



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: July 8, 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 14-155966 AD

GENERAL INFORMATION

Applicant: Schuyler Smith / Polyphon Architecture & Design, LLC
412 NW Couch St #309 / Portland, OR 97209 / 503-508-5678

Owner: Marc B Peters
6120 NE 22nd Ave / Portland, OR 97211-5444

Site Address: 6120 NE 22ND AVE

Legal Description: BLOCK 9 LOT 23&25, IRVINGTON PK
Tax Account No.: R421302240
State ID No.: 1N1E14DA 15200
Quarter Section: 2432
Neighborhood: Woodlawn, contact Anjala Ehelebe at 503-388-5004.
Business District: North-Northeast Business Assoc, Joice Taylor at 503-841-5032.
District Coalition: NE Coalition of Neighborhoods, Claire Adamsick at 503-388-9030.
Plan District: None
Zoning: R5ah, Single-Dwelling Residential 5,000 zone with the "a" Alternative Design Density and the "h" Aircraft Landing overlay zones.

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

Proposal: The applicant is requesting an Adjustment to reduce the required side (north) building setback from 5 feet to 1.5 feet and reduce the required setback for the eave from 4 feet to 6 inches for a new detached Accessory Dwelling Unit (ADU). The existing detached garage will be removed and replaced with a single-story, 360 square foot ADU. A parking space will be provided off the alley, at the back (east) of the ADU structure.

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 5,000 square foot lot is developed with a two-story 1930's Tudor-style home and a detached garage at the rear of the site, adjacent to an alley. The garage is located 10 inches from the north property line and 10 feet from the alley, a 14-foot wide public right-of-way. The site has mature landscaping including two large trees.

Most of the homes on the block of the subject site and in the nearby area have on-site parking with driveways and/or garages. There is no distinct pattern of access. Some of the homes, particularly those on the southern half of the block have access off the alley, while there are others that access the parking from the fronting street. Most of the detached structures in the immediate area appear to be set back from the homes and are modest in scale.

Zoning: The site and surrounding properties are located in an R5ah, Single-Dwelling Residential 5,000 zone and the "a", Alternative Design Density and "h" Aircraft Landing 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.

The "h" overlay limits height of structures and vegetation in the vicinity of the Portland International Airport to provide safer operating conditions for aircraft. The "h" overlay height limit at this location is approximately 180 feet. Therefore, the R5 zone height limit of 30 feet supersedes that of the 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 May 30, 2014. The following Bureaus have responded with no issues or concerns:

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

The **Portland Bureau of Transportation** stated no concerns/objections regarding the side setback Adjustment. However, staff raised concerns that will affect the associated building permit. Staff responded with the following key comments:

Street Improvements (Section 17.88.020) in association with the Building Permit:

As a result of the proposed development, the applicant is proposing to accommodate on-site parking via a space off the alley at the rear of the proposed accessory dwelling unit. As previously stated, the alley does not meet City standards in terms of width as it is only 14-ft wide.

While it is not PBOT's practice to require property dedication for right-of-way purposes for this type of request, the alley must be able to function in a safe manner that facilitates unobstructed vehicular movement within the public alley. Accordingly, the proposed parking space will be required to be setback a minimum of three (3) feet from the eastern property line. (Exhibit E.2.a)

Updated PBOT Determination: In response, the applicant submitted a “Design Exception” request to PBOT to reduce the PBOT required parking area setback from 3 to 1 foot. Only July 2, 2014, the PBOT approved the revised plan that includes a 10 foot-wide parallel parking pad between the proposed ADU and the 14 foot-wide public alley. (Exhibit E.2.b)

The **Water Bureau** responded with no concerns/objections to the side setback Adjustment. The following comments will apply at time of Building Permit review:

There is an existing 5/8” metered service (Serial #96042658, Account #2990459600) which provides water to this location from the existing 8” CI water main in NE 22nd Ave. This service may potentially be used as is to provide water to the existing house and additional newly created ADU at this location. Under this scenario, City code 21.12.010 will apply, as described fully below, and a Water Bureau review for fixture count will need to be submitted by the applicant at the time of submittal of the building permit to appropriately size the domestic water service and meter for this location, prior to the Water Bureau signing off on any building permits for this property. If a water service and or meter upsize is required, all applicable costs will be the responsibility of the applicant.

If the proposed new ADU will utilize the existing water service, Title 21.12.070 will then also apply.... “A separate service shall be required for each house or building, even if under one ownership, and on the same lot or parcel of land. If a single service will be used to provide for multiple units under single ownership, a separate service agreement will need to be signed with the Water Bureau for this property where multiple buildings are supplied with water from a single water service”, prior to the Water Bureau signing off on any building permits.

If it is decided that the new ADU will need a separate water service, City code 21.12.010 will require any new building construction, additions to or remodeling and or reconstruction of an existing building structure, or any construction that will need water, to have a water service and meter of appropriate size installed within the public right-of-way and within the specific property boundary/frontage for which it will serve. There is water available to the proposed ADU from the existing 8” CI water main in NE 22nd Ave. A Water Bureau review for fixture count will need to be submitted by the applicant at the time of submittal of the building permit to appropriately size the water service and meter for this location. All applicable costs will be the responsibility of the applicant. (Exhibit E.3)

The **Bureau of Environmental Services** responded with no concerns/objections to the side setback Adjustment. The following comments will apply at time of Building Permit review:

The proposed ADU must meet the City’s Stormwater Management Manual, but being under 500 square feet, pollution reduction and flow control standards would not apply. Additionally, it may be possible to manage roof runoff by directing it to disconnected downspout extensions in the rear yard or by the installation of a small drywell. (Exhibit E.1)

Neighborhood Review: Written responses, stating support of the proposal, have been received from the Woodlawn Neighborhood Association (Exhibit F.1) and adjacent property owners (Exhibit F.2 and F.3) in response to the “Notice of Proposal”.

ZONING CODE APPROVAL CRITERIA

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: Section 33.110.220 identifies the purpose of the building setback regulation. Each purpose statement is addressed individually below.

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

Findings: The proposed ADU will be approximately the same size and in the same location of the existing garage that it will replace. There will be a modest increase in height--3 feet—from the existing structure to the ADU. And, in response to concerns raised by PBOT, the structure will be moved approximately 1 foot to the west in order to provide a 10 foot-wide parking pad between the public alley and the ADU structure. The ADU will not significantly diminish the light, air and fire protection separation between the ADU and other structures and the adjacent property. Access for firefighting will be available from NE 22nd and the public alleyway.

- *They reflect the general building scale and placement of houses in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*

Findings: Given that the ADU will replace the existing detached garage and will be similar in size and scale, the general building scale and placement will not change.

- *They promote options for privacy for neighboring properties;*

Findings: The northern abutting neighbors submitted letters that state their support of the proposal. As noted above, the original proposal has been altered to address PBOT concerns. The ADU structure will be located approximately 1 foot to west, closer to both the primary residence on the subject site and the residence on the northern abutting lot. However, the north building wall of the ADU will be finished with horizontal siding and will not have any windows or doors. Staff finds that the design and location of the ADU will still maintain a comparable level of privacy currently enjoyed by nearby neighbors.

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

Findings: The Adjustment request is to reduce only the side setback. The front yard is not impacted.

- *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: The new ADU will not be located closer to the property line than the detached garage already sits. The location of the ADU will continue to provide adequate outdoor area and will have no apparent impacts to the neighbor's enjoyment of their outdoor space.

- *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: The Portland Bureau of Transportation responded with concerns regarding the proposed parallel parking space between the rear wall of the ADU and the alley. Because the alley is only 14 feet wide, it does not meet City standards. The PBOT response states, "While it is not PBOT's practice to require property dedication for right-of-way purposes for this type of request, the alley must be able to function in a safe manner that facilitates unobstructed vehicular movement within the public alley. Accordingly, the proposed parking space will be required to be set back a minimum of three (3) feet from the eastern property line" (Exhibit E.2.a). In response, the applicant submitted a "Design Exception" request to PBOT to reduce the parking area setback from 3 to 1 foot (Exhibit E.2.b). The PBOT approved the revised plan that includes a 10 foot wide parallel parking pad between the proposed ADU and the 14 foot-wide alley.

The extra 1-foot width will achieve a 10 foot-wide parking space that can accommodate standard-size vehicles and allow residents to enter and exit the vehicles without extending into the alley right-of-way.

For all the reasons described 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: The subject site and nearby lots are part of the Irvington Park subdivision a unique block pattern that generally has 5,000 square foot lots with east-west public alleys that align with NE Ainsworth as well as a north-south alleys that cut through the middle of the blocks. Most of the homes were constructed in the 1930's and 1940's. It is not unusual for these older homes and their accessory structures to be built closer to the property lines than the 5-foot setback currently requires. Approving the proposed Adjustment to allow an ADU to replace an existing detached garage will not detract from the appearance or livability of the area. The ADU windows and access is oriented away from the northern abutting lot. A letter from the property owners to the north states support of the Adjustment request.

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

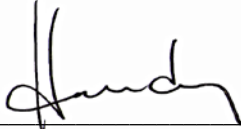
As reflected in the finding of this report, the proposed setback reduction addresses the approval criteria and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the required side (north) building setback (33.110.220) from 5 feet to 1.5 feet and reduce the setback for the eave from 4 feet to 6 inches for a new 360 square foot detached Accessory Dwelling Unit (ADU), per the approved plans, Exhibits C.1 through C.3, signed and dated July 3, 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 14-155966 AD. No field changes allowed."

Staff Planner: Sheila Frugoli

Decision rendered by:  **on July 3, 2014**
By authority of the Director of the Bureau of Development Services

Decision mailed: July 8, 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 May 13, 2014, and was determined to be complete on May 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 May 13, 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 July 22, 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 5th 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 **July 23, 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.

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

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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Revised Site Plan, dated June 25, 2014 (attached)
 2. East and West Elevations (attached)
 3. North Elevation (attached)
 4. Proposed Site Plan, Initial Proposal
- 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
 - a. Response from Teresa Montalvo, June 17, 2014
 - b. Design Exception Application and PBOT Approval, (#14-178223- TR), July 2, 2014
 3. Water Bureau
 4. Life Safety Plan Review Section of BDS
 5. Site Development Review Section of BDS
 6. Bureau of Parks, Forestry Division
 7. TRACS Print-out showing "No Concerns" from Fire Bureau
- F. Correspondence:
 1. Anjala Ehelebe, Land Use Chair and Vice Chair, Woodlawn Neighborhood Association, June 10, 2014, e-mail stating the neighborhood association approved the proposed by a vote of the board.
 2. MacDonald and Cynthia Jackson, May 10, 2014, letter from neighbors stating support of ADU in the proposed location.
 3. Don (MacDonald) Jackson, June 17, 2014, e-mail stating support of the project.
- G. Other:
 1. Original LU Application
 2. Incomplete Application Letter from Staff to Applicant
 3. Follow-up E-Mail from Don Jackson, July 2, 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



File No. LU 14-155966 AD
 1/4 Section 2432
 Scale 1 inch = 200 feet
 State_Id 1N1E14DA 15200
 Exhibit B (May 15, 2014)

Approved

City of Portland - Bureau of Development Services

Planner *S. Frugoli*

Date *July 3, 2014*

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

Polyphom
ARCHITECTURE & DESIGN, LLC
polypnom.com

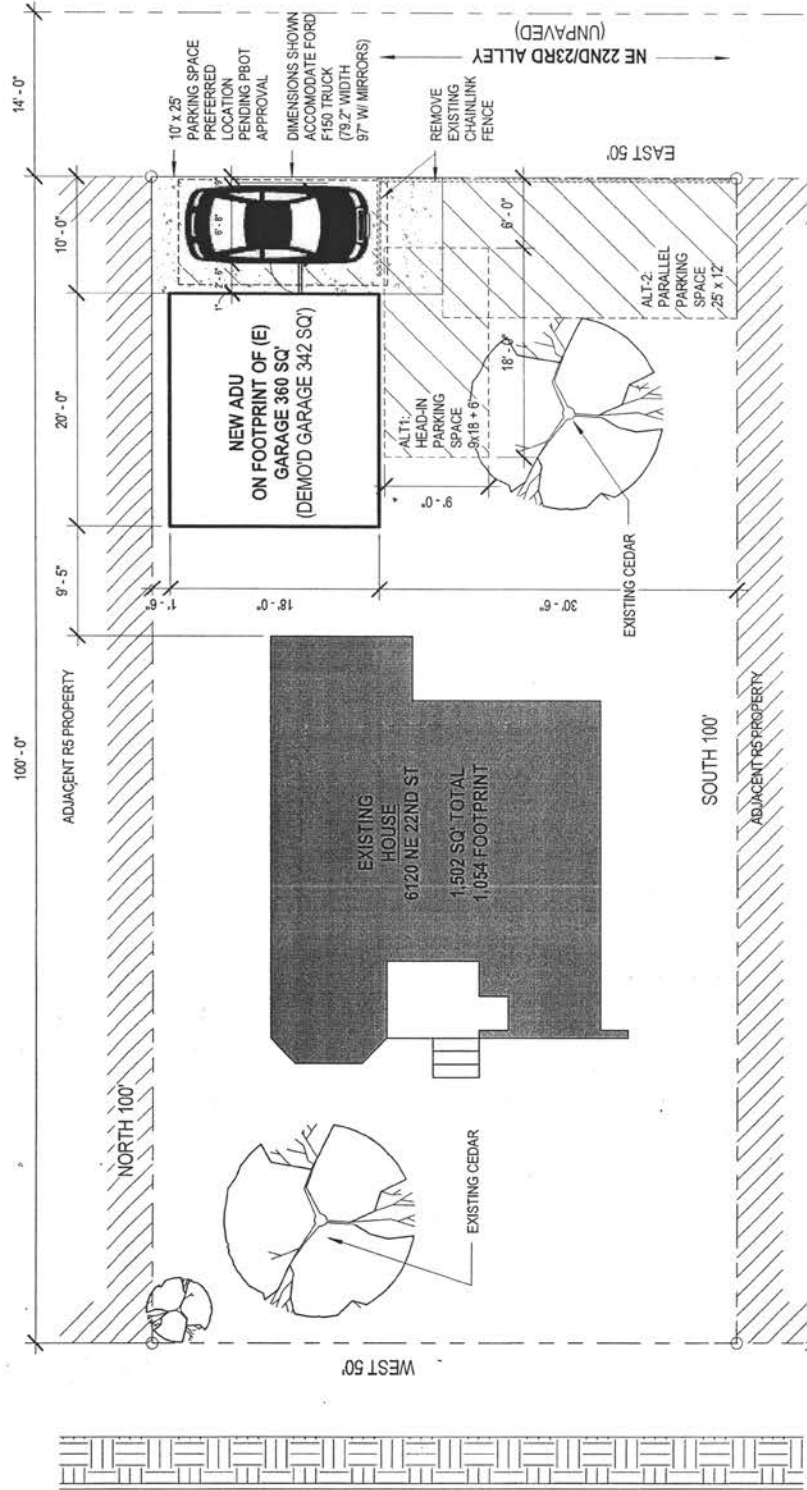
412 NW COUCH ST | SUITE 309 | PORTLAND, OR 97209

PETERS/ASH ADU
6120 NE 22ND AVE
PORTLAND, OR
97211

REVISED
6.25.14
SITE PLAN

DE-1

ORIGINAL SHEET
SIZE: 11" x 17"



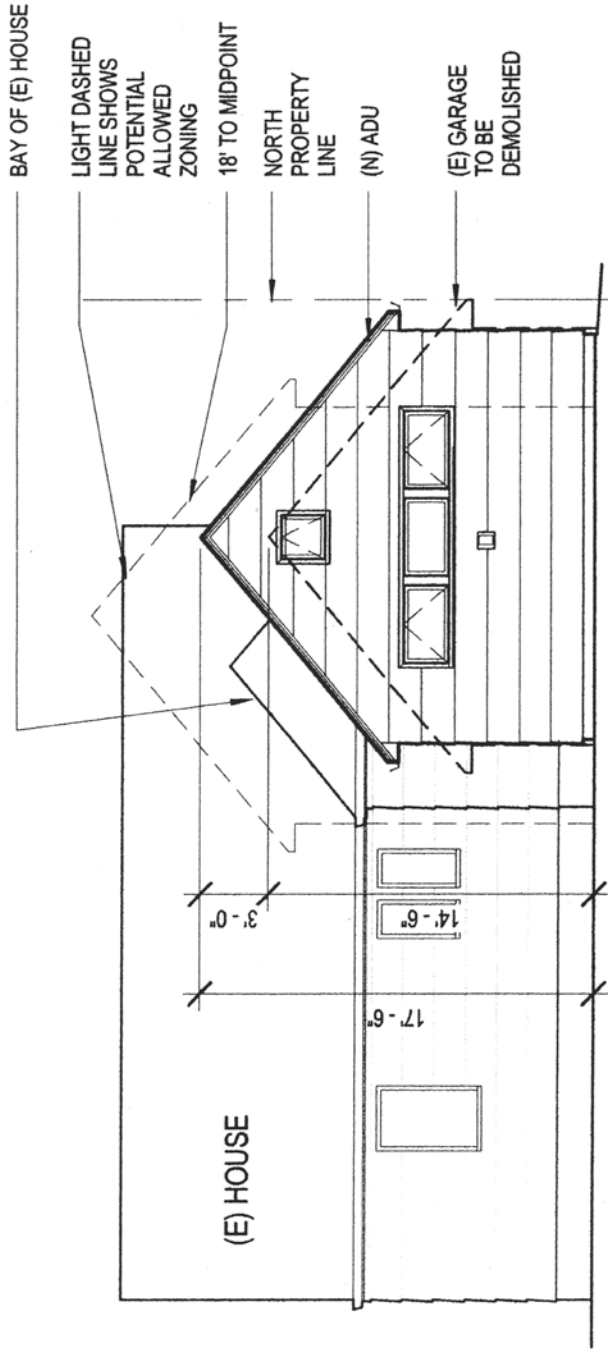
DE-1 | **1** | **SITE PLAN - PBOT DESIGN EXCEPTION**

SCALE: 1" = 10'-0"

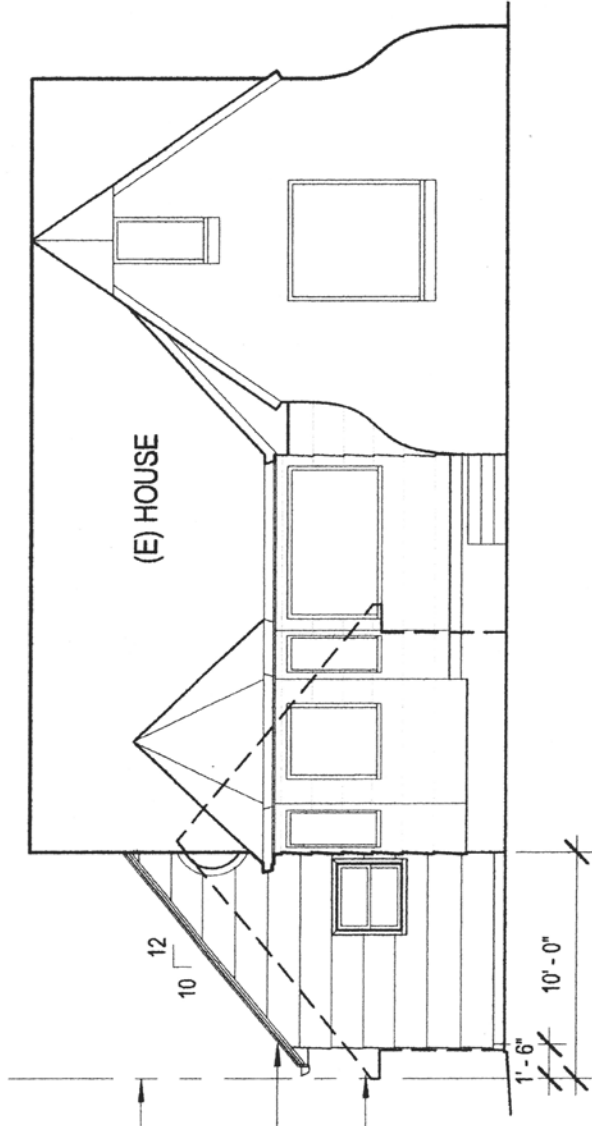


NE 22ND ST.

Exhibit C.1
Lu 14-155966 AD



1. EAST ELEVATION (ALLEY FACING SIDE)



2. WEST ELEVATION (NE 22ND AVE. STREET SIDE)

Approved
 City of Portland - Bureau of Development Services
 Planner S. Frugoli Date July 3, 2014
 * This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

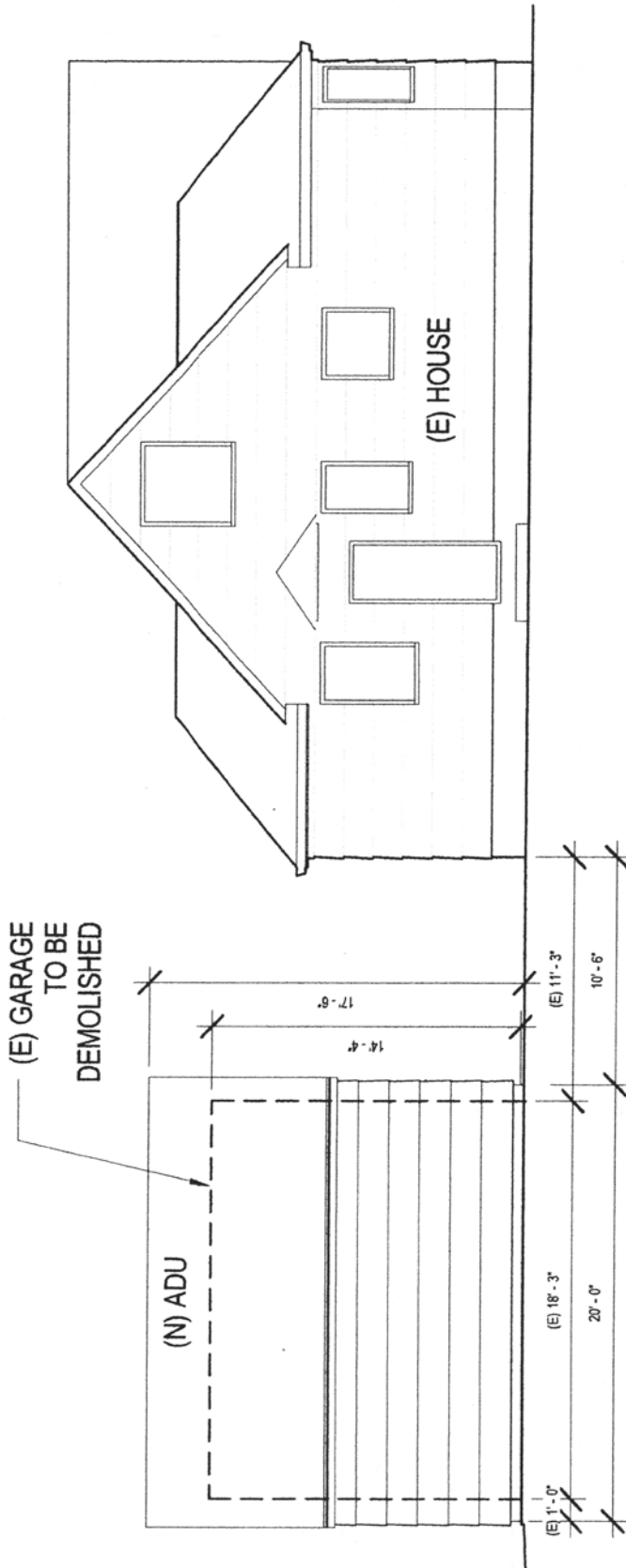
Exhibit C.2
 LU 14-155966 AD

PETERS/ASH ADU

ELEVATIONS

ZA3

ORIGINAL SHEET
 SIZE: 8.5" x 11"



1. NORTH ELEVATION (ADJACENT PROPERTY SIDE)

Approved
 City of Portland - Bureau of Development Services
 Planner S. Fungel Date July 3 2014
 * This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

Exhibit C.3
 LU 14-155966 AD