



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** May 23, 2014  
**To:** Interested Person  
**From:** Andrew Gulizia, Land Use Services  
503-823-7010 / [Andrew.Gulizia@portlandoregon.gov](mailto:Andrew.Gulizia@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 14-137356 AD**

#### **GENERAL INFORMATION**

**Applicants/Owners:** Rita Haberman and Joan Grimm  
2720 SE 49th Ave / Portland, OR 97206

**Site Address:** 2720 SE 49th Ave.

**Legal Description:** BLOCK 5 LOT 10, WINDSOR HTS  
**Tax Account No.:** R921802330  
**State ID No.:** 1S2E07BA 14100  
**Quarter Section:** 3335  
**Neighborhood:** Richmond, contact Douglas Klotz at 503-233-9161.  
**Business District:** Division-Clinton Business Association, contact Darice Robinson at 503-233-1888.  
**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.  
**Plan District:** None  
**Zoning:** R5 – Single-Dwelling Residential 5,000  
**Case Type:** AD – Adjustment Review  
**Procedure:** Type II administrative decision with appeal to the Adjustment Committee

#### **Proposal:**

The applicant proposes to construct a new covered porch on the north side of the existing house to serve as an entry for a future accessory dwelling unit (ADU) inside the house. The porch will be three feet from the north side property line and the eave will be two feet from the north side property line. The applicant is requesting an Adjustment to Zoning Code Section 33.110.220 (Table 110-3), which requires a five-foot minimum setback from the side property line (four feet minimum for the eave).

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

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Section 33.805.040.A-F of the Portland Zoning Code.

## ANALYSIS

**Site and Vicinity:** The site is a 4,950 square-foot lot located on the east side of SE 49<sup>th</sup> Avenue, between SE Clinton Street and SE Woodward Street. The site is developed with a one-story single-dwelling house. Most neighboring lots within a block of the site are also developed with one-story single-dwelling houses.

**Zoning:** The R5 designation is one of the City's single-dwelling residential zones, which are intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

**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 April 29, 2014. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services;
- Bureau of Transportation Engineering;
- Water Bureau;
- Fire Bureau;
- Site Development Section of BDS;
- Life Safety Review Section of BDS; and
- Bureau of Parks-Forestry Division.

**Neighborhood Review:** Two written responses were received from notified property owners in response to the Notice of Proposal. One letter was in support of the proposal and raised no specific issues (Exhibit F-1), and the other was in opposition (Exhibit F-2).

The neighbor opposed to the proposal expressed concern about privacy, fire protection, livability, and neighborhood appearance, and requested that the porch be smaller, with solid north and east walls. The neighbor also stated the site has a "tiny house" in the back yard already, and that the ADU illustrated in this proposal would increase residential density in a manner inconsistent with the neighborhood.

*Staff Response:* The issues raised by the neighbor opposed to the proposal are discussed in the findings for approval criteria A and B, below. A condition of approval for a new landscape screen in the north side yard will help maintain privacy between the subject property and the adjacent neighbor. Although the applicant has not yet applied to construct an ADU, and this review is limited to the proposed covered porch, the applicant has been notified that only one ADU is permitted on the site. (A living area is considered an ADU if it has its own kitchen and bathroom.)

## ZONING CODE APPROVAL CRITERIA

### 33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated 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 applicant is requesting an Adjustment to the minimum five-foot side setback requirement for structures in the R5 zone. The purpose of the setback requirement is stated in Zoning Code Section 33.110.220.A:

**Purpose.** *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.*

Since the covered porch will be open on three sides, access to light and air will be maintained. Although only three feet from the north side property line, the porch will be ten feet from the wall of the neighboring house, maintaining a reasonable physical relationship between the residences. The Portland Fire Bureau reviewed the application and responded with no concerns. The proposed design and materials are compatible with the house on the site and with the surrounding neighborhood. The proposed porch's modest size (38 square feet) and height (12 feet at the highest point) make it fit well into the general building scale of the neighborhood, and the proposal leaves ample outdoor area in the front and rear yards. Since the porch is on the side of the house, the open front yard is not affected. There is no driveway or on-site parking on this property.

By creating an activity area close to the north property line, the proposal has a potential negative impact on privacy for the adjacent neighbor to the north. However, a condition of approval requiring a tall, evergreen landscaping buffer between the porch and the north property line will limit this impact. With this condition of approval, the Adjustment equally meets the intent of the regulation and 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:** Because the site is located in a single-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. Because the covered porch will be on the side of the house, will be fairly small (38 square feet), and will be set back 30 feet from the street lot line, the proposal will have little impact on the livability or appearance of the neighborhood overall. A condition of approval requiring an evergreen landscaping screen in the north side yard will help maintain privacy for the adjacent neighbor to the north. With this condition of approval for landscaping, the proposal will not result in any significant negative impacts to neighborhood livability or appearance. 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:** As only one Adjustment is being requested, this criterion is not applicable.

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

**Findings:** City-designated scenic resources are identified on the Official Zoning Maps with a lower case "s," and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

- E.** Any impacts resulting from the Adjustment are mitigated to the extent practical; and

**Findings:** As discussed in the findings for approval criteria A and B, a condition of approval will require an evergreen landscaping screen in the north side yard to mitigate privacy impacts on the northerly neighbor. No other adverse impacts which would require mitigation are anticipated. With the condition of approval for landscaping, 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 “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on the 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

The proposal to reduce the north side setback for a covered porch equally meets the intent of the setback regulation and does not have adverse impacts on the livability and appearance of the surrounding residential neighborhood. With a condition of approval for additional landscaping for privacy, the applicable approval criteria have been met. Since the approval criteria are met, the proposal should be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum north side setback for a covered porch from five feet to three feet for the porch, and from four feet to two feet for the eave (Zoning Code Section 33.110.220), per the approved site plans and building elevations, Exhibits C-1 through C-3, signed and dated May 21, 2014, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 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 through C-3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 14-137356 AD."
- B. The site plan submitted with the building permit application must illustrate a landscaping buffer between the new porch and the north side property line. The landscaping buffer must be composed of evergreen shrubs at least 6 feet tall at the time of planting (to grow to 8 feet tall within 3 years), planted densely enough to screen the view of the northerly neighbor's property from the new porch. The landscaping buffer must extend the full length of the new porch and at least 5 feet beyond the eastern end of the porch.

**Staff Planner: Andrew Gulizia**

**Decision rendered by:** \_\_\_\_\_ **on May 21, 2014**

By authority of the Director of the Bureau of Development Services

**Decision mailed: May 23, 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 April 8, 2014, and was determined to be complete on **April 25, 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 April 8, 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 extended by the applicant, **the 120 days will expire on: August 22, 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 June 6, 2014**, at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 2:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 2:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> 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 **June 9, 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.

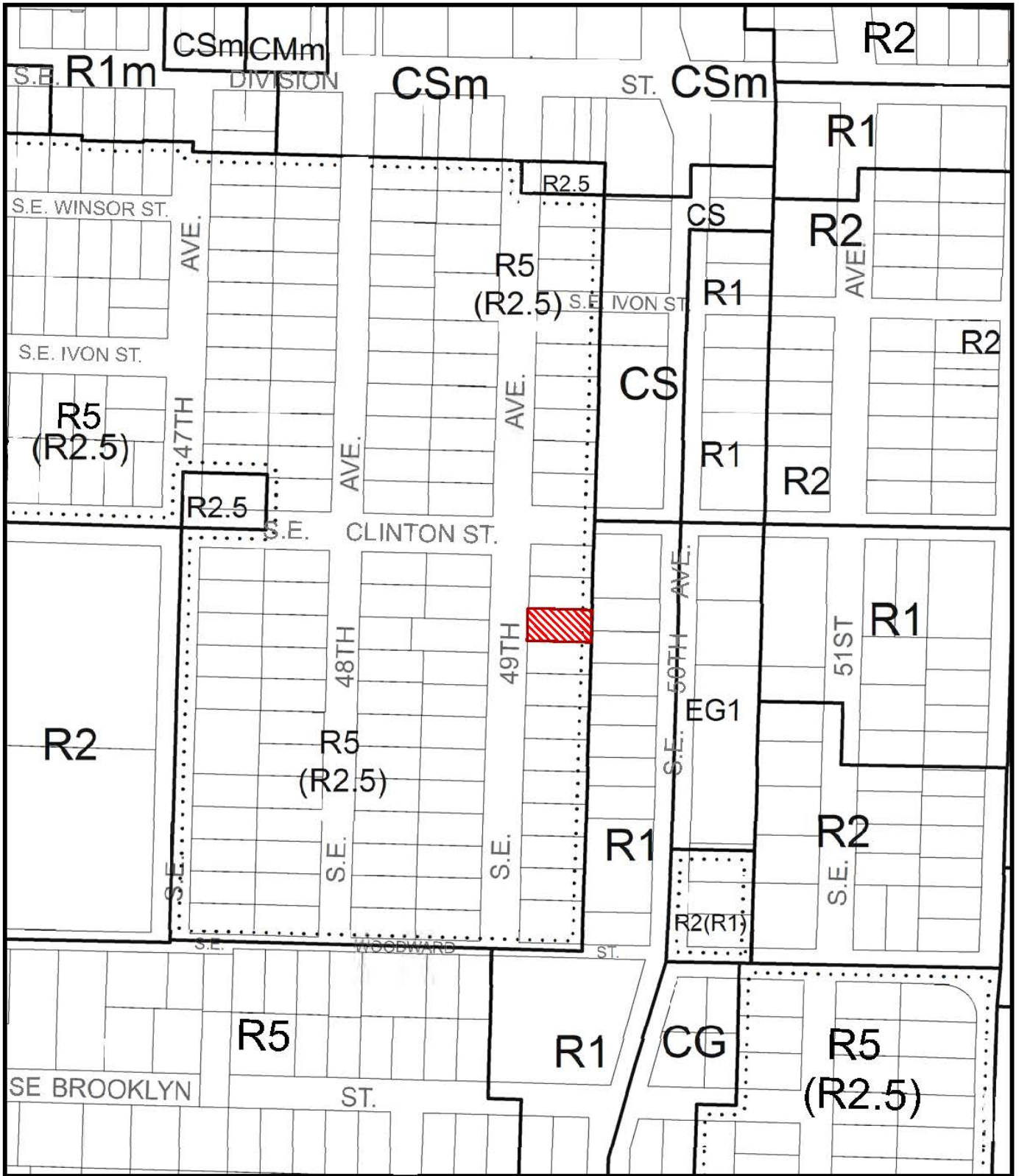
**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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. Written narrative
  - 2. Response to incompleteness determination letter, received April 22, 2014
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site plan (attached)
  - 2. West elevation (attached)
  - 3. North elevation (attached)
  - 4. Floor plan
- 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. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Life Safety Review Section of BDS
  - 7. Bureau of Parks, Forestry Division
- F. Correspondence:
  - 1. Letter in support from Kendra and Dennis Axon, received May 5, 2014
  - 2. E-mail in opposition from Kari Salis and Bill Long, received May 19, 2014
- G. Other:
  - 1. Original LU application
  - 2. Incompleteness determination letter, dated April 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



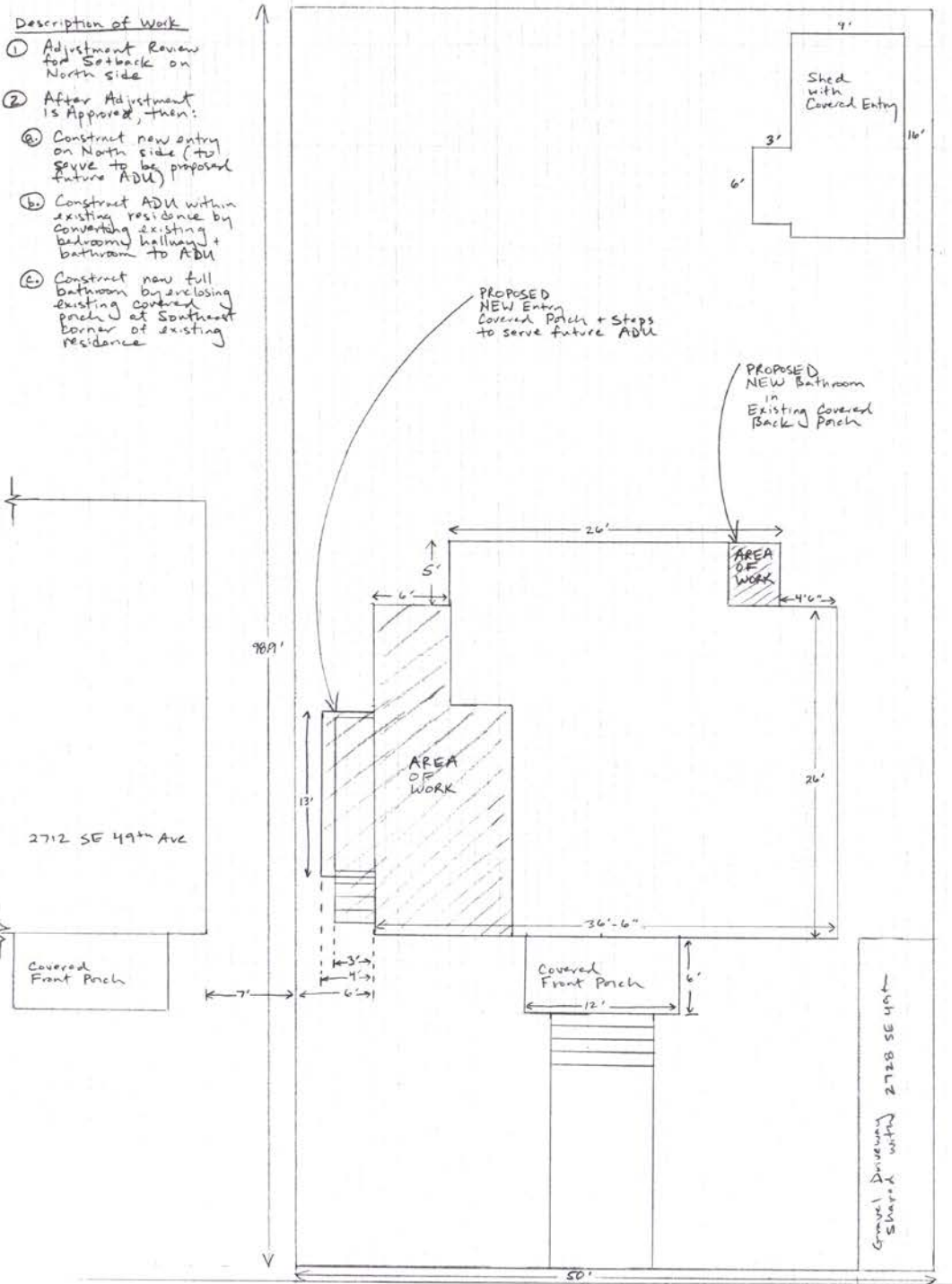
NORTH

File No. LU 14-137356 AD  
 1/4 Section 3335  
 Scale 1 inch = 200 feet  
 State\_Id 1S2E07BA 14100  
 Exhibit B (Apr 09,2014)



Description of Work

- ① Adjustment Review for Setback on North side
- ② After Adjustment is Approved, then:
  - Ⓐ Construct new entry on North side (to serve to be proposed future ADU)
  - Ⓑ Construct ADU within existing residence by converting existing bedroom hallway + bathroom to ADU
  - Ⓒ Construct new full bathroom by enclosing existing covered porch at Southeast corner of existing residence



\*Approved\*

City of Portland - Bureau of Development Services

Planner AS

This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

Date 5/21/14

2712 SE 49th Ave

Covered Front Porch

Covered Front Porch

4535 SE 82nd Avenue Young's General Contracting

SIDEWALK

Parking Strip

SE 49th Ave

2720 SE 49th Ave  
Portland, Oregon 97206  
Windsor Heights, Lot 10 Block 5

SITE PLAN

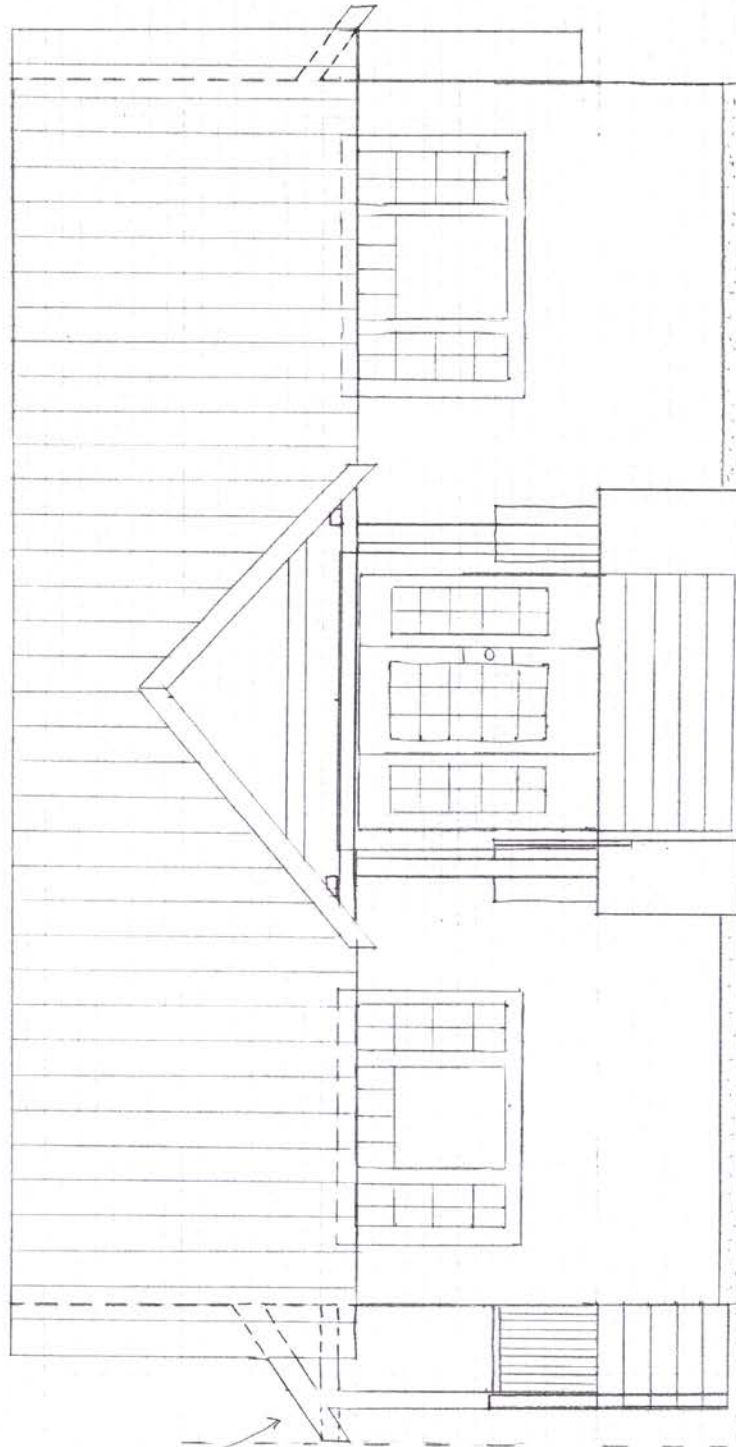
1/8" = 1'-0"

N ←

LU 14-137356 AD  
Exhibit C-1

Proposed New Entry style + materials:

Steps, porch, railing + posts/beams to be cedar and/or juniper - match existing style  
Shed roof over porch to be standing seam metal - match existing material  
12:8 pitch - match existing material



10'-0" = 1" = 1/4"

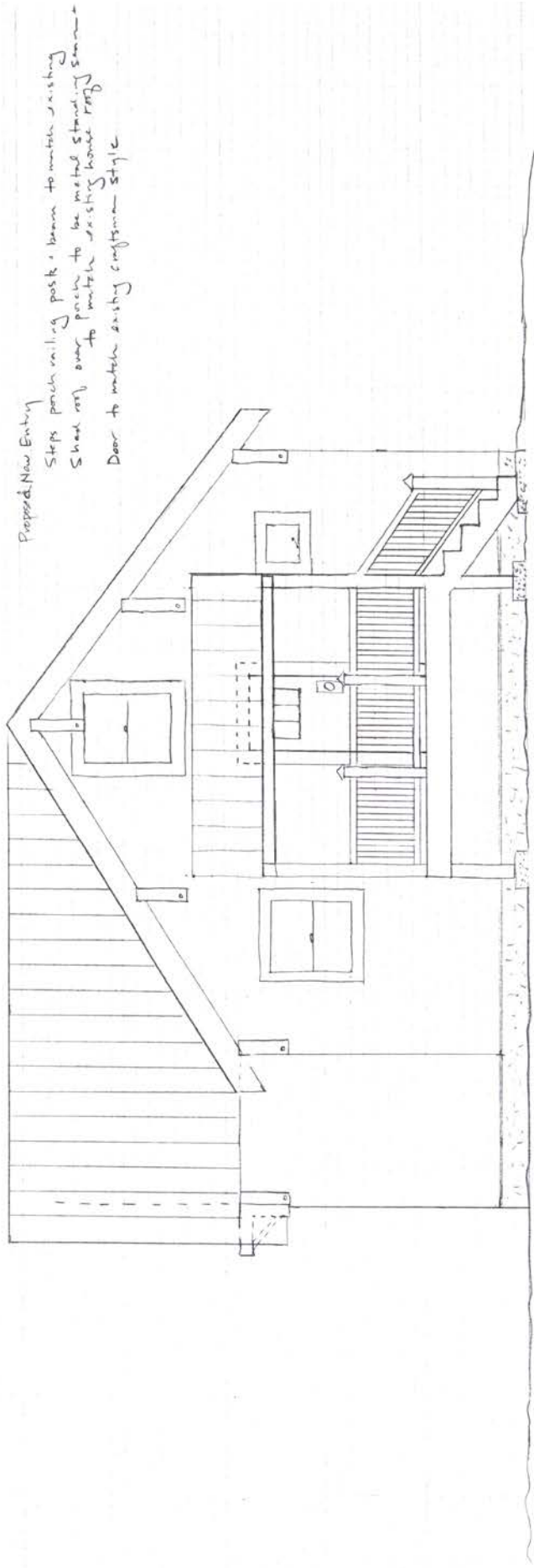
West Ellevation  
4th St  
2022

Eave of porch roof is 2' 2" from Portland Hwy line.  
Porch posts, rail + deck 11' 3" from Portland Hwy line.  
House is 9' 9" from Portland Hwy line.

Portland Hwy line

\*Approved\*  
City of Portland - Bureau of Development Services  
Planner AG Date 5/21/14  
This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

LU 14-137396 AD  
Exhibit C-2



Proposed New Entry

Steps porch railing posts + banister to match existing  
 Show roof over porch to be metal standing seam  
 to match existing house roof  
 Door to match existing custom style

1/4" = 1'-0"

North Elevation  
 20' x 4th SE 0662

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

Planner AE  
 Date 5/21/14

This approval applies only to the reviews requested and is subject to the conditions of approval. Additional zoning requirements may apply.

CU 14-137356 AD  
 Exhibit C-3