



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

**Date:** January 20, 2015  
**To:** Interested Person  
**From:** Sylvia Cate, Land Use Services  
503-823-7771 / [Sylvia.Cate@portlandoregon.gov](mailto: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 14-236703 AD**

#### **GENERAL INFORMATION**

**Applicant:** Stephen Smith / Design Build Portland  
3525 NE 26th Ave / Portland, OR 97213

**Owners:** Aaron E Bouchane & Laura B Alsenas  
4046 SE Madison St / Portland, OR 97214-4424

**Site Address:** 4046 SE MADISON ST

**Legal Description:** BLOCK 16 LOT 9, SUNNYSIDE ADD  
**Tax Account No.:** R810501820  
**State ID No.:** 1S1E01AD 21200  
**Quarter Section:** 3134  
**Neighborhood:** Sunnyside, contact Daniel Rutzick at [drutzick@gmail.com](mailto:drutzick@gmail.com)  
**Business District:** Hawthorne Blvd. Bus. Assoc., contact Hilda Stevens at 503-774-2832.  
**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.  
**Zoning:** R2.5, Single Dwelling Residential 2,500  
**Case Type:** AD, Adjustment  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant proposes to convert the existing detached garage to an Accessory Dwelling Unit (ADU). The proposed ADU will meet all of the ADU development standards, which require the ADU to match main elements of the primary house such as siding, roof pitch, trim, etc. However, because the garage is within the required 5-foot setback from the east and south property lines, the applicant requests an Adjustment to allow the ADU to have an east setback of 1 foot 6 inches with the eaves at 6 inches, and a setback of 1 foot 6 inches with the eaves at 6 inches along the south property line. 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 4,286 square foot lot developed with a 1,511 square foot house constructed circa 1908. The surrounding lands to the north, west and east are zoned R2.5 and developed with residential uses. Storefront Commercial zoning runs along the north side of SE Hawthorne Street and abuts the rear property line of the site.

**Zoning:** The R2.5 zone is a high density single-dwelling zone. The R2.5 zone allows attached and detached single-dwelling structures and duplexes.

**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 8, 2014.**

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

- Bureau of Environmental Services
- Bureau of Transportation Engineering

The Water Bureau responded with no objections, but included comments regarding water service and requirements at time of building permit review.

The Fire Bureau responded with no objections, but included comments regarding water service and requirements at time of building permit review.

The Site Development Section of BDS responded no objections, but included comments regarding water service and requirements at time of building permit review.

The Bureau of Parks-Forestry Division responded with no objections, but included comments regarding water service and requirements at time of building permit review.

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

**ZONING CODE APPROVAL CRITERIA****33.805.010 Purpose (Adjustments)**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

**33.805.040 Approval Criteria**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

**Findings:** The applicant proposes to convert an existing detached garage into an accessory dwelling unit (ADU). The ADU is approximately 445 square feet and complies with all of the applicable ADU development standards. However, the garage does not currently meet the required 5 foot setback from the east property line, which is allowed for garages, but is required for ADUs. The applicant proposes extending the ADU toward the south property into the 5 foot setback. Therefore the applicant requests an Adjustment to allow the new ADU to be 1 foot 6 inches with the eaves at 6 inches from the east property line, and a setback of 1 foot 6 inches with the eaves at 6 inches along the south property line.

The purpose for the setback regulations in single dwelling zones is found at 33.110.220, Setbacks, which states:

**A. Purpose.** The setback regulations for buildings and garage entrances serve several purposes:

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

The ADU will be a one story structure, similar to the existing garage, but with a longer east facing façade. However, the reduced setback along the east property line is adjacent to the easterly neighbor's garage, and the existing footprint of the garage is such that the conversion to an ADU will have no increased impacts on light, air, and access for firefighting. The structure will meet all building code requirements for fire rated construction. The reduced setback from the south property line is similar to the placement of other garages/accessory structures in the neighborhood. A high fence along the south property line already exists, which will remain and provide a buffer for any impacts from the reduced setback. The Fire Bureau notes no objection to the setback reductions and notes several requirements that must be met at time of building permit review. There is no impact on adjacent neighbors' privacy as the ADU is oriented towards the interior of the lot and there will be no windows on either façade with the reduced setback. The proposal will have no impact on the open front yard of the site and continues to provide an area for on-site parking. Because the ADU will meet all of the applicable development standards, it will be consistent with the architectural features of the main house, while providing a shared outdoor area/backyard. 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 proposal will provide an attractive addition to the site that has no significant impact on the appearance of the residential area. The existing garage has been in its current location for decades, the conversion includes features that are in keeping with the main house and with the general architectural character of the neighborhood. The appearance will be similar to many accessory structures that were built to the rear of residences in the Portland area in the first decades of the 1900s.

Therefore, no potential impacts on livability or appearance, based on the location of the structure have been noted and 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:** Only one adjustment is requested. This criterion is not applicable.

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

**Findings:** City designated resources are shown on the zoning map by the ‘s’ overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

**Findings:** There are no discernible impacts that would result from granting the requested adjustment. This criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As the site is not within an environmental zone, this criterion is not applicable.

## DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## CONCLUSIONS

The applicant proposes to convert an existing one story garage into a one story ADU, with reduced setbacks from the east and south property lines. The proposal meets all of the applicable approval criteria and therefore should be approved.

## ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to 33.110.220 and Table 110-3, to reduce the setbacks from the east property line to 1 foot 6 inches with the eaves at 6 inches, and a setback of 1 foot 6 inches with the eaves at 6 inches along the south property line, per the approved site plans, Exhibits C-1 through C-3, signed and dated January 14, 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.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 14-236703 AD."

**Staff Planner: Sylvia Cate**

**Decision rendered by:** \_\_\_\_\_ **on January 14, 2015**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: January 20, 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 12, 2014, and was determined to be complete on **December 4, 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 12, 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 3, 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 February 3, 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 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 **February 4, 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.

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;

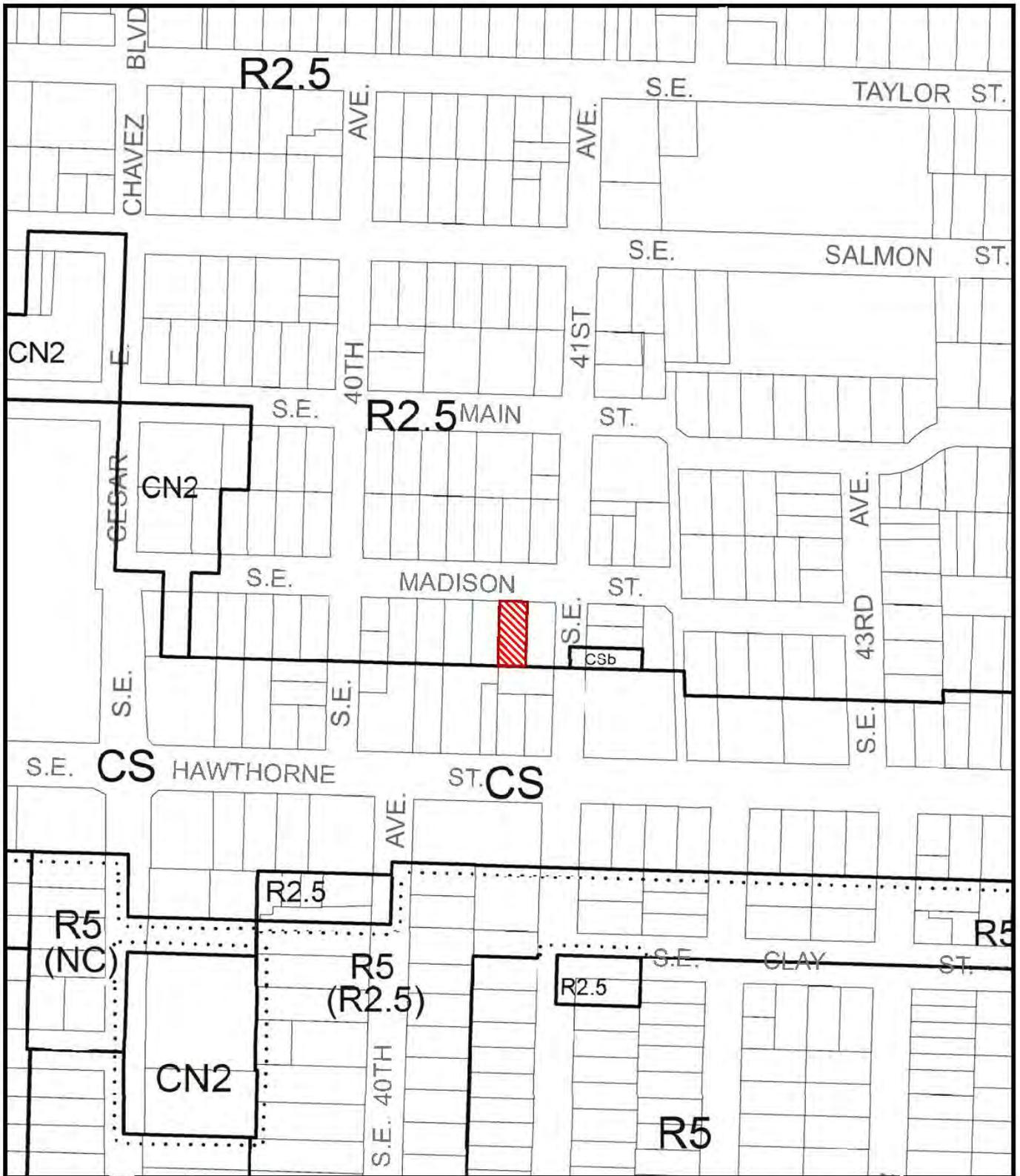
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Street facing elevation
  - 3. East elevation
- 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 14-236703 AD  
 1/4 Section 3134  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E01AD 21200  
 Exhibit B (Nov 14, 2014)

PROPERTY CORNER  
165.00' ELEV.

47' - 0"

100.00' PROPERTY LINE

PROPERTY CORNER  
165.00' ELEV.

42.86' PROPERTY LINE  
SE MADISON ST

EXISTING FENCE

EDGE OF  
EXTERIOR  
WALL BELOW

37' - 4 1/2"

31' - 0 1/2"

4' - 10 1/2"

28' - 0"

42' - 10 1/2"

EXISTING RESIDENCE  
4046 SE MADISON ST  
1511 SF

NEW ADU

8' - 0 1/2"

1' - 6"

EXISTING FENCE

PROPERTY CORNER  
165.00' ELEV.

NEIGHBORING  
GARAGE

37' - 6"

PROPERTY CORNER  
165.00' ELEV.

**Approved\***  
City of Portland  
Bureau of Development Services  
Planner: [Signature]  
Date: 1-14-2015  
\* This approval applies only to the NEIGHBORING HOUSE.  
This approval is subject to the following conditions of approval which may apply:  
Additional zoning requirements may apply.



**BOUCHANE ADU**

4046 SE MADISON ST  
PORTLAND, OR 97214

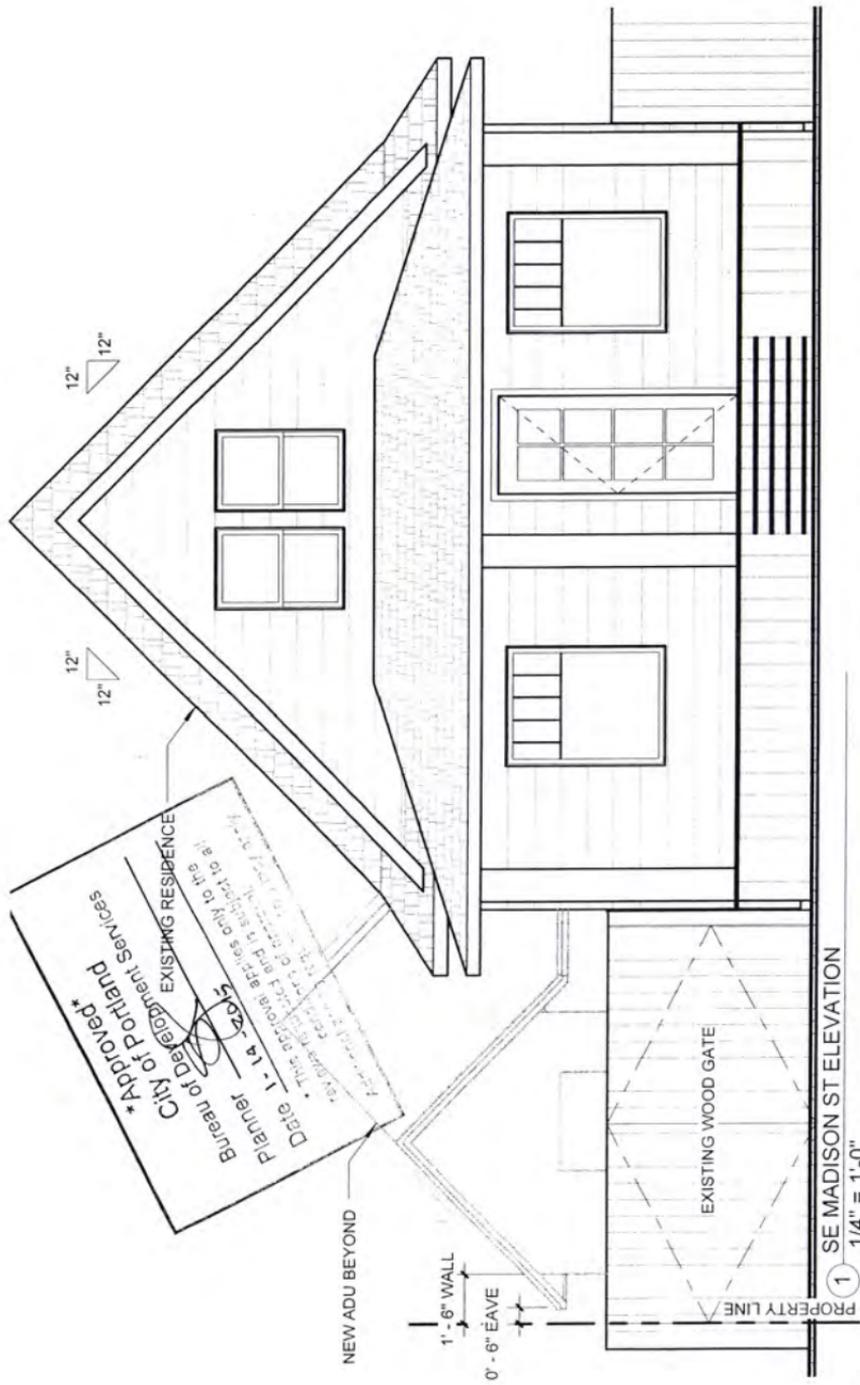
**SITE PLAN**

**A1.0**

**DESIGN BUILD**  
PORTLAND

PORTLAND, OREGON 97213  
PHONE 406.599.2277  
info@designbuildportland.com

11/12/14



\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 EXISTING RESIDENCE  
 Planner: 1-14-2015  
 Date: 1-14-2015  
 This approval applies only to the  
 structure indicated and is subject to all  
 applicable codes, rules, and regulations.

**BOUCHANE ADU**  
 4046 SE MADISON ST  
 PORTLAND, OR 97214

STREET ELEVATION

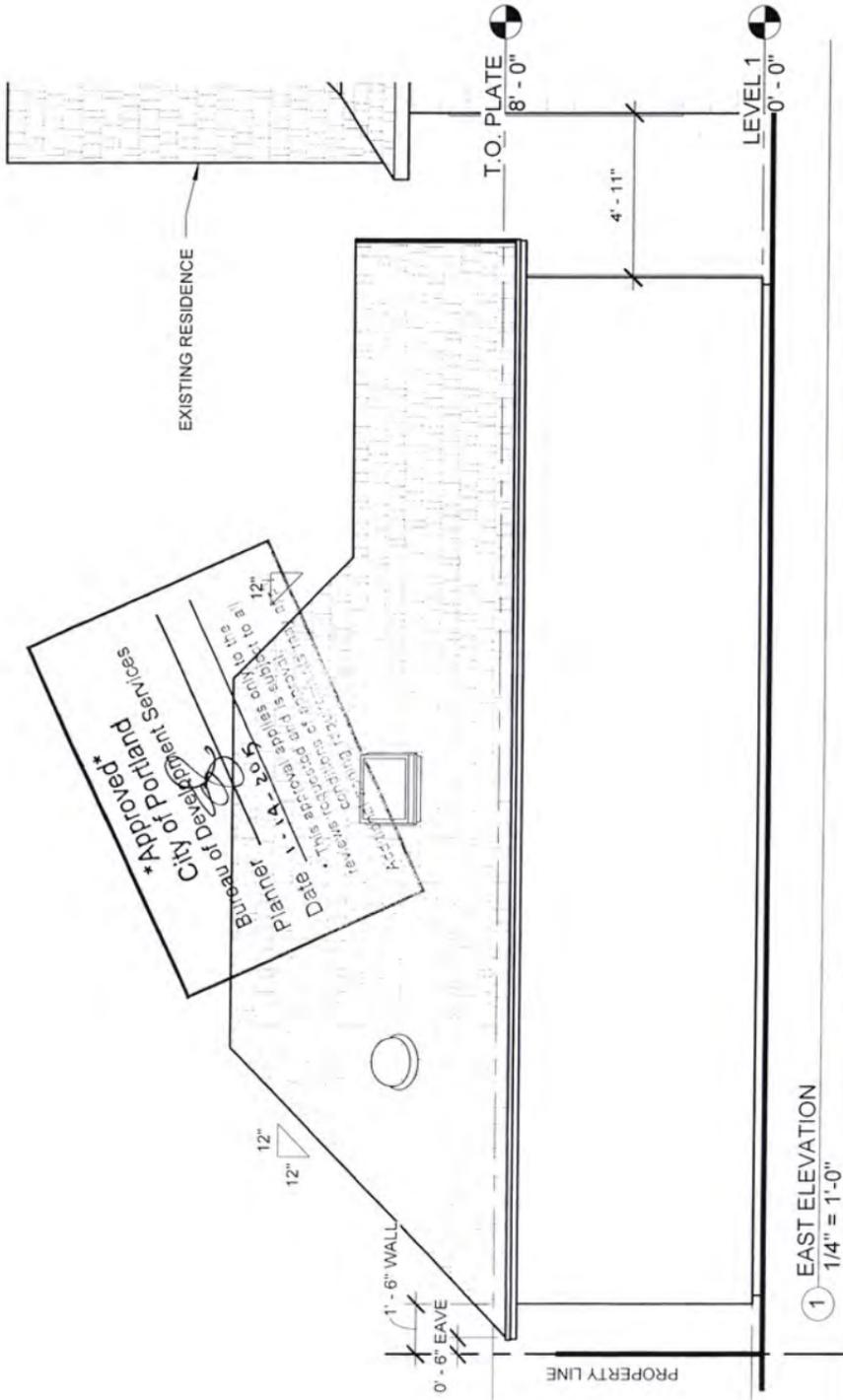
**A3.0**

**DESIGN BUILD**  
 PORTLAND

PORTLAND, OREGON 97213  
 PH: 503.466.2277  
 info@designbuildportland.com

11/12/14

① SE MADISON ST ELEVATION  
 1/4" = 1'-0"



① EAST ELEVATION  
1/4" = 1'-0"

**BOUCHANE ADU**  
4046 SE MADISON ST  
PORTLAND, OR 97214

EXTERIOR ELEVATIONS

**A3.3**

**DESIGN BUILD**  
PORTLAND

PORTLAND, OREGON 97213  
PHONE: 503.999.2277  
info@designbuildportland.com

11/12/14