



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

Charlie Hales, Mayor
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Date: May 21, 2013
To: Interested Person
From: Shawn Burgett, Land Use Services
503-823-7618 / 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 13-128244 AD

GENERAL INFORMATION

Applicant: Tracy Orvis
2827 NE Ainsworth St / Portland, OR 97211

Owners: Joel Michael & Danielle Dumont
6705 N Kerby Ave / Portland, OR 97217

Site Address: 6705 N KERBY AVE

Legal Description: BLOCK 2 S 42' OF LOT 9, LOCHINVAR ADD
Tax Account No.: R502500650
State ID No.: 1N1E15BD 13700
Quarter Section: 2329
Neighborhood: Piedmont, contact Brian Borrello at 503-754-5595.
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321.
District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

Zoning: R5 (Single Family Residential 5,000 sq. ft.)
Case Type: AD (Adjustment)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant is proposing to construct a new 14'6" wide by 27'7" long, 2 story detached garage with a second floor accessory dwelling unit (ADU) in the southwest corner of the subject site. The structure will be 18 feet tall measured to the mid-point of the roof. The existing detached garage will be demolished. The applicant has proposed to place the structure 3 feet from the adjacent western (rear) and southern (side) property lines. Zoning Code section 33.110.220.B (table 110-3) requires 5 foot side and rear setback. The applicant has requested adjustments to this standard.

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 subject site is a flat interior lot with frontage along N. Kerby Ave which is improved with sidewalks and a planter strip. The existing home on the site which was built in 1924. Many of the homes in this area were built during the same era, and have historical architectural features.

Zoning: The R5 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 **April 12, 2013**. The following agencies had no 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 April 12, 2013. One written response (exhibit F-1) has been received from a notified property owner in response to the proposal. The letter is discussed in the findings below.

ZONING CODE APPROVAL CRITERIA

Title 33.805.10 Purpose of Adjustments

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the code's regulations would preclude all use of the site. Adjustment reviews provide flexibility for unusual situations and to allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.40 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below are met.

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

Findings: The applicant has requested Adjustments to the Zoning Code setback standards in order to construct the new detached garage with a second floor accessory dwelling unit (ADU). The adjustments are to Zoning Code section 33.110.220.A and table 110-3 which require a 5 foot rear and side setback. The applicant is proposing 3 foot rear and side setbacks along the southern and western property boundary for the new ADU/attached garage (see attached site plan).

The purpose of the setback and parking regulations are listed below:

Purpose 33.110.220 Setbacks

- *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.*

The request to reduce the required rear and side setback from 5 feet to 3 feet equally meets the purpose of the regulation. Currently, a one story detached garage measuring approximately 14 feet wide by 24 feet in length is located in the southwest corner of the site, partially in the area where the new structure is proposed. The existing detached garage wall (measuring approximately 24 feet) is located approximately 1' from the south property boundary. The proposed ADU/detached garage will be located 3 feet from the adjacent property boundary to the south and west with an associated eave which will extend an additional 1 foot into the setback. The proposed structure will be set back approximately 69 feet from the public right of way (N Kerby Ave) and set back approximately 20 feet from the associated property boundary to the north. The proposed ADU will have a façade which is 27'7" feet in length along the southern property line. The 3 foot setback provided along the side and rear set backs maintains light, air and separation for fire protection.

The owner of the home south of the proposed ADU/detached garage would be most effected by the setbacks (6633 N Kerby Ave) has provided a letter (Exhibit F-1) requesting the windows proposed along the south side of the proposed new structure be opaque for privacy reasons, since the new structure abuts the rear yard of their property. This request was passed onto the applicant, who has agreed to put privacy glass in the south facing windows of the new structure. In addition, the property owner to the west of this proposal would also be affected by the reduced rear setback. This property (6706 N. Borthwick Avenue) has a detached garage located approximately 25 feet from the rear property boundary of the subject site. This detached garage provides a visual buffer between the proposed ADU/detached garage on the subject site and the primary residence on adjacent property to the west. No windows are proposed along the rear facing façade of the new ADU/detached garage, which maintains privacy along the rear property line for adjacent properties. In addition, the applicant has indicated that they plan in preserving a evergreen tree near the rear of the property, which will also provide a visual buffer between the property to the west and the subject site.

Therefore, a reasonable physical relationship between residences will be maintained. The southern façade of the proposed ADU where the setback adjustment is proposed will have privacy glass in both the windows proposed. These windows are long and narrow and located 5 feet above ground level and are intended to allow in light, as opposed to providing views. The detached garage/ADU is designed with the majority of its windows and doors facing the interior parts of the site (north); therefore, privacy for the abutting lots is maintained. The proposed reduced south (side) and west (rear) setbacks allow for flexibility to develop the ADU/detached garage in a location with little impact, while also allowing the preservation of a existing evergreen tree located directly north of the proposed structure. In addition, adequate outdoor area is provided for the ADU and existing home. This criterion is met.

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

Findings: The proposal will not detract from the livability or appearance of the residential area. The ADU/detached garage is proposed to be located 3 feet from the south and west property lines, in a location where a detached garage is partially located. The structure will be built with privacy glass in the windows located along the south façade, facing the south property line and the neighboring property – this helps to reduce adverse impacts on privacy for the neighbors. The ADU/detached garage is designed so that the siding, window orientation, roof pitch and trim match the primary structure.

Based on this information, this criterion is met.

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

Findings: Two Adjustments have been requested (side and rear setback), the cumulative effect of the adjustments are consistent with the purpose of the zone, allowing flexibility on a site for a new ADU/detached garage which provides housing opportunities for households.

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

Findings: As indicated above, the existing home south of the proposed ADU/detached garage which would be most effected by the proposed setback adjustment (6633 N Kerby Ave) has provided a letter (Exhibit F-1) requesting the windows proposed along the south side of the proposed new structure be opaque for privacy reasons, since the new structure abuts the rear yard of their property. The applicant has agreed to put privacy glass in the south facing windows of the new structure. The windows proposed along the south façade of the new structure are long and narrow and located 5 feet above ground level and are intended to allow in light, as opposed to providing views. The size and location of the windows, along with the privacy glass proposed within these windows adequately addresses privacy concerns for the adjacent neighbors to the south.

With a condition of approval, requiring that privacy glass is installed on the south facing windows, this criterion is met.

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

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

Findings: The site does not contain any identified scenic or historic resources and the site is not located in an environmental zone; therefore, these criterion are not applicable.

DEVELOPMENT STANDARDS

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

CONCLUSIONS

The applicant proposes an Adjustment associated with plans to demolish an existing one story detached garage and construct a new 2 story detached garage/second floor ADU. The adjustments include a reduction to the south and west setback for the new structure. As noted in this report, the proposal is able to meet the Adjustment approval criteria with approval granted based on the current location of a detached garage within the side setback and the minimal windows on the south façade, which the applicant has agreed to place privacy glass in

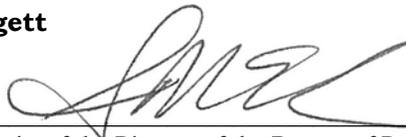
at the request of the adjacent neighbor to the south. With approval requiring that the permit drawings substantially conform with the site plan and elevation drawings attached, the Adjustment requests meet the applicable criteria and should be approved. *Staff note: changes may be made to the design of the ADU to ensure that it meets the Design Standards of 33.205.030.C and D.*

ADMINISTRATIVE DECISION

Approval of Adjustments to 33.110.220.A (table 110-3) to reduce the south (side) and west (rear) setback of the proposed detached garage/second floor ADU from 5 feet to 3 feet, (with an additional 1 foot eave) per the approved site plans, Exhibits C-1 through C-2, signed and dated May 17, 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 13-128244 AD
- B. The applicant is required to install privacy glass in the window openings located along the south façade of the structure.

Staff Planner: Shawn Burgett

Decision rendered by:  **on May 17, 2013**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 21, 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 15, 2013, and was determined to be complete on April 9, 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 15, 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.

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 June 4, 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.

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 **June 5, 2013**.
- 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:

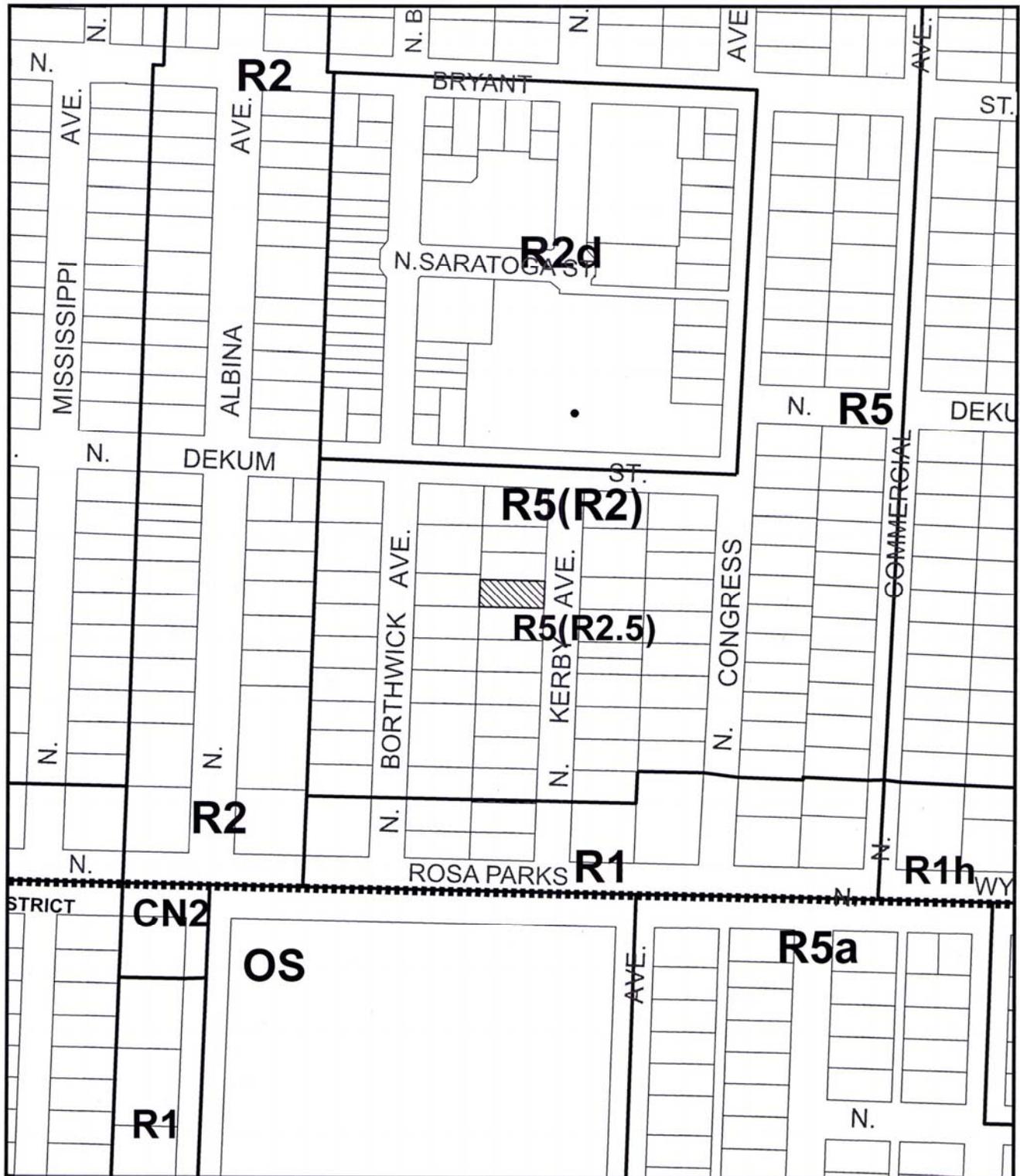
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicants narrative
 - 2. Original elevations/site plan prior to revisions
 - 3. Elevation of primary home with ADU/Detached garage
 - 4. Photo of primary house
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations (attached)
 - 3. Floor plan of ADU/detached garage (attached)
 - 4. Floor plan of primary house
- 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. Steve Keller, 4/24/13, 6633 N Kerby Ave Portland, OR 97217
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete Letter
 - 4. E-mail from applicant dated 5/9/13 regarding privacy glass

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

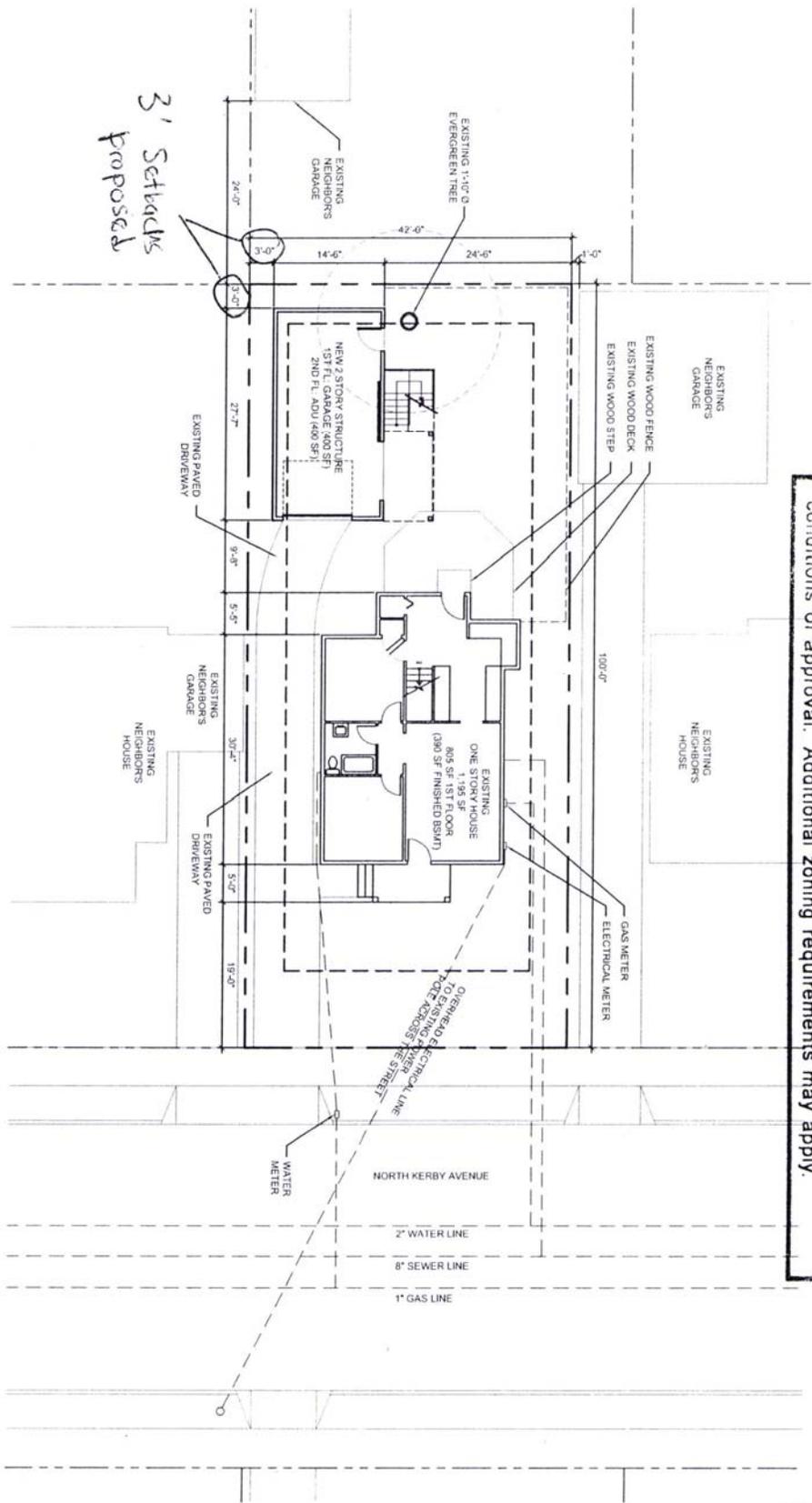
 Site

 Historic Landmark



File No. LU 13-128244 AD
 1/4 Section 2329
 Scale 1 inch = 200 feet
 State_Id 1N1E15BD 13700
 Exhibit B (Mar 15, 2013)

Approved
 City of Portland - Bureau of Development Services
 Planner S Burgett Date 5/17/13
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



KERBY GARAGE + ADU

6705 N KERBY AVENUE, PORTLAND, OR 97217

SITE PLAN

SCALE: 1" = 20'-0"

CASE NO. 13-128244
 EXHIBIT C-1

Approved

City of Portland - Bureau of Development Services

SBurgott

Date 5/17/13

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

- Privacy
Glass
Required
on both
windows

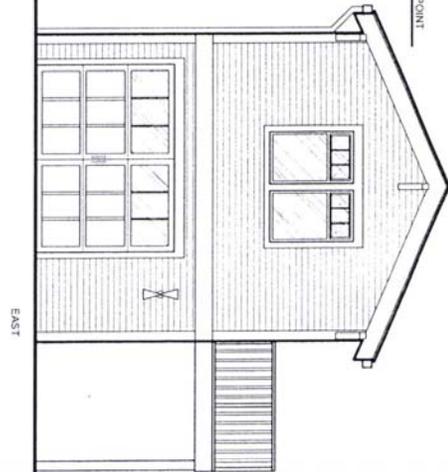
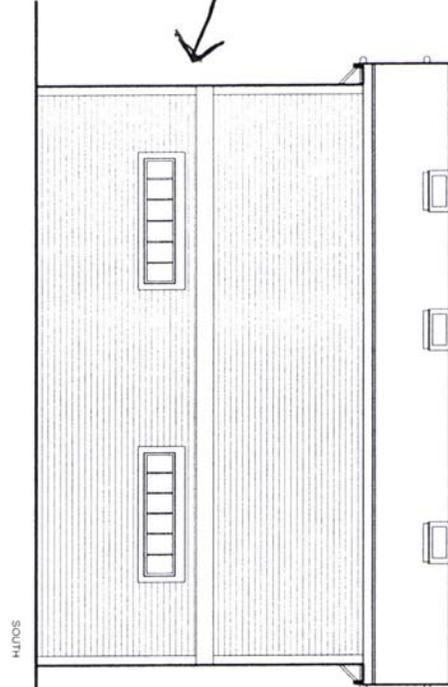
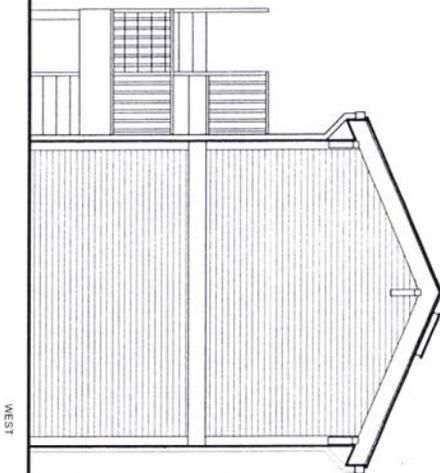
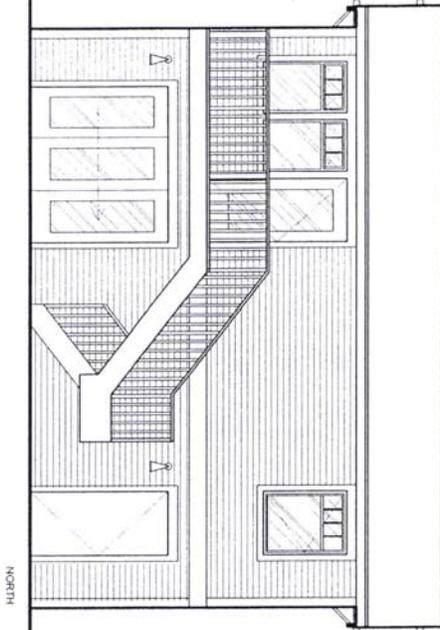


6705 N KERBY AVENUE, PORTLAND, OR 97217

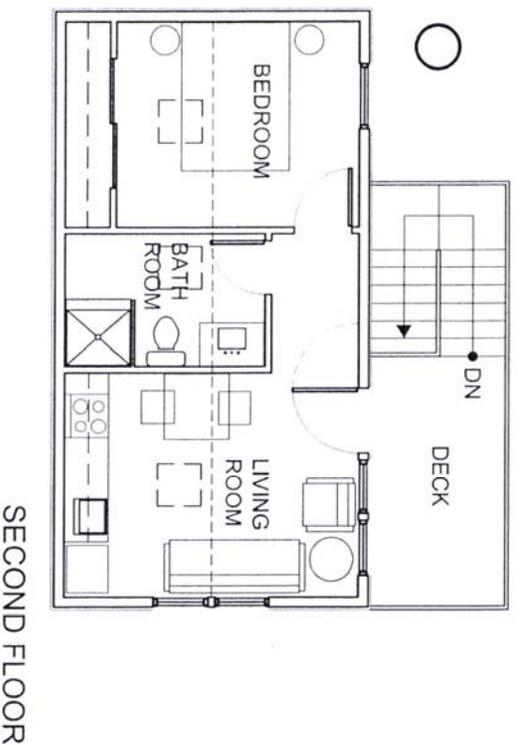
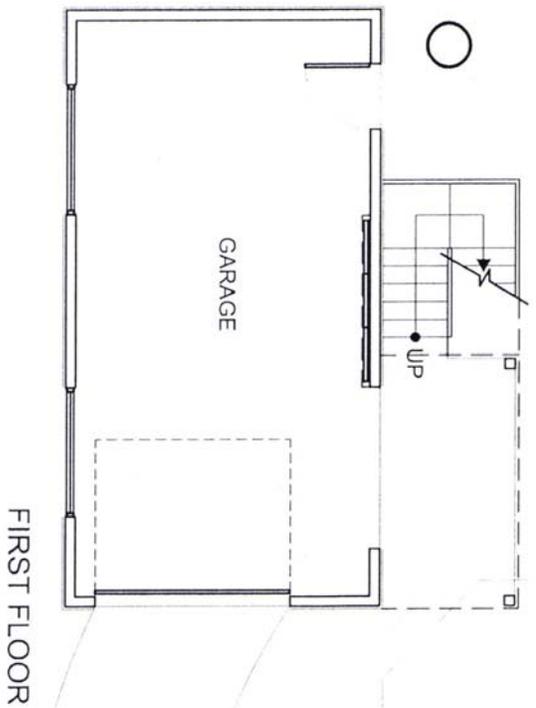
KERBY GARAGE + ADU

ELEVATIONS OF PROPOSED STRUCTURE

SCALE: 1/8" = 1'-0"



CASE NO. 13-128244
EXHIBIT C-2



KERBY GARAGE + ADU

6705 N KERBY AVENUE, PORTLAND, OR 97217

FLOORPLANS OF PROPOSED STRUCTURE

SCALE: 1/8" = 1'-0"



CASE NO. 13-128244
 EXHIBIT C-3