



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

FROM CONCEPT TO CONSTRUCTION

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Date: January 13, 2014
To: Interested Person
From: Amanda Rhoads, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **denied** 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 13-220193 AD

GENERAL INFORMATION

Applicant: Erich Garnica
630 Pleasant Ave. #B106 / Oregon City, OR 97045

Owners: Ryan and Therese Donohoe
4234 NE Prescott St / Portland, OR 97218-1632

Site Address: 4234 NE PRESCOTT ST

Legal Description: TL 2100 0.18 ACRES, SECTION 19 1N 2E
Tax Account No.: R942190540
State ID No.: 1N2E19CB 02100 **Quarter Section:** 2635
Neighborhood: Beaumont-Wilshire, contact Michael Rounds at 503-936-0740.
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.
Zoning: R5h – Residential 5,000 with an “h” Aircraft Landing Overlay Zone
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant is requesting legalization of a 9-foot, 4.5-inch by 24-foot rear addition and new deck to a permitted two-story garage and storage building. The garage/storage building with the addition (the “accessory structure”) has 1,020 square feet of building coverage, whereas the primary house has 777 square feet of building coverage. The applicant has requested an Adjustment to Zoning Code Section 33.110.250.D.2, which states that the building coverage of an accessory structure may not be greater than the building coverage of the primary structure.

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 45 feet wide and 170 feet deep, making it 7,650 square feet total. The house on the site, located toward the front of the property, was constructed in 1934 as a one-story building with a tuck-under garage. The partial attic has since been converted into finished space. The site has a slope of about 9.4% according to LiDAR-derived two-foot contours, sloping up from Prescott. This means that the south end of the lot is approximately sixteen feet higher than the north end at Prescott.

In 2003, the then-owners built a permitted, two-story garage with living space above the automobile area. Its footprint at the time was just under that of the primary house. The construction of the garage included a new driveway to the back of the property. Some time later, this garage was expanded without permits by 24 feet by 9.33 feet to make the garage's footprint a total of 1,020 square feet, or 31% larger than the primary house. The expansion has a dormered roof off the back of the garage with a deck leading from a rear door. The expansion made room for a kitchenette and additional office/storage on the second floor and a storage space on the main (garage) floor. The structure is not an accessory dwelling unit.

The site is on busy NE Prescott St., adjacent to a public charter school that is part of the Portland Public Schools system and across the street from commercial buildings and multi-dwelling residential sites. To the east and south, the site is adjacent to other single-dwelling houses in an R5 zone.

At this location, NE Prescott is classified in the Transportation System Plan as a Neighborhood Collector, Transit Access Street, City Bikeway, City Walkway & a Local Service (Street Design mode). One lot away, NE 42nd Ave. is a Transit Access Street, a Neighborhood Collector Street, a City Walkway and City Bikeway as well, but is designated a Regional Main Street.

Zoning: The site is zoned **Residential 5,000** (R5) with an **Aircraft Landing Overlay Zone** (denoted by the letter "h").

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

The "h" overlay provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The current proposal is not subject to height limits through the h overlay.

Land Use History: City records indicate that prior land use reviews on the site include the following:

ZC 6894 proposed to change the zoning in the blocks bounded by NE 42nd to NE 47th and between Shaver and Prescott, from R5L to R7L. The Planning Commission denied the request.

Summary of Applicant's Statement: The applicant's statement makes the following points:

1. The addition is not visible from the street.
2. The width of the addition is less than that of the main house.
3. Setbacks meet or exceed standards.
4. The accessory structure is 170 feet from the street.

BDS Staff Comment: As will be explained below, the accessory structure has high visibility from two street frontages. While the accessory structure is two feet narrower than the primary

house, it is now twelve feet longer. Finally, the garage is located about 105 feet from the street lot line. More explanation on these points is included below in the section Zoning Code Approval Criteria.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **December 16, 2013**. The following Bureaus have responded with no issues or concerns relevant to the requested land use review:

- Bureau of Environmental Services;
- Site Development Section of BDS;
- Bureau of Transportation;
- Bureau of Parks-Forestry Division;
- Water Bureau;
- Bureau of Environmental Services; and
- Life Safety (Building Code) Plans Examiner.

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the Notice of Proposal.

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:

33.110.250, Accessory Structures

Purpose: This section regulates structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards provide for necessary access around structures, help maintain privacy to abutting lots, and maintain open front setbacks.

The two sentences of the purpose statement will be addressed independently.

This section regulates structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site.

The applicant has requested an Adjustment to Zoning Code Section 33.110.250.D.2, which states that the building coverage of an accessory structure may not be greater than the building coverage of the primary structure. This regulation helps to implement the purpose statement above. Given the particular context of this site and proposal, it would be impossible to make the case that granting the Adjustment to this regulation “equally or better” meets the purpose of the regulation.

The relevant context includes the following points:

1. ***The topography of the site highlights the accessory structure.*** The site slopes up from Prescott some 16 feet from the front of the lot to the back, nearly a 10% slope. This makes the accessory structure much more apparent and appear more significant from nearby streets than it otherwise might if the site were flat or sloping downward. It sits above the primary house.
2. ***There are significant views into the property both from Prescott and from NE 42nd.*** Despite the fact that the addition is on the rear of the garage, the structure and addition both have high visibility from two streets. The primary house has a thirteen-foot driveway on its west side and the setbacks on the subject site and the site to the east allow views on that side as well. The adjacent property to the west is a public charter school in the Portland Public Schools system. This has three impacts:
 - a. The open parking lot in front of the school enables views from a wide array of vantage points along both sides of Prescott between the subject site and the corner at NE 42nd Ave.
 - b. The open playground behind the building enables a clear view from NE 42nd through the school site and to the back half of the subject site. The addition is particularly visible from NE 42nd Ave. The school's fence along 42nd Ave. is neither tall enough nor sight-obscuring enough to block any views into the subject site.
 - c. The school is also a public space in its own right. Views from the rear of the school to the accessory structure are clear, and this garage, being on an elevation higher than the school site, has a significant mass from the viewpoint of the school.
3. ***The site reads as having two primary structures.*** The addition's design contributes to the accessory structure looking like a primary house. There is nothing visually about the accessory structure that would make it clear that it is, in fact, accessory. There is little differentiation with mass or the size of the buildings, the architecture or the details that demonstrates this building is incidental to the primary structure.

The side elevations reveal garage walls that are 12 feet longer than the side walls of the primary house. This is 30 percent longer and is visible from Prescott but even more so from NE 42nd Ave.

The garage already had a dormer roof that largely mirrored the pitch of the primary home. The windows in place on the garage make the garage look like a house from the street already. However, the addition includes a dormer roof on the back half of the building perpendicular to the main roofline (similar to the primary house's front porch, though much larger). The entryway on the rear of the addition is accessed by a deck that appears like an uncovered front porch. The house-like design features makes the garage read like a house facing south.

4. ***The addition (and resulting living area) makes the structure even more out of scale.*** With the addition, the garage's footprint is now 31% larger than the main house. The building also has two full stories, unlike the primary home which has one and a half. The garage has 850 square feet of livable space on the second story, which includes a bathroom and kitchenette. This is more square footage than the primary house had when it was first built. Given the large footprint and the mass of the accessory structure, it clearly reads like a predominant building.

5. **Finally, this site is in an urban neighborhood**, surrounded to the east and south by homes in the R5 zone that all, at most, have a garage, shed or shop as outbuildings. Instead of reading like a site with one of these accessory buildings, the subject site most resembles a nearby flag lot where two houses are now located on a former single site. The perception of two primary houses is in direct conflict with the purpose statement to keep accessory structures incidental to primary buildings.

In other Adjustments granted to the same regulation in the last ten years, the sites have been much more rural in character and/or with larger lots; the accessory structures were completely or mostly obscured from view; and the purpose of the accessory structure was clearly incidental to the primary house on the site.

In this situation, for the reasons described above, the regulation would not equally or better meet the purpose of the regulation to be modified.

The standards provide for necessary access around structures, help maintain privacy to abutting lots, and maintain open front setbacks.

Access around the accessory structure is not an issue. The site is large enough that the building was built outside of the setbacks, providing enough room to navigate around both buildings. Likewise, the accessory structure is behind the primary house, so that the front setback is unaffected.

The addition has windows on each elevation and an open back deck that could pose privacy concerns. Both the deck and the new western window look down onto the Ivy School's playground toward the rear of their site, which is at a lower elevation from the subject site. The addition also brought the accessory structure up to eighteen feet closer to the house behind it (including the deck), making views into that yard and that home's windows possible. Finally, there are clear views to the backyards of two additional neighbors to the east.

Again, the building is not located within the setbacks required by the Zoning Code, so the privacy concerns are not primary to the particular regulation being requested for Adjustment, but the addition onto the structure does enable more views into these neighboring properties that could be troubling from a privacy perspective.

For the reasons listed above, this criterion is not 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: As stated above, the site currently appears to have two primary structures on it, with the "accessory" structure visible from two street frontages and appearing like a primary structure due to the reasons outlined in A above. The addition provides views into adjacent yards and the public space of the school playground. The scale of the accessory structure is significantly larger than any others on the block. While trees provide some screening, many of them have no branches low enough to screen the building, and many are deciduous, leaving the building highly visible at least half of the year.

The proposal detracts from the appearance of the neighborhood by adding what looks like a house to a place where no house should be. It creates a jumbled environment that is confusing to read and is out of context with the surrounding R5 zoning.

This criterion is not 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: No mitigation has been proposed to address the impacts of this oversized accessory structure. The new gate that staff noted on the most recent site visit across the driveway does little to obscure views of the accessory structure or change its appearance as a second house. ***This criterion is not 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: Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase "p" (Environmental Protection overlay zone) or a "c" (Environmental Conservation overlay zone). As 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.

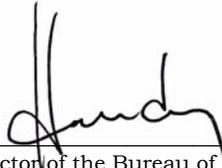
CONCLUSIONS

The proposed addition brings the accessory structure out of conformance with Zoning Code Section 33.110.250.D.2, and so an Adjustment to this regulation has been requested. However, the proposed addition results in the accessory structure appearing as a second house on the site, which is what the regulations of Zoning Code Section 33.110.250 intend to avoid. It does this by adding additional floor area and a dormer roof onto the back half of the property, as well as a deck that serves as the entryway to the garage from the rear; and extending the walls on the side elevations to 12 feet longer than the side walls of the primary house. Furthermore, the structure is visible from multiple points on two street frontages due to the structure's scale, the slope of the site and the additional views allowed by an adjacent school. Due to its appearance as a primary house and its visibility on the site, the proposal does not meet the approval criteria and should be denied.

ADMINISTRATIVE DECISION

Denial of request for Adjustment of 33.110.250.D.2 to allow an addition as built to accessory structure to have 31 percent more building coverage than the primary structure on the site.

Staff Planner: Amanda Rhoads

Decision rendered by:  **on January 10, 2014.**
By authority of the Director of the Bureau of Development Services

Decision mailed: January 13, 2014

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 October 23, 2013, and was determined to be complete on December 11, 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 October 23, 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: April 10, 2014.**

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 January 27, 2014** 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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

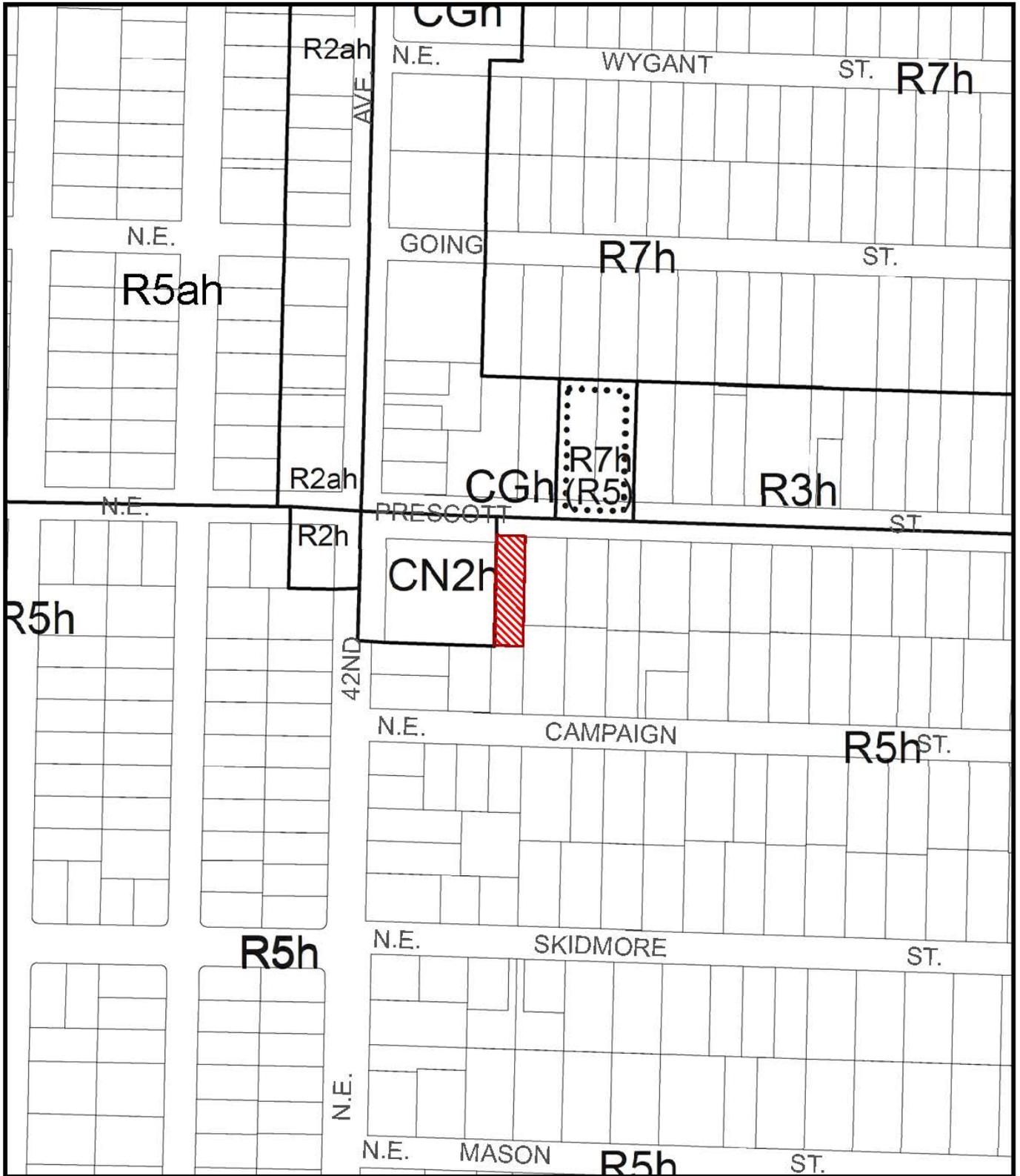
Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Accessory Structure Elevations (attached)
 - 3. Accessory Structure Main Floor Plan (attached)
 - 4. Accessory Structure Upper Floor Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Water Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety (Building Code) Plans Examiner
- F. Correspondence: none received
- G. Other:
 - 1. Original LU Application
 - 2. Applicant Photos
 - 3. Site Visit Photos 1
 - 4. Site Visit Photos 2
 - 5. Incomplete Letter, November 6, 2013
 - 6. Email to Applicant, November 22, 2013

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).

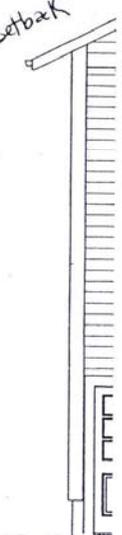
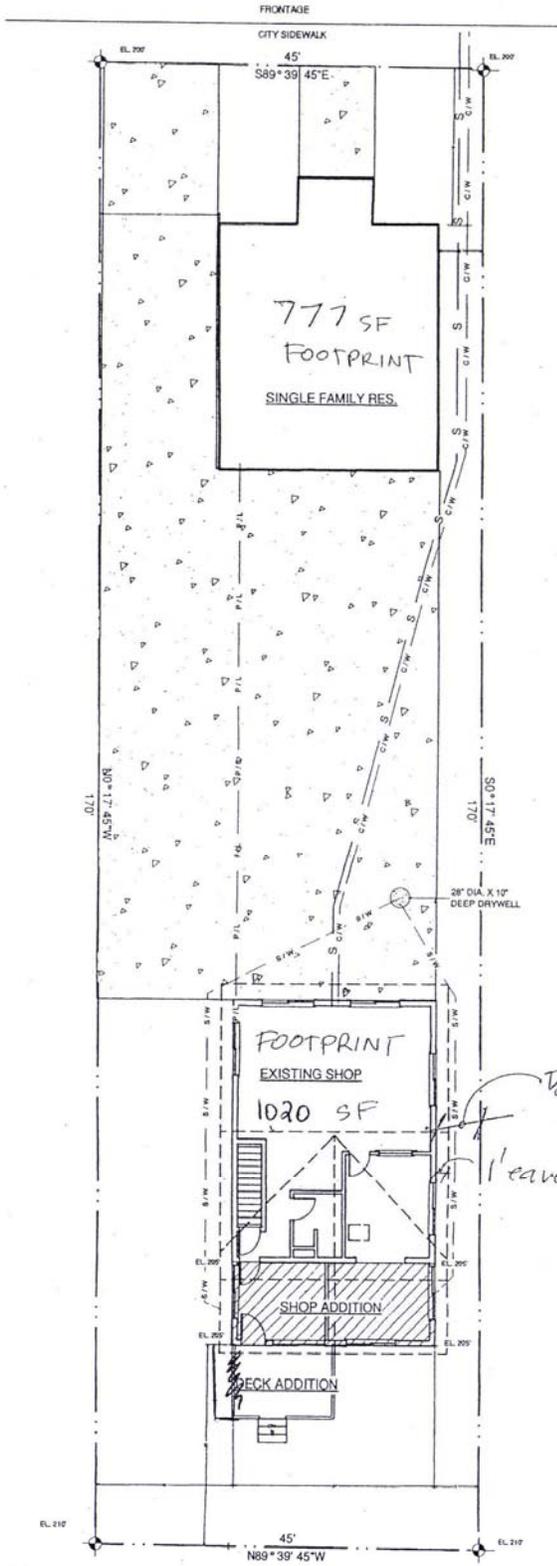


ZONING



File No. LU 13-220193 AD
 1/4 Section 2635
 Scale 1 inch = 200 feet
 State_Id 1N2E19CB 2100
 Exhibit B (Oct 29, 2013)

NE PRESCOTT



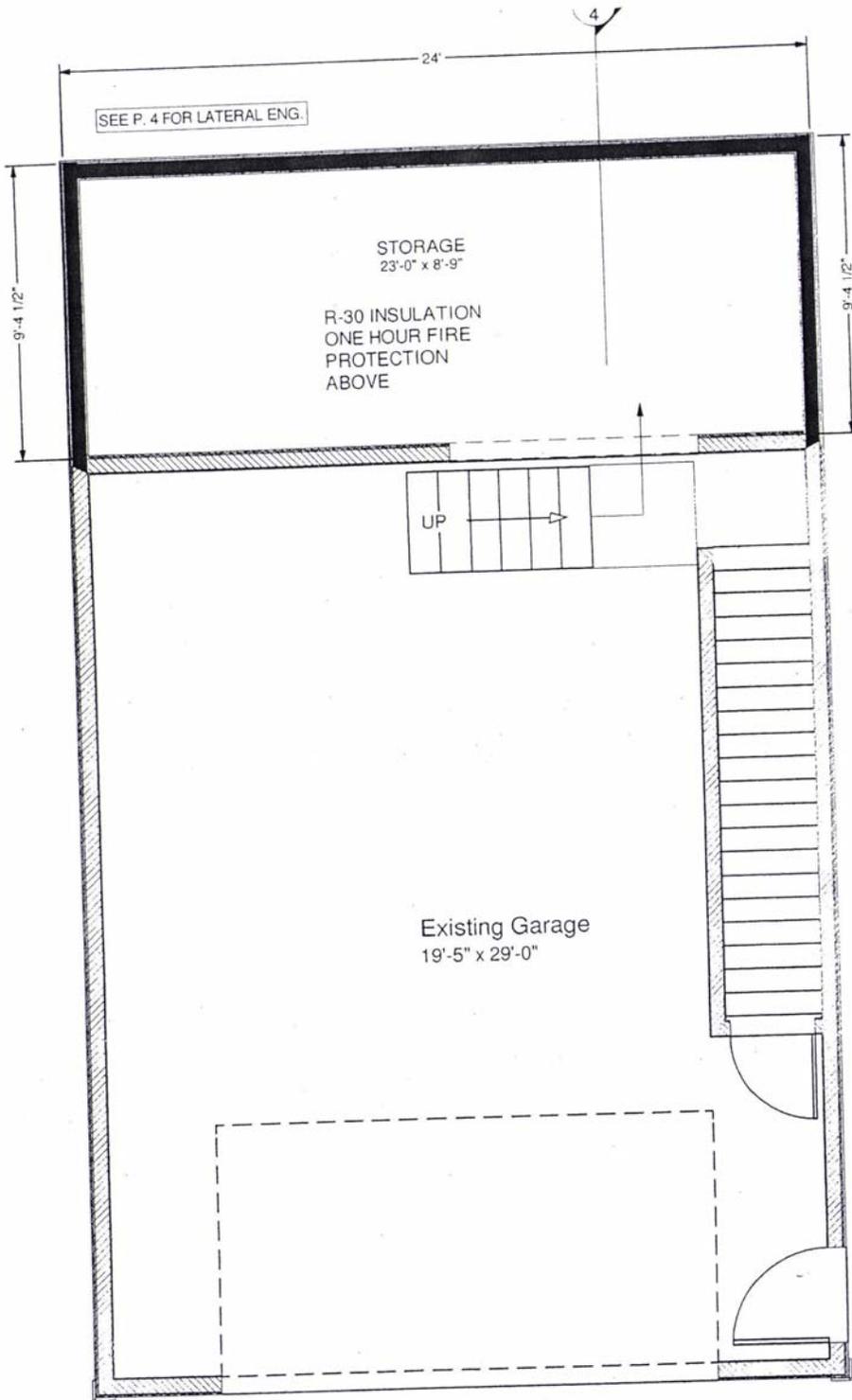
SITE PLAN

SCALE: 1"=10'

LEGAL SECTION 18 1/4 NW 1/4 2100 S 18 ADRES
OWNER ANDY KRUE
SITE ADDRESS 4224 NE PRESCOTT
LOT COVERAGE / BUILDING HEIGHT / FLATWORK
LOT AREA: 7645.55 sq ft
BUILDING AREA: EXISTING HOUSE 777 sq ft, SHOP 720 sq ft
SHOP ADDITION 720 sq ft, TOTAL: 1497 sq ft
BUILDING COVERAGE: 64% 50% FT. ALLOWED
BUILDING HEIGHT: 20'
FLATWORK AREA: 2100 SQ. FT.

LOT COVERAGE / BUILDING HEIGHT / FLATWORK	
Site plan is based on data supplied by owner, not boundary survey. Actual coordinates and dimensions may vary from what is shown. Adjustment may be required once boundary survey is provided.	
LEGEND	
SEWER	— S
POWER	— P/L
WATER	— C/W
PROPERTY LINE	— C/N
SETBACK LINE	— S/W
STORM WATER	— S/L
ENCLOSURE LINE	— E/L

CASE NO. Lu 13-220193 AD
EXHIBIT C.1



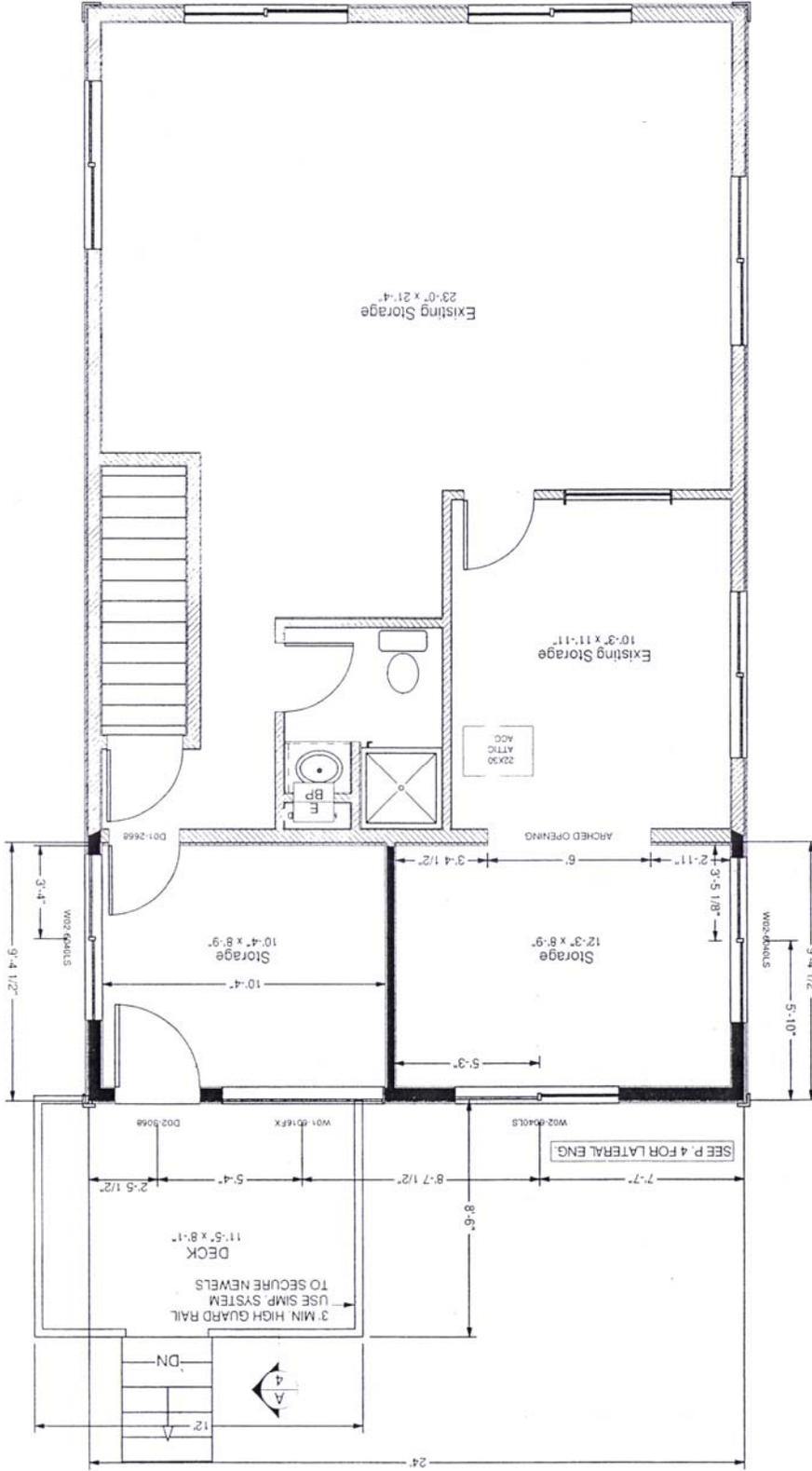
MAIN FLOOR PLAN

SCALE: 1/4" = 1' NEW = 225 SQ FT NEW
TOTAL = 450 SQ FT

CASE NO. Lu 13-220193 AD
EXHIBIT C.3

SCALE: 1/4" = 1' NEW = 225 SQ FT NEW TOTAL = 450 SQ FT

UPPER FLOOR PLAN



CASE NO. Lu 13-220193 AD
EXHIBIT C.4