



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

FROM CONCEPT TO CONSTRUCTION

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Date: March 31, 2014
To: Interested Person
From: Kathleen Stokes, Land Use Services
503-823-7843 / Kathleen.Stokes@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 13-242201 AD

GENERAL INFORMATION

Applicant: Kevin Fischer / 4803 NE 32nd Ave / Portland OR 97211

Owners: Leslie Heilbrunn & John Eckenrode / 4340 NE 49th Ave
Portland, OR 97218

Site Address: 4340 NE 49TH AVE

Legal Description: BLOCK 6 TL 2800, IRVINGTON ACREAGE TR
Tax Account No.: R420703000
State ID No.: 1N2E19CA 02800 **Quarter Section:** 2635
Neighborhood: Cully, contact David Sweet at 503-493-9493.
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.
Zoning: R5h, High Density Single-dwelling Residential 5,000,with an Aircraft Landing (height) Overlay

Case Type: Adjustment Review
Procedure: Type II, administrative decision with appeal to Adjustment Committee.

Proposal: The property owners are proposing to convert their existing garage to use as an accessory dwelling unit (ADU). They would like to remove the driveway area to create a new green space, that would serve as a yard for the future occupants of the ADU. The Portland Zoning Code, Title 33, requires single-dwelling residences to have one on-site parking space. No parking space is required for an ADU. Exceptions to this and other Code requirements are approved through Adjustment Reviews, when all of the approval criteria are met or if the criteria can be met through conditions of approval. Therefore, the applicant is requesting approval of an Adjustment to Code Section 33.266.110, to waive the requirement for an on-site parking space.

Title 33 also requires that the walls of structures be set back 5 feet from the side and rear property lines. Roof eaves on structures must be set back a minimum of 4 feet from the side and rear property lines. In some cases, existing garages that were legally constructed, but are located within the required setback areas, can be converted for other uses by right. This structure does not meet the exceptions to be able to be converted by right and so it is subject to the 5-foot setback requirement. The applicants are asking for approval of a second adjustment,

to Code Section 33.110.220, to reduce the side setback for the structure from 5 feet to 3 feet, 8 inches to the east wall and from 4 feet to 2 feet for the roof eave.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

ANALYSIS

Site and Vicinity: The site is a 6,840 square-foot taxlot, that is located on the southeast corner of the intersection of NE Campaign Street and NE 49th Avenue. The site is developed with a single-dwelling residence that was constructed in 1955. The main entrance of the house faces NE 49th Avenue. There is also a detached garage that is located in the northeast corner of the lot, facing NE Campaign Street. The area around the house is mainly developed with other single-dwelling residences. The streets in the immediate area are Local Service Streets with paved roadways. While many streets in the area have no curbs or sidewalks, the streets that abut this site have received these improvements.

Zoning: The site is zoned R5, High Density Single-Dwelling Residential 5,000. This zone is intended to accommodate single-dwelling development, with an average of one unit per 5,000 square feet of site area. This site also has an “h” or Aircraft Landing Overlay. The provisions of this overlay zone, that limit the height of structures within the aircraft landing approach patterns for the Portland International Airport, are not relevant to this proposal.

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 **February 20, 2014**. The following Bureaus have responded with no issues or concerns:

- Environmental Services provided information regarding sanitary infrastructure and storm water management requirements for the applicant’s advice for future building permit review (Exhibit E-1).
- Transportation Engineering commented that there was evidence of adequate on-street parking in the vicinity of the site and noted that conditions of approval of the adjustment to waive on-site parking should include requirements to close the two curb cuts on the site’s street frontages, to restore the sidewalk corridors and to consult with the City’s Urban Forester regarding street tree planting requirements (Exhibit E-2).
- Water Bureau offered a response with information regarding the existing water service and requirements for upgrading the service to serve the proposed ADU (Exhibit E-3).
- Site Development Section of BDS provided general information on the characteristics of the site, recommended that the applicant obtain a Sanitary Evaluation Permit, to decommission an abandoned cesspool, and also noted that requirements of City Title 10 for erosion prevention and sediment control apply to both site preparation work and development (Exhibit E-4).
- Life Safety Plan Review Section of BDS provided comments that are intended to give the applicant preliminary Building Codes information, as applicable to the land use review and to future building permit review. The comments included a recommendation that the applicant schedule a Preliminary Fire and Life Safety Meeting to review requirements for the conversion of the garage to habitable space (Exhibit E- 5).
- Parks-Forestry Division provided information the requirements of the City’s Title 20 for the provision of street trees (Exhibit E-6).
- Fire Bureau provided a response of “ no concerns” (Exhibit E-7).

Neighborhood Review: One written response was received from a notified property owner, in response to the proposal. This neighbor stated that the conversion of the garage to use as an accessory dwelling unit would, in and of itself, detract from the neighborhood. This neighbor was opposed the idea of having ADUs in single-dwelling zones, stating that he believed they would not be allowed in certain neighborhoods with higher property values. He further stated that he believed every residence should have at least one on-site parking space. Based on these beliefs, the neighbor stated that he and his wife were both opposed to approval of the requested Adjustments (Exhibit F-1).

Staff note: Title 33, the Portland Zoning Code, allows ADUs in all single-dwelling zones in the City. Many affluent neighborhoods are seeing the popularity of these small residential units rise, as they tend to provide opportunities for various types of families to find suitable housing. They are especially helpful for those who are choosing to age in place and maintain an independent life style. Recently many existing accessory structures are being converted by property owners to create these units. When this requires the removal of on-site parking spaces, the City assesses each situation to determine whether there is adequate on-street parking to absorb the additional vehicles without crowding out or causing significant inconvenience to the surrounding residents.

ZONING CODE APPROVAL CRITERIA

33.805.010 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 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 to provide certainty and rapid processing for land use applications.

33.805.040 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, have been met.

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

Findings: The applicant has requested approval of an Adjustment to Code Section 33.266.110, to waive the requirement for an on-site parking space. The regulations of Title 33 generally require one on-site parking space for each residential unit. There are allowed exceptions to this for sites that are well-served by frequent transit and for sites where other alternative forms of transportation can be supported. There is also an allowance for reviewing exceptions to this requirement, on a case-by-case basis, and where the purpose of the regulation will be equally met and other relevant approval criteria are also found to be met, the requirement can be waived. The purpose for requiring on-site parking spaces is stated in Code Section 33.266.110, as follows:

“The purpose of required parking spaces is to provide enough on-site parking to accommodate the majority of traffic generated by the range of uses which might locate at the site over time. Sites that are located in close proximity to transit, have good street connectivity, and good pedestrian facilities may need little or no off-street parking.”

The applicant conducted an informal survey of the availability of on-street parking in the immediate vicinity of the site and found that there were always available spaces along the street frontages abutting the site's north and west property lines. Staff found this statement to be corroborated when conducting a site visit during weekend evening hours,

when one might anticipate the greatest demand for on-street parking. Further, the proposal calls for closing two existing curb cuts, one on each street frontage. The recommended conditions from Portland Transportation, provide direction for the restoration of the curb and sidewalk in these areas, which will give back two available on-street parking spaces for the one required on-site space that would be waived. Therefore, the proposal is equally meeting the purpose of providing parking at the level that might be generated by the uses on this site and so, for this Adjustment, this criterion is met.

A second Adjustment is also being requested: an exception to Code Section 33.110.220, to reduce the side setback for the structure from 5 feet to 3 feet, 8 inches to the east wall and from 4 feet to 2 feet for the roof eave.

Code Section 33.110.220 A, includes the following language:

The setback requirements for buildings and garage entrances 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 development in the City's neighborhoods;*
- *they promote a reasonable physical relationship between residences*
- *they promote options for privacy for neighboring properties and*
- *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 site is zoned R5, High Density Single-Dwelling Residential. This zone requires buildings to be set back 5 feet from the side and rear property lines. Detached garages that meet certain thresholds are excepted from this standard and may be located within the required side and/or rear setbacks, as long as they meet fire code standards. The thresholds include the following requirements: The garage must be located at least 40 feet back from the front lot line or 25 feet from a side street lot line on a corner lot, cannot have maximum dimensions that exceed 24 by 24 feet and that must have walls that are not more than 10 feet tall or an overall height of more than 15 feet. Existing detached garages that meet these exception requirements may be converted to other uses. Garages that meet these exception requirements can also be rebuilt on the existing footprint, but may not be increased in height within the side or rear setback areas. Attached garages and new accessory structures used for any other purpose than as a garage must meet the setback standards, unless an exception to the required setbacks is approved through an Adjustment Review.

The garage is being converted to a use that is different than a garage and, at 21 feet, 4 inches, does not meet the required minimum of 25 feet from the side street lot line that abuts NE Campaign Street. The location of the structure is not changing. The applicants propose removal of the driveway and parking space, with the addition of a fence to create a private outdoor space and also changes to the structure that will make its function and appearance more residential in character. Because the structure has been in this location since its construction in 1963, there should be no impacts on light, air, privacy, fire protection or access for fire fighting, based on maintaining the same footprint but changing the use and the appearance of the street-facing facade. The lack of openings on the part of the building that faces toward the east, other than skylights in the roof of the structure, will ensure that there are no impacts on privacy. The proposed ADU structure is in keeping with many other detached accessory buildings along this street which were built close to the side property lines so it will reflect the general building scale and placement of development and continue a reasonable physical relationship between residences and be compatible with the neighborhood. Therefore, the purposes of the regulation are equally met and so, for this Adjustment, 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: Approval of the requests to waive the required on-site parking space and to reduce the required setback for the ADU structure will not significantly detract from the appearance or the livability of the residential area. As noted above, there is a reliable supply of on-street parking in the vicinity and especially along the abutting street frontages for the site where two on-street spaces will be reinstated. The original structure has been in this location for about 51 years and its conversion to use as an ADU will not have any negative impacts on the appearance or livability of the residential area because the conversion will include residential architectural features that are compatible with the main residence and enhance the street view of the structure. The restoration of the full sidewalk and curb, where the two driveways will be removed and the addition of the private yard area adjacent to the ADU will also contribute to increased livability and an upgraded appearance. Therefore 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 are being requested. However, no cumulative effects are anticipated to occur from approval of the requested Adjustments. Further, the purpose of the R5 and other single-dwelling residential zones is to preserve land for housing and to provide housing opportunities for individual households. Approval of the requested Adjustments will allow an enhanced proposal for creation of an ADU, with the retention of the primary residence on this site. This helps to provide more opportunities for individual households and so is entirely consistent with the purpose of this zone. Therefore, this criterion is met.

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

Findings: City-designated scenic resources are shown on the City's zoning maps by an "s" or Scenic Overlay Zone. City-designated historic resources are shown on the City's zoning maps, either as an adopted landmark, or as a site that is located within the boundaries of a Historic Conservation or Historic Design District. There are no City-designated scenic or historic resources on the site. Therefore, this criterion does not apply.

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

Findings: No potential impacts from approval of the requested Adjustment have been identified by staff. Therefore, no mitigation is needed and 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 zones are designated with either a lower case "c," for the Environmental Conservation Overlay, or "p," for the Environmental Protection Overlay. The site is not located in an environmental zone. Therefore, this criterion does not apply.

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

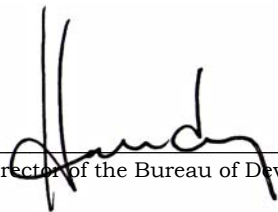
The relevant approval criteria have been met for the requested Adjustments to waive the requirement for an on-site parking space and to reduce the minimum building setback from the east side property line. The purpose for required on-site parking spaces will be equally met because there is already adequate on-street parking and the proposed closure of the existing curb cuts will restore two spaces to the available number of on-street spaces. The purpose of requirements for building setbacks will be equally met because the proposed building will not significantly impact light, air or privacy and will not cause fire safety issues. It will be in keeping with the scale and placement of structures in the area and will not significantly detract from the appearance or the livability of the surrounding area. Approval of the requested Adjustments is more likely to contribute positively to the appearance and livability of the residential area than to detract from the area. The proposal can be approved in general compliance with the site plan and elevation drawings.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.266.110, to waive the requirement for an on-site parking space and also, approval of an Adjustment, to Code Section 33.110.220, to reduce the side setback for the structure from 5 feet to 3 feet, 8 inches to the east wall and from 4 feet to 2 feet for the roof eave, in general compliance with the approved site plan and elevation drawings, Exhibits C-1 and C-2, signed and dated March 27, 2014, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 13-242201 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. As a condition of approval for the waiver of the required on-site parking space, the existing curb cuts along the street frontages of the site on NE Campaign Street and NE 49th Avenue must be closed. To meet the requirements for this, the following procedures must be completed:
 - 1) Prior to obtaining a building permit for the accessory dwelling unit, the driveways on NE 49th Avenue and NE Campaign Street shall be closed and the curb and sidewalk corridor along both frontages shall be rebuilt to their current configuration, under a permit from PBOT.
 - 2) Prior to restoring the sidewalk corridor, the applicant shall coordinate with the City's Urban Forester to determine whether any Street Tree planting requirements apply to the subject property. Should Street Trees be required, they shall be installed in conjunction with re-establishing the sidewalk corridor.

Staff Planner: Kathleen Stokes

Decision rendered by:  **on March 27, 2014**
By authority of the Director of the Bureau of Development Services

Decision mailed: March 31, 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 27, 2013, and was determined to be complete on January 10, 2014.

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 27, 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 requested that the 120-day review period be extended, through discussions of changes in the proposal and the postponement of the decision, which are reflected in Exhibit A-3. Unless further extended by the applicant, **the 120 days will expire on: June 30, 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 April 14, 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 **April 15, 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.

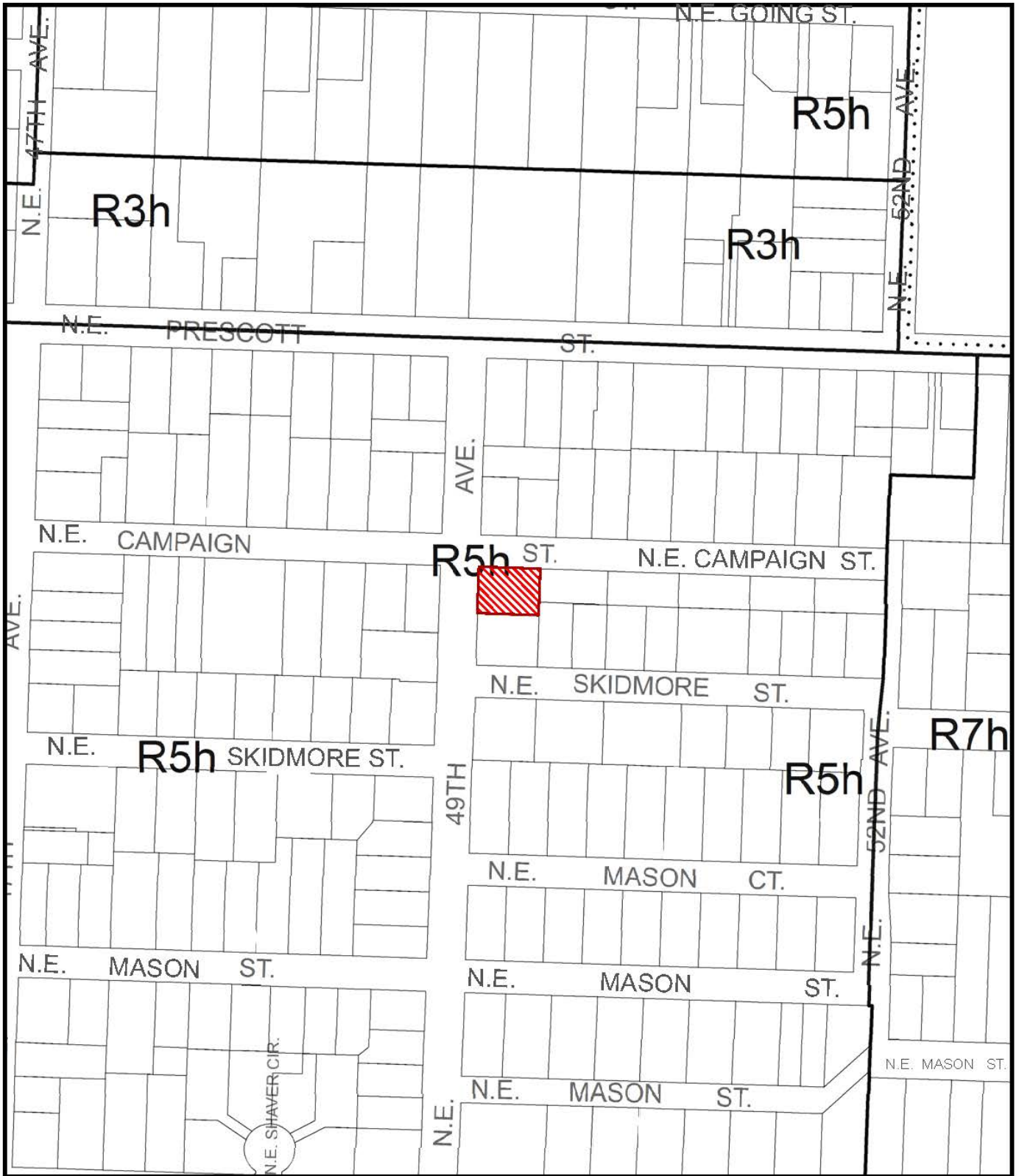
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Application and original narrative and plans
 2. Supplemental information, including second adjustment request, February 14, 2014
 3. Copies of email of discussions of proposal changes and decision postponement
- B. Zoning Map (attached)

- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation Drawings (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. Site Development Review Section of BDS
 - 5. Life Safety Plan Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Summary of electronic agency responses, including Fire Bureau
- F. Correspondence:
 - 1. William Schneider DC
- G. Other: (None)

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

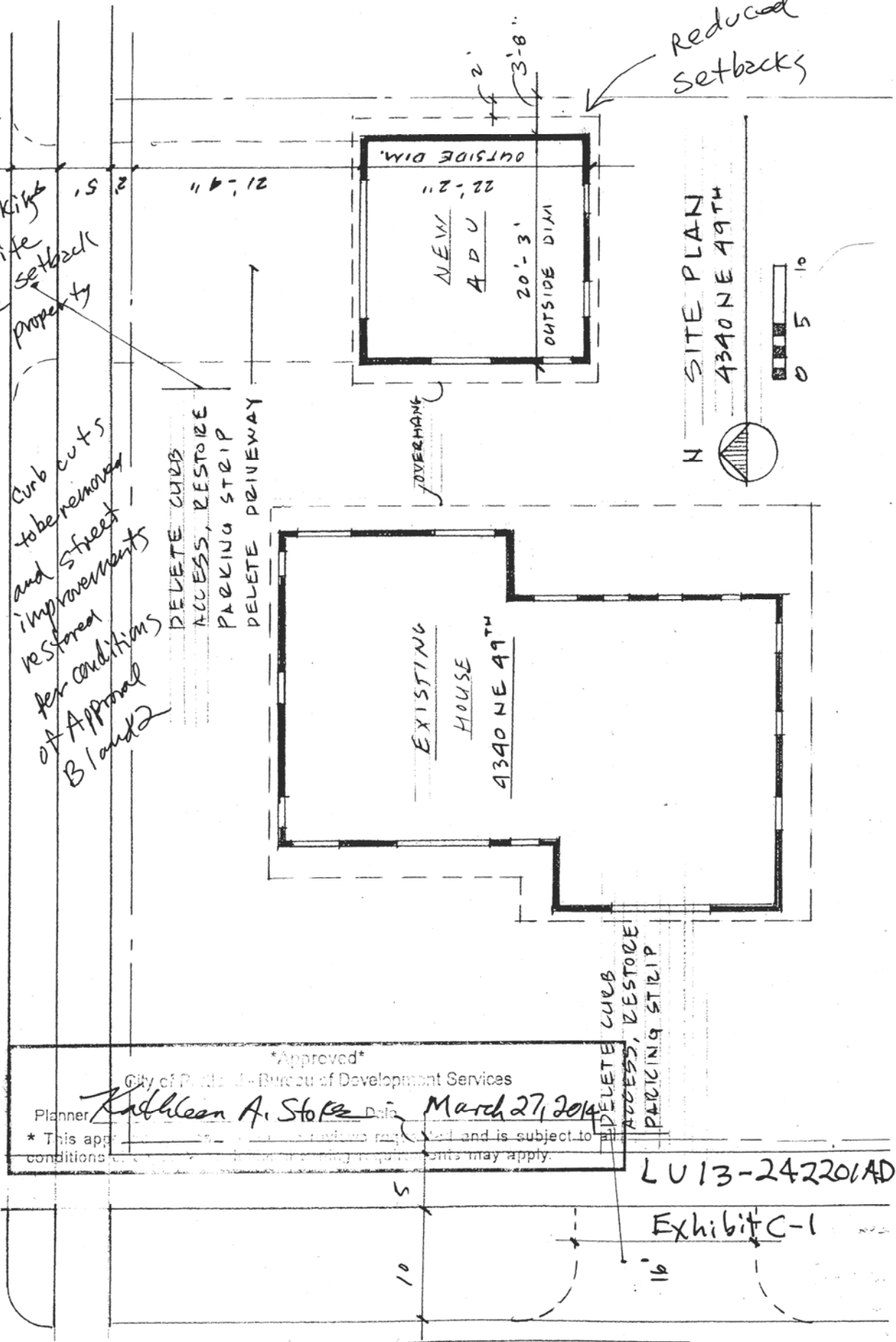


NORTH

File No. LU 13-242201 AD
 1/4 Section 2635
 Scale 1 inch = 200 feet
 State_Id 1N2E19CA 2800
 Exhibit B (Dec 31, 2013)

Approval of ADs to waive parking and reduce setback from East property

NE CAMPAIGN ST.



Reduced setbacks

N SITE PLAN 4340 NE 99TH

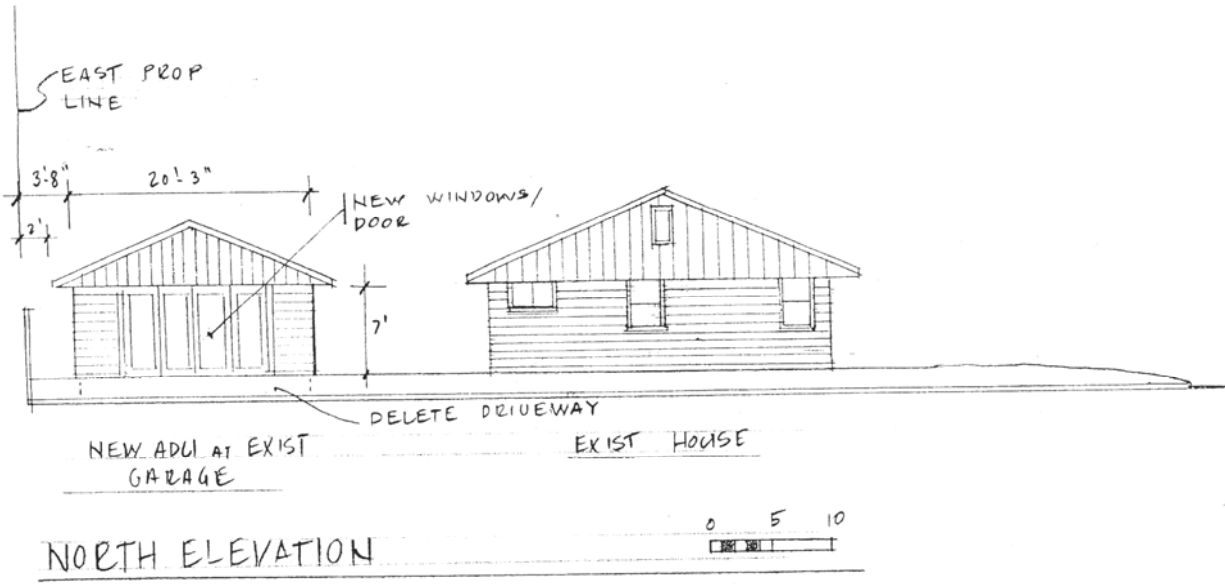


Approved
 City of Portland - Bureau of Development Services
 Planner Kathleen A. Stokes Date March 27, 2014
 * This application is subject to all applicable zoning requirements and is subject to all conditions of use and any other requirements that may apply.

LU 13-242201AD

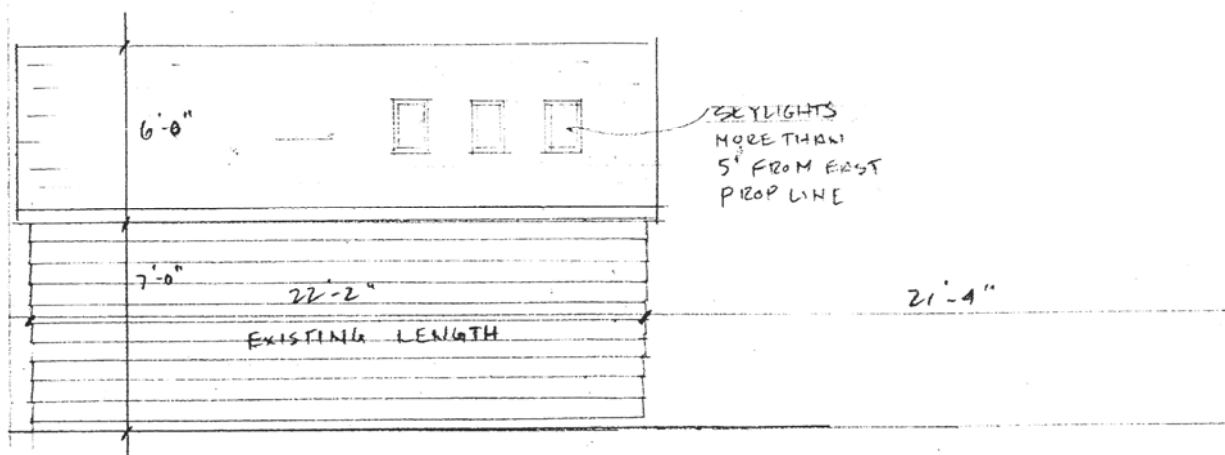
Exhibit C-1

NE 99th

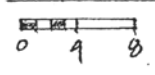


Kathleen A. Stokes March 21, 2014

subject to all applicable codes



EAST ELEVATION



LOT 3-242201AD
Exhibit C-2