



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

Charlie Hales, Mayor
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Date: April 26, 2013
To: Interested Person
From: Kathleen Stokes, 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 13-129471 AD

GENERAL INFORMATION

Applicant: Kym Nguyen / Concept Design & Associates
PO Box 8464 / Portland OR 97207

Owner: AAV One LLC
8733 SE Division St #201 / Portland, OR 97266-1470

Site Address: 13715 SE RHONE ST

Legal Description: S 110' OF E 80.8' OF LOT 28, O'CONNOR PK
Tax Account No.: R623801140, R623801140, R623801140
State ID No.: 1S2E11DB 00200, 1S2E11DB 00200, 1S2E11DB 00200
Quarter Section: 3444
Neighborhood: Powellhurst-Gilbert, Mark White at 503-761-0222.
Business District: Midway, Bill Dayton at 503-252-2017.
District Coalition: East Portland Neighborhood Office, Richard Bixby at 503-823-4550.
Plan District: Johnson Creek Basin
Zoning: R5a (R5,000, High Density Single-dwelling Residential with an Alternative Design Density Overlay)

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

Proposal: The applicant is proposing to convert the existing garage on this site for use as an accessory dwelling unit. In addition to the interior remodeling, the conversion will include replacing the garage door with a new entry door and adding a covered front porch. The 550 square-foot unit will meet the size requirements for ADUs because it is less than 75% of the size of the 852 square-foot primary dwelling unit. The height standard is also met, because the structure is less than 18 feet tall, at the average height of the highest gable. The special setback standard for ADUs requires that the building be set back 60 feet from the front property line or 6 feet behind the main house. This structure does not meet this standard because it is not set back 60 feet and is situated adjacent to the west side of the primary dwelling unit. Exceptions to this standard are approved through Adjustment Reviews, if all of the relevant approval criteria are met or if the criteria can be met through conditions of approval. Therefore, the applicant is requesting approval of an Adjustment to Code section 33.205.030 D.1, to reduce the required setback from the front property line, from 60 feet to 39 feet, thereby allowing the structure to be located next to the west side of the main house.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

ANALYSIS

Site and Vicinity: The site is a 4,009 square-foot property that is located on the north side of SE Rhone Street, to the east of SE 136th Avenue and approximately one-third of the way along the long block, to the next intersection at SE 141st Avenue. The property is developed with a single-dwelling residence that was constructed in 1940. The area immediately surrounding the site is also developed with single-dwelling residences, constructed over several decades, ranging from 1926 to 1980. Many of the sites, including the applicant's property, resulted from small land divisions that created flag lots for second building lots on the original deep parcels.

Zoning: The site is zoned R5, High-Density Single-Dwelling Residential with an "a" or Alternative Design Density Overlay. The R5 zone requires an average lot area of 5,000 square feet, with a maximum allowed density of one unit per lot (generally 8.7 units per acre.) The "a" Overlay Zone allows opportunities for increased residential density in certain situations. The overlay zone does not apply to this situation.

The site is located within the boundaries of the Johnson Creek Basin Plan District. This plan district provides for the safe, orderly, and efficient development of lands that may be subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services. At certain locations, the density of development is limited by applying special regulations to new land division proposals. At other locations, development is encouraged and mechanisms are included that provide relief from environmental restrictions.

Land Use History: City records include a 1978 Multnomah County land division, MCF 32-78, that created a two-lot partition, thereby separating the applicant's site from the flag lot that abuts it on the north and west sides. A condition of approval for the land division required that each of the two parcels provide at least two paved on-site parking spaces (Exhibit G-1).

(Staff note: The applicant has provided a revised site plan that shows the two parking spaces that area required to meet this condition of approval).

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **March 29, 2013**.

The following Bureaus have responded with electronic responses that indicated that there are no issues or concerns:

- Environmental Services
- Transportation Engineering
- Fire Bureau
- Parks-Forestry Division

The following bureaus provided written comments that included information needed for building permit submittal:

- Water Bureau provided information regarding the existing water service and requirements for providing water service for the proposed ADU (Exhibit E-1).
- Site Development Section of BDS explained the process for addressing a no decommissioned cesspool that is located on the site and also provided information on erosion control requirements (Exhibit E-2).
- Life Safety Plan Review Section of BDS noted that a building permit review will include requirements to meet life-safety building code requirements (Exhibit E-3).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on March 29, 2013. Two written responses have been received from notified property owners in response to the proposal. Both letters requested that the conversion of the garage to use as an ADU be prevented, due to concerns regarding parking issues. The letters included descriptions of property line disputes regarding the applicant's western property line and the eastern edge of the abutting flag pole, as these lines relate to parking and vehicle access. The writers also stated that they disagreed with the existing regulations that allow conversion of garages to ADUs and generally, with the concept of allowing small rental units and not requiring onsite parking for the units when they are created. One of the respondents also noted that no notice was received for the creation of an ADU through a garage conversion for another nearby property. A second copy of one of these responses was also sent, with the original writer's name and another person with the same last name also appended to the response. (Exhibits F-1 through F-3).

(Staff note: This review is to determine whether the garage, in its present location, can be allowed for the proposed conversion to use as an ADU. The review is not to determine whether an ADU can be allowed, as the Code allows this by right in all single-dwelling zones and does not require an additional on-site parking space be provided for the unit. Therefore, the things that these neighbors are requesting are beyond the authority of this review. Under this review process, authority only exists to determine whether the ADU can be in the proposed location. The approval criteria address the appearance of the structure as it relates to the primary house. If not approved, the applicant can move the garage or tear it down and build a new structure to serve as an ADU. There is no authority, under the current Code, to deny the right to build the ADU or to require additional parking, beyond the two spaces that are already required to be located on the site. Further, when all of the applicable development standards for the creation of an ADU are met, no notice is sent to surrounding neighbors. These neighbors are advised that, if they disagree with the regulations in the Code, they must address changes in the regulations through the legislative process. Such changes require a public process, administered by the Bureau of Planning and Sustainability, and final approval by City Council).

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of 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 to provide certainty and rapid processing for land use applications.

33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below, have been met.

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: Adjustment to Code Section 33.205.030 D.1, to reduce the required setback from the front property line, from 60 feet to 39 feet, thereby allowing the structure to be located next to the west side of the main house.

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;*
- *Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;*
- *Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and*
- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

The applicants have proposed the reuse of an existing structure to create a detached ADU. The R5 zone allows the creation of ADUs as a way to provide alternative types of housing and to promote livability by offering a means to provide stability for the residents of the primary residential units. This proposal includes adding a porch to the front of the former garage and making other alterations that will ensure that it presents an appearance that is consistent with the residential character. Although the structure is not located all the way to the rear of the lot, as the Code regulations call for, it will still be obviously subordinate to the primary residence, because of its smaller size and because it is set back several feet from the front building line of the house. Maintaining the present location for the structure will also allow the common area in the rear of the lot to be maintained as a shared open area, which will be more useful for the tenants and have more environmentally positive attributes than could be experienced if the rear yard were taken up by a detached structure that was in the northern portion of the lot. The driveway and on-site parking for the primary residence will be retained, in accordance with Title 33 standards. Therefore the purposes of the regulation are equally fulfilled 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: The request to reduce the required setback for the ADU, from 60 feet to 39 feet, to allow the conversion of the garage that is located on the side of the house, will not make any significant difference in the appearance or the livability of the residential area. The building has existed in this location for many years. The proposal contains attractive features that are consistent with the primary dwelling unit and the overall character of this residential area. The building is still set back from the front building wall of the primary unit and will not overpower it. The appearance will be similar to many accessory cottages that were built in the Portland area in the first decades of the 1900s. Therefore, no potential impacts on livability or appearance, based on the location of the structure have been noted and 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 being requested. Therefore, this criterion does not apply.

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

Findings: There are no City-designated scenic or historic resources on the site. Therefore, this criterion does not apply.

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

Findings: No impacts from the requested Adjustment have been identified by staff.

Therefore, no mitigation is needed and 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 located in an environmental zone. Therefore, this criterion does not apply.

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

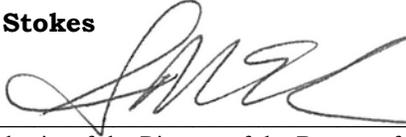
All of the relevant approval criteria have been met. The request to reduce the required 60-foot setback to 39 feet for the proposed location of the ADU will still result in a building that appears to be accessory to the primary dwelling unit. The proposed development will allow efficient reuse of an existing structure and shared use of open areas. The result will be approval of a project that is consistent with the character of the residential area and will not have any significant detrimental impacts on the appearance or livability of the residential area. A revised plan was submitted that shows compliance with the condition of the 1978 land division that required that there be two on-site parking spaces. The requested Adjustment can be approved, in general compliance with the revised plan and the elevation drawings.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Code section 33.205.030 D.1, to reduce the required setback from the front property line, from 60 feet to 39 feet, thereby allowing the detached ADU structure to be located next to the west side of the main house, in general compliance with the approved site plans, Exhibits C-1 through C-2, signed and dated April 24, 2013, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 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 13-129471 AD."

Staff Planner: Kathleen Stokes

Decision rendered by:  **on April 24, 2013**

By authority of the Director of the Bureau of Development Services

Decision mailed: April 26, 2013

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on March 19, 2013, and was determined to be complete on March 27, 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 March 19, 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 extended by the applicant, **the 120 days will expire on: July 26, 2013.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 10, 2013** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, 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 13, 2013**.
- 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. Application and original narrative and plans
 2. Letter from applicant and revised plan, showing two parking spaces
- 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. Water Bureau
 2. Site Development Review Section of BDS

3. Life Safety Plan Review Section of BDS
 4. Summary of electronic responses from City service agencies
- F. Correspondence:
1. Jeff Hiatt
 2. Steve Martin
 3. Jeff and Cindy Hiatt (copy of Exhibit F-1)
- G. Other:
1. Site History Research

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

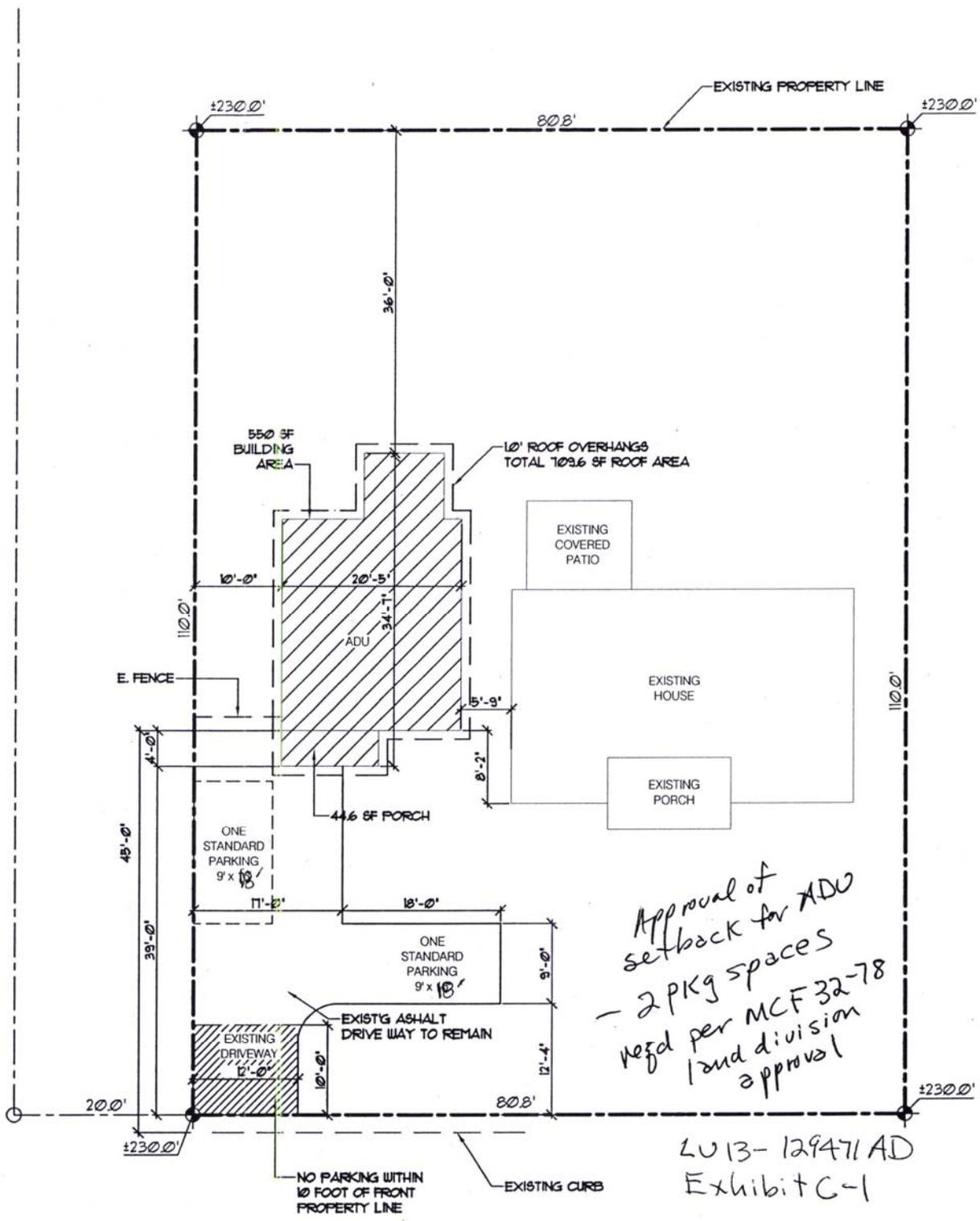


Site



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

File No. LU 13-129471 AD
 1/4 Section 3444
 Scale 1 inch = 200 feet
 State_Id 1S2E11DB 200
 Exhibit B (Mar 21, 2013)



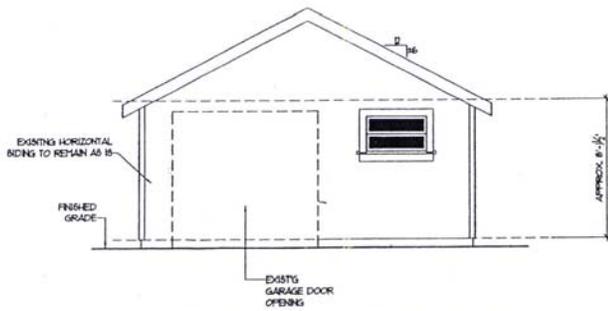
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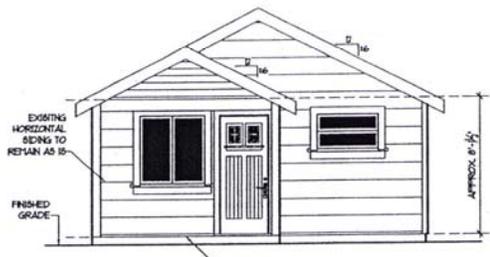
City of Portland - Bureau of Development Services

Planner Kathleen A. Stof Date April 24, 2013

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



1
A1
EXISTING CONDITION - FRONT ELEVATION
SCALE: 1/4" = 1'-0"



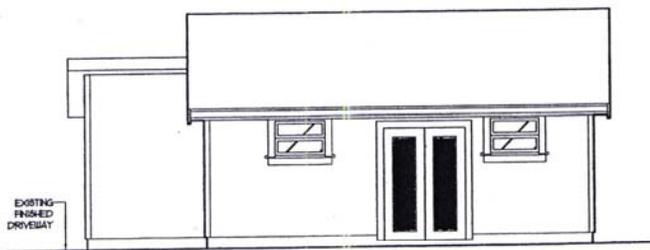
1
A1
FRONT ELEVATION
SCALE: 1/4" = 1'-0"

Approved

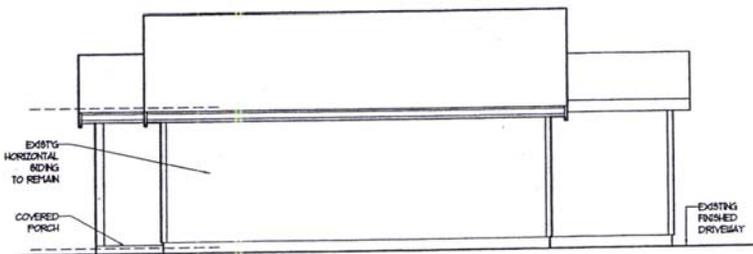
City of Portland - Bureau of Development Services

Planner Kathleen A. Stover Date April 24, 2013

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1
A1
LEFT SIDE ELEVATION
SCALE: 1/4" = 1'-0"



1
A1
RIGHT SIDE ELEVATION
SCALE: 1/4" = 1'-0"



BUILDING ELEVATIONS

Revision	By	Date

A1



BUILDING ELEVATIONS

Revision	By	Date

A1.1

LU 13-129471 AD Exhibit G-2

LU 13-129471 AD