



City of Portland, Oregon
Bureau of Development Services
Land Use Services
 FROM CONCEPT TO CONSTRUCTION

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Date: July 7, 2014
To: Interested Person
From: Matt Wickstrom, Land Use Services
 503-823-6825 / Matt.Wickstrom@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 14-156689 AD

GENERAL INFORMATION

Applicant: Dave Spitzer | DMS Architects Inc.
 2325 NE 19th Ave | Portland, OR 97212

Property Owner: Annie R Robb
 1414 NE Morgan St | Portland, OR 97211-4770

Site Address: 1414 NE MORGAN ST

Legal Description: BLOCK 5 INC PT VAC ALLEY LOT 7 W 20' OF LOT 8&9, LOWELL ADD
Tax Account No.: R513500650
State ID No.: 1N1E14AB 06000
Quarter Section: 2332

Neighborhood: Woodlawn, contact Anjala Ehelebe at 503-388-5004
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-841-5032
District Coalition: Northeast Coalition of Neighborhoods, contact Claire Adamsick at 503-388-9030

Zoning: R5h (Residential 5,000 with an Airport Landing Zone overlay)

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

Proposal:
 The applicant proposes to demolish an existing detached garage, maintain the foundation and rebuild the structure as an accessory dwelling unit (ADU). In the R5 zone, ADUs are required to be located 5 feet from the side and rear property lines. The existing detached garage is located 6 feet 6 inches from the side (east) property and 1-foot 3 inches from the rear (south). The applicant proposes one Adjustment to the setback standards of the Portland Zoning Code to reduce the required 5-foot rear setback to 1-foot 3 inches for an ADU constructed in the location of the previous detached garage.

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 6,880 square foot lot is developed with a single-story residence constructed in 1955 and a detached garage. The detached garage has a flat roof and is located 63 feet from the street property line and 1-foot 3 inches from a rear property line. An approximately 6-foot tall wooden fence runs along the northern half of the east property line. The fence becomes chain link along the southern half of the property line. The surrounding vicinity is developed with single-dwelling residences. The Woodlawn School is located a block to the west of the site.

Zoning: The site is zoned R5h (Residential 5,000 with an Airport Landing Zone overlay). The R5 zone is intended to foster the development of single-dwelling residences. Newly created lots must have a maximum density of 1 lot per 5,000 square feet of site area. The “h” overlay limits the height of structures and vegetation in the vicinity of the Portland International Airport. The height limit for this site is 180 feet above the PDX airport landing strip elevation of 18 feet above sea level. The maximum allowed height of 30 feet in the R5 zone is more restrictive than the height limit imposed by the “h” overlay.

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 **June 3, 2014**. The following Bureaus have responded:

- The Site Development section of BDS responded with information on site attributes and erosion control (Exhibit E-1).
- The Bureau of Environmental Services responded with information on sanitary service and stormwater management (Exhibit E-2).
- The Life Safety section of BDS responded with information on obtaining a building permit (Exhibit E-3).
- The Water Bureau responded with information on water service and options for connecting the ADU to service (Exhibit E-4).
- The Portland Bureau of Transportation, Fire Bureau and Parks Bureau responded with no concerns (Exhibit E-5).

Neighborhood Review: Four written responses have been received in response to the Notice of Proposal.

The first letter came from the neighbor who lives at the corner of NE Morgan and NE 15th Avenue, directly east of the site. The letter states that no changes to the Zoning Code limitations should be allowed and that neighbor has rights to make improvements to his property as well. The letter also states that the improvements proposed have already been made (Exhibit F-1).

Staff response: The Adjustment Review process exists as a means for property owners to request exceptions to development standards in the Portland Zoning Code. The request is required to meet certain Approval Criteria including a criterion that the proposal will not significantly detract from the livability or appearance of the neighborhood. Staff is not aware of work having already occurred on this project; regardless, in order to reduce the required setback and receive necessary permits, approval through an Adjustment Review is required.

The second letter came from the Woodlawn Neighborhood Association. It says that the Board voted to support the Adjustment request (Exhibit F-2).

The third letter came from the neighbor who lives on NE 15th Avenue to the southeast of the proposed ADU. The letter asks questions about the proposal, in particular the location of the property line and if any changes to her property would be required (Exhibit F-3).

Staff response: The property owner called the neighbor and responded to her questions. The applicant also provided a written account of her responses and stated that questions seemed to be resolved to the neighbor's satisfaction.

The fourth letter came from a representative of the Woodland Condominiums – a single-dwelling housing/condominium project. The letter asks whether the project will result in foundation issues for any of the homes in the condominium (Exhibit F-4).

Staff response: The applicant responded that the project will have no impact on the foundations of the adjacent homes.

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

Findings: The applicant requests one Adjustment to reduce the side building setback for an ADU from 5 feet to 1-foot 3 inches. This setback is proposed because it would allow the ADU to be built in the same footprint as the existing detached garage. The purpose of the Portland Zoning Code setback regulations in single-dwelling zone is found in 33.110.220.A and states:

The setback regulations for buildings and garage entrances 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.*

The proposed ADU will replace the existing detached garage. From the perspective of neighboring properties to the south and southeast, the new structure will be very similar to the existing, with the exception of the roof. The ADU will have a gable roof

that matches the existing house, whereas the detached garage has a flat roof. The change to roof-type will not result in any significant change to the availability of light and air for the adjacent properties. The Fire Bureau has responded to the Adjustment request with “no concerns”. This indicates that access for fire fighting is not a concern with this proposal. The Life Safety reviewer from BDS responded with information on meeting Building Code firewall requirements. This indicates that despite the rear wall of the ADU being closer than 3 feet to the property line, it can be constructed in such a way that adequate separation for fire protection is maintained. ADUs are considered houses in the Zoning Code and Building Code and this ADU is proposed to be one-story in height and approximately 40 feet from the nearest off-site home. This reflects an acceptable general building scale and placement of houses as well as an appropriate physical relationship between residences. The blank south-facing wall of the ADU and the existing 6-foot tall fence along the northern portion of the east property line ensure that privacy for neighboring properties is maintained. Based on the information above, the proposed setback for the ADU equally meets the purpose of the setback regulations.

- 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 proposal will not detract from the livability or appearance of the residential area. The ADU is designed with no windows along the south side, this is consistent with the detached garage that currently occupies this location of the site. It also maintains privacy for the neighbors to the southeast. The existing fence along the northern portion of the east property line also screens the ADU from residence to the east. In addition, the ADU maintains a greater than required setback from the east property line (6.5 feet rather than 5 feet). The main entrance of the ADU faces NE Morgan Street which ensures that comings and goings, and activity associated with the ADU, primarily impacts the existing home on the site. The ADU is designed with a roof pitch to match the existing house which helps improve the appearance of the site. It is also important to mention again that the ADU will occupy the same location as the existing detached garage. The garage has existed in this location without incident. 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; therefore, this criterion does not apply.

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

Findings: No City-designated scenic resources or historic resources are located at this site; therefore, this criterion does not apply.

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

Findings: The ADU will be located in the same location a detached garage currently located and no impacts are anticipated. Furthermore, the lack of windows on the south façade and the fence along the northern portion of the east property line help maintain privacy for neighbors. 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 requests one Adjustment to reduce the required setback for a proposed ADU from 5 feet to 1-foot 3 inches. Considering that the ADU will occupy the same location a detached garage currently locates, the lack of windows along the south facing façade and screening along the east façade, the proposal meets the applicable approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to 33.110.220.B to reduce the required rear building setback for an Accessory Dwelling Unit from 5 feet to 1-foot 3 inches, per the approved site plans, Exhibits C-1 through C-2 signed and dated July 1, 2014, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 3 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 14-156689 AD."

Staff Planner: Matt Wickstrom

Decision rendered by:  on July 2, 2014
By authority of the Director of the Bureau of Development Services

Decision mailed: July 7, 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 May 14, 2014, and was determined to be complete on May 28, 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 May 14, 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 further extended by the applicant, **the 120 days will expire on: September 24, 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 July 21, 2014** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 2:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 2:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th 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 **July 22, 2014 – (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:

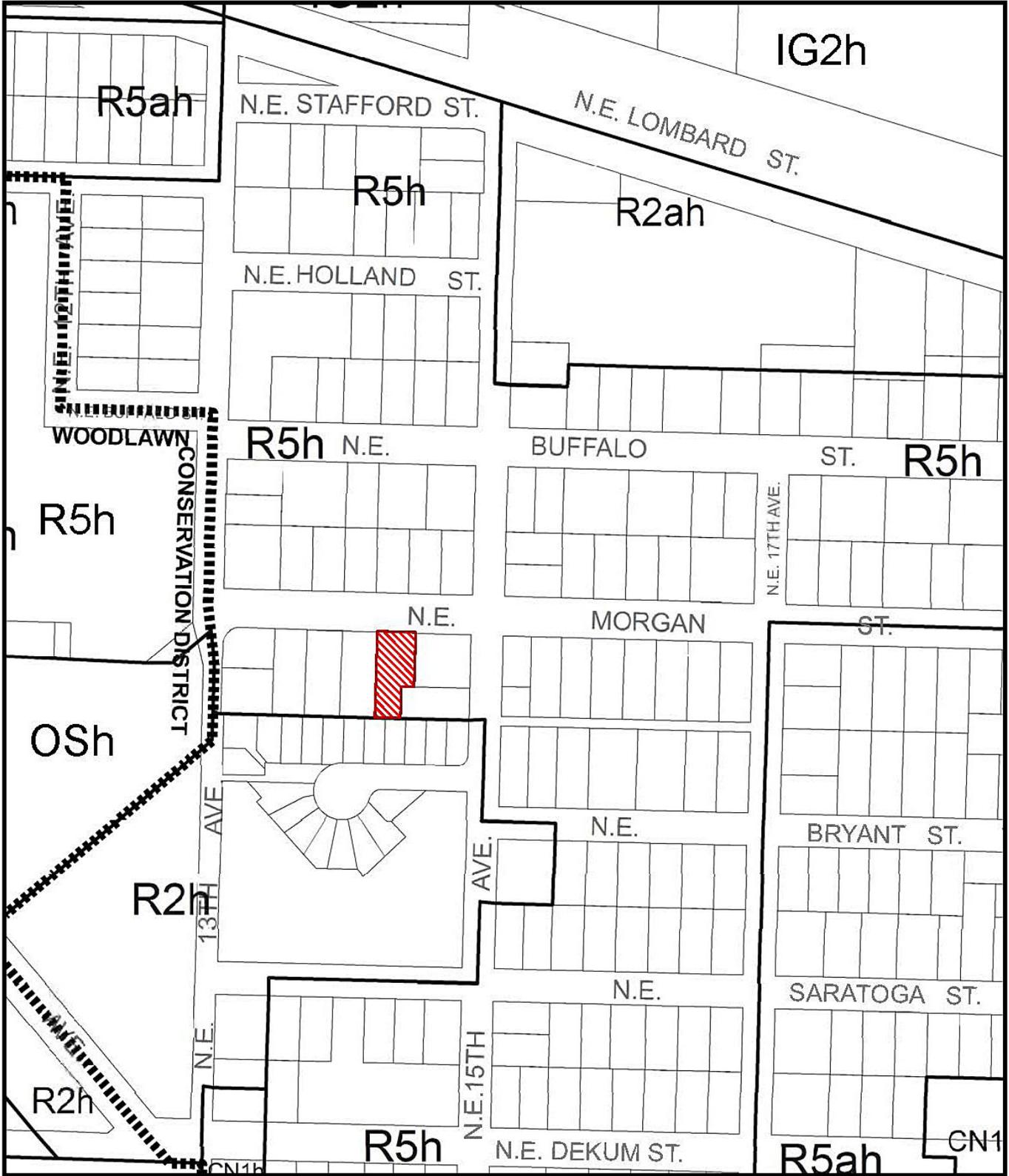
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
 1. Letter from Annie Robb dated June 24, 2014 and detailing responses to questions contained in letter from Oretha Johnson and summary of conversation
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Elevation Drawings (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Site Development Review section of BDS
 2. Bureau of Environmental Services
 3. Life Safety section of BDS
 4. Water Bureau
- F. Correspondence:
 1. Harold Lambert, June 9, 2014, opposition to granting changes to zoning regulations
 2. Anjala Ehelebe, Woodlawn Neighborhood Association, Land Use Chair/Vice Chair, June 10, 2014, support of Adjustment request
 3. Oretha Johnson, June 19, 2014, questions about proposal and property line location
 4. Steven C. Knight, June 24, 2014, questions about project

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



File No. LU 14-156689 AD
 1/4 Section 2332
 Scale 1 inch = 200 feet
 State_Id 1N1E14AB 6000
 Exhibit B (May 16, 2014)

Approval of Adjustment request to allow accessory dwelling unit built in footprint of former detached garage to be located 1-foot 3 inches from south property line

SITE NOTES:

LOT COVERAGE:	
LOT AREA:	6,880 SF
EXIST. HOUSE COVERAGE:	960 SF
(E) GARAGE - ADU COVERAGE:	410 SF
TOTAL LOT COVERAGE:	1,370 SF
LOT COVERAGE PERCENTAGE:	20%

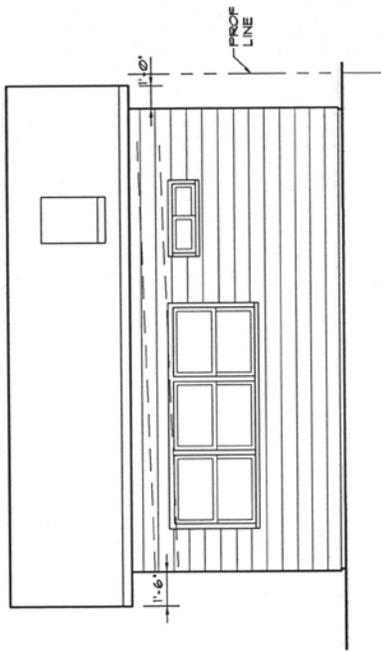


Approved
 City of Portland - Bureau of Development Services
 Planner MLW Date 7/1/14
 * This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

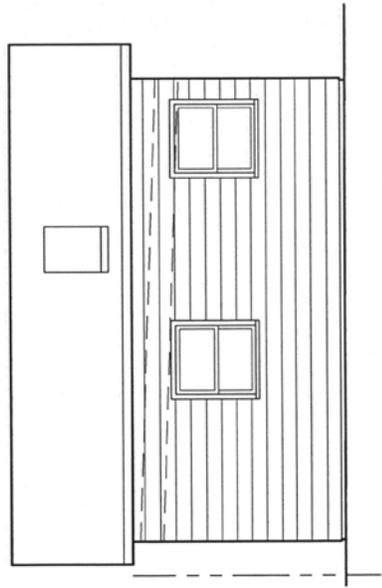
NE MORGAN STREET

 7 SITE PLAN 1" = 10'

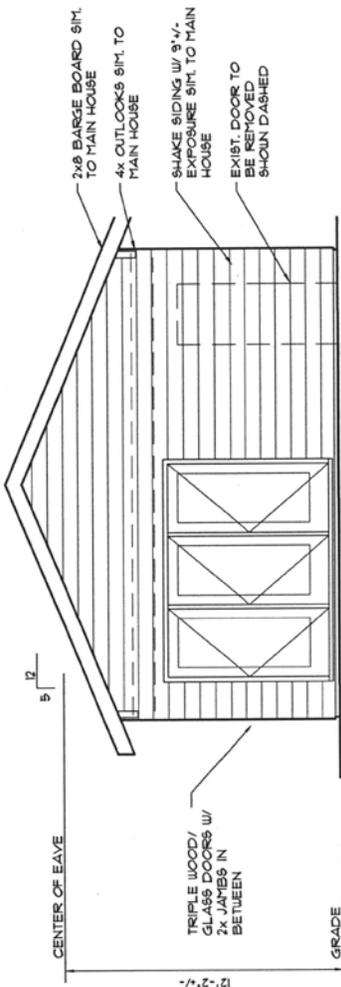
Exhibit C-1
 LU14-156689 AD



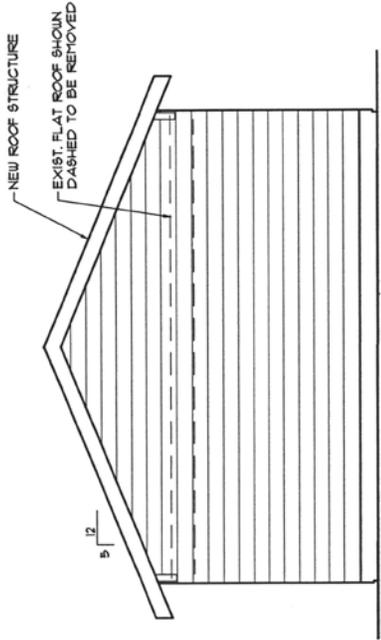
4 WEST ELEVATION
AI



6 EAST ELEVATION
AI



3 NORTH ELEVATION
AI



5 SOUTH ELEVATION
AI

1/4" = 1'-0" * Approved*
 City of Portland - Bureau of Development Services
 Planner *MLW* Date *11/14*
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

LU 14-156689AD Exhibit C-2