



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

Charlie Hales, Mayor  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** May 2, 2013  
**To:** Interested Person  
**From:** Sylvia Cate, Land Use Services  
503-823-7771 / [Sylvia.Cate@portlandoregon.gov](mailto:Sylvia.Cate@portlandoregon.gov)

## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Adjustment Committee has **approved** a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 13-123260 AD**

#### **GENERAL INFORMATION**

**Owner:** Carl J Andreen  
1903 SE Ankeny St  
Portland, OR 97214

**Representative:** Dave Spitzer  
DMS Architects  
2106 NE MLK Blvd  
Portland OR 97212

**Site Address:** 1903 SE ANKENY ST  
**Legal Description:** BLOCK 2 LOT 5, BUCKMANS ADD  
**Tax Account No.:** R114800160  
**State ID No.:** 1N1E35DD 01900  
**Quarter Section:** 3032

**Neighborhood:** Buckman, contact Susan Lindsay at 503-725-8257.  
**Business District:** East Burnside Business Association, contact Matt Bender at 503-803-4224.

**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.  
**Plan District:** None  
**Zoning:** R1, Multi Dwelling Residential 1,000  
**Case Type:** AD, Adjustment  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant proposes to build a structure that would mimic existing garages in the area, 'dug in' to the grade on the site. The proposed structure would have a flat roof with a portion of the roof area used as a patio and the balance of the roof area as a green roof. The structure would be used as a workshop, typically found in residential garages, but will have windows and a person door, rather than a garage door, because the structure will not be accessed by vehicles

due to the location of a stormwater infiltration planter that precludes a curb cut. The applicant requests an Adjustment to reduce the required side yard setback from 5 feet to 6 inches. Attached to this Notice are site plans depicting the proposal.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:

- 33.805.040.A.-F.

**ANALYSIS**

**Site and Vicinity:** The site is a 5,000 square foot lot developed with a single dwelling residence constructed circa 190 and with frontage along the northern half of SE Ankeny. Directly across from the site are lots developed with residential uses and zoned R2.5. Immediately adjacent to the easterly property line of the site is another 5,000 square foot developed with two residential units. The entire rest of the block surrounding the site is zoned CS, Storefront Commercial.

**Zoning:** The site is zoned R1, Multi-Dwelling Residential 1,000. The R1 zone is a medium density multi-dwelling zone. It allows approximately 43 units per acre. Density may be as high as 65 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one to four story buildings and a higher percentage of building coverage than in the R2 zone. The major type of new housing development will be multi-dwelling structures (condominiums and apartments), duplexes, townhouses, and rowhouses. Generally, R1 zoning will be applied near Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.

**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 **April 5, 2013**. The following Bureaus have responded with no issues or concerns:

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

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on April 5, 2013. One written response has been received from a notified property owner in response to the proposal. The letter notes that the proposal will visually detract from the block because other houses have normal side yard setbacks. The letter notes that the structure does not appear to be a garage, but living space and that there are few garages similarly situated on the street. The letter also notes that on-street parking is crowded along the street due to bioswales, a bike lane, and spill over parking from bars and restaurants on Burnside. The letter notes that many cars park along the street to avoid paying for parking. The letter also objects to the appearance of the structure as a retail space, which is prohibited in the current zone. *Staff Note:* All concerns relevant to the approval criteria are included in the findings, below.

**ZONING CODE APPROVAL CRITERIA****33.805.010 Purpose (Adjustments)**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review

process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing 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 purpose of the setback regulations is found at 33.120.220, *Setbacks*, which states:

Purpose: The building 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 multi-dwelling development 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
- Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users.

Because of the proposed configuration of the new structure, partially set into the existing grade of the site, it will have no impact on light and air. The Fire Bureau notes no concerns. The set in style of garages is typical in the general residential area. Given the location of the homes directly east of the site, the proposed placement of the new structure will maintain reasonable separation from other residences, and no aspect of the proposal is anticipated to impinge on privacy because there will be no windows on the east facing façade of the shop building. Due to the proposed offset placement for the new structure, the open front yard and wide porch of the existing house will remain open. The addition of a new patio and the utilization of a green roof atop the proposed structure will continue to provide a feeling of openness. By proposing to locate the new structure close to the easterly property line and setting the structure partially into the existing grade of the site, approval of the request will result in the flexibility needed to locate the new building in this area. Given the fenestration and guard rails proposed for the new building, the addition will create additional visual interest to the streetscape for pedestrians. For all these reasons, 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 is in a residential zone, R1. The proposed structure and reduced side setback will result in a project that is well integrated architecturally with the

existing house, as well as add additional, useable outdoor area via the patio area atop the flat roofed shop which will be partially set into the existing grade of the site. This configuration is not atypical in the area. The improvements will add additional livability to the site for the homeowner and will have no adverse visual impacts to the residential neighborhood.

A notified neighbor objects to the proposal, suggesting that because the structure will not have a garage-like appearance. The neighbor further notes that the proposed structure looks like living space or a retail shop because of the configuration of the street facing garage. As additional living space, the neighbor further notes that this could in turn add one more car to existing limited on-street parking. Because the site is zoned Multi-Dwelling R1, an additional living unit on the site would be allowed. However, the applicant notes that the use of the structure will be a typical homeowner shop that would be present in a garage, but due to the lack of a curb cut, the structure cannot function as a garage. The request to reduce the side setback has no impact on parking. The site currently has on-site parking to the north of the existing house. Retail or any commercial use within the proposed structure is prohibited in the R1 zone, and none is proposed. The proposed patio area is well outside of required setbacks, and thus will not impact privacy of adjacent lots. 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:** Only one adjustment is requested. This criterion is not applicable.

- 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:** There are no discernible impacts that would result from granting the requested adjustment. This criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** The site is not 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 proposes to build a structure that would mimic existing garages in the area, set into the existing grade of the site, and close to the easterly property line. Because of the existing bio-swale in the public right of way, which includes the frontage of the site, the structure will not be able to accommodate vehicle parking because no curb cut will be allowed through the swale. The proposal meets all of the applicable approval criteria and therefore should be approved.

## ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to 33.120.220, to reduce the required side yard setback from 5 feet to 6 inches for construction of a shop building, per the approved site plans, Exhibits C-1 through C-2, signed and April 30, 2013, 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 13-123260 AD."

**Staff Planner: Sylvia Cate**

**Decision rendered by:**  **on April 30, 2013**

By authority of the Director of the Bureau of Development Services

**Decision mailed: May 2, 2013**

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

**Procedural Information.** The application for this land use review was submitted on March 5, 2013, and was determined to be complete on **April 2, 2013**.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on March 5, 2013.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: July 31, 2013.**

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

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

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the

permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

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

**Appealing this decision.** This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 16, 2013** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](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 **May 17, 2013 – (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.

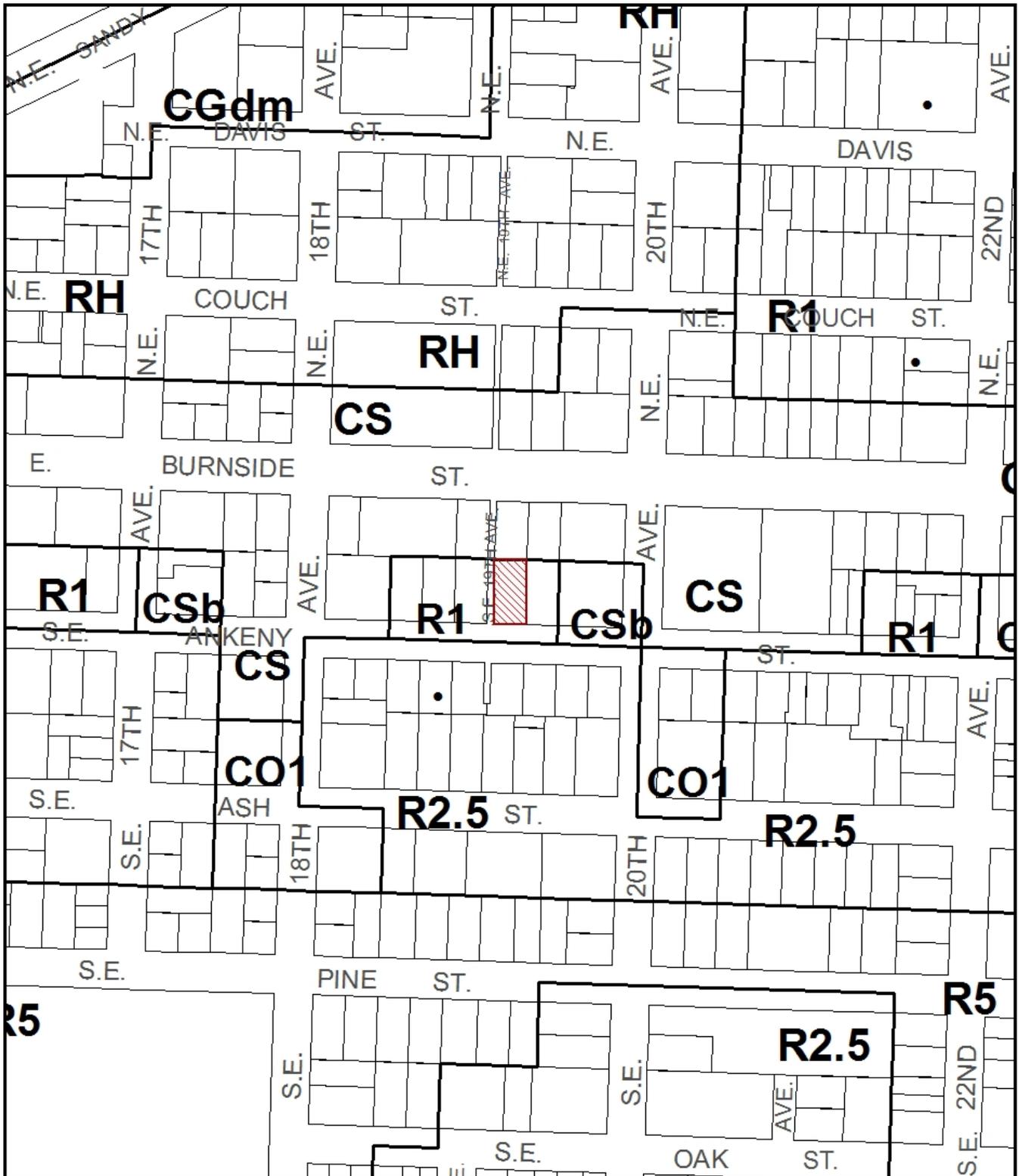
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Street 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
- F. Correspondence:
  - 1. C. Devita, April 26, 2013, objections and concerns
- 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

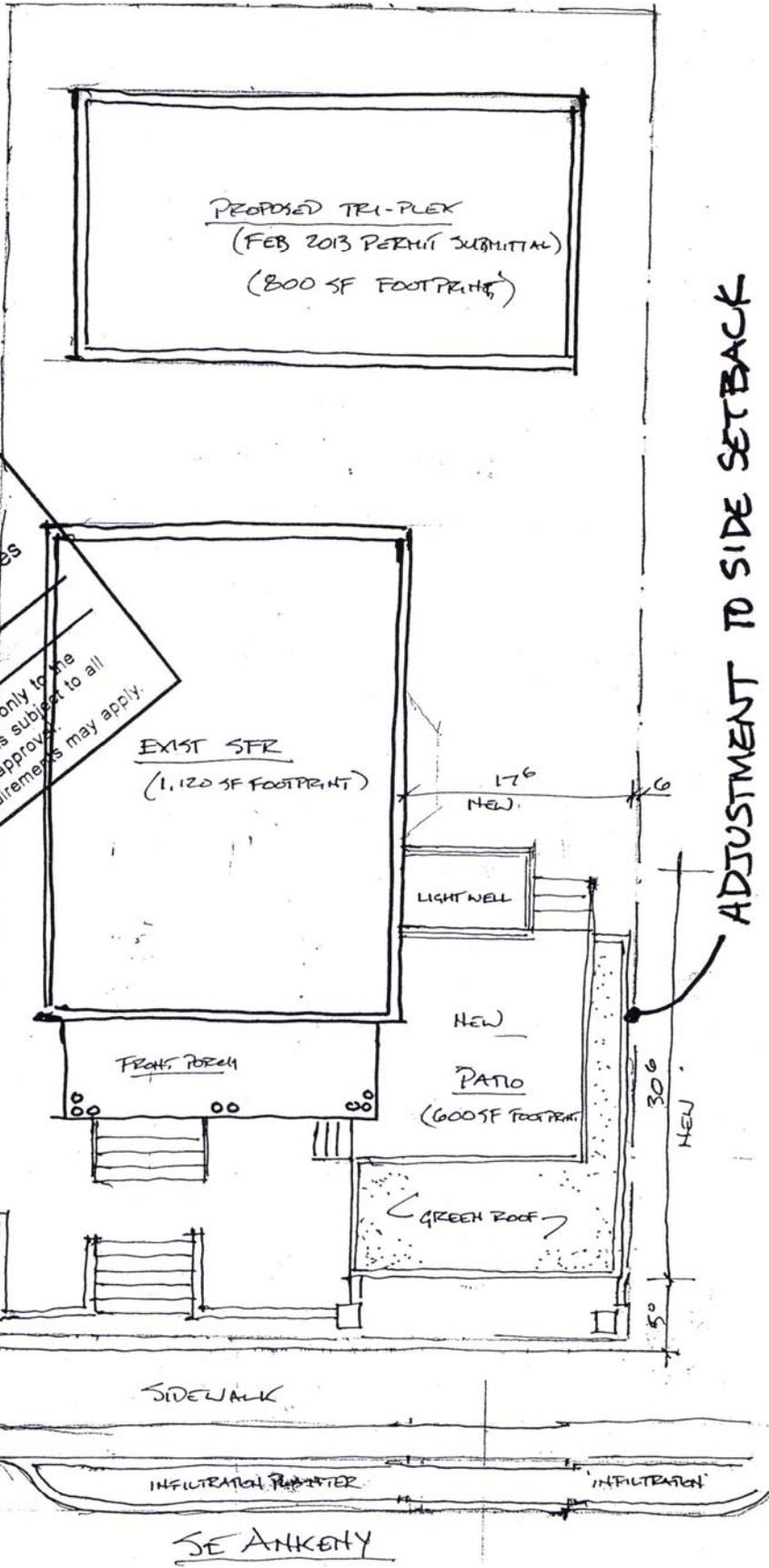


Historic Landmark



NORTH

File No.	LU 13-123260 AD
1/4 Section	3032
Scale	1 inch = 200 feet
State_Id	1N1E35DD 1900
Exhibit	B (Mar 07, 2013)

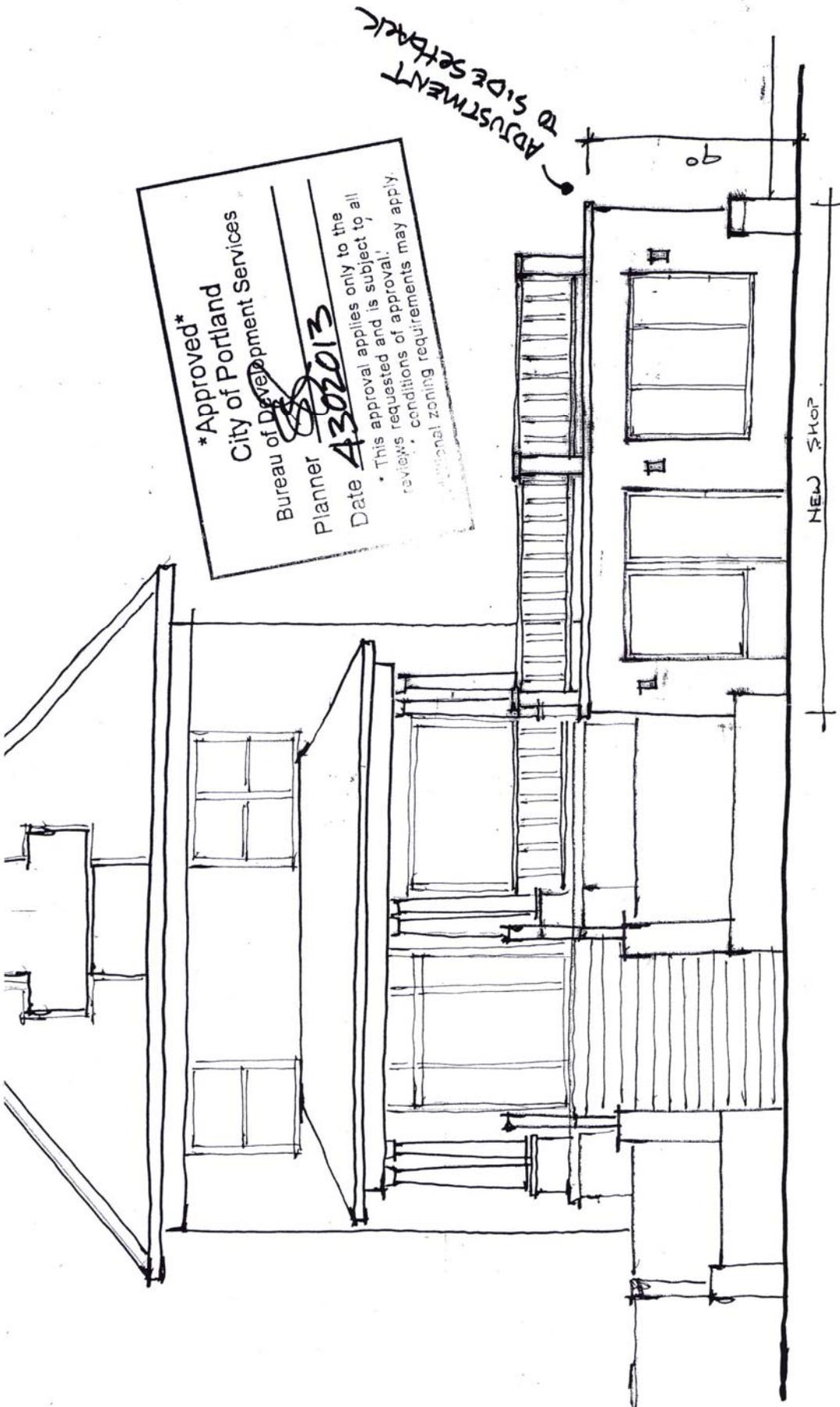


**\*Approved\***  
 City of Portland  
 Bureau of Development Services  
 Planner [Signature]  
 Date **4-30-2013**

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

SITE PLAN  
 DMS 1.26.13 1/8" = 1'0"

LV 13 123260AD



\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner *[Signature]*  
 Date 4/30/2013  
 \* This approval applies only to the  
 reviews requested and is subject to all  
 conditions of approval.  
 Additional zoning requirements may apply.

FRONT (STREET) ELEVATION

DMS 1-26-13

1/4" = 1'-0"