



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

FROM CONCEPT TO CONSTRUCTION

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Date: April 16, 2014
To: Interested Person
From: Andrew Gulizia, Land Use Services
503-823-7010 / Andrew.Gulizia@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 14-122971 AD

GENERAL INFORMATION

Applicants/Owners: Jeremy Romagna and Meredith Butner
3613 SE 10th Ave
Portland, OR 97202

Site Address: 3613 SE 10th Ave

Legal Description: BLOCK 4 LOT 5, STROWBRIDGE ADD
Tax Account No.: R802800490
State ID No.: 1S1E11CA 06000
Quarter Section: 3431
Neighborhood: Brooklyn Action Corps Hotline at 503-241-4540.
Business District: Greater Brooklyn, contact David Weislogel at 503-872-9320.
District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.
Plan District: None
Zoning: R5 – Single-Dwelling Residential 5,000
Case Type: AD – Adjustment Review
Procedure: Type II administrative decision with appeal to the Adjustment Committee

Proposal:

The applicant proposes to convert an existing garage in the back yard into an accessory dwelling unit (ADU). The garage is built to the north side and rear property lines and therefore does not comply with the current 5-foot setback requirement for structures in the R5 zone. Zoning Code Section 33.205.030.D.4.a allows existing structures in the side and rear setbacks to be converted to ADUs provided the requirements of Section 33.110.250.C.4.c are met. One of these requirements is that the walls are no more than 10 feet tall excluding the gable, and another is that the garage is no more than 24 feet wide by 24 feet long. The applicant's garage has 11-foot tall walls and is 26.5 feet long (though only 14.5 feet wide). Therefore, the applicant is requesting approval of an Adjustment to the requirements of Section 33.110.250.C.4.c in order to convert the existing garage into an ADU.

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 site is a 5,144 square-foot lot located on the west side of SE 10th Avenue, between SE Rhine Street and SE Rhone Street. The site is developed with a two-story single-dwelling house that is set back approximately 14 feet from the street lot line. Neighboring lots are developed with a mixture of one- and two-story homes.

Zoning: The R5 designation is one of the City's single-dwelling residential zones, which are intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

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 March 21, 2014. The following Bureaus have responded with no concerns:

- Bureau of Environmental Services;
- Bureau of Transportation Engineering;
- Water Bureau;
- Fire Bureau;
- Site Development Section of BDS;
- Life Safety Review Section of BDS; and
- Bureau of Parks-Forestry Division.

Neighborhood Review: One written response was received from a notified property owner in response to the Notice of Proposal. This neighbor raised concerns about maintenance of the property, the number of residents that might live on the site, and parking (Exhibit F-1). The neighbor also requested that a solid fence be extended along the property line for privacy.

Staff Response: If the garage were not more than 24 feet long and had walls not more than 10 feet tall, the ADU conversion would be allowed outright without the need for an Adjustment review. Therefore, the scope of this Adjustment review is the anticipated impact of the applicant's garage being 2.5 feet longer and 1 foot taller than would be allowed without the Adjustment. As discussed below in the findings for approval criterion B, approval of the Adjustment is not expected to significantly impact the livability or appearance of the neighborhood.

Pursuant to Zoning Code Section 33.205.030.C.2 and 33.910.030, no more than six unrelated persons can live on the property. This limit includes residents of both the main house and the ADU. If neighbors suspect this requirement is not met in the future, the City's Compliance Services Department will investigate upon request. Similarly, the Compliance Services Department will investigate complaints regarding the upkeep and maintenance of the property upon request.

The Zoning Code requires at least one parking space to be located on the property. A second space is not required for the ADU per Section 33.205.030.C.5. However, the existing driveway into the back yard will remain and can accommodate more than one vehicle for parking. Additional on-street parking is available.

Staff finds the anticipated impacts of the Adjustment do not justify the City requiring the applicant to construct a fence as a condition of approval. However, through this report the

applicant is notified of the neighbor's concern for privacy and request for a solid fence near the ADU.

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 limitations in Section 33.110.250.C.4.c on converting existing garages in the side and rear setbacks to another type of use (such as an ADU). The purpose of the accessory structure regulations is stated in Zoning Code Section 33.110.250.A:

***Purpose.** This section regulates structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards provide for necessary access around structures, help maintain privacy to abutting lots, and maintain open front setbacks.*

The garage proposed for conversion to an ADU is 22 feet behind the house and is significantly smaller and lower than the house. Therefore, the building will not appear as the predominant element of the site and the open front yard is not affected. There is ample space to access the building from the applicant's back yard, and the Fire Bureau and the Life Safety Review Section have no objections to the applicant's proposal. (However, the Life Safety Review Section's response notes building code requirements that will apply to the applicant's building permit review. See Exhibit E-6 in the archived record of this application.)

Since no windows are proposed on the north side of the building, and the applicant proposes to remove the existing window from the west side of the building, the proposal will maintain privacy for the abutting neighbors to the north and west. A condition of approval will prohibit windows on the north and west sides of the ADU.

With the condition of approval to prohibit north-facing and west-facing windows, the 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 single-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. Because the garage is fairly small (384 square feet) and fairly far from the street lot line (103 feet), the fact that the building is 2.5 feet longer and has walls that are 1 foot taller than would be required to avoid the Adjustment review will have little impact on the neighborhood. However, to prevent a blank wall from facing the street, a condition of approval will require an additional window on the east side of the building. This window will face the street and will not provide direct views from the ADU into any neighboring property.

With the condition of approval for the new street-facing window, the proposal will not result in any significant negative impacts to neighborhood livability or appearance. 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. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

- 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 has no adverse impacts on the livability or appearance 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 the 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 proposal to convert the detached garage into an ADU equally meets the intent of the accessory structure regulations and does not have adverse impacts on the livability and appearance of the surrounding residential neighborhood. With conditions of approval related to windows, the applicable approval criteria have been met. Since the approval criteria are met, the proposal should be approved.

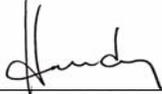
ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.250.C.4.c to allow the existing detached garage to be converted into an ADU, per the approved site plan and building elevations, Exhibits C-1 through C-3, signed and dated April 14, 2014, subject to the following conditions:

- 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-3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 14-106796 AD."

- B. No windows are allowed on the north or west elevations.
- C. At least one additional window is required to the right of the door on the east elevation. This window must be at least 12 square feet in area.

Staff Planner: Andrew Gulizia

Decision rendered by:  **on April 14, 2014.**

By authority of the Director of the Bureau of Development Services

Decision mailed: April 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 March 4, 2014, and was determined to be complete on March 10, 2014.

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 March 4, 2014.

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: July 8, 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 April 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 **May 1, 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. East and south building elevations (attached)
 - 3. West and north building elevations (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
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Review Section of BDS
 - 7. Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. E-mail in opposition from Thomas and Jane Averin, received April 4, 2014
- G. Other:
 - 1. Original LU application

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

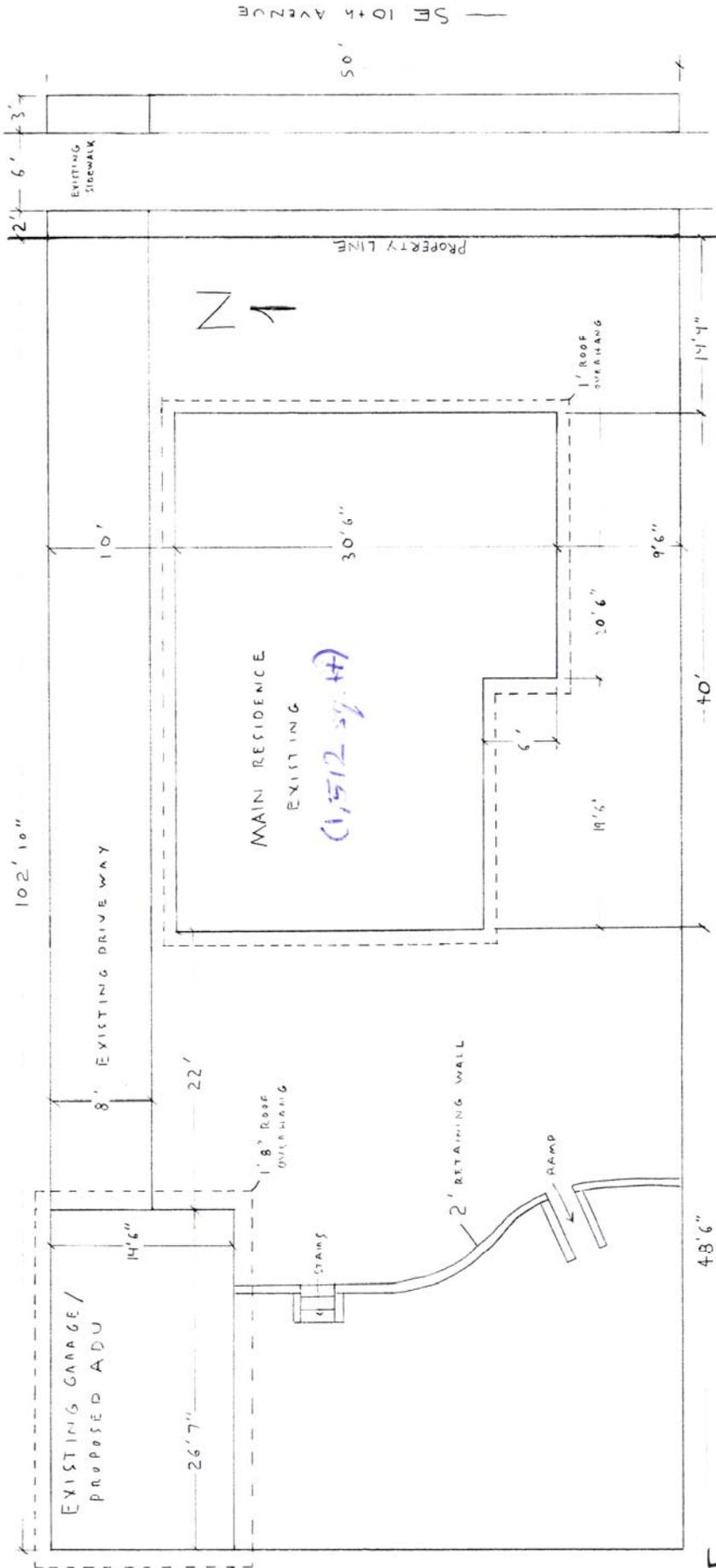


Site



NORTH

File No. LU 14-122971 AD
 1/4 Section 3431
 Scale 1 inch = 200 feet
 State_Id 1S1E11CA 6000
 Exhibit B (Mar 06, 2014)



SCALE, 1" = 8' / 1

SITE PLAN · 3193 SE 10th

Exhibit C-1
 LU 14-122971 AD

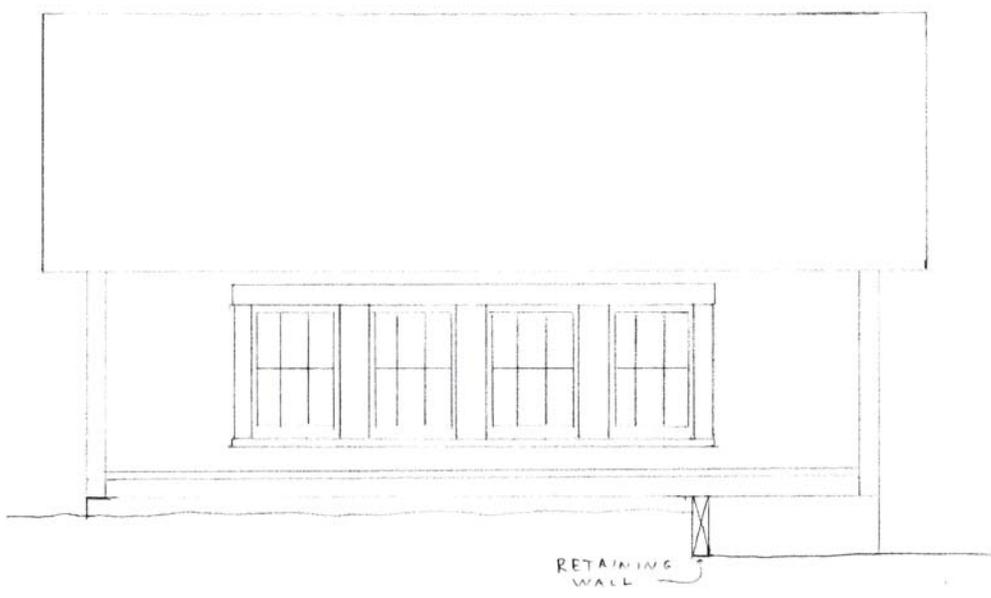
Approved
 City of Portland - Bureau of Development Services
 Planner etc
 Date 4/17/14
 * This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

City of Portland - Bureau of Development Services
Approved
Date 4/11/14
This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.



-horizontal wood siding on all sides-

EAST ELEVATION -
EXISTING (PROPOSED ADU
WOULD HAVE GARAGE DOOR REMOVED)



SOUTH ELEVATION 1/4" = 1'
3613 SE 10th

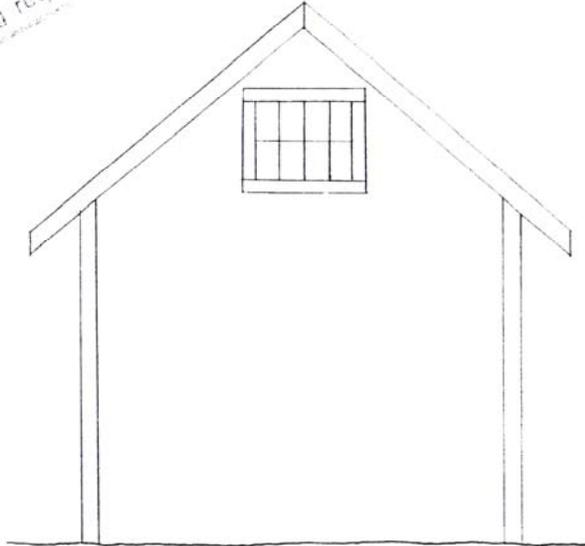
Exhibit C-2
LU 14-122971 AD

City of Portland - Bureau of Development Services

Approved

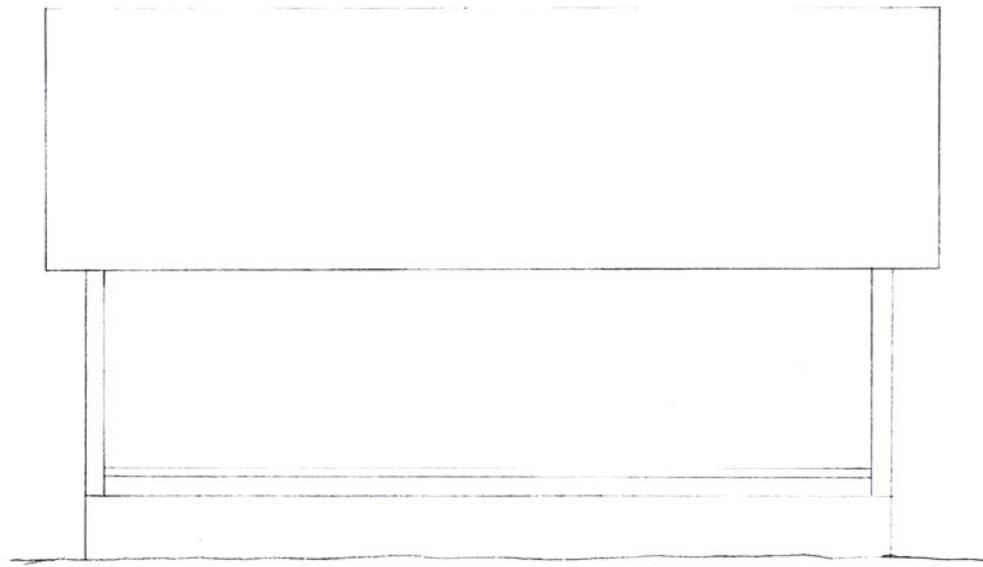
Date 7/24/14

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



WEST ELEVATION -

EXISTING (PROPOSED ADU
WOULD HAVE WINDOW REMOVED)



NORTH ELEVATION

1/4" = 1'

3613 SE 10th

Exhibit C-3
W 14-122971AD