



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
Paul L. Scarlett, Director
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www.portlandoregon.gov/bds

Date: January 28, 2014
To: Interested Person
From: Amanda Rhoads, Land Use Services
503-823-7837 / Amanda.Rhoads@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 13-234414 AD

GENERAL INFORMATION

Applicant: Ben Valentin / Birdsmouth Construction LLC
1633 SE 55th Avenue / Portland OR 97215

Owners: Casey Whisler, Erin Leddy, Karen Whisler
4912 NE Going St. / Portland, OR 97218-2039

Site Address: 4912 NE GOING ST

Legal Description: TL 11600 0.45 ACRES, SECTION 19 1N 2E
Tax Account No.: R942192030
State ID No.: 1N2E19BD 11600 **Quarter Section:** 2535
Neighborhood: Cully, contact Evans Martin at 503-784-1494.
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.
Zoning: R5h – Residential 5,000 with an Airport Landing “h” Overlay Zone
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant proposes to convert the existing primary dwelling on the site into an Accessory Dwelling Unit (ADU) and build a new house behind the existing house. Per Zoning Code section 33.205.030.C.6, ADUs are limited to 75% of the size of the primary house, or 800 square feet, whichever is less. The applicant proposes to construct a new 1,400 to 1,500 square-foot home. The existing home is 935 square feet. The ADU will be less than 75% the size of the new home, but is larger than the 800 square foot maximum. Therefore, the applicant requests an Adjustment to this regulation to allow the conversion of the home from the primary structure to the ADU.

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 property is on the south side of NE Going Street, a Local Service Street. This street has a right-of-way of 50 feet, but is only improved with 28 feet of paving. The site is in an area with large lots and limited sidewalk infrastructure. The lots on the north side of NE Going Street generally are either 40,000 square feet or 28,000 and 12,000 square feet (where they have been split into front lots and flag lots). The lots on the south side of the block are somewhat smaller, most of which sharing the subject site's size of 19,598 square feet except where flag lots now exist.

There is no consistent pattern to the size of the lots or the locations of the houses on them in the immediate area. The larger lots have led to some unusual development patterns, including many flag lots nearby, some apartment buildings, a new cohousing community across the street, a six-lot subdivision and lot partitions. The block with the site includes many of these examples to better utilize the large lots.

The subject site is developed with a house originally built in 1926 which appears to have been expanded at least once. There are a number of large Douglas firs and deciduous trees on the lot which provide screening to much of the rear of the site. There is a tall laurel hedge on the west property line further limiting visibility of the site from the street.

Zoning: The site is located in a Single-Dwelling Residential 5,000 (R5) Zone, with an Airport Landing "h" Overlay Zone.

The R5 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. This overlay does not apply in residential or commercial zones.

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

PR 06-117765 PLA requested a property line adjustment between the subject site and the adjacent site to the west, 4848 NE Going. The property line adjustment was never finalized and the property line was not moved.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed on **December 31, 2013**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Life Safety (Building Code) Plans Examiner

The Bureau of Transportation Engineering had no concerns with the proposed Adjustment; however, they responded with the following comment: "As a condition of building permit approval the applicant must construct standard frontage improvement under a separate public works permit per the requirements of the City Engineer. A bond and contract shall also be a condition of building permit approval."

Neighborhood Review: A "Notice of Proposal in Your Neighborhood" was mailed on **December**

31, 2013. No written responses have been received from either the Neighborhood Association or notified property owners in response to the 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: 33.205.030 Accessory Dwelling Unit Design Standards

Purpose. Standards for creating accessory dwelling units address the following purposes:

- *Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;*

The street on which the site is located has much larger lots than standard R5-zoned streets, and the lots are much larger than the adjacent R7 zoning to the north (which traditionally would have lots larger than lots in the R5 zone). To compensate for the oversized lots, different approaches have been taken at different times. There are many flag lots on both the north and south sides of the street. There are subdivisions and lot partitions. A cohousing community was recently built on a particularly large lot. Allowing an accessory dwelling unit, even one that is somewhat larger than the maximum size usually allowed, is not out of character for the neighborhood, nor does it impact the livability. In fact, the wooded condition of the lot and the distance that the current house (which will become the ADU) is located from the front lot line (over 67 feet) minimize the impact an additional house will have on the appearance or livability of the neighborhood.

- *Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;*

The lot is 82.5 feet wide by 239 feet deep. Even with an additional house on the site, there will be sufficient land to accommodate yards and parking for both structures. In fact, placing the two homes relatively close together (21 feet apart) enables more of the site to be kept in a natural state. There already are two driveways on the property as well, so sharing a driveway appears unnecessary.

- *Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and*

The proposed ADU will be approximately 62% to 67% the size of the new primary house. The footprint of the ADU will be 180 square feet or more smaller than the new primary home. Despite the Adjustment to the maximum allowed size of the ADU, it will

be clear from both overall size and height of the two structures which one is the primary structure and which is the ADU.

- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

The proposed ADU meets all other design standards for ADUs. Because of the placement of the structures and the ample size of the lot, the buildings will fit the topography of the site. Given the depth of the site, it is reasonable to keep the ADU as the front building and use the ample space behind to build the new primary house.

For all of 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: As stated above, the front half of the site is heavily wooded and the proposed ADU is more than 67 feet back from the property line. The existing house is not very visible from the road. Building a new primary house behind this house will have no impact on the appearance of the residential area since the tree cover allows little visibility into the site. The site already has two driveways and will be able to accommodate any additional parking needs onsite. This configuration minimizes impacts on livability as the ADU in combination with the new house will not result in impacting on-street parking. Finally, the adaptation of this oversized site to accommodate two houses only follows the neighborhood trend of breaking up or otherwise increasing density on these large lots, and in this way is consistent with the neighborhood. This criterion is met.

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

Findings: 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: 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

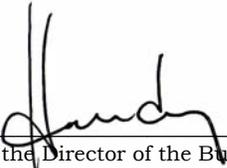
Allowing an Accessory Dwelling Unit above the maximum size standard of 800 square feet makes the best use of the existing home without making the ADU appear in any way more primary than the new structure that will be built and will serve as the new primary residence. The impact will not be felt on the neighborhood; the site is wooded, allowing few views into it, and both homes will be set back significantly from the road. Allowing an additional house is consistent with the many ways past and present owners have broken apart or otherwise increased the density of these oversized lots in the immediate area. Allowing an ADU to contain an additional 135 square feet, when the structure is already built and has existed on the site for decades, in no way impacts the livability or the appearance of the neighborhood. The approval criteria have been met, and the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of Adjustment to **33.205.030.C.6, Maximum Size of an Accessory Dwelling Unit**, to convert an existing house into a 935-square-foot Accessory Dwelling Unit per the approved site plans, Exhibits C-1 through C-3, signed and dated January 24, 2014, 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.XX. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-234414 AD."

Staff Planner: Amanda Rhoads

Decision rendered by:  **on (January 24, 2014.)**
By authority of the Director of the Bureau of Development Services

Decision mailed: January 28, 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 December 4, 2013, and was determined to be complete on December 26, 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 December 4, 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 26, 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 February 11, 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.

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 **February 12, 2014**.

- 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

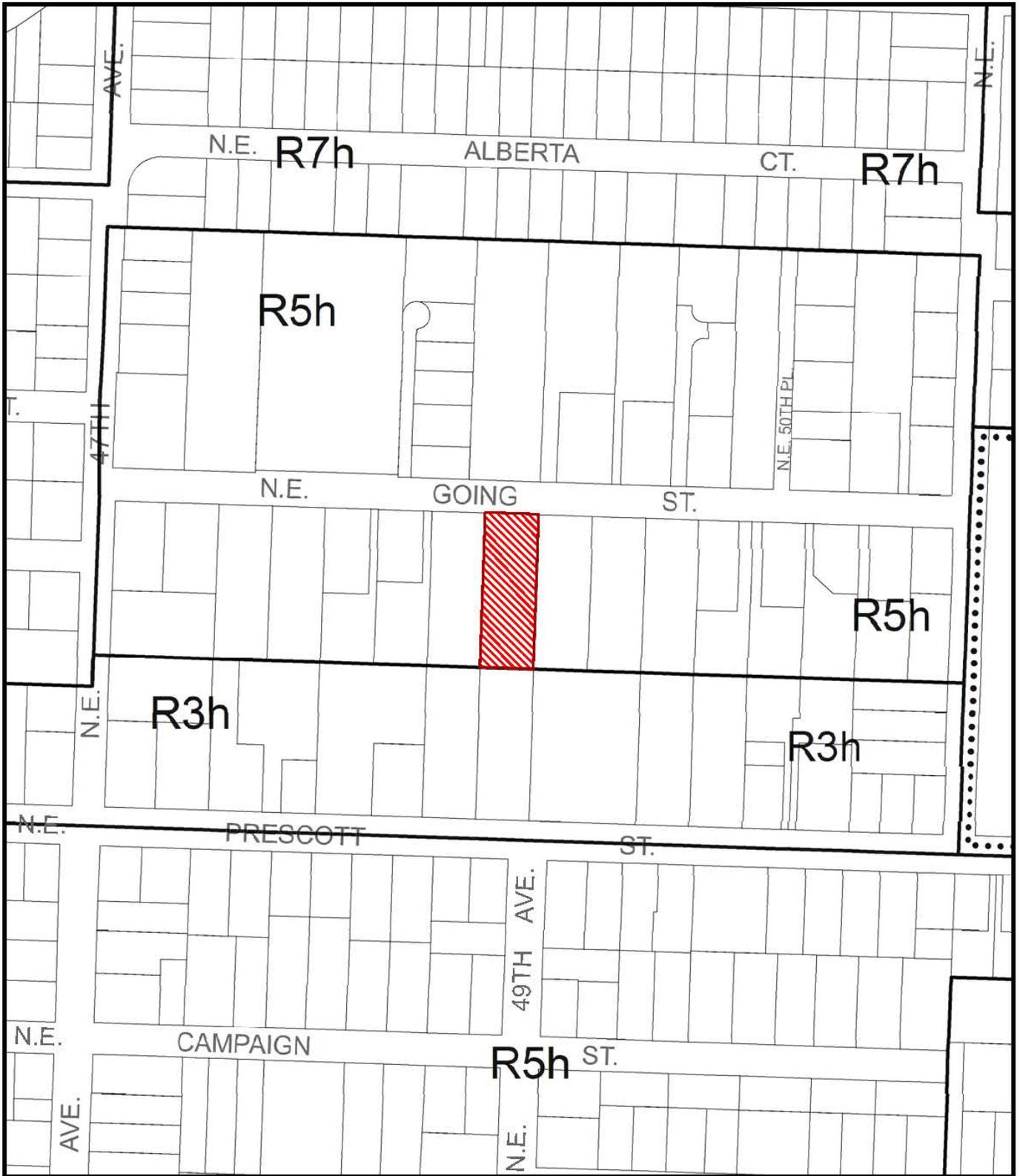
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. North and South Elevations illustrating both the existing and proposed dwellings (attached)
 - 3. East and West Elevations illustrating both the existing and proposed dwellings (attached)
 - 4. ADU Floor Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety (Building Code) Plans Examiner
- F. Correspondence: none received

G. Other:

1. Original LU Application
2. Incomplete Letter, December 16, 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

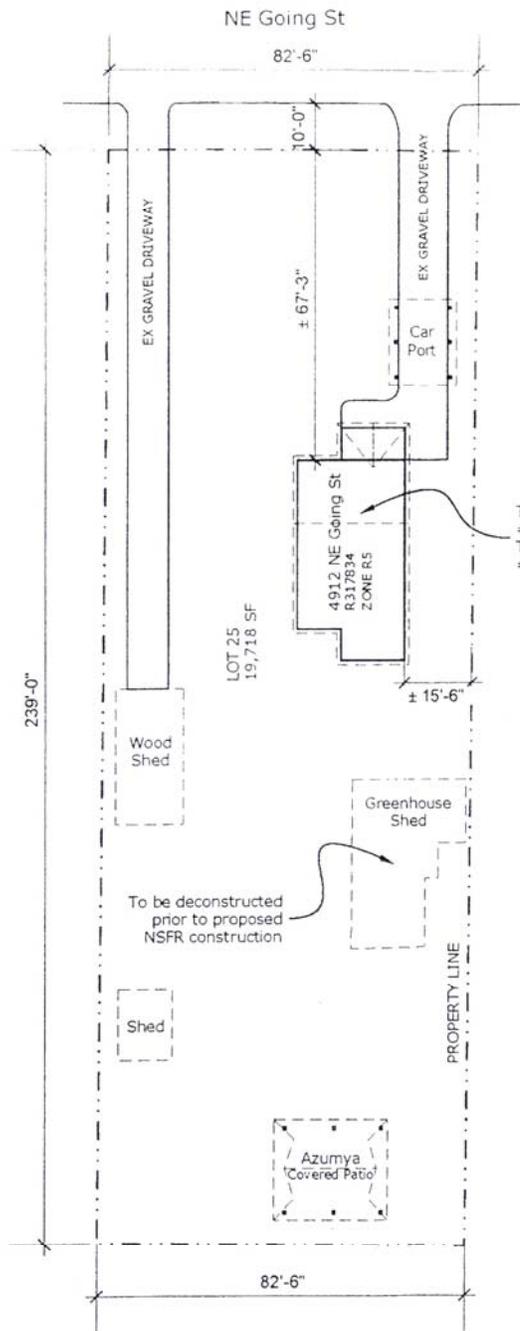


Site

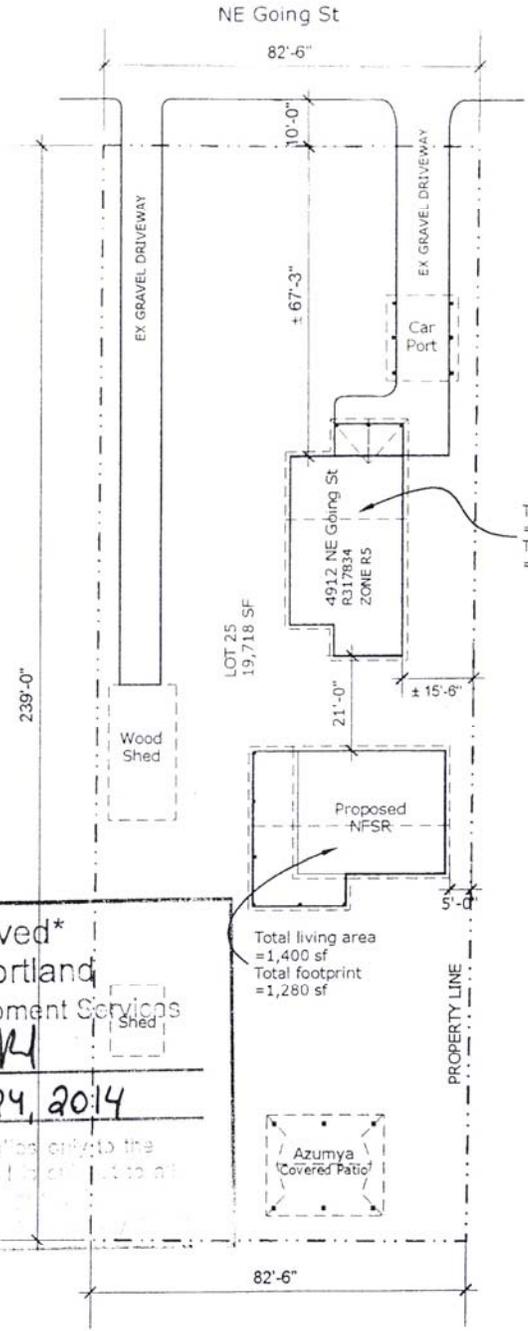


NORTH

File No. LU 13-234414 AD
 1/4 Section 2535
 Scale 1 inch = 200 feet
 State_Id 1N2E19BD 11600
 Exhibit B (Dec 09, 2013)



Total living area
= 935.34
Total footprint
= 1,100 sf

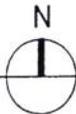


Total living
= 1,400 sf
Total footprint
= 1,280 sf

Approved
 City of Portland
 Bureau of Development Services
 Planner Andy R
 Date January 24, 2014

* This approval applies only to the
 revisions requested and not to other
 conditions of the plan.

1
A1 EXISTING SITE PLAN
SCALE: 1" = 40'-0"



2
A1 NEW SITE PLAN
SCALE: 1" = 40'-0"



CASE NO. LU 13-234414 AD
 EXHIBIT C.1

L



Birdsmouth Construction, LLC
 2015 SE Water Ave
 Portland, OR 97214
 ccb#184665

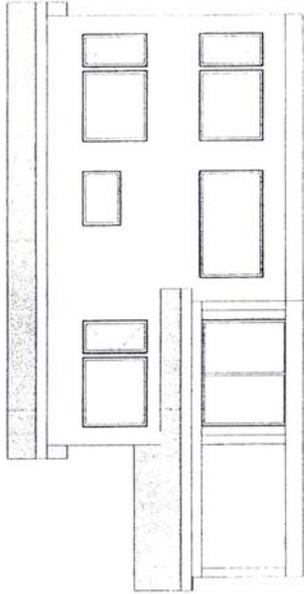
Drawn By Ben Valentin
 (323) 459-2067
 Issued 12/04/2013

Whisper/Leddy Residence
 Land Use Review
 4912 NE Going St
 Portland, OR 97218

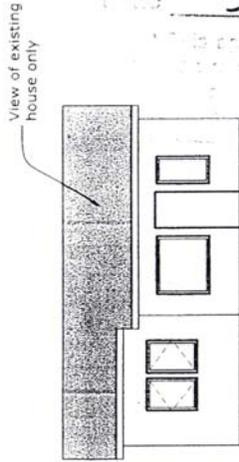
BUILDING ELEVATIONS

A2

Approved
 City of Portland
 Bureau of Development Services
 Planner Ann M
 Date January 24, 2014



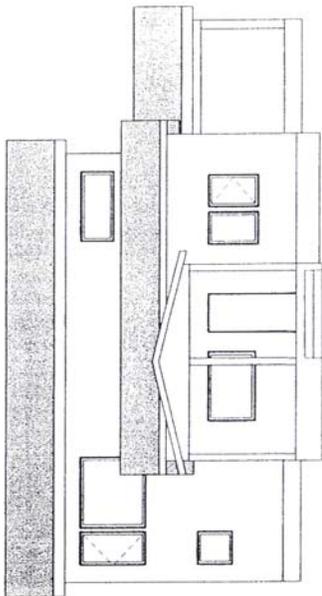
2 SOUTH ELEVATION
 SCALE: 1/8" = 1'-0"



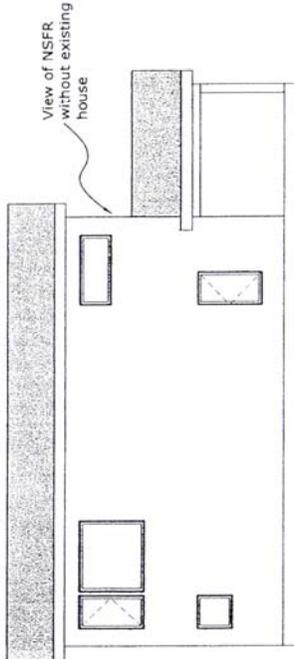
View of existing house only

4 SOUTH ELEVATION
 SCALE: 1/8" = 1'-0"

Approval for ADU elevations only. Design of new primary house must meet all applicable standards during building permit process.



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



View of NSFR without existing house

3 NORTH ELEVATION
 SCALE: 1/8" = 1'-0"

CASE NO. 44 13-234919 AD
 EXHIBIT C.2



Birdsmouth Construction, LLC
 2015 SE Water Ave
 Portland, OR 97214
 CCB#184665

Drawn By Ben Valentin
 (323) 459-2067
 Issued 12/04/2013

Whisper/Leddy Residence
 Land Use Review
 4912 NE Going St
 Portland, OR 97218

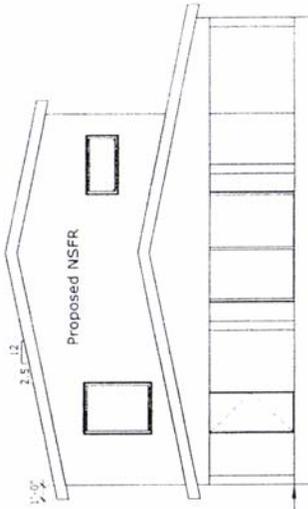
BUILDING ELEVATIONS

A3

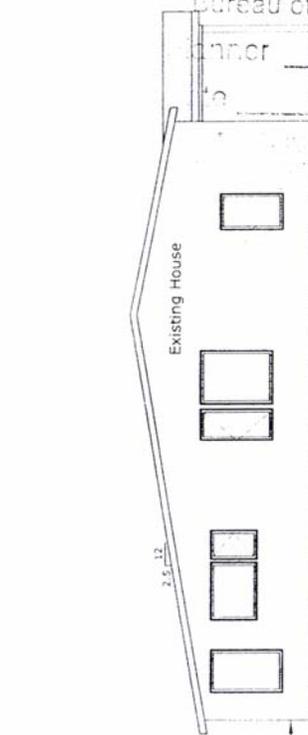
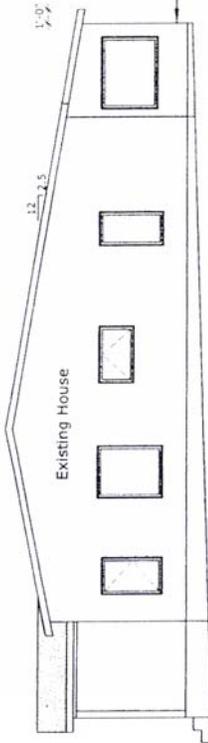
"Approved"
 City of Portland
 Bureau of Development Services

Adm
 January 24, 2014

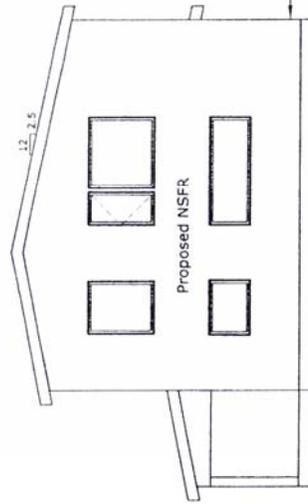
Approval for ADU elevations only. Design of new primary house must meet all applicable standards during building permit process.



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



2 EAST ELEVATION
 SCALE: 1/8" = 1'-0"



CASE NO. LU 13-234914 AD
 EXHIBIT C-3