



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
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Date: July 21, 2014
To: Interested Person
From: Andrew Gulizia, 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 14-117783 AD

GENERAL INFORMATION

Applicants/Owners: Kevin and Celia Kane
1805 SE 33rd Ave / Portland, OR 97214

Site Address: 1805 SE 33rd Ave.

Legal Description: BLOCK 5 LOT 5 N 1/2 OF LOT 6, SOUTH SUNNYSIDE
Tax Account No.: R779701210
State ID No.: 1S1E01CA 18300
Quarter Section: 3233
Neighborhood: Richmond, contact Douglas Klotz at 503-233-9161
Business District: Hawthorne Blvd. Bus. Assoc., contact Hilda Stevens at 503-774-2832
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 applicants propose to convert the duplex on this site to a single-dwelling residence and convert the accessory building in the side yard to an accessory dwelling unit (ADU). Zoning Code Section 33.205.030.D.1 requires that detached ADUs be either 6 feet or more behind the house or 60 feet or more from the street lot line. The proposed ADU is not behind the house and is only 55 feet from the street lot line. Therefore, the applicants are requesting approval of an Adjustment to the requirement of Section 33.205.030.D.1 in order to convert the existing accessory building into an ADU.

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 7,500 square-foot lot located on the west side of SE 33rd Avenue, between SE Market Street and SE Stephens Street. The site is developed with a two-

story house which was constructed as a duplex but which the applicants now propose to use as a single-dwelling residence. Two detached accessory buildings occupy the southwestern corner of the site, one of which the applicants propose to use as an ADU. Most neighboring lots are developed with two-story, single-dwelling homes.

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" was mailed June 24, 2014. The following Bureaus have responded with no concerns about the proposal:

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

Neighborhood Review: In response to the "Notice of Proposal", seven written responses were received from notified property owners. The comments are summarized below:

- Two of the responses expressed support for the proposal and raised no specific issues related to the approval criteria (Exhibits F-1 and F-3).
- Another response in support of the proposal stated that the accessory building proposed for use as an ADU is attractive, set back a considerable distance from the sidewalk, and compatible with the character of the neighborhood (Exhibit F-7).
- One neighbor expressed concern about on-street parking and stated she would support the proposal if the driveway were modified to accommodate two parked cars (Exhibit F-4).
- Another neighbor thought the accessory building was appropriate for the property and that it didn't matter whether it was slightly closer to the street than required. However, this neighbor was concerned that the main house could contain more than one dwelling unit in the future, and said he supported this proposal only if multiple rental units on the site could be prevented (Exhibit F-6).
- One of the responses in opposition to the proposal objected to the lack of off-street parking on this site and the noise and inconvenience caused by construction (Exhibit F-5).
- Another response in opposition objected to the lack of off-street parking and questioned whether the main house would, in fact, be used as a single-dwelling residence (Exhibit F-2). This response alleged that a basement apartment in the main house was recently advertised for rent, and raised a concern that three separate residential units could occupy this site.

Staff Response: The Adjustment proposal is to use an existing accessory structure as an ADU. No additions or exterior modifications to the accessory structure are proposed. Therefore, construction impacts related specifically to this Adjustment application will be minimal. The site plan submitted with this application is inaccurate in that the driveway does not extend into the back yard as shown. Rather, the driveway stops at a gate approximately 7 feet back from the street lot line. Pursuant to Zoning Code Chapter 33.266, at least one 18-foot long, off-street parking space is required per residential lot, and this space must be entirely outside the 10-foot front setback. Therefore, in the absence of a functioning garage or carport, a driveway at least 28 feet long is required to comply with the zoning standard. Such a driveway would allow for two parking spaces, one of which would be entirely outside the 10-foot front setback

from the property line. This issue is not relevant to the current Adjustment application because per Zoning Code Section 33.205.030.C.5, additional parking is not required for an ADU and the proposal to use the existing accessory building as an ADU does not take away any existing parking space. However, neighbors have the option to raise this issue with the Code Compliance Section of BDS. The Code Compliance Section would require the applicants to bring the driveway into conformance with the zoning regulations unless they can demonstrate the current driveway configuration existed before those requirements were in effect.

Only one primary dwelling unit and one ADU are allowed on an R5-zoned site. Three separate dwelling units would not be allowed. Recently a building permit was issued for an upper-story addition to the main house on this lot (permit # 14-107934 RS). The approved floor plans with this building permit illustrate a single dwelling unit in the main house, with no separate apartment in the basement. The Adjustment application for the accessory building cannot be delayed or denied based solely on the allegation that the property contains an illegal dwelling unit or the potential for illegal dwelling units to be created in the future. However, the building inspector for permit # 14-107934 RS has been asked to verify that no unpermitted dwelling unit occupies the basement. (A “dwelling unit” is defined as having a separate kitchen and bathroom.) Also, if neighbors suspect that more than one ADU is rented on this property in the future, the BDS Code Compliance Section will investigate upon request. A condition of approval will also be imposed to reiterate the limitation of only one primary dwelling unit and one ADU on this site.

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: In order to use the existing accessory building as an ADU, the applicant is requesting an Adjustment to the requirement that a detached ADU be at least 60 feet from the front lot line or 6 feet behind the house. The ADU design standards are stated in Zoning Code Section 33.205.030.A:

Purpose. *Standards for creating accessory dwelling units address the following purposes:*

- *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 accessory building to be used as an ADU is significantly smaller and lower in height than the main house on this lot. Although the building is not 60 feet from the street lot line or 6 feet behind the house, its setback from the street lot line is substantial (55 feet), and its scale and placement appear typical of an accessory building in a single-dwelling residential zone. Landscaping in the side yard further diminishes the visual presence of the accessory building from the street. As required in the R5 zone, the structure is set back 5 feet from the adjacent neighbors’ property lines. The site is relatively large for the neighborhood (7,500 square feet), and outdoor area in the side and rear yards can be easily shared between the main house and the ADU. The design of the accessory building is compatible with the main house on this lot and with the surrounding residential area. Based on these reasons, the Adjustment equally meets the intent of the ADU regulations 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. The accessory building to be used as an ADU is set back 55 feet from the street lot line, and the view of the building from the street is partially obscured by landscaping. In addition, as required in the R5 zone, the structure is set back 5 feet from the adjacent neighbors' property lines. The design of the accessory building is compatible with the main house on the lot and does not appear out of place in the neighborhood. To maintain the density envisioned for the R5 zone, and therefore the livability of the surrounding residential area, a condition of approval will reiterate the limit of one primary dwelling and one ADU on this site. For these reasons, 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 criterion B, the proposal has no adverse impacts on the livability or appearance of the surrounding residential area. As there are no identified adverse impacts for which mitigation would be required, this criterion is not applicable.

- 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 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

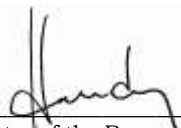
The proposal to convert the existing accessory building into an ADU equally meets the intent of the ADU regulations and does not have significant adverse impacts on the livability and appearance of the surrounding residential neighborhood. The applicant has demonstrated that the applicable approval criteria have been met. Since the approval criteria are met, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to the requirement that a detached ADU be at least 60 feet from the front lot line or 6 feet behind the house (Zoning Code Section 33.205.030.D.1) in order to convert an existing accessory building into an ADU, per the approved site plan and building elevations, Exhibits C-1 and C-2, signed and dated July 17, 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 and C-2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 14-117783 AD."
- B. Only one dwelling unit in the main house and one detached ADU are allowed on the site. The applicant/owner may not rent or advertise for rent any other dwelling unit on the site.

Staff Planner: Andrew Gulizia

Decision rendered by:  **on July 17, 2014**
By authority of the Director of the Bureau of Development Services

Decision mailed: July 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 March 13, 2014, and was determined to be complete on **June 20, 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 March 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. Unless extended by the applicant, **the 120 days will expire on: October 17, 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 August 4, 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 **August 5, 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.

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:

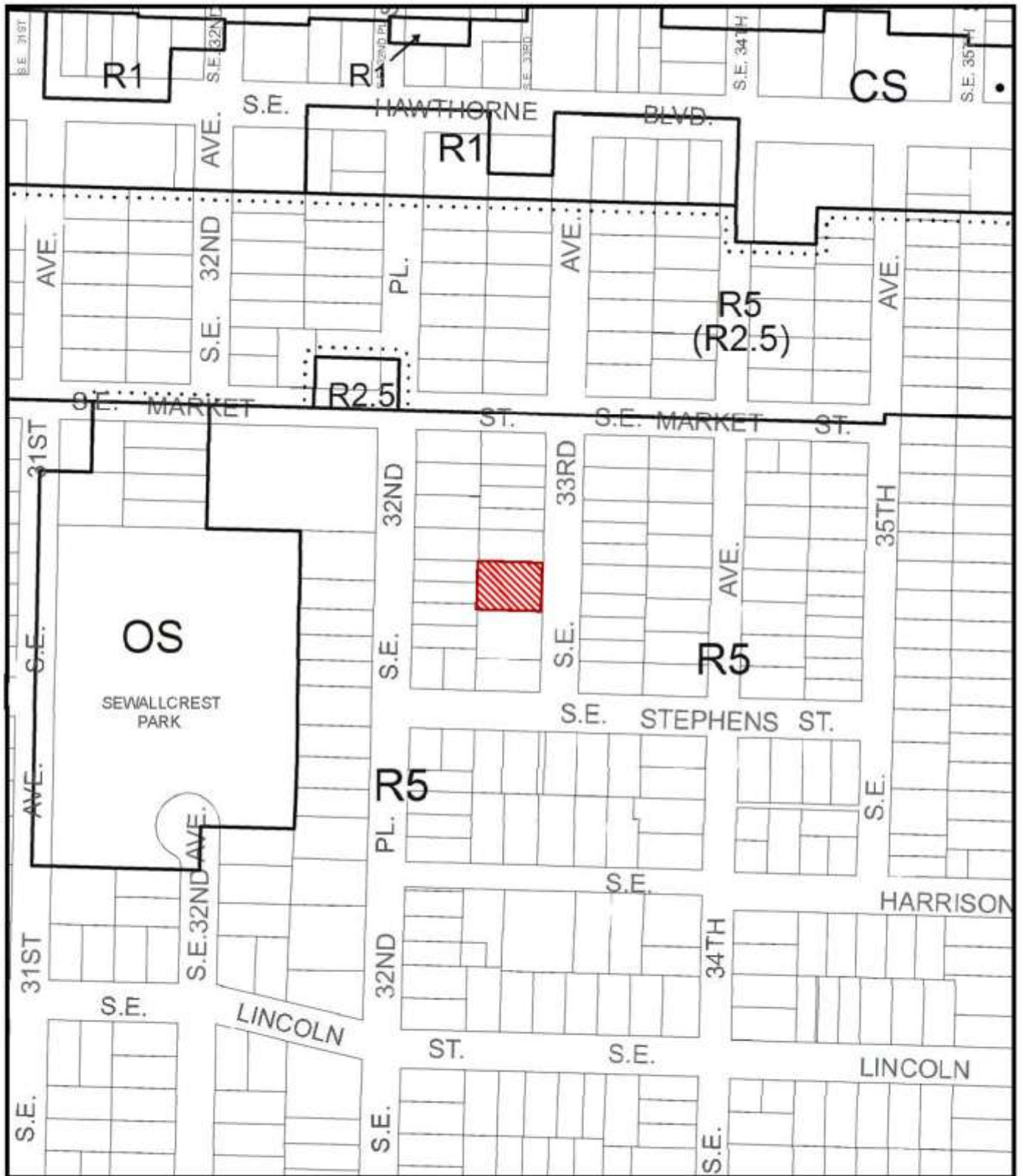
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Approval criteria response
 2. Revised approval criteria response, received June 17, 2014
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site plan (attached)
 2. Building elevations (attached)
- D. Notification Information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of BDS
 6. Life Safety Review Section of BDS
- F. Correspondence:
 1. E-mail from Linda and Patrick Kadas, dated June 27, 2014
 2. Letter from Catherine and Randall Heeb, dated July 5, 2014
 3. Letter from Trent and Glenda Robinett, dated July 3, 2014
 4. Letter from Allison King, dated July 13, 2014
 5. Letter from Rob and Karen Rohman, dated July 9, 2014
 6. Letter from Mark Niemann-Ross, dated July 8, 2014
 7. E-mail from Anthony Iaccarino, dated July 15, 2014
- G. Other:
 1. Original LU application
 2. Incompleteness determination letter, dated March 25, 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



File No. LU 14-117783 AD
 1/4 Section 3233
 Scale 1 inch = 200 feet
 State_Id 1S1E01CA 18300
 Exhibit B (Mar 14, 2014)



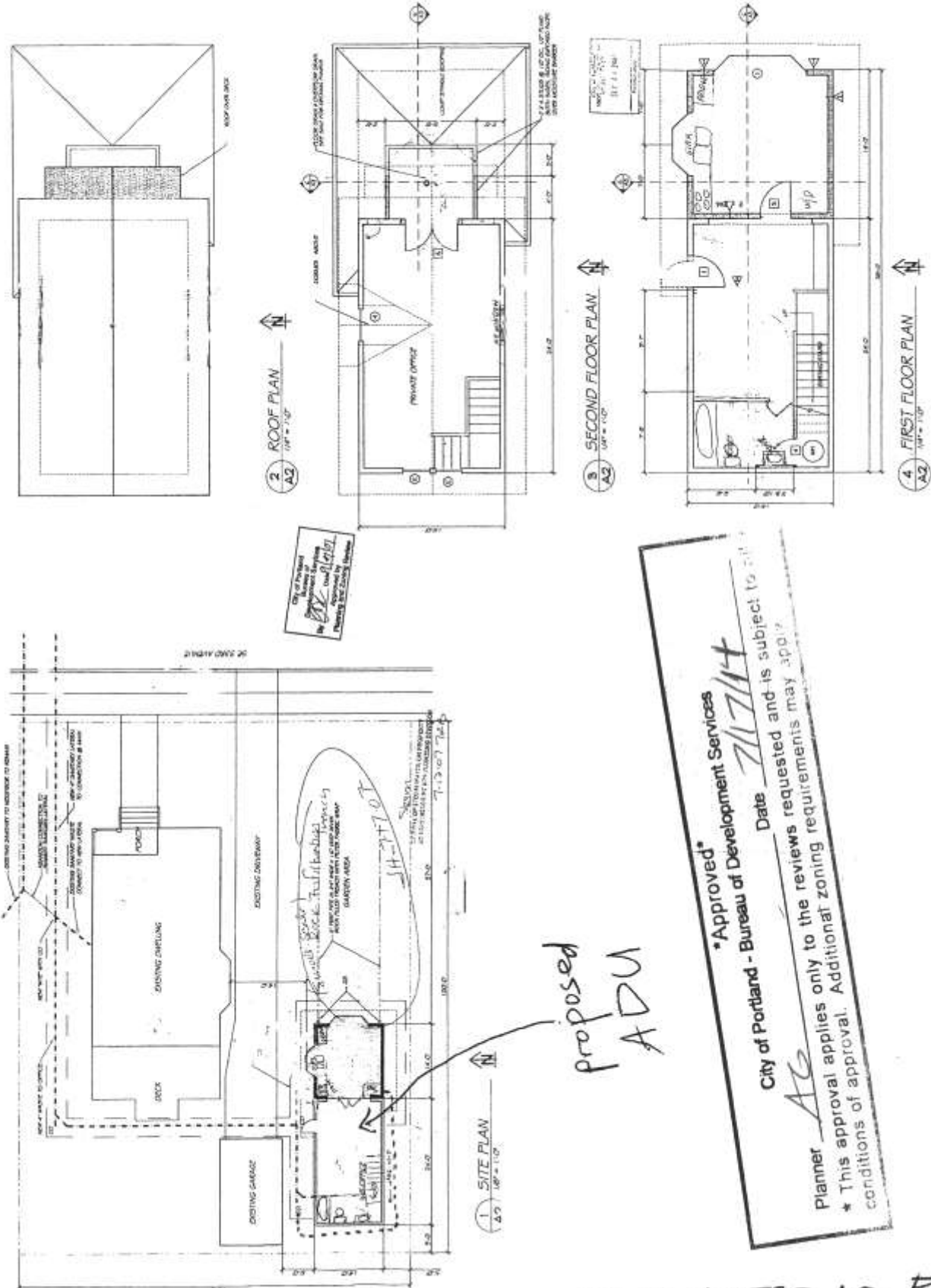
STEWART GORDON STRAITS
ARCHITECT
1500 SW CHURCH STREET
SUITE 200
PORTLAND, OREGON 97205
503.273.7517
503.273.7500 (FAX)
sgs@stewartgordonstraits.com



HOME OFFICE REMODEL
DR. KEVIN KANE
1803 SE 33RD AVENUE
PORTLAND, OREGON

PROJECT NUMBER: 0717
DATE: 11-25-2017
BY: KKS
CHECKED: JKS
DATE: 25 JAN 2018

SHEET TITLE: PLANS & SCHEDULES
SHEET #: A2



CITY OF PORTLAND
APPROVED FOR
PLANNING SERVICES
DATE 11/17/17
BY [Signature]

Approved
City of Portland - Bureau of Development Services
Date 11/17/17
Planner AG
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

LM 14-117783 AD Exhibit C-1



STEWART-GARDNER, INC.
 ARCHITECTS
 6170 SW CHERRY HILL DR.
 PORTLAND, OR 97206
 PHONE: 503-233-7000
 FAX: 503-233-7001
 www.stewartgardner.com



HOME OFFICE ADDITION
 DR. KEVIN KANE
 1803 SE 33RD AVENUE
 PORTLAND, OREGON

PROJECT NUMBER: 0717
 DRAWING DATE: 12.28.13
 DATE: 01.24.14

SHEET TITLE
 ELEVATIONS

SHEET #
 A3

