires an Adjustment to the 800 square-foot maximum size standard.

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 subject site is a 5,700 square foot, 50-foot x 114-foot lot in the Mount Tabor neighborhood. The house on the site was built in 1911. The site sits near the southwest entry to Mount Tabor, on a fairly busy street surrounded by single-dwelling development. Some of that development is from the early 20th century, including many of the homes to the west, while the houses across the street, on property formerly owned by nearby Warner Pacific College, all date to the early 1980s.

SE 60th is a City Walkway, a Local Service Bikeway (with a City Bikeway one block north on Lincoln), and a Neighborhood Collector Street. There is a lane of on-street parking on the west side of the street.

Zoning: The site is zoned Residential 5,000 (R5). The R5 single-dwelling 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.

Land Use History: City records indicate that prior land use reviews include the following:

LU 12-195462 PR A lot confirmation verified that a southern 35-foot-wide parcel of land, Tract 2, was an Adjusted Lot and was eligible to be built on.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **January 3, 2014**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Site Development Section of BDS
- Bureau of Transportation
- Life Safety (Building Code) Plans Examiner
- Bureau of Parks-Forestry Division

Neighborhood Review: A total of three written responses have been received, two from adjacent neighbors and one from the Land Use Chair of the Mount Tabor Neighborhood Association. All three letters were in opposition to the proposal. The arguments against the expansion of the existing ADU focused on the possibility of the ADU changing the character of the Mount Tabor neighborhood with an increase in density, and the livability and safety issues created by the increase in the number of vehicles that might be generated by the ADU.

These concerns will be addressed in the findings below and by the condition of approval placed on the decision.

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

33.205.030 Accessory Dwelling Unit Design Standards

Purpose. Standards for creating accessory dwelling units address the following purposes:

- *Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;*

Findings: Because the proposed ADU is located in the basement of the existing house, and no exterior changes are proposed, the expansion of the existing accessory dwelling unit will have no visual impacts. The ADU growing in size from 797 square feet to 1,151 square feet will have no impact on the desired character or livability of the residential neighborhood.

The neighbors' concerns with increased parking issues if this Adjustment is granted stem from an opinion that a larger ADU might attract more people than a smaller one. Zoning Code Section 33.205.030.C.2 states that the total number of individuals that reside in both the primary dwelling unit and the accessory dwelling unit may not exceed the number that is already allowed for a household*. Therefore, increasing the size of the ADU does not in and of itself allow more people to live on the site than would be allowed by right. Further, C.5 states that no additional parking is required for the ADU. However, to address this concern, staff is including a condition of approval that the ADU will have no more than two bedrooms (its current number). This limitation in bedrooms is designed to help limit the numbers of vehicle-driving adults who will be likely to reside in this basement apartment.

- *Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;*

Findings: The house will remain consistent with the general building scale of the surrounding residential development; the ADU is in the basement, is currently invisible from the outside of the house and will remain thus after the expansion to the entire basement. The main entrance to the accessory unit will remain on the rear (west) of the home.

The ADU will share driveway space and backyard with the primary house, and the long driveway (at 12 feet wide and extending the whole 114-foot length of the site) ensures there is ample room to do so. The building and site will appear no different with the expansion of the ADU than the current conditions that exist on the site today.

- *Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and*

Findings: The proposed ADU, at 1,151 square feet, represents a size that is about 50% of the primary dwelling unit on the main and second stories of the house. This is significantly less than the maximum of 75% established in the

* A household is defined in Zoning Code Section 33.910 as "One or more persons related by blood, marriage, legal adoption or guardianship, plus not more than 5 additional persons, who live together in one dwelling unit; or one or more handicapped persons as defined in the Fair Housing Amendments Act of 1988, plus not more than 5 additional persons, who live together in one dwelling unit."

Zoning Code. Including the entire basement in the ADU makes better use of the existing building than the current configuration, which created an artificially smaller unit to meet the 800-square-foot limit, without allowing the ADU to appear as the primary dwelling unit.

- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

Findings: The proposal does not call for building any additional structures on the site. Rather, the expansion of the ADU takes place within the existing building envelope. This purpose statement is not relevant.

As demonstrated above, and with the condition that the expanded ADU maintain no more than two bedrooms, 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 neighbors raised the concern of the impacts of increasing the density on this site. In single-dwelling zones, ADUs are not included in the minimum or maximum density calculations for a site. Further, ADUs are allowed in all single-dwelling zones, and in fact are currently encouraged by the City of Portland through the waiver of system development charges for new ADUs. Since an ADU is allowed outright, the increase in density that an ADU might cause on a site is not an argument against allowing this Adjustment. The condition of approval that requires the ADU to have no more than (the current) two bedrooms addresses the concern that approving a larger ADU might attract more people (and more vehicles) than a smaller unit allowed outright.

As mentioned, the expansion of the ADU is proposed within the existing building envelope and will have no impact on the appearance of the residential area.

With the condition of approval, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is requested. ***This criterion is not applicable.***

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

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. ***Therefore, this criterion is not applicable.***

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

Findings: Bureau of Development Services staff does not find there will be impacts to the neighborhood from granting this Adjustment to increase the size of the existing ADU. However, neighbors have raised concerns about the increased ADU size attracting more people than otherwise. The condition of approval limiting the number of bedrooms in the accessory dwelling unit to two mitigates any impact that allowing a larger ADU might cause. ***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: 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 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

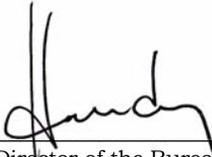
The proposal to increase the size of the existing Accessory Dwelling Unit will not increase its visibility from the street. The ADU will remain significantly smaller than the main dwelling unit. The site has several parking spaces onsite and street parking is allowed on one side. The condition of approval to maintain no more than two bedrooms in the ADU addresses neighbors' concerns about large groups moving into an expanded space. Granting the Adjustment to increase the maximum size of the existing ADU by 351 square feet will have no impact on ADU compatibility or placement, nor will it impact the character or livability of the neighborhood. With the condition of approval, the proposal meets the criteria and the Adjustment should be granted.

ADMINISTRATIVE DECISION

Approval of Adjustment to Zoning Code section 33.205.030, to allow an Accessory Dwelling Unit to exceed the maximum size of 800 square feet by 351 square feet, per the approved site plans, Exhibits C-1 through C-2, signed and dated January 30, 2014, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (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 13-213220 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The Accessory Dwelling Unit shall have no more than two bedrooms.

Staff Planner: Amanda Rhoads

Decision rendered by:  **on January 30, 2014.**

By authority of the Director of the Bureau of Development Services

Decision mailed: February 3, 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 October 4, 2013, and was determined to be complete on December 30, 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 4, 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 29, 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 February 18, 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 **February 19, 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.

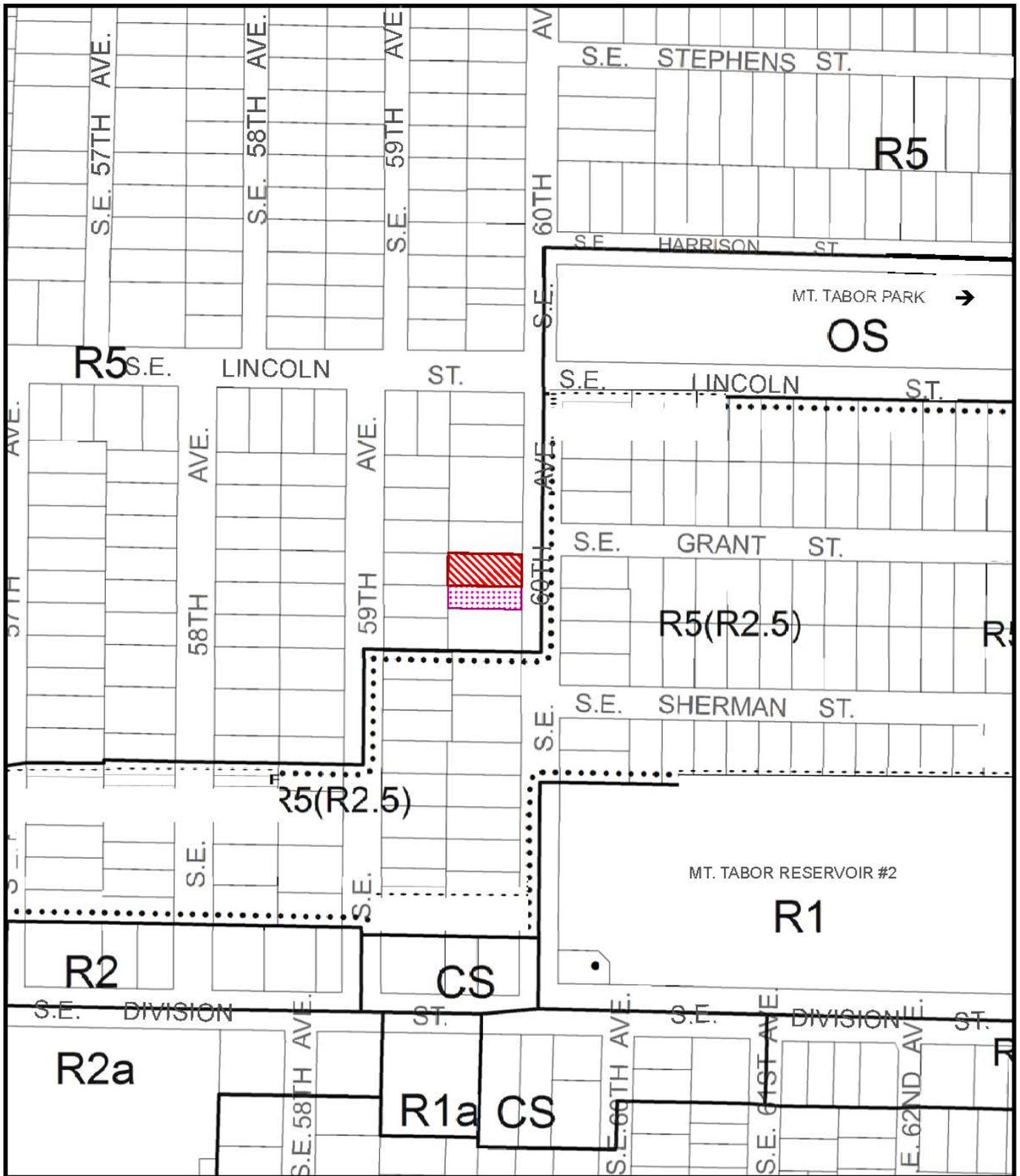
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. ADU Floor Plan (attached)
- 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
 5. Site Development Review Section of BDS
 6. Bureau of Parks, Forestry Division
 7. Life Safety (Building Code) Plans Examiner
- F. Correspondence:
1. Nathan and Sophia Harp, January 23, 2014, in opposition
 2. Reid and Eike TenKley, January 24, 2014, in opposition
 3. Stephanie Stewart, Land Use Chair for Mount Tabor Neighborhood Association, January 24, 2014, in opposition
- G. Other:
1. Original LU Application
 2. Incomplete Letter, October 14, 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



Also Owned



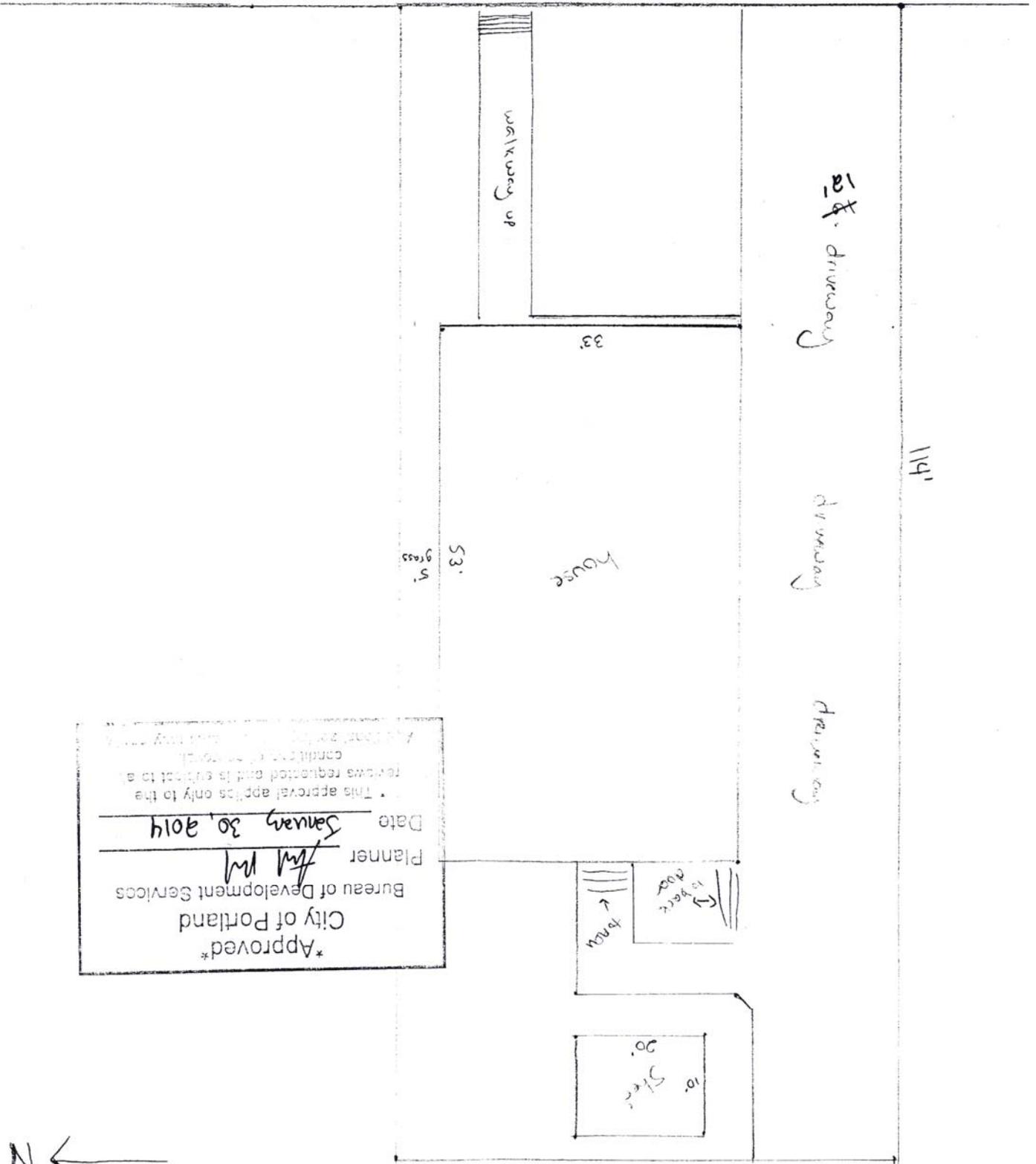
Historic Landmark



File No. LU 13-213220 AD
 1/4 Section 3236
 Scale 1 inch = 200 feet
 State_Id 1S2E06DD 11100
 Exhibit B (Oct 11, 2013)

SE 60th Ave

Street



114'

12' driveway

driveway

driveway

33'

53'

grass

walkway up

house

10' x 20' parking

10' x 20' Stairs

Approved
 City of Portland
 Bureau of Development Services
 Planner *fmw*
 Date January 30, 2014
 This approval applies only to the reviews requested and is subject to all conditions of approval. It does not constitute any other...



2203 SE 60th Avenue

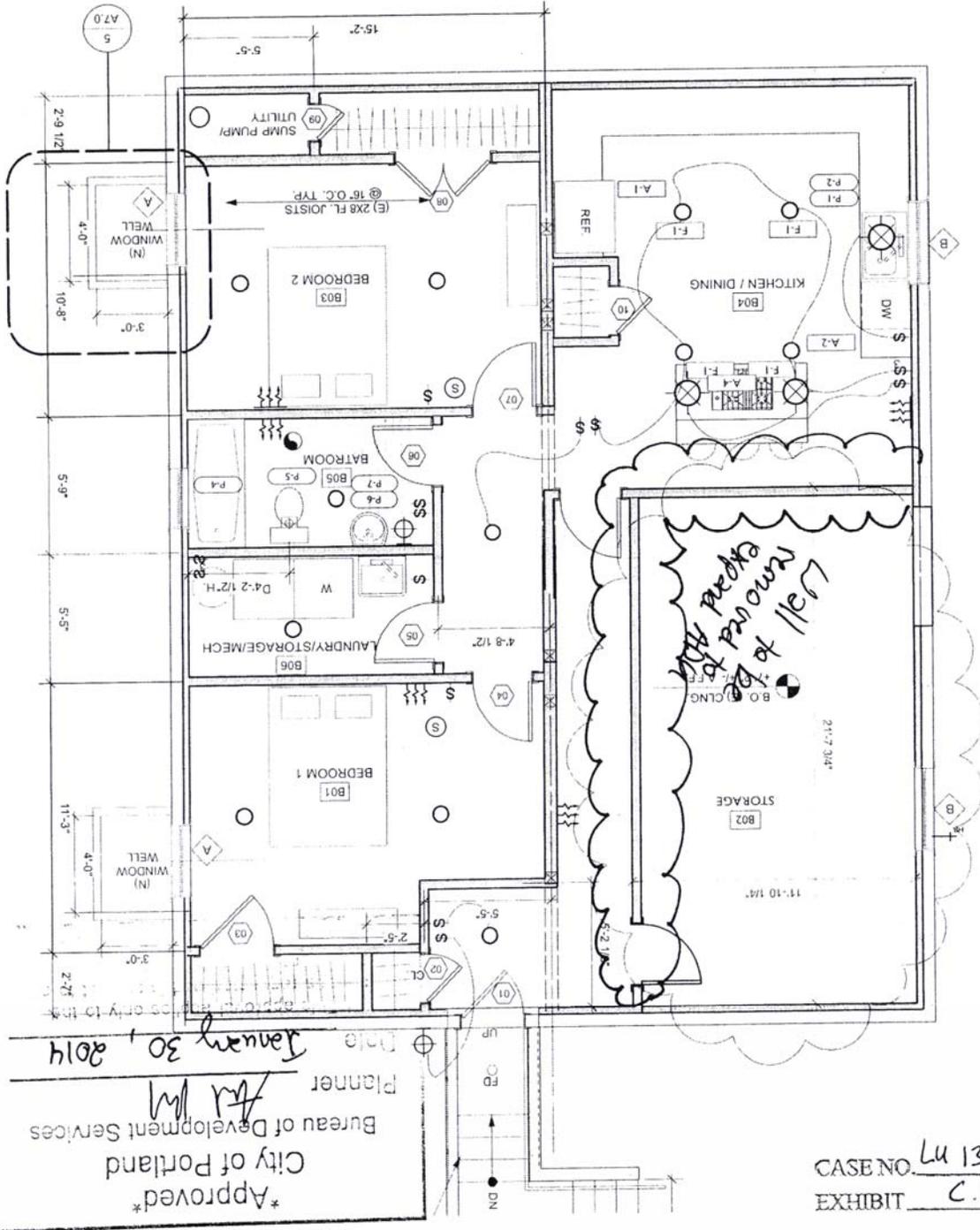
50'

EXHIBIT 1.7 CASE NO. L13-117 AD

1" = 13'



existing
TOTAL PROPOSED ADU SF: 797 SF
After demo of well: 1,151 SF



CASE NO. LU 13-2132AD
EXHIBIT C.2