



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

FROM CONCEPT TO CONSTRUCTION

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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** April 21, 2014  
**To:** Interested Person  
**From:** Amanda Rhoads, Land Use Services  
503-823-7837 / [Amanda.Rhoads@portlandoregon.gov](mailto: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 14-122097 AD**

#### **GENERAL INFORMATION**

**Applicant:** Dave Spitzer / DMS Architects, Inc.  
2325 NE 19th Ave. / Portland, OR 97212

**Owners:** James Forristal and Ada Kardos  
204 SE 16th Ave. / Portland, OR 97214-1444

**Site Address:** 204 SE 16TH AVE

**Legal Description:** TL 8700 0.11 ACRES, SECTION 35 1N 1E  
**Tax Account No.:** R941350600  
**State ID No.:** 1N1E35DC 08700      **Quarter Section:** 3032  
**Neighborhood:** Buckman, contact Matthew Kirkpatrick at 503-236-6350.  
**Business District:** East Burnside Business Association, Matt Bender at 503-803-4224.  
**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.  
**Zoning:** R2.5 – Residential 2,500  
**Case Type:** AD – Adjustment Review  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The subject site is a corner lot with an existing two-car garage accessed from the side street. This garage is currently located 7.5 feet from the north property line along SE Ash St. The applicant proposes to remove this garage and replace it with a new, one-car garage with an Accessory Dwelling Unit (ADU) above. Zoning Code Section 33.110.220.B and Table 110-3 state that the minimum setback between the street lot line and the garage entrance on this site is 18 feet. The applicant requests an Adjustment to this standard to allow the garage entrance to be within 5 feet of the property line along SE Ash St.

#### **Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

## ANALYSIS

**Site and Vicinity:** The subject property is a corner lot with 100 feet of frontage on SE Ash Street and 50 feet of frontage on SE 16<sup>th</sup> Avenue. The house on the lot faces SE 16<sup>th</sup> and was built in 1887. Both sites behind and across the street from the subject site are developed with multi-dwelling structures.

The area around the site is developed with a variety of uses. Commercial development is situated along the frontages on SE Burnside Street and SE Stark St. The area to the south of SE Ankeny is generally residential, with a mixture of vintage single and multi-dwelling structures. Nearby, several heavily-travelled rights-of-way – Burnside, Stark and Sandy running east-west, and 11<sup>th</sup> and 12<sup>th</sup> running north-south – cause traffic congestion and limit on-street parking options. There are also a number of alternative transportation options available in the area, with frequent service bus routes, bicycle and pedestrian paths and a continuous grid pattern to the streets.

**Zoning:** The Residential 2,500 (R2.5) 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. The minimum density for new lots in this zone is 1 unit per 5,000 square feet and the maximum density is based on lot size and street configuration. Both detached and attached single-dwellings are allowed. Minimum lot size for both types of development is 1,600 square feet with minimum front lot line of 30 feet and minimum depth of 40 feet. There is no required minimum lot width or front lot line for lots that are developed with structures that meet certain additional development standards related to design.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**Public Notice:** A “Notice of Proposal in Your Neighborhood” was mailed **March 24, 2014**.

**Agency Review:** The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services;
- Water Bureau;
- Fire Bureau;
- Site Development Section of BDS; and
- Bureau of Parks-Forestry Division.

The Bureau of Transportation responded with the following comment:

The frontage adjacent to the proposed garage replacement is improved with a 12-ft sidewalk corridor with a 4-6-2 configuration. The existing double garage is set back 7.5-ft from the property line. The replacement single car garage is proposed to be setback 5-ft. PBOT general concerns for reduced garage entrance setbacks is that a car parked in front of the garage will block the sidewalk. If a reduced setback is proposed, PBOT can accept a setback of between 0 and 5 feet. With a 12-ft sidewalk corridor and a 5-ft setback a vehicle will be less likely to park in front of the garage because it would partially extend into the roadway. So, in this case, PBOT has no objection to granting the adjustment. As a condition of building permit approval, the applicant shall be required to narrow the existing driveway to the new single car garage in order to maximize the available on-street parking.

Please see Exhibit E.2 for additional details.

**Neighborhood Review:** 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:** The relevant purpose statements are the following:

#### 33.110.220 Setbacks

Purpose: The building setback regulations 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.

Each purpose statement will be addressed separately.

*They maintain light, air, separation for fire protection, and access for fire fighting;*

**Findings:** The new structure will be taller than the existing garage, with a second story for the ADU, but the proposed garage has a smaller footprint than the existing garage, with more space around it for air circulation. The existing garage is located only two feet from the rear property line; the proposed garage/ADU will be located 5 feet, 6 inches from the rear property line, creating more space than exists currently for access for fire fighting and separation for fire protection. The proposed structure is on the northeast corner of the site, with approximately 23 feet from the rear of the garage to the property line of the adjacent site to the south, creating no issues with air circulation or light with that property. The Fire Bureau responded to the Adjustment request with no concerns.

*They reflect the general building scale and placement of houses in the City's neighborhoods;*

**Findings:** It is not uncommon in Portland neighborhoods for houses to front on the numbered streets, and corner houses have their garages facing the named streets at setbacks less than 18 feet. On this block of Ash, there are four garages on three sites that do this (the other sites on the block are developed with apartment buildings and do not have garages). Replacing a garage close to the street with a smaller garage close to the street that is designed to reflect the architecture of the primary house on the subject site will improve the site's integration in the neighborhood. Most garages that do sit close to the street are one-car garages, so removing the existing two-car garage and replacing it with a one-car garage will make the site better reflect the general building scale and placement of houses in the neighborhood.

*They promote a reasonable physical relationship between residences;*

**Findings:** The proposed accessory structure will be approximately the same height as the existing home and will not appear out of scale on the site. The garage will also maintain the same side setback that the existing home on the site has, 5 feet. The adjacent site on Ash is a multi-dwelling apartment building which appears to have the minimum 5-foot side setback. The proposal increases the distance between the structures by some 3.5 feet by placing the new garage wall at a distance of 5 feet, 6 inches from the rear property line instead of the current 2 feet. For these reasons, the proposal promotes a reasonable physical relationship between residences.

*They promote options for privacy for neighboring properties;*

**Findings:** The neighboring structure, the apartment complex, appears to be set back from the Ash St. property line some 15 feet. Replacing the existing garage with a structure that is 3.5 feet further from the apartment building, and 5 feet from the Ash St. property line, works to separate the structures to protect privacy.

Because the minimum 5-foot rear setback will be met for the proposed garage, there will be no impact on privacy for the adjacent apartment building to the east. The applicant only included one window on that elevation as well. The width of the 60-foot Ash Street right-of-way provides substantial separation between the proposed structure and nearest properties to the north.

*They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*

**Findings:** The requested Adjustment does not impact the front yard of the subject site. This purpose statement is not relevant.

*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*

**Findings:** Allowing the new garage to maintain roughly the same location as the old garage does allow development on the site to fit in with the neighborhood, which has many similarly-placed garages on corner lots. The Adjustment will help the applicant maximize the outdoor area by keeping the driveway minimal and maintaining the backyard instead of paving much of it. The ADU standards ensure that the ADU design respects the architecture of the neighborhood it is in; the design for the proposed garage with ADU matches and repeats elements from the

Victorian-era primary house on the lot. The Adjustment enables the proposal to meet this purpose statement.

*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.*

**Findings:** While building to the standard does enable a car to be parked in front of the garage door without overhanging the street or sidewalk, reducing the setback to only 5 feet has the same impact of protecting the sidewalk and street by preventing a car from parking in front of the garage door. As PBOT stated, “[i]f a reduced setback is proposed, PBOT can accept a setback of between 0 and 5 feet. With a 12-ft sidewalk corridor and a 5-ft setback a vehicle will be less likely to park in front of the garage because it would partially extend into the roadway.” If the setback were proposed to be reduced from 18 feet to 10 feet, or anything larger than 5 feet, the driveway length would create a problem with blocking the sidewalk. But the Adjustment equally meets the purpose of keeping the sidewalk and road clear. On this site, the visibility is not obstructed by foliage either on the subject site or on the adjacent site. The Adjustment equally meets this purpose statement.

***The discussion above demonstrates that the proposed Adjustment will at least equally meet the purposes for setbacks. 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 discussed above, the garage/ADU will be designed to complement the architecture of the primary house on the site. The replacement of a two-car garage with a one-car garage will bring the garage more in line with what is evident on nearby sites, adding to the appearance of the residential area. The narrowing of the driveway, which will be a result of transitioning to a one-car garage, will maximize on-street parking, contributing to livability of the area.

***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

The proposal to build a new single-car garage with an Accessory Dwelling Unit above in approximately the same location as an existing two-car garage will meet the purpose statements for setbacks, will contribute to the attractiveness and livability of the neighborhood, and will not have negative impacts on the surrounding lots. The Bureau of Transportation supports the reduction of driveway length, stating in essence that making the driveway significantly shorter than what is required is preferable than a smaller request since the end result will be the same as what the standard intends: the sidewalk and street will not be blocked by parked cars. The proposal meets all relevant approval criteria and should be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.220.B and Table 110-3 to reduce the garage entrance setback from 18 feet to 5 feet, per the approved site plans, Exhibits C.1 through C.3, signed and dated April 17, 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.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 14-122097 AD."

**Staff Planner: Amanda Rhoads**

**Decision rendered by:** \_\_\_\_\_ **on April 17, 2014**

By authority of the Director of the Bureau of Development Services

**Decision mailed: April 21, 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 February 28, 2014, and was determined to be complete on **March 19, 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 February 28, 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. Unless further extended by the applicant, **the 120 days will expire on: July 18, 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 May 5, 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](http://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 6, 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. Original submittal, February 28, 2014
  2. Revised submittal, March 14, 2014
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. Proposed ADU/Garage Elevations – North and East (attached)
  3. Proposed ADU/Garage Elevations – South and West (attached)
  4. Proposed First Floor Plan
  5. Proposed Second Floor Plan
  6. Proposed Storage Loft Plan
  7. Existing House – South Elevation
  8. Existing House – West Elevation
  9. Existing House – North Elevation

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

F. Correspondence: none received

G. Other:

1. Original LU Application
2. Incomplete Letter, March 11, 2014
3. Addendum to Incomplete Letter, March 17, 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



Historic Landmark



This site lies within the:  
**IRVINGTON HISTORIC DISTRICT**

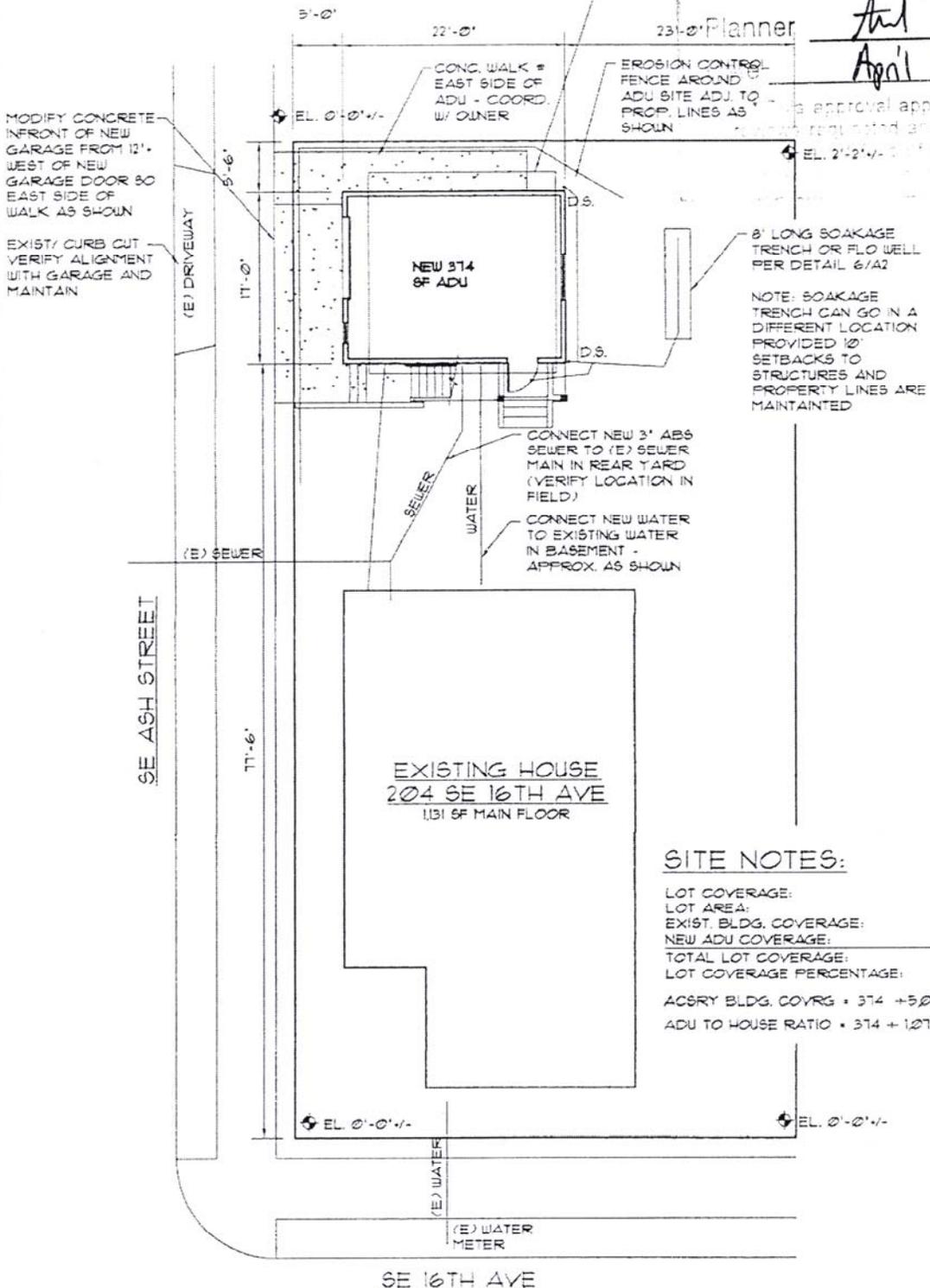
File No.	<u>LU 14-120297 HR</u>
1/4 Section	<u>2832</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N1E26DA 8500</u>
Exhibit	<u>B (Feb 26, 2014)</u>

**\*Approved\***  
**City of Portland**  
 Bureau of Development Services

Planner Paul Hill

April 17, 2014

This approval applies only to the project as shown and is subject to all applicable regulations and codes. Any changes to the project may require a new approval.



**SITE NOTES:**

LOT COVERAGE:	
LOT AREA:	5,000 SF
EXIST. BLDG. COVERAGE:	1,070 SF
NEW ADU COVERAGE:	314 SF
TOTAL LOT COVERAGE:	1,444 SF
LOT COVERAGE PERCENTAGE:	29%
ACSRY BLDG. COVRG = 314 + 5,000 = 7.6%	
ADU TO HOUSE RATIO = 314 + 1,070 = 35.8%	

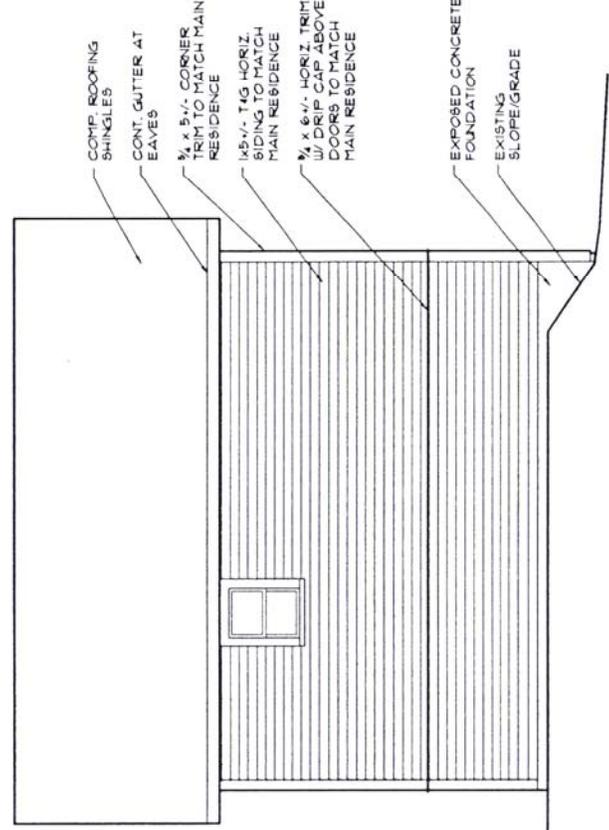
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**SITE PLAN**

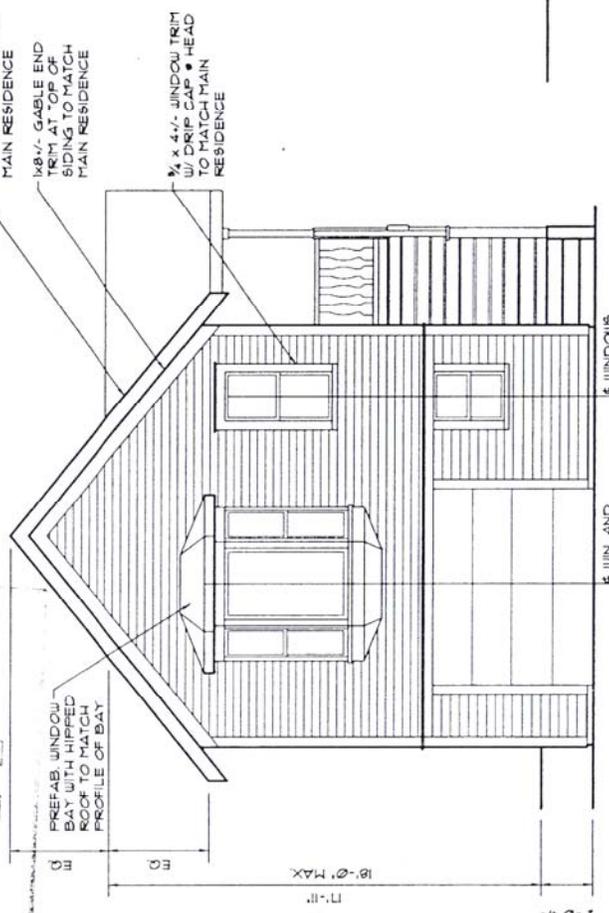
CASE NO. Lu 14-122097 AD  
 EXHIBIT C.1

# Proposed ADU / Garage Elevations

Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner *AMM*  
 Date April 17, 2014  
 \* This approval applies only to the systems requested and is subject to all applicable codes and regulations.



1 WEST ELEVATION  
 A2 East  
 1/4" = 1'-0"

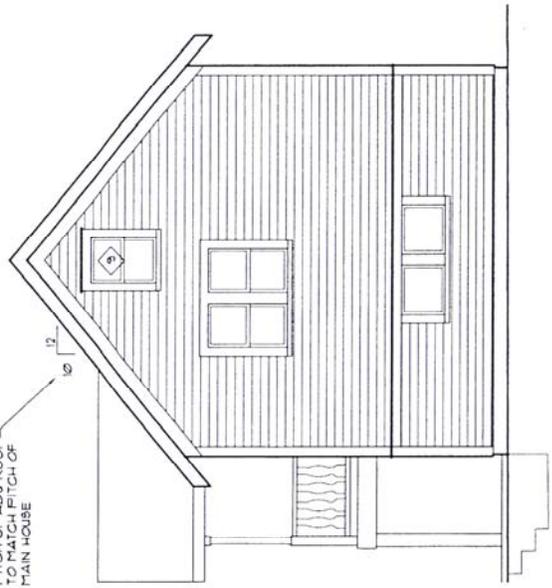


1 NORTH ELEVATION  
 A2  
 1/4" = 1'-0"

CASE NO. LD 70201-1-17-14 AD  
 EXHIBIT C.2

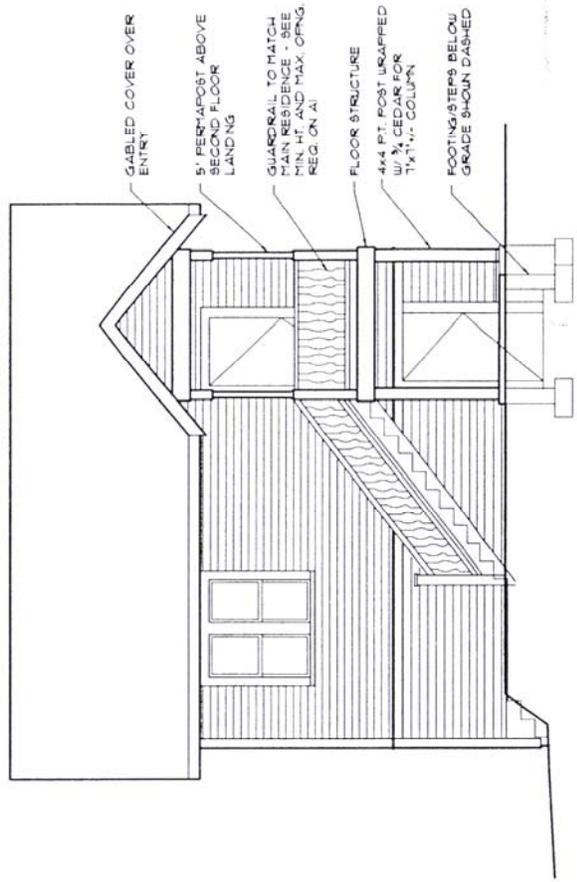
Proposed ADU | Garage Elevations

1/4" = 1'-0"



4 SOUTH ELEVATION  
1/4" = 1'-0"

1/4" = 1'-0"



5 EAST ELEVATION  
A2 West

\*Approved\*  
City of Portland  
Bureau of Development Services  
Planner And M  
Date April 17, 2014  
1/4" = 1'-0"  
This approval applies only to the project regulated and is subject to all other laws of approval.  
This approval is not an endorsement of any product.

CASE NO. Lu 14-122097 AD  
EXHIBIT C.3