



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

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Date: July 23, 2009
To: Interested Person
From: Matt Wickstrom, Land Use Services
503-823-7840 / WickstromM@ci.portland.or.us

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 this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 09-134284 AD

GENERAL INFORMATION

Applicant/Owner: George Zaninovich
4308 NE Rodney
Portland, OR 97211

Site Address: 4308 NE RODNEY AVE

Legal Description: BLOCK C LOT 7, ALBINA HMSTD
Tax Account No.: R010500370
State ID No.: 1N1E22DA 03100
Quarter Section: 2630

Neighborhood: King, contact Maureen Mimiaga at 503-381-4805
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321
District Coalition: Northeast Coalition of Neighborhoods, contact Lauren McCartney at 503-823-4135

Zoning: R2.5a (Residential 2,500 with an Alternative Design Density overlay)

Case Type: AD (2 Adjustments)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant plans to construct an Accessory Dwelling Unit (ADU) behind the existing house on this site. An ADU is a separate dwelling unit with its own cooking facilities. The ADU is designed so that it faces NE Skidmore Street. Approximately half of the side wall of the ADU is located 3 feet from the rear property line of this site with the remainder of this wall located approximately 5 feet from the property line. In the R2.5 zone the Portland Zoning Code requires structures over 6 feet in height to be located 5 feet from a rear property line. The ADU is also designed with a shed roof, a covered porch with a gabled roof, a combination of horizontal and vertical siding, as well as a combination of horizontal and vertical windows. The ADU is also designed with exposed rafter tails under the eaves and a privacy fence around the

front and west side. The Zoning Code requires certain architectural elements of ADUs, such as the siding, the roof pitch, trim and windows, to match the primary residence on the site. The applicant requests two Adjustments as part of this land use review; the first, to allow approximately 19 feet of the east wall of the ADU to be located 3 feet from the rear property line rather than the required 5 feet, and the second to allow certain architectural elements of the ADU, such as the roof pitch, siding, window orientation and window trim, to vary in appearance from the primary residence.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of 33.805.040 A-F, Adjustments.

ANALYSIS

Site and Vicinity: This 5,000 square foot site is located at the northeast corner of NE Rodney Street and NE Skidmore Street. The site is developed with a single-dwelling residence oriented toward NE Rodney Street and a detached carport oriented toward NE Skidmore Street. The carport is proposed to be removed as part of this project. Currently however, the east side of the carport is constructed about 1-foot from the rear property line shared with the home to the east. That home is located on a relatively small 1,750 lot and is located approximately 5 feet from the shared property line. The surrounding development is primarily single-dwelling residences. Some homes in the vicinity are constructed on relatively small lots with reduced setbacks.

Zoning: The site is zoned R2.5a (Residential 2,500 with an Alternative Design Density overlay). The R2.5 zone is intended to foster single-dwelling residences. The minimum density for new lots in this zone is 1 unit per 5,000 square feet and the maximum density is 1 unit per 2,500 square feet. The “a” overlay is intended to allow increased density that meets design compatibility requirements. This proposal does not utilize regulations of the “a” overlay. ADUs may be added to lots developed with houses in the R2.5 zone by right – zoning code standards regulate the height, size and other aspects of these dwellings.

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 22, 2009**. The following Bureaus have responded:

- The Water Bureau responded with information on water service. The response states that the ADU has sufficient water supply and mentions no objections to the proposal (Exhibit E-1).
- The Life Safety Section of BDS responded that a building permit is required for the work proposed (Exhibit E-2).
- The Bureau of Environmental Services responded with information on sanitary services, stormwater management and water resources. The response also includes building permit information. A follow-up response states that BES has no objection to the proposal and infiltration rates will be reviewed at the time of building permit (Exhibit E-3).
- The Site Development Section of BDS responded with no objections to the proposal (Exhibit E-4).
- The Development Review Section of the Bureau of Transportation responded with no objections and noted that modifications to the existing fence may be required as part of the building permit (Exhibit E-5).
- The Parks and Fire Bureaus responded with no concerns (Exhibit E-6).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 22, 2009. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

Title 33.805.10 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 code's regulations would preclude all use of the site. Adjustment reviews provide flexibility for unusual situations and to 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.

33.805.40 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 are met.

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

Findings: The applicant requests two Adjustments as part of plans to construct an Accessory Dwelling Unit (ADU) behind the existing house on this site. The first Adjustment request is to allow approximately 19 feet of the east wall of the ADU to be located 3 feet from the rear property line rather than the required minimum 5-foot setback. The second Adjustment request is to the roof pitch, siding, window orientation and window trim of the ADU to vary in appearance from the house. The purpose of the setback and ADU regulations are listed below:

Purpose 33.110.220 Setbacks

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.*

Purpose 33.205.030 Accessory Dwelling Unit Design Standards

Standards for crating 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 house, or manufactured homes; and*
- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

Adjustment 1 – Setback

The proposal to reduce the rear setback for the east side of the ADU equally meets the purpose of the regulation. The ADU is only one-story in height so the availability of light and air should not be significantly compromised for the house to the east, especially considering that the existing carport is located in a similar location. Furthermore, the Zoning Code allows single-story garages which are no more than 24 feet in depth to be located at a 0-foot rear setback by

right provided these structures are at least 25 feet from the side street property line. Although, the ADU is located closer than 25 feet to the street property line, only 19 feet of the structure is within the setback which is less than what is allowed for a detached garage. The attached Zoning Map shows many relatively small lots in the vicinity including one next door to the site. Because the ADU will face NE Skidmore Street whereas the existing house on the site faces NE Rodney Avenue, it will resemble a house constructed on its own lot and the perceived lot size should be similar to that of many lots in the vicinity. Furthermore, the homes in the vicinity which are constructed on relatively smaller lots also tend to have reduced setbacks. Considering the reduced setback and smaller lots for homes in the vicinity, the proposed ADU will reflect the general building scale and placement of homes in the neighborhood. The ADU is designed so that windows on the east side which face the neighbor's lot are elevated to allow light in but to restrict view out, this will help preserve privacy for the neighbor without creating an uninteresting blank wall adjacent to that house. The existing fence along the east property line will also help protect privacy. Based on this information, this criterion is met.

Adjustment 2 – ADU Design

The proposal to allow certain architectural details of the ADU to vary from those of the existing house equally meets the purpose of the regulation. Overall, the orientation of the ADU toward NE Skidmore Street will provide the impression that the ADU is a primary structure built on an individual lot. The relatively small lots of other nearby homes in the vicinity further emphasizes this impression. For these reasons, it is less important for the ADU to match the existing house. However, the design of the ADU does include architectural elements which correspond to elements of the existing house. The submitted drawings show that the roof pitch of the ADU doesn't match the primary roof pitch of the house but it does match the secondary roof pitch of the rear portion of the house which is closest to the ADU. The covered porch is also designed with a gable entry to represent the roof pitch of the house. The ADU is designed with a combination of vertical and horizontal siding and the horizontal siding is intended to correspond with that of the primary structure. Window trim which should resemble that of the existing house is provided around the ADU windows. The ADU is designed with a mix of horizontal and vertical windows. The inclusion of vertical windows corresponds with the vertical windows on the house as does the "unglazed historic wood window" which will be included in the ADU screen wall. Eaves project 1-foot from the ADU which meets the Zoning Code standard. The architectural features included in the ADU and described above ensure that the ADU is compatible with the desired character and livability of the residential zone. The windows on the east side of the ADU which face the neighbor's house will also help preserve privacy as they are elevated to allow light in but not view out of the windows. The ADU also respects the general building scale and placement of homes in the neighborhood as many homes in this location are relatively small and built on smaller lots. The site layout also helps provide for shared common space as the rear yard of the house and the outdoor space of the ADU are abutting. The ADU meets the size limitations of the Portland Zoning Code. Building permit drawings will be required to be in substantial conformance with the site plan and elevation drawings approved as part of this review. This ensures that permit drawings and ultimately what is constructed will conform with the approved land use review. Based on this information, 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 proposal should not significantly detract from the livability or appearance of the residential area. The ADU is designed as a one-story structure which has only 19 feet of its east wall within the required 5-foot setback. This distance within the setback is less than allowed for detached garages of comparable height and therefore impacts should be minimal. Furthermore the east wall of the ADU is designed with windows that allow light in but are elevated as to not allow views out. Other homes in the vicinity are located on relatively small lots and the ADU should appear as a separate house on an equally small lot. This ensures that

its appearance better conforms with existing development in the area. The ADU is also attractively designed with varying materials and architectural treatments which will add visual interest and a greater sense of permanence. The inclusion of architectural details which reflect those found in the primary residence also helps to promote consistency through thoughtful design. Based on this information 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: The purpose of the R5 and other single-dwelling zones is to preserve land for housing and to provide housing opportunities for individual households. The two Adjustment requests will not result in a project which is inconsistent with this purpose, in fact, the ADU will also provide housing for an individual household. Based on this information, this criterion is met.

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

Findings: The thoughtful design of the ADU helps mitigate for the requested Adjustments. The window placement on the east wall mitigates for any reduction in privacy which could result from the reduced setback. The inclusion of architectural elements which correspond to those found on the existing house mitigates for the overall different styles of design. The one-story design of the ADU as well as the articulation of the east façade and the encroachment of only about half that façade within the rear setback also helps reduce impacts. Based on this information, this criterion is met.

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

- F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resources and resource value as is practical.

Findings: The site does not contain any identified scenic or historic resources and the site is not located in an environmental zone; therefore, these criterion are 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 proposes two Adjustments associated with plans to construct an accessory dwelling unit (ADU) behind an existing house on this site. As noted in this report the Adjustment to reduce the rear setback and to allow architectural features of the ADU to vary from those of the existing house, are able to meet the Adjustment approval criteria with approval granted based on the one-story height of the ADU and amount of building wall proposed within the rear setback, the inclusion of architectural details which correspond to details of the existing house and the location of other homes on relatively small lots in the vicinity. With approval requiring that the permit drawings substantially conform with the site plan and elevation drawings attached, the request meets the applicable criteria and should be approved.

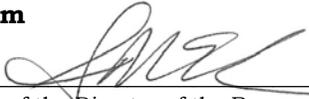
ADMINISTRATIVE DECISION

Approval of Adjustments to 33.110.220.B Setbacks and to 33.205.030.B Accessory Dwelling Unit Design Standards to allow the ADU to be located 3 feet from the rear property line and to allow architectural elements to vary from those of the existing house, per the approved site

plans, Exhibits C-1 through C-2, signed and dated July 21, 2009, subject to the following conditions:

- 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 09-134284 AD."

Staff Planner: Matt Wickstrom

Decision rendered by:  **on July 21, 2009**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 23, 2009

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 June 9, 2009, and was determined to be complete on June 18, 2009.

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 June 9, 2009.

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: October 16, 2009.**

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 August 6, 2009** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3

p.m. After 3 p.m., 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. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-7967 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 **August 7, 2009 – (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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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:

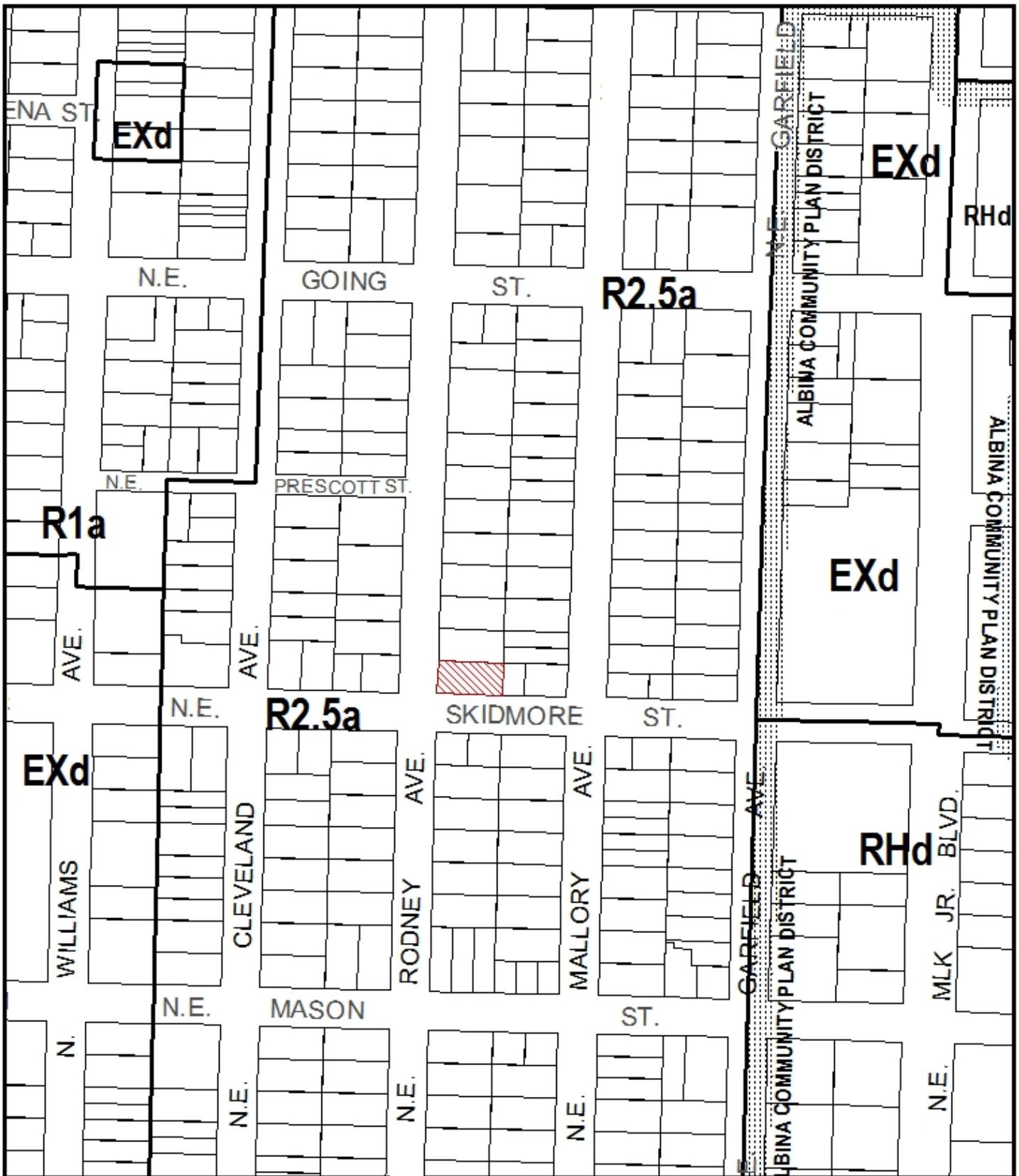
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
- 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. Life Safety Section of BDS
 - 3. Bureau of Environmental Services
 - 4. Site Development Section of BDS
 - 5. Development Review Section of the Bureau of Transportation
 - 6. Summary sheet of agency responses
- F. Correspondence: None received
- G. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-7300 (TTY 503-823-6868).



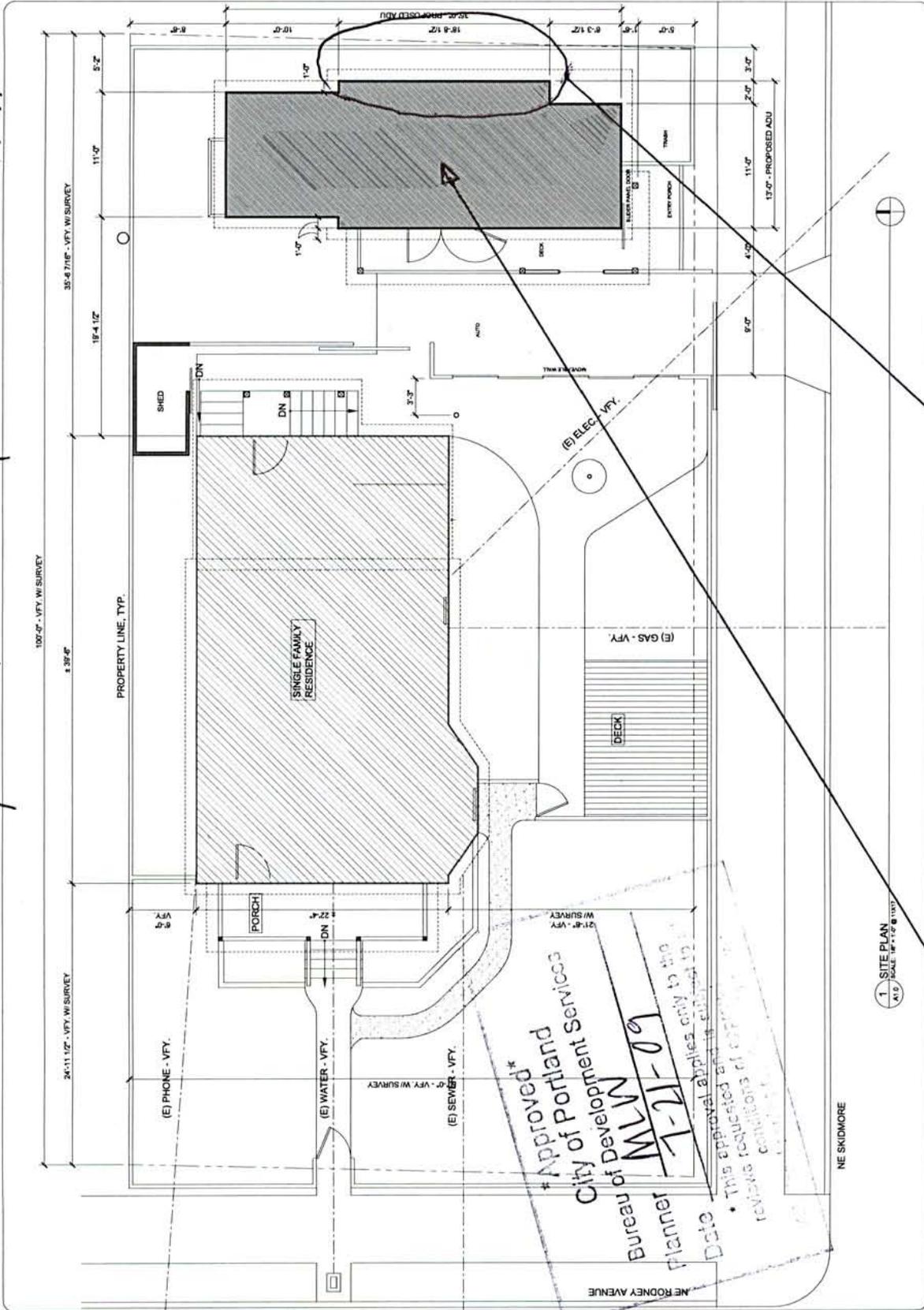
ZONING

 Site



File No.	<u>LU 09-134284 AD</u>
1/4 Section	<u>2630</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1N1E22DA 3100</u>
Exhibit	<u>B</u> (Jun 11, 2009)

Adjustment request to reduce the rear setback from 5 feet to 3 feet for approximately 19 feet of planned ADU wall.



Approved*
 City of Portland Services
 Bureau of Development Services
 Planner MLW
 7-21-09
 Date
 * This approval applies only to the
 reviews requested and does not constitute
 a guarantee of accuracy or a warranty of any kind.

JASON SWIFT
 ARCHITECTURE
 8230 SE 42ND AVENUE
 PORTLAND, OR 97206
 503 241 0004
 info@jasonswift.com

ADU - LAND USE REVIEW
 4308 NE RODNEY AVENUE
 PORTLAND, OREGON 97211

PROJECT #	0600
DATE	06/24/08
DRAWN	JWS
APPROVED	JWS
REVISIONS	

SITE &
 FLOOR
 PLAN
A1.0

LU 09-134284 AD
 Exhibit C.1

Proposed accessory dwelling unit (ADU)
 Location of proposed Setback Adjustment
 LU09-134284 AD

