



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

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: October 29, 2012
To: Interested Person
From: Douglas Hardy, Land Use Services
503-823-7816 / Douglas.Hardy@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 12-178616 AD

GENERAL INFORMATION

Applicant: Dave Spitzer / DMS Architects
2106 NE MLK Boulevard / Portland OR 97212

Property-Owner: Jeffrey S. Capen
2425 NE 48th Avenue / Portland, OR 97213

Site Address: 2425 NE 48th Avenue

Legal Description: Block 26, Lot 3, Rose City Pk
Tax Account No.: R723101140
State ID No.: 1N2E30CA 06500
Quarter Section: 2835
Neighborhood: Rose City Park, contact Tamara DeRidder at 503-249-6977
Business District: Hollywood Boosters, contact Christine Azar at 971-570-8011
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156
Zoning: R2.5 – Single-Dwelling Residential 2,500
Case Type: Adjustment (AD)
Procedure: Type II, Administrative decision with appeal to Adjustment Committee

PROPOSAL

The applicant is proposing to convert and expand an existing detached garage into an Accessory Dwelling Unit (ADU). The existing garage, located 2 feet 8 inches from the south side lot line and 1 foot from the rear lot line, has a footprint that measures 20 feet 6 inches in depth and 14 feet 4 inches in width. With the expansion, the building's footprint will measure 19 feet in width and 28 feet 6 inches in depth. The existing building setbacks from the south side and rear lot lines will be maintained.

Regulations of the R2.5 zone require ADUs to be set back a minimum of 5 feet from side and rear lot lines. The applicant is therefore requesting an Adjustment to allow the proposed ADU to be located 2 feet 8 inches from the south side lot line, and 1 foot from the west rear lot line. The eave overhang would extend 1 foot 2 inches into the reduced south side setback, and 6 inches into the reduced west rear setback.

RELEVANT APPROVAL CRITERIA

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Zoning Code Section 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The 5,000 square foot lot is located on the west side of NE 48th Avenue, between NE Brazee Street and NE Thompson Street in the Rose City Park Neighborhood. Existing development on the site consists of a one and one-half story single-dwelling residence located close to the center of the lot. A detached garage (approximately 14 feet in width by 20 feet in depth) is located in the southwest corner of the site, within the side and rear setbacks. A paved driveway, approximately 70 feet in length, extends from the garage entrance to the street.

Development in the surrounding area, within a one to two block radius, is developed with similar one to one and one-half story single-dwellings residences. Many having detached garages that are located in the rear corner of the lot. The exception to this development pattern is along NE Sandy Boulevard and NE Thompson Street about one block south of the subject site, where properties are developed with a variety of lower density commercial uses interspersed with some multi-dwelling development.

Zoning: The subject site is located in a Single-Dwelling Residential 2,500 (R2.5) zone. The use regulations of the Single-Dwelling Residential zones are intended to create, maintain and promote single-dwelling neighborhoods. They allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. The development standards are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A Notice of Proposal was mailed October 1, 2012. The following City bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering;
- Fire Bureau;
- Bureau of Development Services/Site Development Section; and
- Bureau of Parks-Forestry Division

The Bureau of Environmental Services (BES) responded that they have no objections to the requested Adjustment Review. The requested Adjustment to side and rear setbacks does not appear to impact the location of a required stormwater management facility. BES did note that stormwater runoff from the proposed structure cannot impact adjacent properties. At the time of building permit review, BES noted that a stormwater management plan must be submitted to BES for review.

The Water Bureau responded with no issues regarding the requested Adjustment, but noted that a separate water service is required for each house or building even if under one ownership and on the same lot or parcel of land. If a single service will be used to provide for multiple units under single ownership, prior to the Water Bureau signing off on any building permits, a separate service agreement will need to be signed with the Water Bureau. Also, if the existing water service is proposed to be used, or with regards to the purchase of a new water service, City code will require any new building construction, additions to existing water service needs, remodeling and or reconstruction of an existing building structure, or any construction that will need water to have a water service and meter of appropriate size installed

within the public right-of-way and within the specific property boundary/frontage for which it will serve. A Water Bureau review for fixture count will need to be submitted by the applicant at the time of submittal of the building permit to appropriately size the domestic water service and meter for this location.

The Bureau of Development Services Life Safety Plans Examiner responded that a separate building permit will be required for the proposed development, and it must be designed to meet all applicable building codes and ordinances. It was noted that walls less than 3 feet from a property line must be one-hour fire rated, with no openings allowed. Roofs and eaves may project not closer than 2 feet to a property line. Eaves located less than 3 feet from a property line must be protected on the underside as required for one-hour rated construction.

Neighborhood Review: One written response was received from an adjacent neighbor to the rear of the subject site. The neighbor expressed concerns about stormwater issues, and wanted to ensure that stormwater from the proposed structure does not drain onto her property. As indicated above, BES will require at time of building permit review that the applicant submit a stormwater management plan. As BES indicated in their written response, the stormwater management plan must demonstrate that stormwater from the proposed structure will not impact adjacent properties.

The Land Use and Transportation Committee for the Rose City Park Neighborhood Association submitted comments in support of the requested Adjustment. The Committee appreciates the consistency of design and architectural elements between the ADU and the primary house, and the design sensitivity in supporting privacy for adjacent residences.

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 to provide 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 is requesting an Adjustment to reduce the minimum south side setback and west rear setback from the required 5 feet to 2 feet 8 inches and 1 foot, respectively. The purpose of the minimum building setback, as stated in Zoning Code Section 33.110.220.A, is as follows:

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 request to reduce the side and rear setbacks for the proposed ADU equally meets the purpose of this regulation based on the following findings:

- The proposal involves expanding an existing detached garage that is currently located 2 feet 8 inches from the south side lot line, and 1 foot from the rear lot line. These setbacks will remain unchanged under the proposal. The applicant is proposing to expand the length of the wall that is at these setbacks in order to accommodate an ADU. Along the south side lot line, the length of the building wall will be extended an additional 8 feet at the current setback, and extended an additional 5 feet along the existing rear setback. Given the limited extension of the wall within the side and rear setbacks, there is unlikely to be a substantive impact on the amount of light and air reaching the adjacent residential properties. Even with the addition, there will be approximately 70 feet along the remainder of the south side lot line, and approximately 28 feet along the rear lot line that is open to air and light.
- As for fire protection, and access for fire fighting, the Fire Bureau has reviewed the proposal and has no concerns. The walls of the proposed ADU that are located within the side and rear setbacks will be required to meet all Fire Codes at time of building permit review, and accessibility to the structure will be maintained from open areas to the north and east.
- It is typical in older neighborhoods throughout Portland to have detached garages in the rear corner of a site, and the Zoning Code allows such garages within the side and rear setbacks to have width and depth dimensions of up to 24 feet by 24 feet. Additionally, such garages that were built prior to January 1, 2005 are allowed to be converted to living area, such as an ADU. While the proposed ADU will have width and depth dimensions of 19 feet by 28 feet six inches, and the garage was legalized after January 1, 2005, the overall form of the structure, in its scale and placement, will look little different than what is allowed by right. This is particularly true as viewed from the street or from the property to the rear, given the east (street-facing façade) and west (rear) facades will be only 19 feet in width. As proposed and in this location, compatibility with the surrounding residential neighborhood is maintained.
- Regarding the intent of the regulation to promote a reasonable physical relationship between residences, even with the reduced setback the proposed ADU will still be located approximately 10 to 12 feet back from the adjacent residence to the south, and approximately 30 feet from the adjacent residence to the west. This distance is substantially greater than the minimum set back of 10 feet that could be achieved by right when adjacent residences are built 5 feet from common side or rear lot lines.
- The request will have no impact of the privacy for abutting residences to the south and west as there will be no windows or doors on the facades of the ADU that face these lot lines. Furthermore, the door of the ADU that faces the front lot line will be approximately 4 feet 8 inches from the closest side lot, or only four inches closer than what would be allowed by right.
- Because the ADU is proposed in the rear corner of the site, approximately 70 feet back from the front lot line, the proposal has no impact on the intent of the

regulation to maintain larger front setbacks so as to promote open, visually pleasing front yards

- Because a paved driveway approximately 70 feet in length will be maintained between the front of the ADU and the front lot line, the proposal has no impact on the ability of cars to park on the site without overhanging the street or sidewalk, or driver visibility when backing onto the street.

As proposed, the Adjustment request equally meets the intent of the minimum setback regulation, and this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: Because the site is located in a residential zone, this criterion requires demonstrating the proposal will not detract from the livability or appearance of the surrounding area. As stated in response in Criterion A, above, a garage or ADU located in a side and rear setback is something that is relatively common in single-dwelling residential neighborhoods throughout the City. The only difference in this particular situation, and which is triggering a land use review, is that the depth dimension of detached structure in which the ADU is proposed is 4 feet 6 inches longer than that which is allowed. Otherwise, the appearance of the proposed ADU will be no different than those ADUs found elsewhere in residential neighborhoods.

Regarding livability, the one potential adverse impact that such proposal can have on adjacent residents is privacy. This becomes an issue when windows or doors directly face an adjacent neighbor. In this case, the facades of the expanded building that face the side and rear lot lines have no windows or doors. The majority of the window area for the ADU will be on the north facade, facing the interior of the subject site.

As the proposal will not detract from the livability or appearance of the surrounding residential neighborhood, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: As only one Adjustment is requested, this criterion is not applicable.

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

Findings: City-designated scenic resources are identified on the Official Zoning Maps with a lower case "s," and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As the subject site is not designated as a scenic or historic resource, this criterion is not applicable.

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

Findings: As indicated above in response to Approval Criteria A and B, the request as proposed equally meets the intent of the regulation, with no adverse impacts on the appearance or livability of the surrounding residential area. As such, there are no adverse impacts for which mitigation would be required.

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: As the site is not located in 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 via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

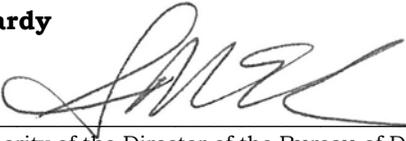
The applicant has demonstrated the applicable approval criteria for the Adjustment request to reduce the minimum required south side and west rear setback for a proposed ADU have been met. The request equally meets the stated intent of the minimum setback regulation, and will not significantly detract from the appearance or livability of the surrounding residential area.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum required building setback (Zoning Code Section 33.110.22) for a proposed ADU from 5 feet to 2 feet 8 inches along the south side lot line, and from 5 feet to one foot along the west rear lot line, with the eave overhang extending 1 foot 2 inches into the reduced south side setback, and 6 inches into the reduced west rear setback, per the approved site plan and building elevations (Exhibits C.1 through C.5), signed and dated October 26, 2012, and 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.5. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 12-178616 AD."

Staff Planner: Douglas Hardy

Decision rendered by:  **on October 26, 2012**

By authority of the Director of the Bureau of Development Services

Decision mailed: October 29, 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 September 4, 2012, and was determined to be complete on **October 1, 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 September 4, 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 January 29, 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 November 13, 2012**, at 1900 SW Fourth Avenue. 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 **November 14, 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.

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.

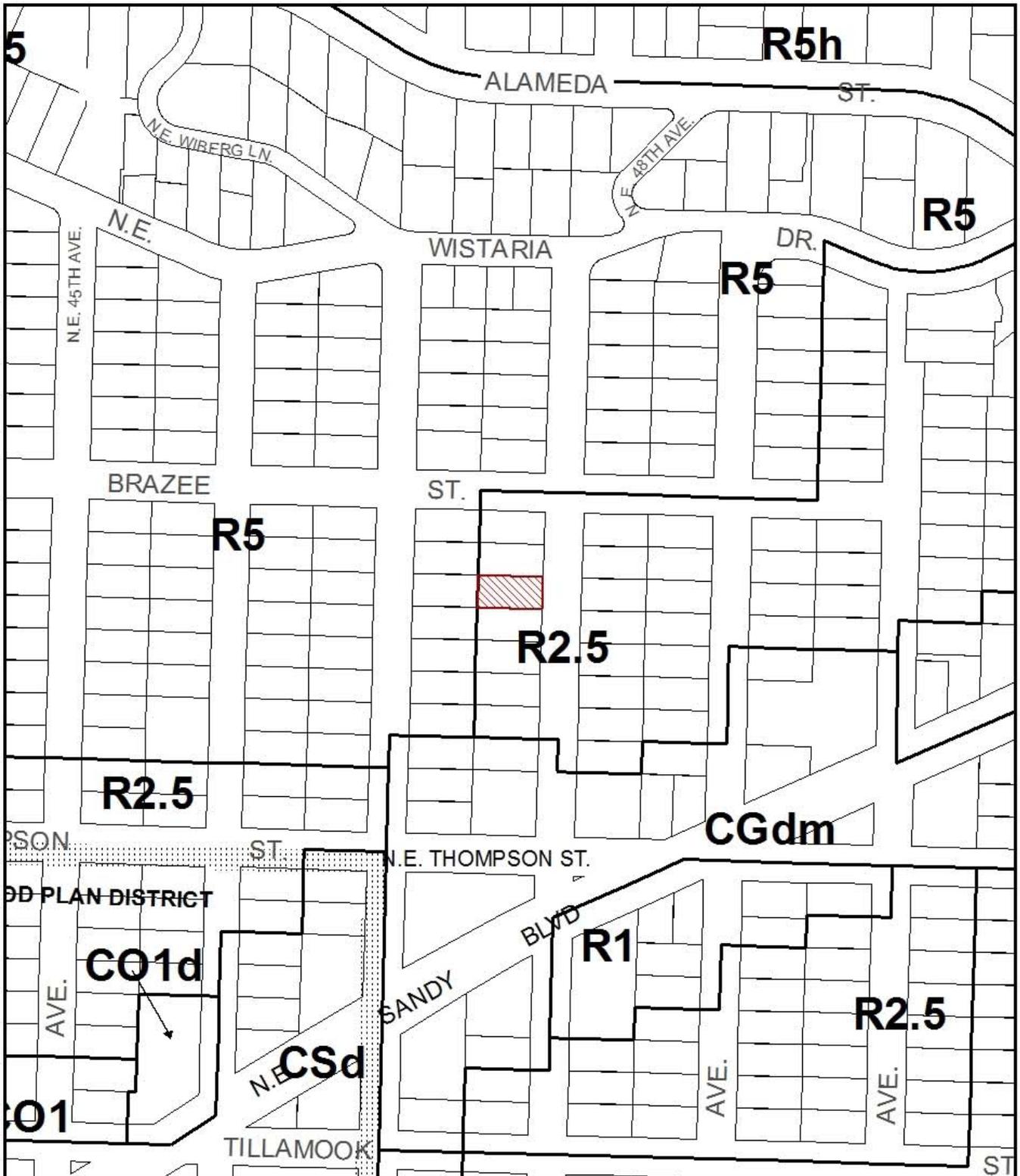
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Written narrative, received 9/4/12
 2. Additional narrative received 9/25/12
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Front (East) Elevation (attached)
 3. Side (North) Elevation (attached)
 4. Rear (West) Elevation (attached)
 5. Side (South) Elevation (attached)
 6. Floor plan
- 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. Bureau of Development Services/Site Development Section
 6. Bureau of Parks, Forestry Division
 7. Bureau of Development Services/Life Safety Plans Examiner
- F. Correspondence:
1. E-mail from Cynthia Bjorkman received 10/22/12
 2. E-mail in support from Rose City Park Neighborhood Association, received 10/19/12
- G. Other:
1. Original LU Application
 2. incomplete Letter

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).



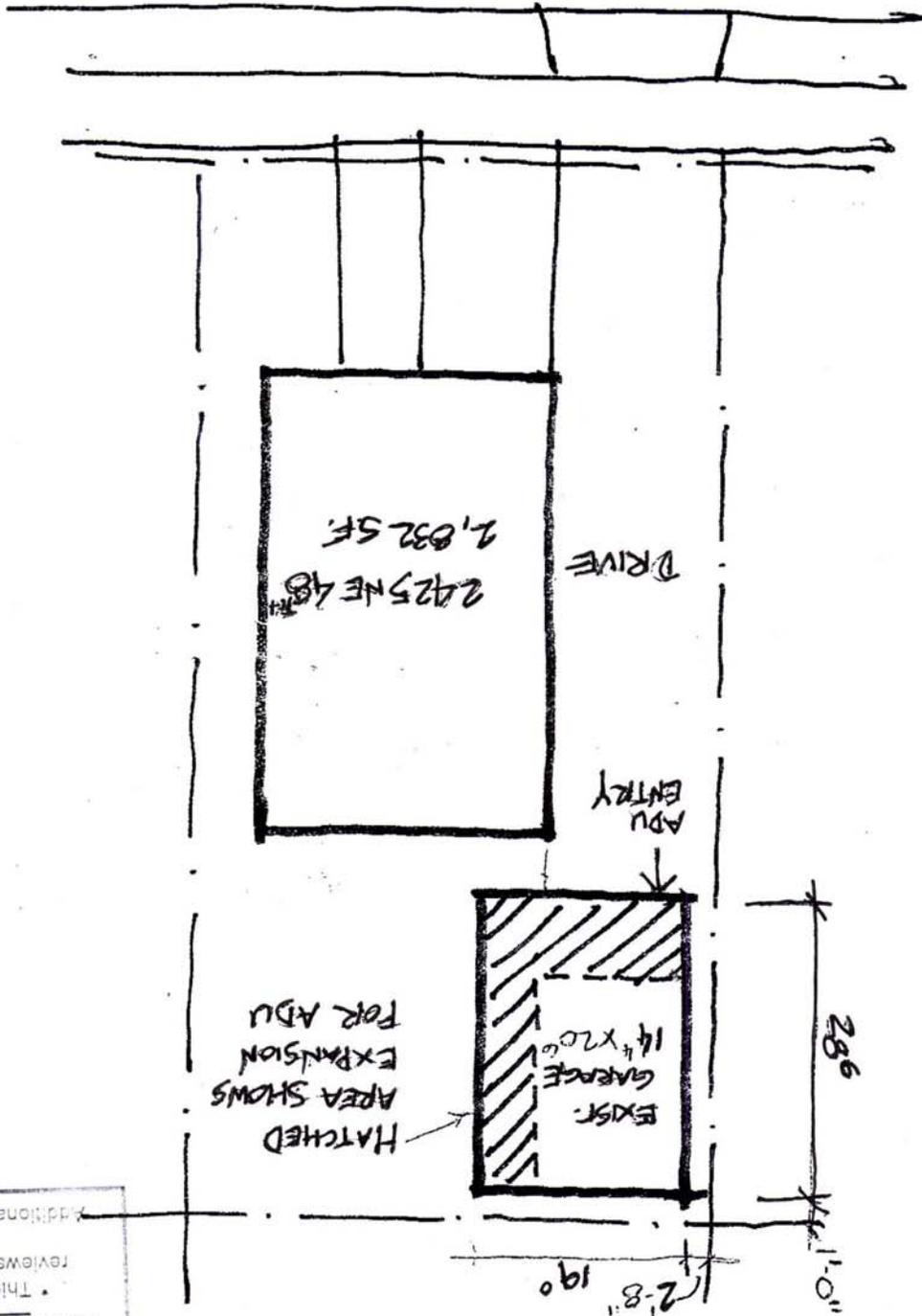
ZONING

 Site

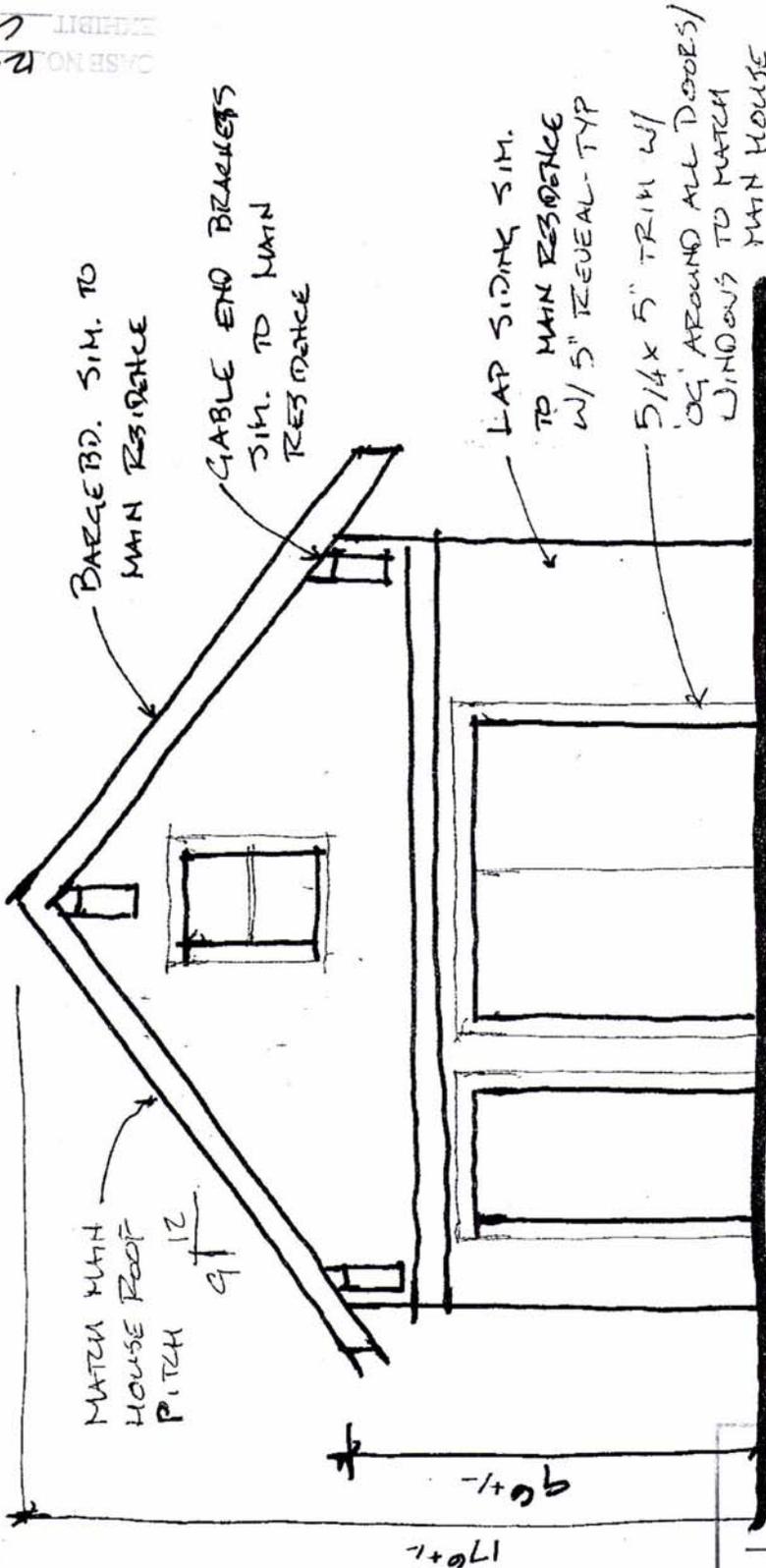


File No.	LU 12-178616 AD
1/4 Section	2835
Scale	1 inch = 200 feet
State_Id	1N2E30CA 6500
Exhibit	B (Sep 27, 2012)

NE 48TH AVE
SITE PLAN N
1" = 10'

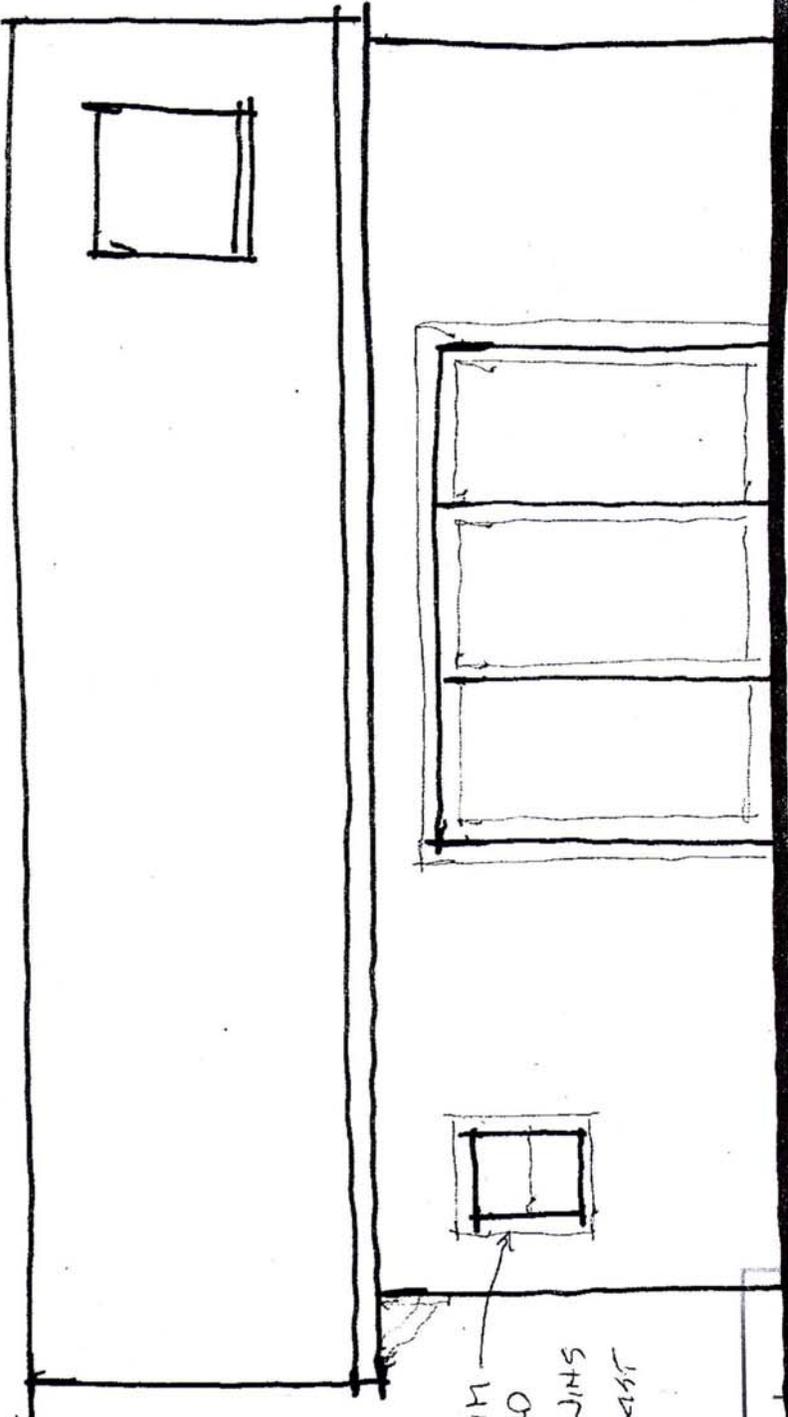


Approved
City of Portland
Bureau of Development Services
Planner *[Signature]*
Date 10.26.12
* This approval applies only to the reviews requested and is subject to all conditions of approval.
Additional zoning requirements may apply.



FRONT ELEVATION
EAST
1/4" = 1'-0"

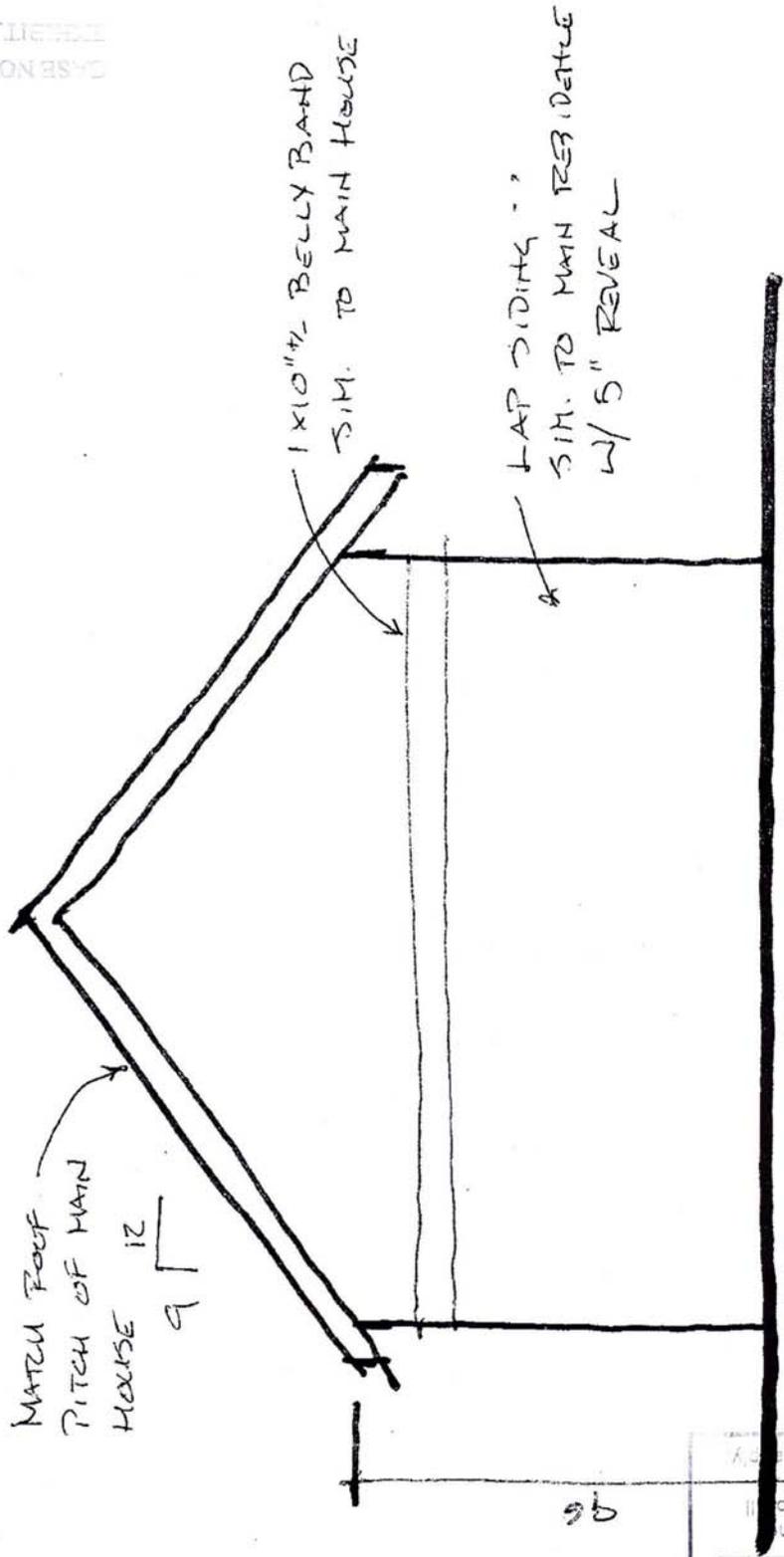
Approved
City of Portland
Bureau of Development Services
Planner *[Signature]*
Date 10.26.12
* This approval applies only to the reviews requested and is subject to all additional zoning requirements may apply.



5/4x5" TRIM
w/ 06' ARROUND
ALL DOORS/WINS
TO MATCH EXIST

SIDE ELEVATION
NORTH
1/4" = 1'-0"

Approved
City of Portland
Bureau of Development Services
Planner *[Signature]*
Date 10-28-12
* This approval applies only to the reviews requested and is subject to all conditions of approval.
Additional zoning requirements may apply.

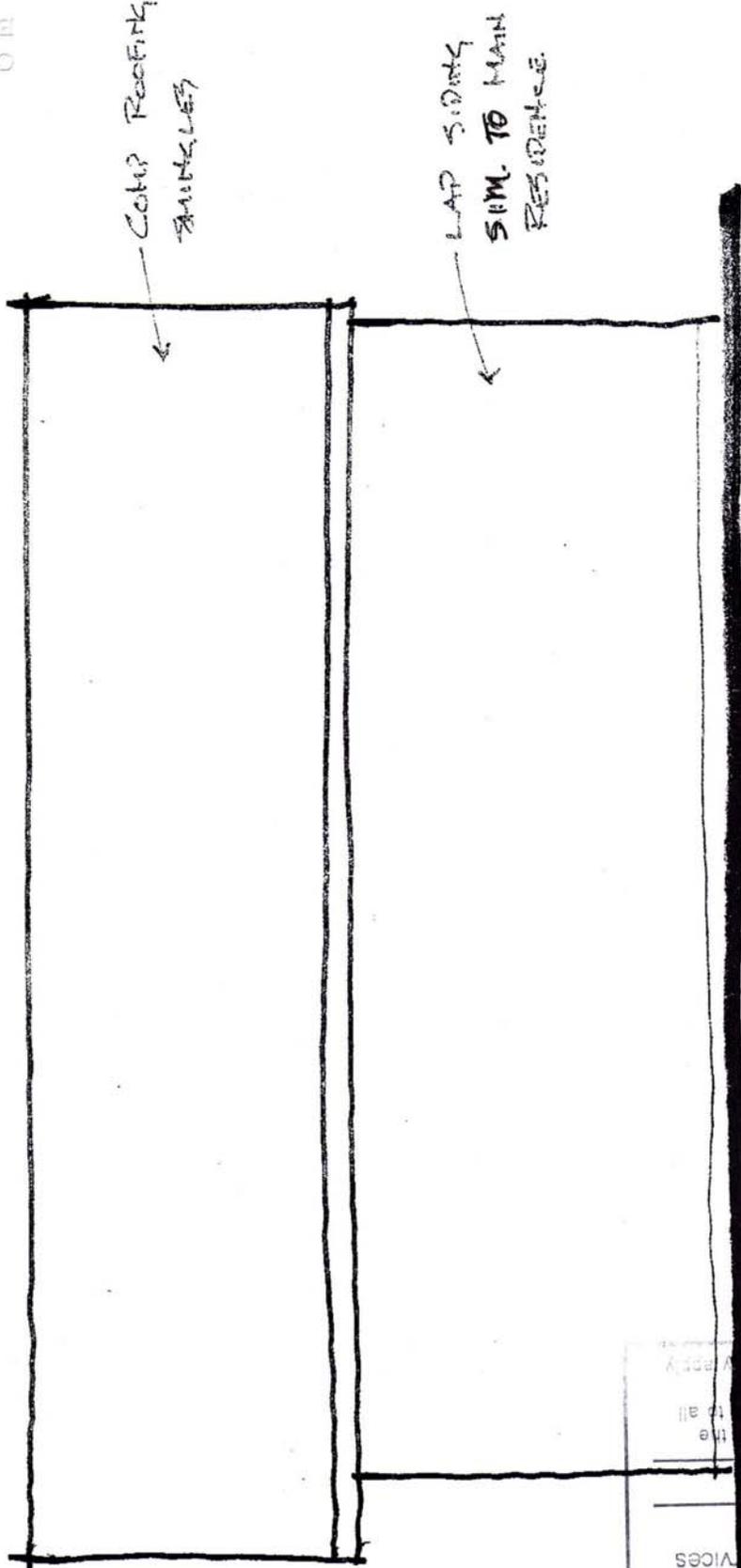


REAR ELEVATION

C PROP. LINE 1/4" = 1'-0"

WEST

Approved
City of Portland
Bureau of Development Services
Planner *[Signature]*
Date 10-26-12
*This approval applies only to the conditions of approval. Additional zoning requirements may apply.



SIDE ELEVATION
 @ PROP. LINE 1/4" = 1'-0"
 SOUTH

Approved
 City of Portland
 Bureau of Development Services
 Planner *[Signature]*
 Date 10.26.17
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.