



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** November 8, 2012  
**To:** Interested Person  
**From:** Shawn Burgett, Land Use Services  
503-823-7618 / [shawn.burgett@portlandoregon.gov](mailto:shawn.burgett@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 12-179246 AD**

#### **GENERAL INFORMATION**

**Applicant/ Owner:** Ron Miller  
1135 SE Cesar E Chavez Blvd / Portland, OR 97214-4319

**Site Address:** 1135 SE CESAR E CHAVEZ BLVD

**Legal Description:** TL 10400 0.06 ACRES, SECTION 01 1S 1E  
**Tax Account No.:** R991010080  
**State ID No.:** 1S1E01AD 10400  
**Quarter Section:** 3134  
**Neighborhood:** Sunnyside, contact Paul Loney at 503-233-8265.  
**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.  
**Zoning:** R2.5 (Single Family Residential 2,500 sq. ft.)  
**Case Type:** AD (Adjustment)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant has constructed a 13 ft. by 8 ft. lean-to storage shed over 6 ft. in height approximately 4 ft. from the eastern and northern property lines, within the required side and rear setbacks. Zoning Code section 33.110.220 (Table 110-3) requires a 5 ft. side and rear setback within this zone. The applicant has requested an adjustment to this standard to allow the Lean-to Storage Shed to remain in its existing location within the side and rear setback areas.

#### **Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

#### **ANALYSIS**

**Site and Vicinity:** The site is located on a corner lot with frontage along SE Salmon St. and SE Cesar Chavez Blvd. a four lane transit access street abutting the eastern (side) property line of the site. The existing home on the site was built in 1925 and faces SE Salmon St. The property located directly south of the site (across SE Salmon St.) is zoned CN2 (Neighborhood Commercial 2) and has a building built in 1969 which has a bank (US Bank) located within it. The properties located directly to the north and directly to the west both have single family homes located on them. The home directly to the north was built in 1909, while the home located directly to the west was built in 1919. In addition, a triplex built in 1978 is located directly east of the site across SE Cesar Chavez Blvd.

**Zoning:** The R2.5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

**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 **September 25, 2012**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division
- Life Safety

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on September 25, 2012. A total of two written responses have been received from notified property owners in response to the proposal.

**Summary of Neighbor Response:** One neighbor (exhibit F-1) wrote a letter of opposition to the adjustment request stating that they were in opposition to the requested adjustment because applicant has not shown the approval criteria A-F in code section 33.805.040 has been met. This letter stated that the shed detracts from the appearance of the residential area. In addition, the letter states that the applicant has constructed two additional extensions along the western wall of his dwelling in violation of the 5 ft. side setback required per code. An additional neighborhood letter (exhibit F-2) stated that setback variances should not be allowed unless there is a good reason. Allowing a departure from the regulations set dangerous precedents.

**BDS response:** As indicated in the findings below, it has been determined that reducing the side and rear setbacks for the accessory structure located in the northeast corner of the site from 5 ft. to 4 ft. can meet the approval criteria. The structure is located adjacent to SE Cesar Chavez Blvd (to the east), a busy four lane road which separates the structure from residential properties to the east. The existing residential home to the north has a carport located along the northern property line which provides a buffer between the home located on this lot and the accessory structure. In addition, a wooden fence separates the accessory structure from the sidewalk along SE Cesar Chavez Blvd to the east, providing another buffer. Based on the factors described above, allowing the accessory structure to encroach 1 foot into the 5 foot rear and side setbacks does not have any detrimental impact on the surrounding residential character of the area. The detached accessory structure provides enhanced livability because it provides indoor storage for a typical home and garden equipment and tools which otherwise might be stored outside in an unsightly manner.

In regard to the neighbors concerns about building additions along the western façade of the home. This information was turned over to Code Compliance who investigated and in turn added this information to the active Code Compliance (12- 145755 VI) case on the property.

For the purpose of this review, this issue is not addressed. The property owner may either apply for an additional adjustment for the encroachment into the side setback along the western façade to address this issue, or remove the non-conforming structure within the west side setback. Please see the findings below for additional details regarding the adjustment request.

## ZONING CODE APPROVAL CRITERIA

### 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 purposes of the setback standard requested for Adjustment are found in Section 33.110.220, Setbacks. The setback regulations 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.*
- *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 13 ft. by 8 ft. accessory structure is over 6 ft. in height (but less than 10 feet high) and used as a utility shed and is accessed by an exterior door. The shed is set back 4 feet from the north (rear) property line, and 4 feet from the east (side) property line, hence the request to reduce the 5 ft. rear and side setback by 1 foot.

The accessory structure is located behind the residence on this lot, and situated within the northeast corner of the lot. The site is a corner lot, with frontage along SE Salmon St. to the south and along SE Cesar Chavez Blvd to the east along the side setback. The property located directly north of the site and adjacent to the accessory structure which would be most impacted by the reduced setbacks has a large carport located adjacent to the northern property line of the subject site (exhibit G-3). Given the structure's location in relation to the residential property to the north and the associated carport, and the fact that a busy street (SE Cesar Chavez Blvd) is located directly east of the accessory structure, the structure has a reasonable physical relationship to the adjacent properties within this residentially zoned area. Based on GIS mapping, the distance to the nearest residential property to the east of accessory structure, is approximately 100 ft. away, across a four lane transit access street (SE Cesar Chavez Blvd).

The structure itself is relatively small in scale with approximately 104 square feet in floor area and less than 10 feet in height, much lower than the two story home which the shed abuts. The appearance of the accessory structure would not be substantially different if a 5 ft. setback were in place along the side and rear property lines, as opposed to the existing 4 ft. setbacks.

The 1 foot reduction of the side and rear setbacks from the east and north property lines does not significantly impact adjacent structures, or impinge on light, air and access for fire fighting. The Fire Bureau notes no concerns. The proposed 1 foot reduction to the setback does not appear to reduce privacy for adjacent properties. The reduced site setback will not alter the existing front yard setback nor impact the visual appearance of the front yard area of the subject site.

By approving the requested reduction in the side and rear setbacks by 1 foot, the current placement of the structure will remain as is. The location does not impinge on required outdoor area, remains compatible with the surrounding neighborhood and provides flexibility in keeping this structure as located in an 'out of the way' area on the property. For these reasons, this criterion is met.

For the reasons stated above, 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 site lies within the R2.5 residential zone. The accessory structure cannot be seen from the front of the property along SE Salmon Street due to its location behind the existing house. However, since the site is located on a corner lot the structure is visible from SE Cesar Chavez Blvd. to the east. An existing wood fence currently provides a visual and physical buffer separating the accessory structure from the public right of way along SE Cesar Chavez Blvd. Since the structure is built as lean-to storage shed and abuts the existing home on the site, it appears visually as part of the home when viewed from the street, even though it's not connected to the primary structure and is considered an accessory structure.

The detached accessory structure provides enhanced livability because it provides indoor storage for typical home, garden equipment and tools which otherwise might be stored outside in an unsightly manner. The requested Adjustment to reduce the side and rear setbacks for the shed from 5 to 4 feet adjacent to two property lines will not create a significant visual detracting nor impinge on the livability of the residential area. For these reasons, 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 applicant is requesting two Adjustments. Individually and cumulatively, the requested Adjustments for the existing shed accessory structure are consistent with the purpose of the zone and this criterion is met

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

**Findings:** City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

**Findings:** As found under criterion A and B, the requested Adjustments will not create impacts and therefore do not require mitigation to lessen their effect. This approval criterion is satisfied.

- F.** If in an environmental zone, the proposal has as few significant detrimental

environmental impacts on the resource and resource values as is practicable;

**Findings:** The site is not within an environmental zone. This criterion is not applicable.

## DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## CONCLUSIONS

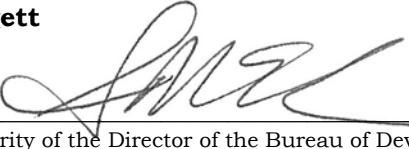
The applicant requests an Adjustment to reduce the setback requirement for an accessory structure (Lean-to storage shed). The required setback for accessory structures over 6 ft. in height in the R2.5 zone is 5 feet. The structure is located approximately 4 feet from the northern (rear) and eastern (side) property lines. Therefore the applicant requests an Adjustment to reduce the side and rear setbacks for the shed from 5 to 4 feet. The proposal meets all of the applicable approval criteria and therefore should be approved.

## ADMINISTRATIVE DECISION

Approval of:

- Adjustment to 33.110.220, to reduce the side and rear setback for an accessory structure (lean to storage shed) from five feet to four feet from the northern (rear) and eastern (side) property lines, per the approved site plan, Exhibit C-1, signed and dated November 2, 2012, subject to the following conditions:

**Staff Planner: Shawn Burgett**

**Decision rendered by:**  **on November 2, 2012**

By authority of the Director of the Bureau of Development Services

**Decision mailed: November 8, 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 5, 2012, and was determined to be complete on **September 19, 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 5, 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.

**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 26, 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 **November 27, 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**

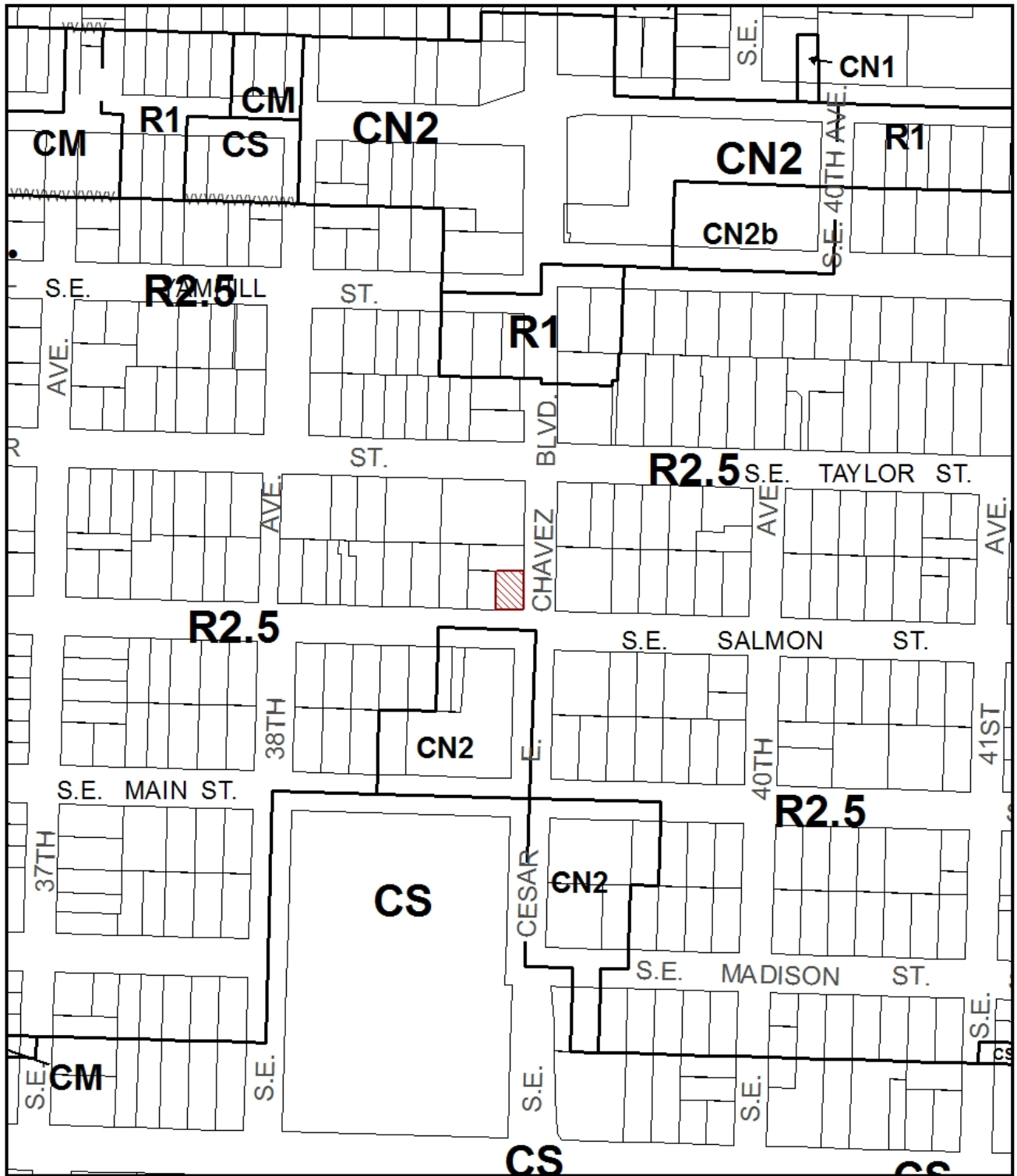
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Applicants narrative
  2. Photos of Site/aerial view, tax map
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (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
- F. Correspondence:
  1. John and Kate Gosling, Letter dated 9/27/12 with associated e-mail dated 10/2/12,
  2. Howard and Alice Shapiro, E-mail dated 9/29/12.
- G. Other:
  1. Original LU Application
  2. Site History Research

3. Picture of Accessory Structure from Google Street view

**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).**





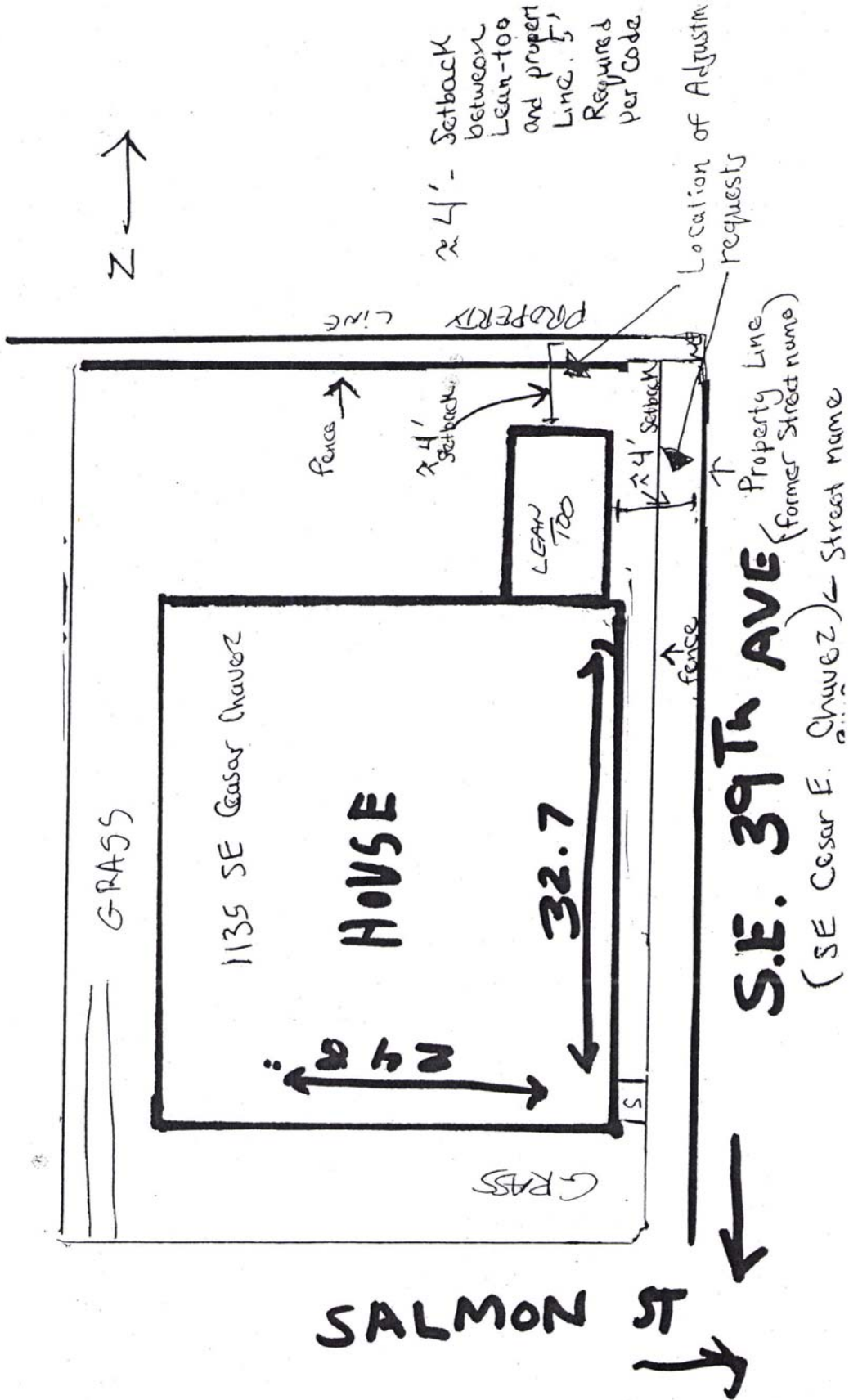
# ZONING

 Site



File No.	<u>LU 12-179246 AD</u>
1/4 Section	<u>3134</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E01AD 10400</u>
Exhibit	<u>B</u> (Sep 24, 2012)

**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner S. Buech Date 11/2/12  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



CASE NO. 12-19246  
 EXHIBIT C-1