



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
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www.portlandoregon.gov/bds

Date: April 18, 2014
To: Interested Person
From: Sheila Frugoli, 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 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 14-111458 AD

GENERAL INFORMATION

Applicant: Aaron Blake, Consultant / Reworks Inc. 503-880-1306
P.O. Box 454 / Corbett, OR 97019

Owners: Peter Teneau and Nancy Cushwa
2715 N Terry St / Portland, OR 97217-6251

Site Address: 2702 N WINCHELL ST

Legal Description: BLOCK 11 LOT 23-25, PENINSULAR ADD
Tax Account No.: R655104260, R655104260
State ID No.: 1N1E09CD 01000, 1N1E09CD 01000
Quarter Section: 2227
Neighborhood: Kenton, contact Steve Rupert at 503-317-6573.
Business District: Kenton Business Association, contact Jessie Burke at 971-404-9673.
District Coalition: North Portland Neighborhood Serv, Mary Jaron Kelley at 503-823-4099.

Plan District: None
Zoning: R5a, Single-Dwelling Residential zone 5,000 and "a" Alternative Design Density overlay zone

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

Proposal: In order to receive a Building Permit to convert a recently constructed 2-story detached artist's studio into an Accessory Dwelling Unit (ADU), the applicant is requesting the following four Adjustments: (1) allow the ADU to exceed the maximum allowed height from 18 to 21.5 feet (33.205.030.D.2);(2) reduce the required rear building setback from 5 feet to 3 feet for a portion of the building that projects 2 feet from the south wall (33.110.220); (3) waive the required side building setback from 5 feet to zero to allow an awning structure that is located at

the entrance door (33.110.220); and (4) allow an increase in the maximum size of the ADU from 800 to 902 square feet (33.205.030.C.6).

The setback requirements apply to all accessory structures including detached ADUs. Even though the Bureau of Development Services plan review and inspection staff did not identify the building extensions into the required setback during initial construction, this review necessitates a review so that all applicable Zoning Code requirements are addressed.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are 33.805.040. A-F, Adjustments.

ANALYSIS

Site and Vicinity: The 7,500 square foot corner lot is developed with a one-story 1920's bungalow-style home and a modern-style, two-story detached accessory structure. The home is oriented to N Winchell while the entrance to the detached structure is oriented to N Burrage. A gravel area (identified in the plans as a driveway, with curb cut) that separates the home from the accessory structure. The accessory structure is located 5 feet back from the east property line, a side lot line. A mature cedar tree is located in front of the accessory structure within the public right-of-way. A vertical structure, identified in the application as an "awning or entry canopy" extends from the ground to a cover over the front entrance. The cedar trees screens most of the vertical structure from the N Burrage.

Most of the homes in the immediate area have on-site parking. There are a variety of one-story attached and detached accessory structures. Most appear to be used as garages or storage sheds. There is no distinct pattern regarding the location of the garages. The smaller detached garages are located near the side and rear property lines. Many extend as close or closer to the front property line than the house. The home immediately across the street, on the east side of N. Burrage has a 2-car detached garage that is setback the same distance as the home from the side property line.

Zoning: The site and surrounding properties are located in an R5a, Single-Dwelling Residential 5,000 zone and the "a", Alternative Design Density overlay zone. The regulations of the Single-Dwelling zones are intended to create, maintain and promote single-dwelling neighborhoods. The development standards work together to preserve the character of neighborhoods, and promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

The "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This proposal is not using the provisions of the "a" overlay zone.

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 **March 10, 2014**. The following Bureaus have responded with no issues or concerns:

- Fire Bureau;
- Site Development Section of BDS;
- Life Safety/Plan Review Section of BDS;
- Bureau of Environmental Services;
- Portland Bureau of Transportation; and

- Water Bureau.

Neighborhood Review: One written response has been received from a notified property owner in response to the Notice of Proposal. The nearby resident submitted a letter included the following points:

- From the start of the project, it appeared to be an Accessory Dwelling Unit and not an artist's studio. The owner rented out the ADU immediately after construction was completed. The parcel has two houses both are occupied now. ‘
- The original home no longer has a accessible garage. Now there are parking impacts with the additional tenant vehicles. The owner should provide a parking structure to remedy parking issues.
- The accessory structure with the vegetation on the adjacent lot (under the same ownership) makes the corner dark and scary.
- Two structures should not be allowed on one lot. (Exhibit F.1)

Staff Response: *Since February 1998, the Portland Zoning Code has allowed detached accessory dwelling units on lots with a house in all single-dwelling zones. While conducting a site visit, staff observed that the structure appeared to be occupied as a dwelling. If concerned citizens had reported the occupancy of the “studio” as a residence, BDS staff could have begun code enforcement actions. However, given this Adjustment application is currently under review to legally establish the ADU, staff has not initiated enforcement action at this time. BDS staff acknowledge that this project as an example of a “loophole in the regulations” that gives property owners a course for obtaining building permits for a structure and then almost immediately after construction “converting” it to an ADU and avoiding applicable standards that address compatibility and scale. BDS staff have reported this occurrence to the Bureau of Planning and Sustainability, the bureau who crafts code amendments and submit them to the Planning Commission and City Council for adoption.*

The Zoning Code requires one on-site parking space per residential lot. The submitted building permit plans and the plans that were submitted for this Adjustment Review identify an on-site parking space. Below, under relevant findings, the parking requirement is addressed.

ZONING CODE APPROVAL CRITERIA

Adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. below, have been met.

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

Findings: The purpose of the standards for accessory structures is explained under Section 33.110.250.A as follows:

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.

Further, the purpose of the setback standard requested for Adjustment is found in Section 33.110.220, Setbacks. The setback regulations 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 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; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

The accessory structure was constructed, via approved building permit plans, with elements that conflict with Portland Zoning Code standards. A “bump out” on the south side of the structure extends within 3 feet of the rear property line and a vertical structure over the entrance extends up to the east (side) property line. The applicant is requesting an Adjustment to reduce, the required 5-foot setback to 3 feet and zero feet, respectively. The 2-story “bump-out” on the south wall appears to serve more as an architectural element than a functional necessity as it provides only approximately 44 additional square feet of floor area. Approximately 40 feet and a dense landscaped rear yard on the southern abutting lot provides significant physical and visual separation between the buildings.

The “canopy” structure that creates an alcove at the entrance to the accessory structure also stands out as an architectural element. It provides a modest cover and screening at the doorway. The wood finish and vertical complement the modern structure. Because the vertical structure is only 4 feet wide, it does not dominate the side yard area between the structure and the N Burrage public sidewalk.

The BDS Life Safety Plans Examiner’s written response states that there are no building code—fire separation issues for the portions of the structure that extend into the setback area. The Fire Bureau identified no concerns regarding the reduced setback for emergency access. For the reasons stated above, the setback Adjustments satisfy this approval criterion.

Section 33.205.030 identifies the purposes of the ADU design standards, as follows:

- *Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;*
- *Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;*
- *Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and*
- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

The applicant has requested an Adjustment to exceed the maximum allowed height of a detached ADU from 18 to 21.5 feet and to exceed the maximum allowed size of the ADU from 800 to 902 square feet. The ADU design standards are based on the expectation that ADU structures blend into a residential area when the dominant architectural elements of the primary structure are repeated on the ADU structure. Because the applicant is proposing to convert an artist studio into an ADU, those standards were not applied when the “studio” received building permit approval. The height and floor area limits are intended to make the ADU smaller so that the structure appears related, but subordinate to the house.

In regards to this specific proposal, the two-story detached structure is an attractive modern-style building that will provide housing in an established single-dwelling residential area near a public grade school and commercial services. Although taller, it only exceeds the ADU height allowance by 3.5 feet. It is considerably lower than 30 feet which is the maximum height allowed for homes and all other detached accessory structures in the R5 zone. The detached structure has less floor area than the primary home (1,189 square feet) on the lot. The large

cedar tree that is located in front of the accessory structure serves as a “street tree” and is protected via City Forester requirements. The tree serves to reduce the scale of the accessory structure.

For the reasons stated above, 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: In a letter of objection, a nearby neighbor raised concerns regarding parking impacts. Similar to the building setback requirements, the required on-site parking space is an outstanding issue that must be addressed. To address current requirements, a right-of-way permit must be obtained to remove the existing curb cut that is located directly in front of the accessory structure and a new curb cut with connecting paved driveway must be installed on-site. Compliance with these conditions will reduce on-street parking demands which will improve livability for other nearby residents.

As stated above, the reduced setback of the detached accessory structure will not detract from the livability of nearby residences. This is an existing structure that complies, except for the projections into the required setback areas) with accessory structure standards. Continued utilization of the structure will not create new or additional impacts to the surrounding area.

With compliance with the conditions, this criterion will be 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: The applicant is requesting four Adjustments. The purpose of the Single-Dwelling Residential zones is to “preserve land for housing and to provide housing opportunities for individual households (Zoning Code Section 33.110.010.). Detached ADU structures are allowed on lots with the primary home in all single-dwelling residential zones. Individually and cumulatively, the requested Adjustments that are needed to convert the existing structure into an ADU are consistent with the purpose of the zone which is to provide housing opportunities. Therefore, this criterion is met.

- 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 zone. Historic resources are designated by a large dot. 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: As found under criterion A and B, the requested Adjustments will not create impacts and therefore do not require mitigation to lessen their effect. Conditions that address the on-site parking requirement are not intended to mitigate impacts of the Adjustments but rather to bring the site into compliance. This approval criterion does not apply.

- 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 there are no such designations on this site, 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

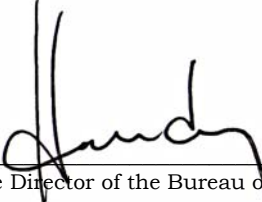
As the findings under the approval criteria explain, with conditions, the approval criteria will be met. Therefore, the Adjustment requests should be approved.

ADMINISTRATIVE DECISION

Approval of Adjustment to: (1) allow the ADU to exceed the maximum allowed height from 18 to 21.5 feet (33.205.030.D.2);(2) reduce the required rear building setback from 5 feet to 3 feet for a portion of the building that projects 2 feet from the south wall (33.110.220); (3) waive the required side building setback from 5 feet to zero feet to allow a canopy/vertical structure that is located at the entrance door (33.110.220); and (4) allow an increase in the maximum size of the ADU from 800 to 902 square feet (33.205.030.C.6), per the approved plans, Exhibits C.1 through C.3, signed and dated April 16, 2014, subject to the following conditions:

- A. As part of the building permit application submittal to convert the artist studio into an Accessory Dwelling Unit, the following development-related conditions (B and C) 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 14-111458 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. A right-of-way (curb cut) permit must be issued from the Bureau of Transportation to close the existing curb cut that is located adjacent to the accessory structure and a new curb cut must be installed to serve the designated on-site parking area, per Exhibit C.1.
- C. A paved on-site driveway/parking pad must be installed, per approved plan (Exhibit C.1).

Staff Planner: Sheila Frugoli

Decision rendered by:  **on April 16, 2014**

By authority of the Director of the Bureau of Development Services

Decision mailed: April 18, 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 January 30, 2014, and was determined to be complete on February 28, 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 January 30, 2014.

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 May 2, 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 **May 5, 2014 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

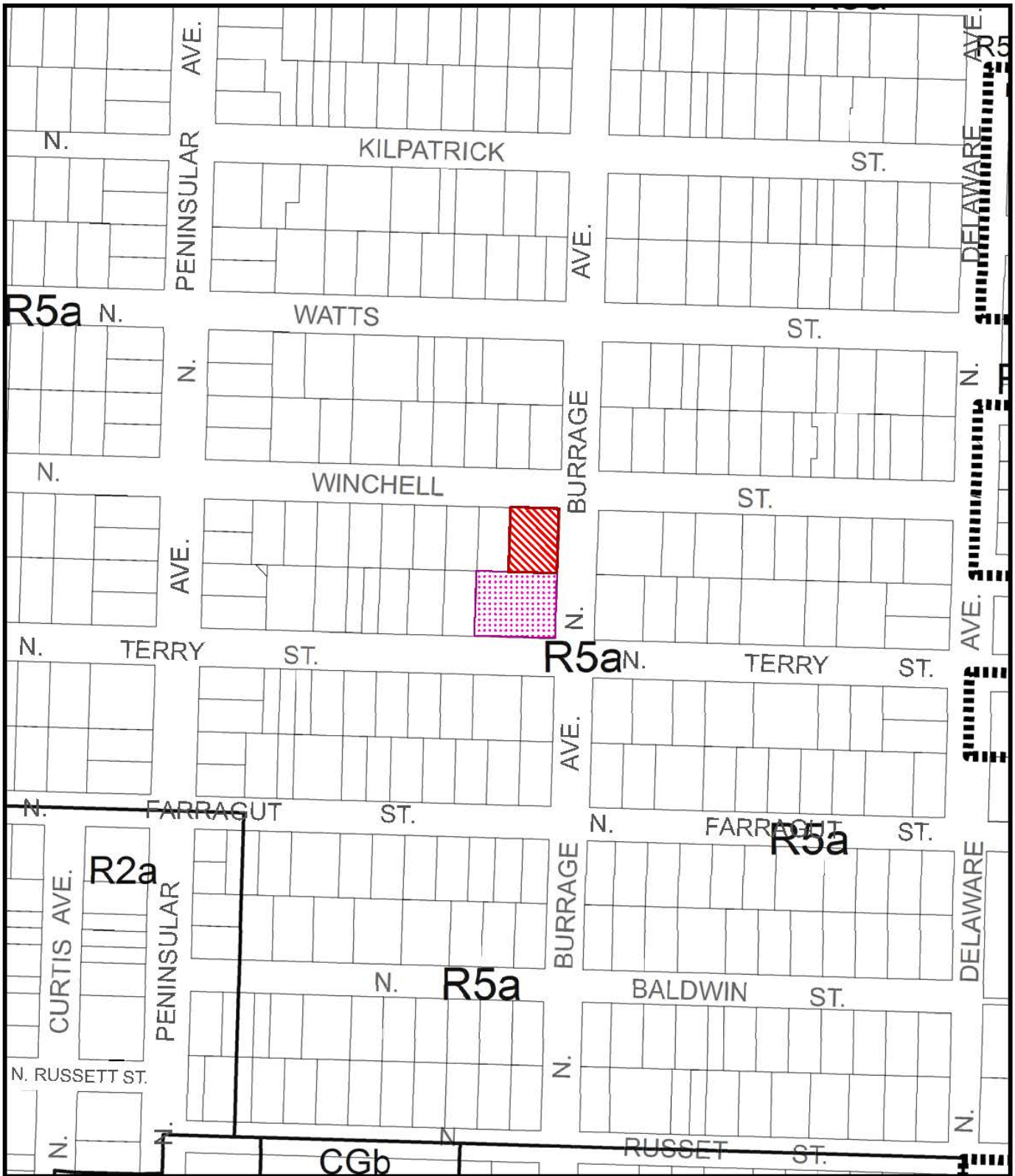
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Response to Approval Criteria for Height and Rear Setback Adjustments, dated January 29, 2014
 - 2. Response to Approval Criteria for Side Setback and ADU Size Adjustments, dated March 6, 2014
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. North and West Elevations (attached)
 - 3. South and East Elevations (attached)
 - 4. ADU Floor Plan
- D. Notification information:
 - 1. Original Notice Mailing list
 - 2. Original Mailed Notice
 - 3. Revised Notice Mailing List, Mailed March 10, 2014
 - 4. Revised Mailed Notice, Mailed March 10, 2014
- E. Agency Responses:
 - 1. Water Bureau
 - 2. BDS Site Development Section
 - 3. BDS Life Safety Plan Review Section
 - 4. TRACS Print-Out showing "No Concerns" from: Fire Bureau, Bureau of Environmental Services, Bureau of Transportation Engineering and City Forester
- F. Correspondence:
 - 1. Lori Hunt Vorst, March 31, 2014, opposes proposal
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Application Letter to Applicant from Staff, Feb. 11, 2014

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
-  Also Owned

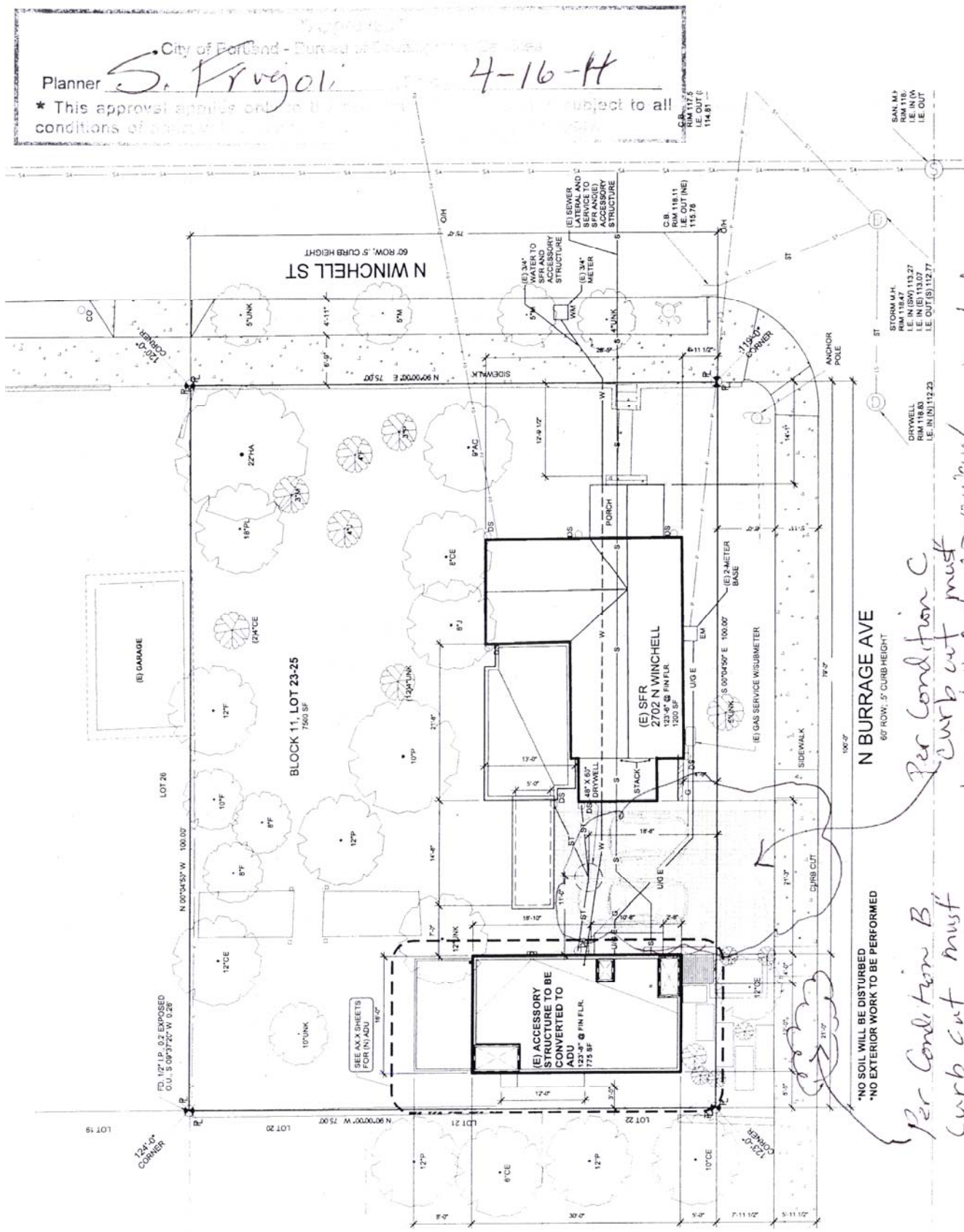


File No. LU 14-111458 AD
 1/4 Section 2227
 Scale 1 inch = 200 feet
 State_Id 1N1E09CD 1000
 Exhibit B (Feb 04, 2014)

City of Portland - Bureau of Planning
Planner *S. Krugoli*

4-16-H

* This approval applies only to the conditions of approval subject to all

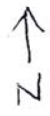


Per Condition C
Curb cut must be installed & driveway constructed.
Parking pad must be constructed.

Per Condition B
Curb cut must be removed

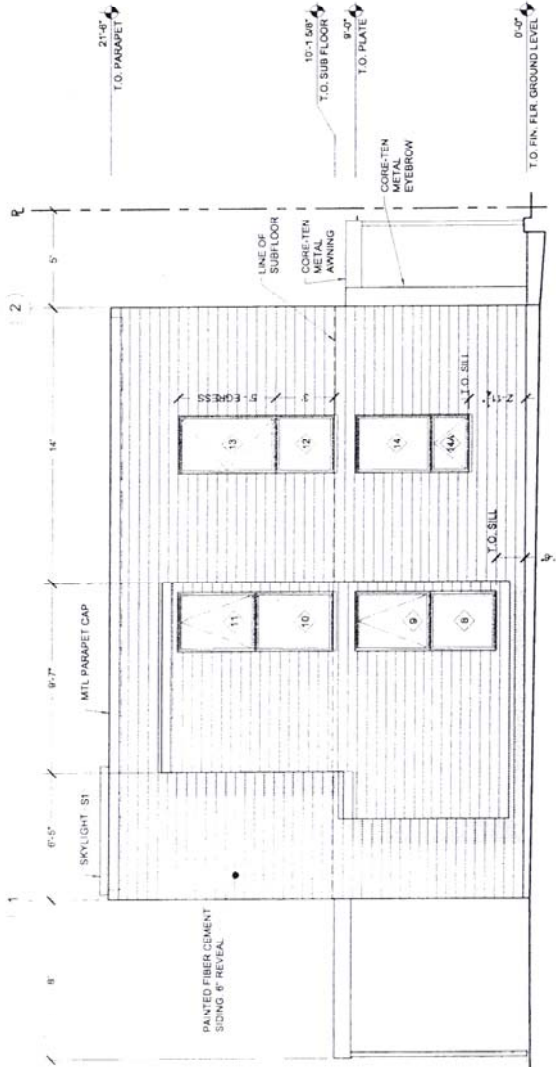
*NO SOIL WILL BE DISTURBED
*NO EXTERIOR WORK TO BE PERFORMED

Exhibit C.1
LU 14 - 111 458 AD

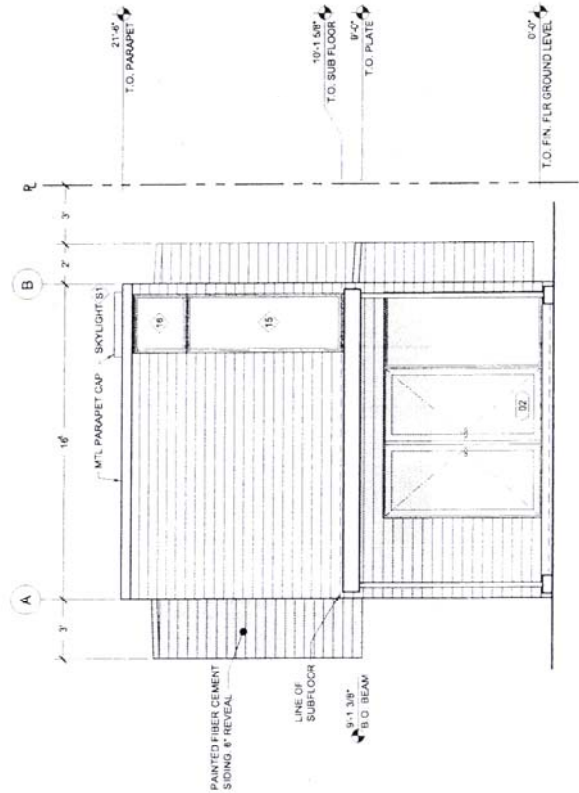


GENERAL NOTES

S. Ferguson
Planner
City of Portland - Bureau of Development Services
Date: 4-16-14
* This approval applies only to the information shown on this project to all conditions of approval.



(E) SOUTHELEVATION 01



(E) EAST ELEVATION 01

W 14 - 111 458 AD

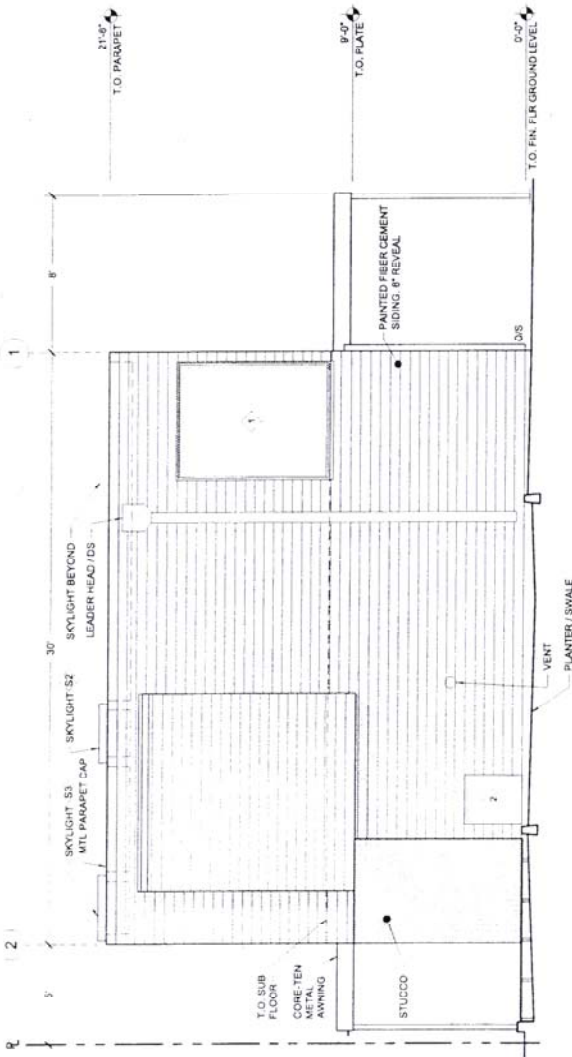
Exhibit C.2

B STREET ADU
2702 N. WINCHELL
PORTLAND, OR 97217

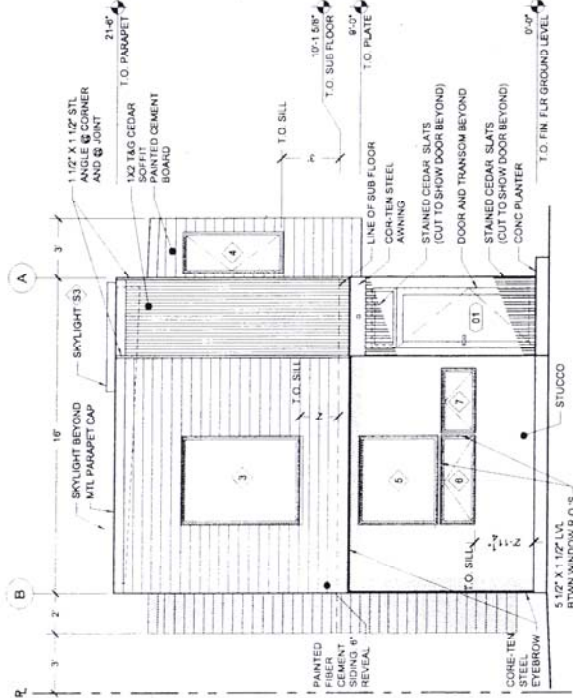
PROJECT: 12-007
B STREET ADU
2702 N. WINCHELL ST.
PORTLAND, OREGON 97217
SET DATE:
JAN 23, 2013

DRAWING
A3.0
NORTH AND
EAST EXTERIOR
ELEVATION

Planner: *S. King*
Date: *4-16-14*
* This drawing is for informational purposes only and is subject to change without notice. All dimensions and materials are subject to change without notice.



(E) NORTH ELEVATION 01



(E) WEST ELEVATION 01

LU 14-111 458A0

Exhibit C.3