



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
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Date: January 12, 2015
To: Interested Person
From: Sylvia Cate, Land Use Services
503-823-7771 / Sylvia.Cate@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 mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, 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 14-235020 AD

GENERAL INFORMATION

Applicant: Brian Chodowski
5846 NE 28th Ave / Portland, OR 97211

Owner: Christa L Cummins,
5846 NE 28th Ave / Portland, OR 97211

Site Address: 5846 NE 28TH AVE

Legal Description: BLOCK 32 LOT 29&31, IRVINGTON PK
Tax Account No.: R421311330, R421311330
State ID No.: 1N1E13CC 01500, 1N1E13CC 01500
Quarter Section: 2433
Neighborhood: Concordia, contact Garlynn Woodsong at 503-936-9873.
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-841-5032.
District Coalition: Northeast Coalition of Neighborhoods, contact Claire Adamsick at 503-388-9030.

Zoning: R5ah, Single Dwelling Residential 5,000 with an 'a' Alternative Design Density and an 'h' Aircraft Landing overlay zone

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

Proposal:

The applicant proposes to add a detached, single car garage with an Accessory Dwelling Unit (ADU) on the second floor. There are several development standards that are applicable to ADU's; these regulations generally ensure that an ADU matches the main house in materials, roof pitch, windows, trim, etc. The applicant is requesting an Adjustment to three of the development standards: 1) to allow a 4/12 roof pitch that does not match the 10/12 and steeper roof pitch of the main house because it would result in a taller structure and; 2) to allow the height of the structure to exceed the 18 foot height limit and be 20 feet in height; and

3) to allow a 'bellyband' trim around the structure to provide a more finished appearance. Attached to this Notice is a zoning map and site plans depicting the proposal.

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 site is a 5,000 square foot lot developed with a 1,350 square foot house built circa 1928. Residential development surrounds the site in all directions on lands zoned R5ah. The site has frontage on NE 28th Avenue, a designated Local Service street for all modes.

Zoning: The site is zoned R5ah Single-dwelling Residential 5,000 with the 'a' and 'h' overlay zones. The R5 zone is a high density single-dwelling zone. The R5 zone allows attached and detached single-dwelling structures and duplexes.

The purpose of the Alternative Design Density Overlay Zone is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements.

The Aircraft Landing overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation.

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

A "Notice of Proposal in Your Neighborhood" was mailed December 5, 2014.

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

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Fire Bureau
- Bureau of Parks-Forestry Division

The Water Bureau responded with no concerns regarding the Adjustment, but noted requirements that are applicable during building permit review.

The Site Development Section of BDS responded with no concerns regarding the Adjustment, but noted that erosion control measures will be required during site preparation and construction.

The Life Safety Plans Examiners Section of BDS responded with no concerns, but notes a building permit is required for the work proposed.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on December 5, 2014. 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 applicant requests Adjustments to three of the development standards for ADUs as follows:

- 1) Allow a 4/12 roof pitch that does not match the 10/12 and steeper roof pitch of the main house because it would result in a taller structure and;
- 2) Allow the height of the structure to exceed the 18 foot height limit and be 20 feet in height; and
- 3) Allow a 'bellyband' trim around the structure to provide a more finished appearance.

The purpose for the ADU development standards are found at 33.205.030.A, *Purpose*, which states

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 applicant notes that the requested Adjustments are modest deviations from the applicable regulations. The development standards for ADUs require a number of architectural elements of an ADU to match the primary residence on the lot. The applicant notes that the 10/12 roof pitch of the 1928 home is unusually steep and would result in a very tall structure if the pitch were to match exactly. The applicant notes that by relaxing the roof pitch to 4/12 that the result is still consistent with the primary residence but allows a lower structure. In fact, by relaxing the roof pitch, the ADU will meet the 18 foot height limit because the Portland Zoning Code, at 33.930.050, *Measuring Height*, notes that roofs that are 12/12 or less in pitch are measured to the 'average height of the gable' and therefore, when measured by this methodology, the ADU meets the 18-foot height limit. As a result, no findings are required addressing height because the ADU, as proposed, meets the 18 foot height limit.

The proposal to not meet the 10/12 roof pitch will result in a structure that will still be consistent with the appearance of the primary residence, and includes a number of design elements that reflect the style of the existing home. The applicant has also requested an Adjustment to allow a 'belly band' to encircle the structure which will provide a more finished and attractive appearance of the garage/ADU. Because the ADU has been designed to mimic almost of the architectural elements of the primary house, the requested Adjustments continue to meet the purpose of the ADU

development standards. The result of the Adjustments will result in a structure that is consistent in appearance with the primary residence, allow a shared back yard, respect the overall scale and placement of buildings in the neighborhood. The ADU meets the 5 foot side setback from the adjacent neighboring lot to the west and is situated adjacent to an alley which runs behind the homes on this block. For these reasons, 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 proposed Adjustments will result in an attractive structure that is consistent in appearance with the primary house on the lot, and is placed to the rear of the lot similar to many garages in the immediate neighborhood. There are no impacts anticipated on the livability of the surrounding residential area. For these reasons, 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: Although the original noticed specified three adjustments, as discussed above, the proposal involves two adjustment requests: to allow the roof pitch to be less steep than the primary house and allow a ‘bellyband’ trim to give the structure a more pleasing and finished appearance. The cumulative effect of these two Adjustments will result in an ADU which is an allowed use in the R5 zone. This criterion is met.

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

Findings: City designated resources are shown on the zoning map by the ‘s’ overlay; 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

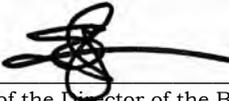
The applicant proposes to construct a single car garage with an ADU on the second floor. The applicant has demonstrated that all of the applicable criteria have been met, and therefore the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to 33.205.030, to allow the second floor ADU to have a 4/12 roof pitch; and,
 - An Adjustment to 33.205.030, to allow a 'bellyband' trim around the garage/ADU structure, per the approved site plans, Exhibits C-1 through C-2, signed and dated January 7, 2015, 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.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 14-235020 AD."

Staff Planner: Sylvia Cate

Decision rendered by:  **on January 7, 2015**
By authority of the Director of the Bureau of Development Services

Decision mailed: January 12, 2015

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 November 6, 2014, and was determined to be complete on **December 2, 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 November 6, 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: April 1, 2015.**

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 January 26, 2015** 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 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 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 **January 27, 2015 – (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:

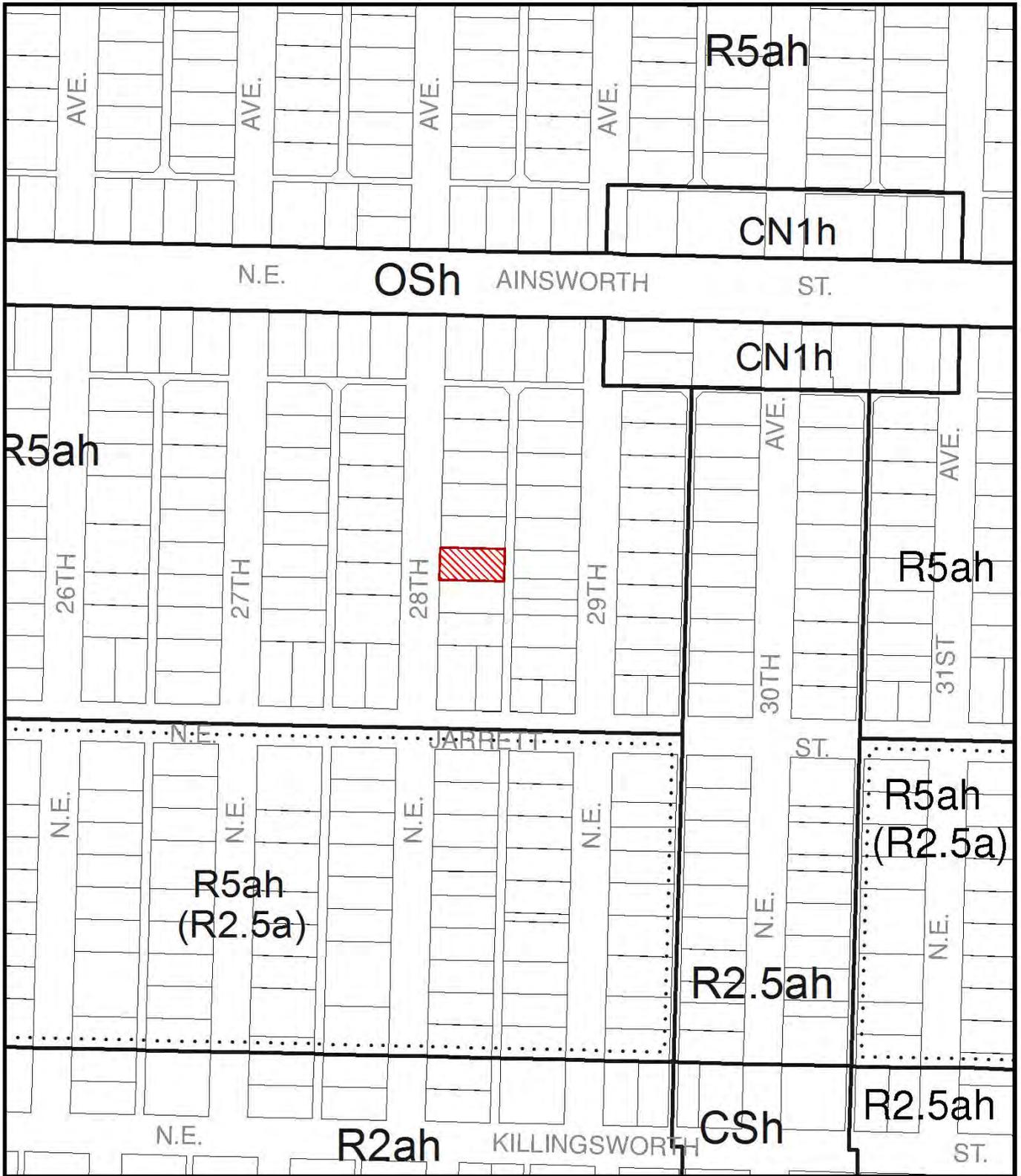
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations
- 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. Bureau of Parks, Forestry Division
- F. Correspondence: None received
- G. Other:
 - 1. Original LU Application

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 14-235020 AD
 1/4 Section 2433
 Scale 1 inch = 200 feet
 State_Id 1N1E13CC 1500
 Exhibit B (Nov 07, 2014)

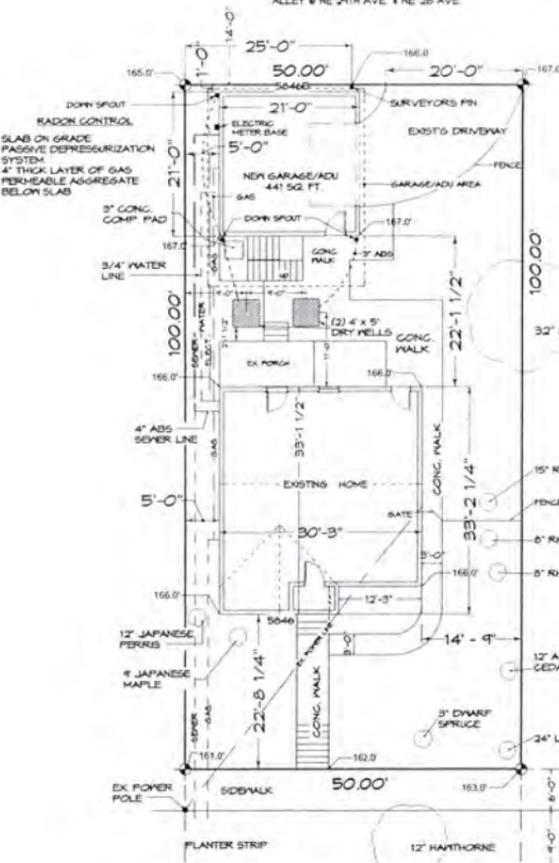
ALLEY # NE 24TH AVE # NE 28 AVE

SITE PLAN

CHRISTA CUMMINS

5846 NE 28 TH AVE.
 PORTLAND, OREGON 97211

BLOCK 32 - IRVINGTON PARK
 LOT 29 # 31
 R-190246
 LOT AREA 5,000 SQ. FT.



Scale 1" = 10'

IMPERVIOUS AREA

DRIVENWAY	300 SQ. FT.
WALKS	198 SQ. FT.
ROOF AREA	1232 SQ. FT.
TOTAL AREA	1,730 SQ. FT.

BUILDING AREA

HOUSE	946 SQ. FT.
ADU	441 SQ. FT.
TOTAL	1,387 SQ. FT.

NE 28TH AVE

Approved
 City of Portland
 Bureau of Development Services
 Planner 
 Date **JAN 7, 2015**
 This approval is only to the extent shown on this plan and is subject to all applicable codes and regulations. Conditions may apply.

LU 14-235020AD EXHIBIT C-1

