



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

FROM CONCEPT TO CONSTRUCTION

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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** April 10, 2012  
**To:** Interested Person  
**From:** Mark Bello, Land Use Services  
503-823-7810 / [Mark.Bello@portlandoregon.gov](mailto:Mark.Bello@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 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 12-117575 AD**

**GENERAL INFORMATION**

**Applicant:** Julia V Martinez  
2034 N Winchell St  
Portland, OR 97217-6460

Stephen Smith  
Design Build Portland  
1333 NE 47th Ave  
Portland OR 97213

**Site Address:** 2034 N WINCHELL ST

**Legal Description:** BLOCK 26 LOT 12&13, KENTON  
**Tax Account No.:** R445912090  
**State ID No.:** 1N1E09DC 05500  
**Quarter Section:** 2228  
**Neighborhood:** Kenton, contact Steve Rupert at 503-317-6573.  
**Business District:** Kenton Business Association, contact Jessie Burke at 971-404-9673.  
Interstate Corridor Business Association, contact Aleksandra Johnson at 503-735-4420.

**District Coalition:** North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

**Zoning:** R5, Residential 5,000  
**Case Type:** AD, Adjustment to modify zoning code development standard(s)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

**Proposal:**  
The existing garage at 2034 N. Winchell was modified in 2005 (permit #05-131612) to add additional garage storage space. This project will convert that space and the original garage into living space. The new accessory dwelling unit will be 400 square feet in area. No exterior changes will be made to the structure.

The existing structure is 1 ft. from the east property line (eave on the property line) and 3 ft. from the south property line (eave within 2 ft. of the property line).

These distances are less than the required minimum setback. Section 33.110.220, Table 110-3, specifies a 5 ft. minimum setback from side and rear property lines. Eaves may project an additional ft. into the minimum setback to within 4 ft. of a property line.

Because adjustments to Zoning Code development standards are requested, an adjustment application has been filed.

**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, are met.

## ANALYSIS

**Zoning:** The Residential 5,000 (R5) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 5,000 square feet of site area.

The Alternative Design Density “a” overlay is in place to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements. No “a” overlay zoning regulations apply to this proposal.

**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 13, 2012**. The following Bureaus have responded with no issues or concerns:

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. Bureau of Parks, Forestry Division
7. Life Safety Plans Examiner, BDS

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on March 13, 2012. No written responses have been received from the Neighborhood Association or other notified persons. As part of the application, the applicant has provided statements from all five property owners surrounding the site stating that no detrimental impacts are expected (Exhibit F.1 – F.5).

## ZONING CODE APPROVAL CRITERIA

**33.805.010 Purpose**

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. They also 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 Adjustment Approval Criteria**

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. Those approval criteria are as follows:

- A.** Granting the adjustment will equally or better meet the **purpose** of the regulation to be modified;
- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in a C, E, or I zone, the proposal will be consistent with the desired character of the area; and
- 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
- D.** City-designated scenic resources and historic resources are preserved; and
- E.** Any impacts resulting from the adjustment are mitigated to the extent practical.
- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.

Regarding approval criterion A, the purpose of setbacks is as follows:

### **33.110.220 Setbacks**

**A. Purpose.** 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

## **FINDINGS AND CONCLUSIONS**

The application meets all applicable approval criteria as follows:

The site is a 50 ft. by 100 ft. interior lot on the south side of N. Winchell Street. The main house is centered on the lot and an accessory structure is located near the southeast corner of the site. The structure is set back 1 ft. from the east property line (eaves at the property line) and set back 3 ft. from the south property line (eaves at 2 ft.). Current use of the structure is a garage and storage area but a wooden fence screens the garage entrance from the driveway

that leads to it. The garage has no windows on the east elevation. The accessory structure is one story in height.

This placement and scale of house and detached garage is typical of lots immediately adjacent to the site and along N. Winchell Street.

The conversion of the garage/storage space to a garage/ADU will not change the physical characteristic of the structure. Scale, placement, openings will remain the same. Privacy will not be affected as there are no openings on the east elevation and the single window on the south elevation is obscured by vegetation and an accessory structure on the adjacent lot. All five property owners on adjacent properties note that they expect no detrimental impacts.

Existing yards will not be reduced in area and the existing driveway width will not be reduced.

Only one adjustment is requested.

The site is not in a scenic or environmental zone.

With these findings, adjustment approval criteria are met.

## **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.

## **ADMINISTRATIVE DECISION**

Approval of an Adjustment to reduce the required side setback (33.110.220) for building and eaves as follows:

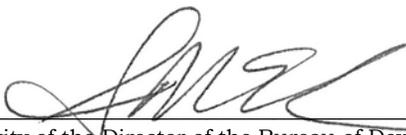
East setback: building wall at 1 ft. and eave at 0 ft.

South setback: building wall at 3 ft. and eave at 2 ft.

per the approved site plans, Exhibits C-1 through C-2, signed and dated April 6, 2012, 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 12-117575 AD.

**Staff Planner: Mark Bello**

**Decision rendered by:**  **on April 6, 2012**

By authority of the Director of the Bureau of Development Services

**Decision mailed: April 10, 2012**

**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 2, 2012, and was determined to be complete on **March 9, 2012**.

*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 2, 2012.

*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: July 7, 2012.**

**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 24, 2012** 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](http://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 **April 25, 2012**.
- 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**

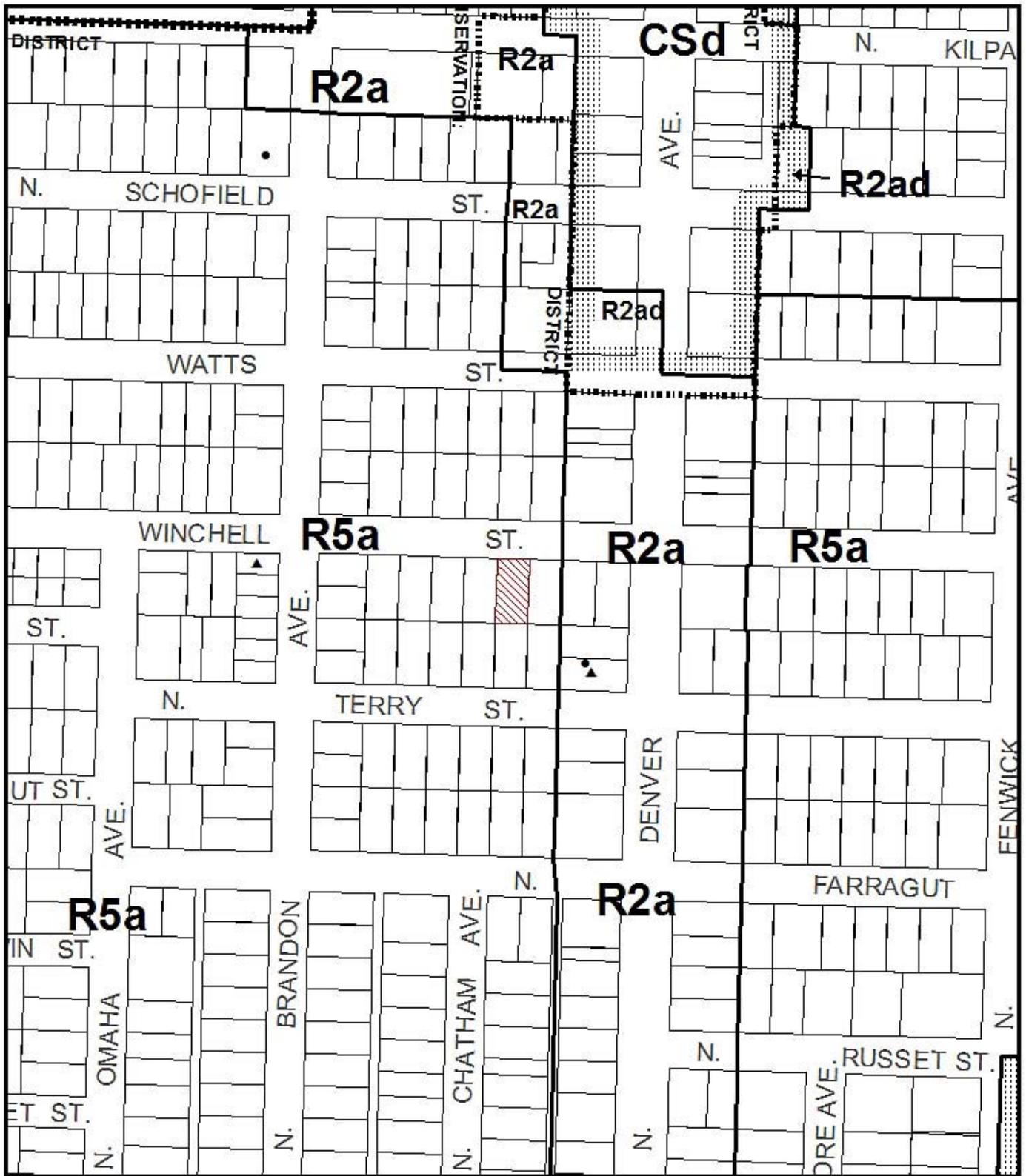
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. 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. Bureau of Parks, Forestry Division
  - 7. Life Safety Plans Examiner, BDS
- F. Correspondence:

Use this format.

  - 1. Joanne Jacobs, 2046 N. Winchell Street
  - 2. Kathy Armstrong, 2033 N. Terry Street
  - 3. Daniel Craddock, 2026 N. Winchell Street
  - 4. Ed and Patti Carraways, 2047 N. Terry Street
  - 5. Gregory C. Eaves, 2025 N. Terry Street
- G. Other:
  - 1. Original LU Application
  - 2. 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

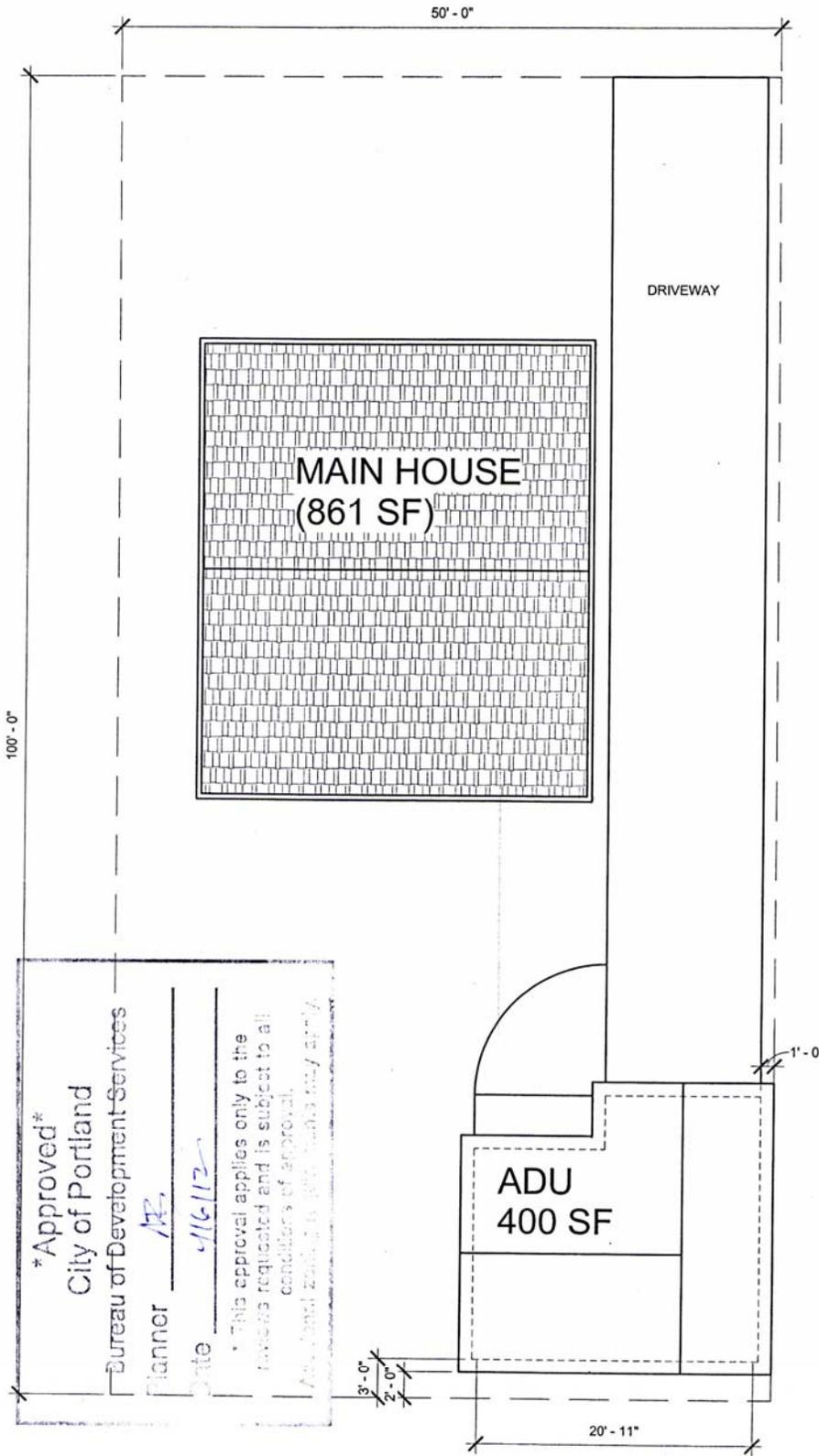


Historic Landmark



This site lies within the:  
KENTON CONSERVATION DISTRICT

File No.	LU 12-117575 AD
1/4 Section	2228
Scale	1 inch = 200 feet
State_Id	1N1E09DC 5500
Exhibit	B (Mar 06, 2012)



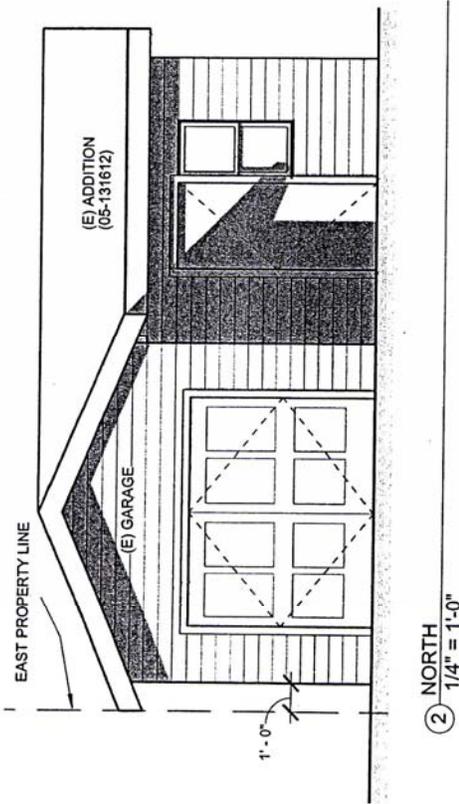
\* Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner AB  
 Date 4/16/12  
 \* This approval applies only to the  
 permits requested and is subject to all  
 conditions of approval.  
 Additional zoning and other rules may apply.

① SITE PLAN  
 1/8" = 1'-0"

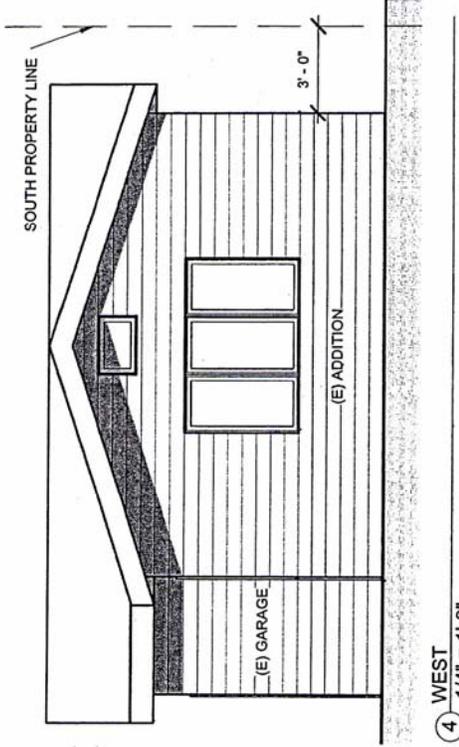
CASE NO. \_\_\_\_\_  
 EXHIBIT C1

LU 12-117575 AD

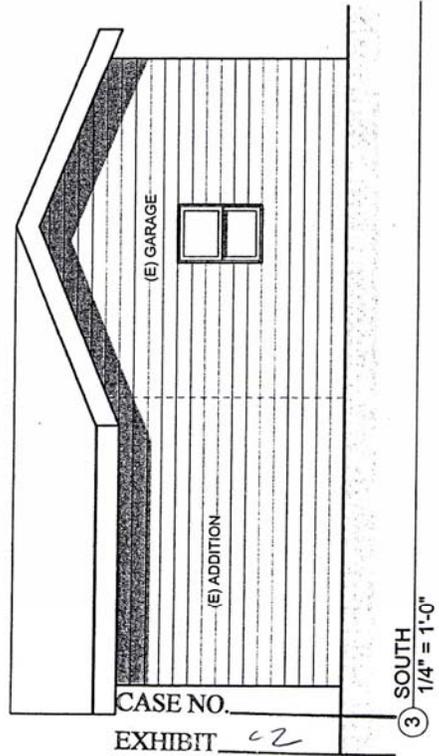
STEPHEN SMITH DESIGN BUILD PORTLAND stephen@designbuildportland.com	SOTO ADU 2034N WINCHELL AVE PORTLAND, OR	SITE PLAN	LUR 03/02/12  <b>A.1</b>
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② NORTH  
1/4" = 1'-0"

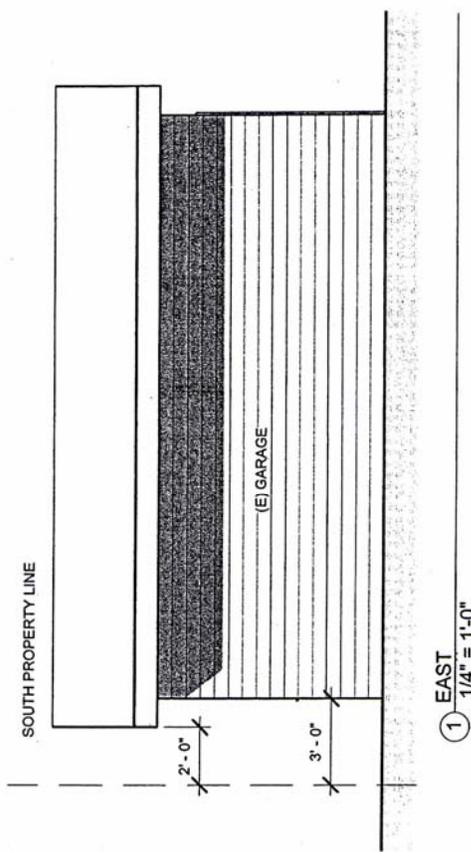


④ WEST  
1/4" = 1'-0"



③ SOUTH  
1/4" = 1'-0"

CASE NO. \_\_\_\_\_  
EXHIBIT 12



① EAST  
1/4" = 1'-0"

LU 12-117575 AD

STEPHEN SMITH DESIGN BUILD PORTLAND stephen@designbuildportland.com	SOTO-ADU 2034N WINCHEPPAWE <sup>d</sup> PORTLAND, OR of Portland	ELEVATIONS LUR 03/02/12	A.2
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Bureau of Development Services  
Planner MB  
Date 4/16/12  
\* This approval applies only to the reviews requested and is subject to all conditions of approval.  
A-10-2012-03-01-001-001-001-001-001-001