



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: May 27, 2015
To: Interested Person
From: Amanda Rhoads, Land Use Services
503-823-7837 / Amanda.Rhoads@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 15-138095 AD ***HEIGHT ADJUSTMENT FOR DETACHED ADU***

GENERAL INFORMATION

Applicant: Dave Spitzer / DMS Architects Inc.
2325 NE 19th Avenue / Portland, OR 97212

Owner: Carol A Gabrielli
4935 NE 8th Ave / Portland, OR 97211

Site Address: 4935 NE 8TH AVE

Legal Description: BLOCK 4 LOT 10, LESHs ADD
Tax Account No.: R491800990
State ID No.: 1N1E23BC 01500 **Quarter Section:** 2531
Neighborhood: King, contact Leigh Rappaport at 503-490-8388.
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-841-5032.
District Coalition: Northeast Coalition of Neighborhoods, contact info@necoalition.org
Zoning: R2.5ah – Single-Dwelling Residential 2,500 zone with “a” Alternative Design Density and “h” Aircraft Landing Zone Overlay Zones

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

Proposal:

The applicant proposes to build a new, detached Accessory Dwelling Unit (ADU), located behind the existing house on the site. The ADU will be two stories, 530 square feet total, and will meet all but one applicable development standard, including those for setbacks, overall size, building coverage and most of the ADU design standards. However, the proposed ADU measures 20 feet tall, whereas the maximum height allowed for ADUs is 18 feet. The applicant requests an Adjustment to Zoning Code Section 33.205.030.D.2 to increase the allowed height for the ADU from 18 feet to 20 feet.

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 located on the west side of NE 8th Avenue, between NE Alberta Street and NE Wygant Street. The site, while residentially zoned, abuts property to the north in the General Commercial zone. These sites are along the NE Alberta Street mixed-use corridor, which is characterized by largely commercial, institutional and multi-dwelling residential development, though the two sites immediately to the north are currently developed with single-dwelling residences. The site is across NE 8th Avenue from the St. Andrew Parish site, which includes a large Historic Landmark church; a two-story office building; a multi-purpose building with a church hall and community service use; and a grade school with on-site parking and a large playground area. Other development in the area includes single dwellings, apartment buildings and, one block to the west, the King Elementary School.

Zoning: The Residential 2,500 (R2.5) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. The minimum density for new lots in this zone is 1 unit per 5,000 square feet and the maximum density is based on lot size and street configuration. Both detached and attached single-dwellings are allowed. Minimum lot size for both types of development is 1,600 square feet with minimum front lot line of 30 feet and minimum depth of 40 feet. There is no required minimum lot width or front lot line for lots that are developed with structures that meet certain additional development standards related to design.

The Alternative Design Density “a” overlay is in place 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. This proposal is not utilizing the provisions of this overlay.

The Aircraft Landing Zone “h” overlay provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. A height contour map is available for review in the Development Services Center. This overlay does not impact the proposal.

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

Public Review: A “Notice of Proposal in Your Neighborhood” was mailed **April 28, 2015**.

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

- Bureau of Environmental Services (Exhibit E.1);
- Bureau of Transportation (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5); and
- Life Safety (Building Code) Plans Examiner (Exhibit E.6).

Neighborhood Review: No written responses were 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 relevant standard being Adjusted is an Accessory Dwelling Unit Design Standard. The purpose for these regulations is listed below. Each purpose statement will be addressed below.

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.
- *Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;*

The design standards of Zoning Code Section 33.205.030 work to integrate ADUs into sites by having them reflect major characteristics of the primary house. Regarding this proposal, the siding, trim size, roof pitch, eaves, and windows on the ADU have been designed to match those of the existing house. For the height standard proposed for Adjustment, the site and area context enable the design to equally meet this purpose statement.

First, the immediate neighborhood is experiencing a transformation with significant redevelopment focused along inner NE Alberta Street. Multi-story buildings are being constructed, providing apartments and storefronts for the area but changing the character of the neighborhood in the process. Given the proximity of the site to the commercial zone, an ADU that is 2 feet taller than allowed does not seem out of place or out of character for the area. The large church complex across the street and the 12-unit apartment building on a similarly-sized lot on the block behind the subject site both contribute, along with the varied commercial development in the immediate Alberta area, to a more varied development pattern where a taller ADU will not be out of place.

This R2.5-zoned site is immediately adjacent to the General Commercial-zoned area. According to Zoning Code Section 33.110.240.H, this "transitional site" would be allowed to be developed with one more dwelling unit than otherwise allowed, either in the form of attached houses on separate lots or with a duplex. While two detached homes similar to the proposed would not be allowed, the resulting density and the idea that a second unit could be built onsite at the much higher base zone height limit of 35 feet, the Adjustment for an ADU to increase the size by 2 feet is in scale and reasonable.

- *Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;*

The ADU is proposed for the back corner of the property, out of the required building setbacks, but in a location not uncommon for a garage in this area. This placement retains an existing 10-inch diameter maple tree in the northwest corner of the site, as well as the existing long driveway to the rear of the property. In this way, the backyard largely remains available for recreation, and the existing parking is maintained.

- *Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and*

Accessory Dwelling Units are allowed a maximum size of 800 square feet, or 75% the size of the primary house on the site (Zoning Code 33.205.030.C.6). In this case, the primary house is 708 square feet, so this ADU is limited to 531 square feet. This ADU measures 530 square feet, with a 352-square-foot main story and 178-square foot sleeping loft above. The proposed ADU meets the size standard and its small footprint demonstrates that smaller size.

ADUs are required to have roof pitches that match the predominant roof pitch of the primary house (Zoning Code Section 33.205.030.C.8). A 12-over-12 roof pitch like that on the primary house tends to result in a structure that is taller than a similarly scaled structure with a shallower roof pitch, since height is measured at the midpoint of the highest gable of the roof. The applicant argues, and staff concurs, that the structure is taller in large part because of the requirement to match the steep roof pitch. While the proposal will result in an ADU that is up to 1.5 feet taller at the peak than the existing house, the location of the ADU 73 feet back from the front of the property and the relatively minor height difference does not result in a structure that reads as larger or more predominant than the primary house onsite. To help knit the two structures together visually, a condition of approval will require the ADU to be painted to match the primary house.

While the roof pitch is required to match, the roof forms are allowed to be different from the primary house and the ADU. In this case, the roof form of the ADU is proposed to be different from that of the primary house. The primary house has a pyramidal hipped roof form, while the proposed ADU has a traditional gable. Since the gable end will face the street, the two roof pitches will visually coordinate.

- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

This flat site has no challenges in building placement related to topography. This purpose statement is not applicable.

As demonstrated above, with a condition that requires the paint color of both structures to match, the proposal meets the purpose of the regulation being adjusted. 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: As described above, this area near inner NE Alberta Street has seen a transition in recent years from one-story buildings that are often in industrial use to an area rapidly developing with more commercial development, multi-dwelling development and, further to the east, modern multi-story mixed-use apartment buildings with first-floor commercial. Given the site's location and its role as a

transition property from commercial space to residential, the proposal fits in with the variety of styles that already occur within the existing neighborhood.

The ADU will be taller than the existing house by approximately 1.5 feet (measured at the roof peak). While the ADU will be smaller in square footage and building footprint than the existing house, and set back 73 feet from the property line, there is a chance that the eye will be drawn to the taller structure. In order to integrate the two buildings visually, a condition of approval will require that the paint color on the ADU match that of the primary house, both in wall and trim color.

Regarding livability issues, the structure is proposed outside the required 5-foot side and rear setbacks and, at 20 feet tall, is substantially shorter than a primary structure would be allowed to be in the same location (for the R2.5 zone, a maximum height of 35 feet). The second-story sleeping loft makes up the west side of the second story, with the east side (closer to the neighboring house to the south) open to the first story living area. Two windows are proposed on the south façade, but the one to the east will provide light only, having no floor area nearby. The other southern-facing window will be located at the top of the stairs. An 18-inch diameter oak tree on the neighboring property will provide screening from the second story as well. Privacy will not be compromised for the property to the south, which has the closest living structure to the proposed ADU.

With the condition of approval to match paint colors, 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

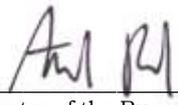
With the condition of approval requiring the paint color on the ADU to match that of the primary house, the proposal meets the approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.205.030.D.2 to increase the allowed height of the Accessory Dwelling Unit (ADU) from 18 feet to 20 feet, per the approved plans, Exhibits C.1 through C.4, signed and dated May 22, 2015, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition B must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 15-138095 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The wall and trim paint colors on the ADU must visually match those on the primary house.

Staff Planner: Amanda Rhoads

Decision rendered by:  **on May 22, 2015**
By authority of the Director of the Bureau of Development Services

Decision mailed: May 27, 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 March 23, 2015, and was determined to be complete on **April 24, 2015**.

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 23, 2015.

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: August 22, 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 June 10, 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 **June 11, 2015**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder’s office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

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

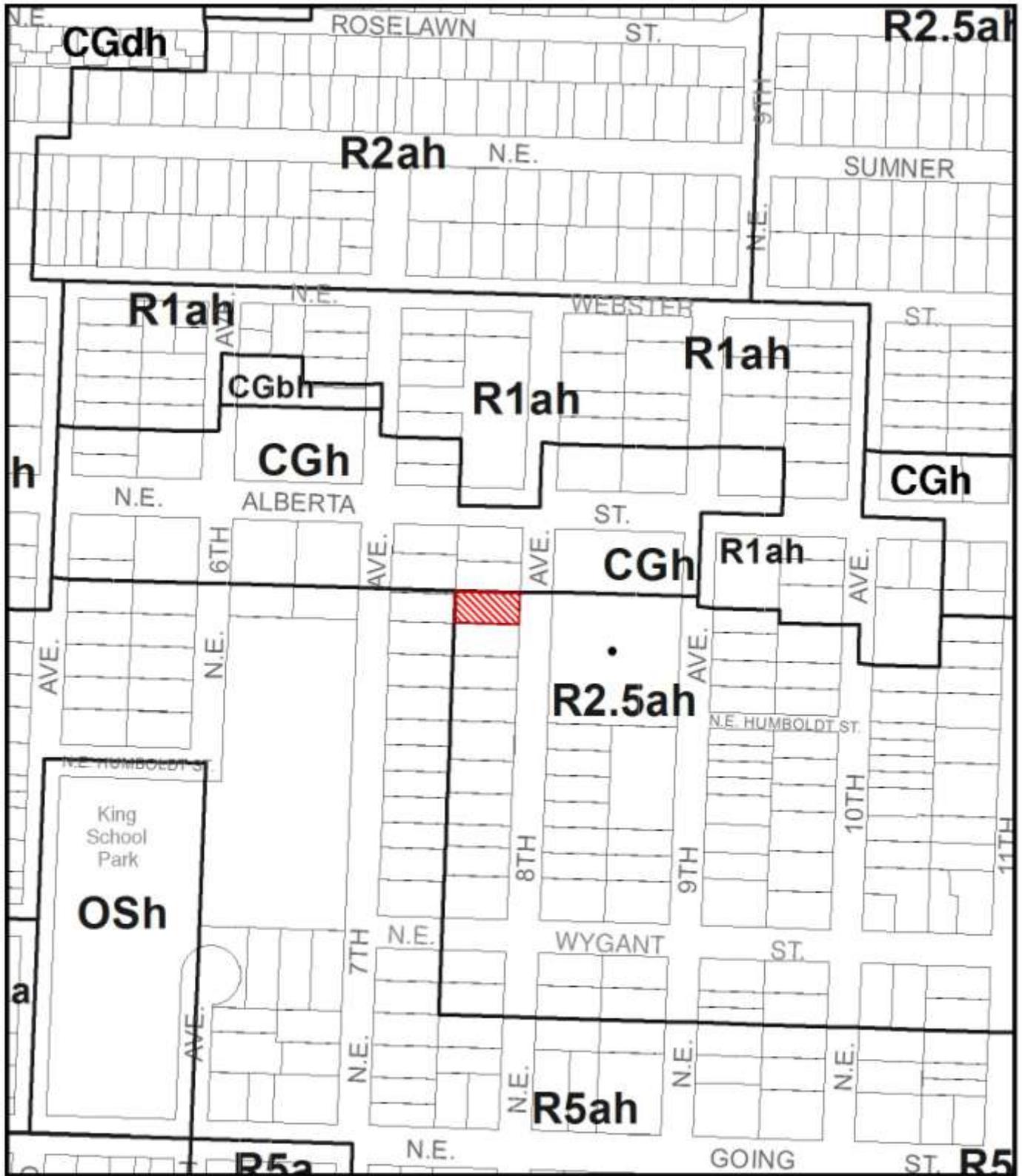
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant Narrative
 - 2. Response to Incomplete Letter, April 21, 2015
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Building Elevations (attached)
 - 3. Building Sections
 - 4. Floor Plans
- 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 (Building Code) Plans Examiner
- F. Correspondence: none received
- G. Other:
 - 1. Original LU Application and Receipt
 - 2. Incomplete Letter, April 16, 2015

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



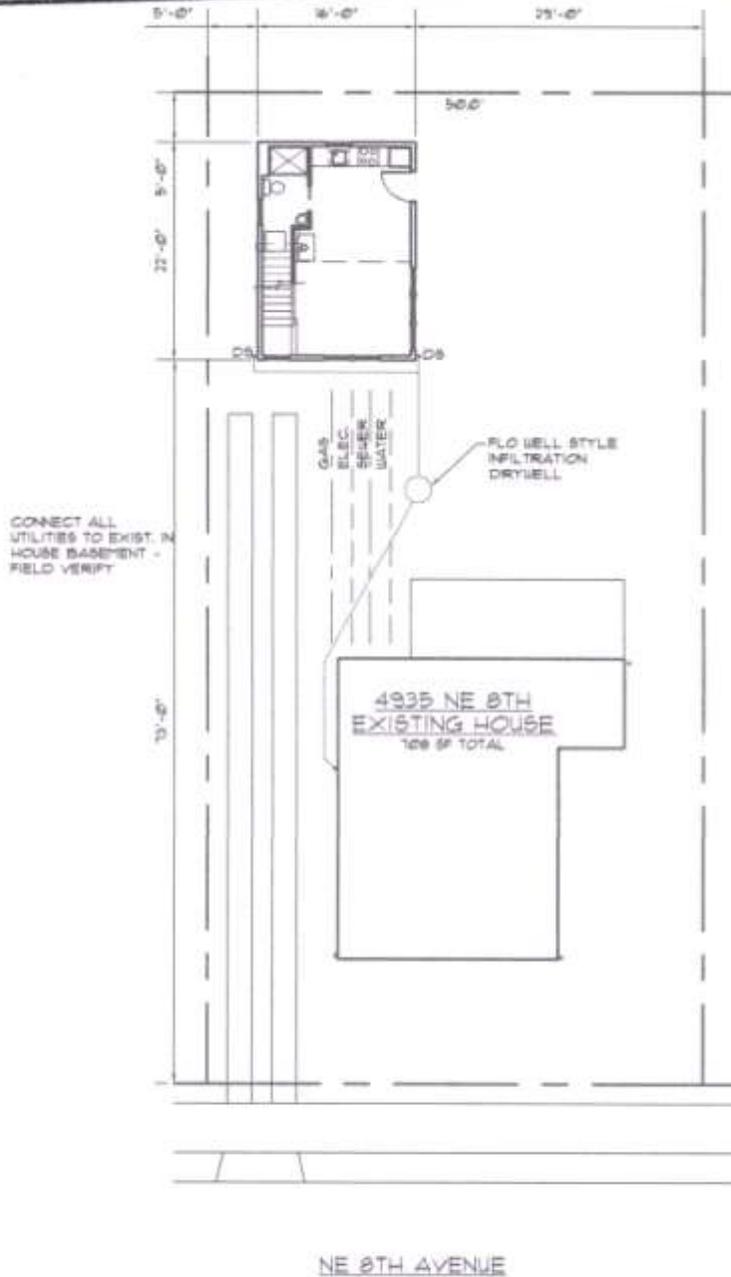
File No. LU 15-138095 AD
 1/4 Section 2531
 Scale 1 inch = 200 feet
 State_Id 1N1E23BC 1500
 Exhibit B (Mar 25, 2015)

Approved

City of Portland - Bureau of Development Services

Planner Am M Date May 22, 2015

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



SCHEMATIC SITE PLAN

1/8" = 1'-0"

SITE NOTES:

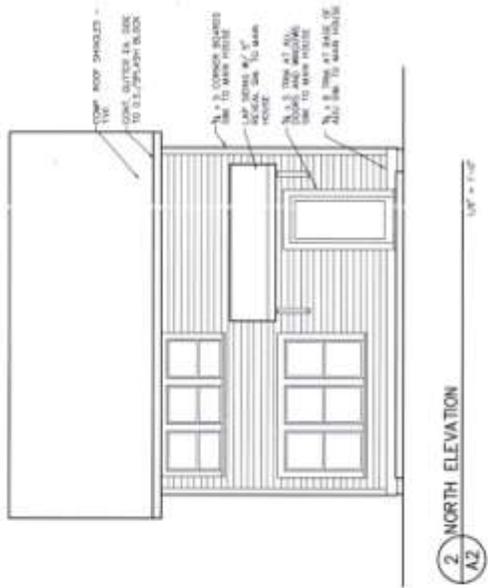
LOT COVERAGE:
LOT AREA: 5,000 SF
EXIST. BLDG. COVERAGE: 108 SF
NEW ADU COVERAGE: 352 SF
TOTAL LOT COVERAGE: 1,040 SF
LOT COVERAGE PERCENTAGE: 21%
ADU TO HOUSE COVRG = 352 ÷ 108 = 3.26
ADU TO HOUSE RATIO = 352 ÷ 108 = 3.26

CASE NO. LU 15-138095 AD

EXHIBIT C.1



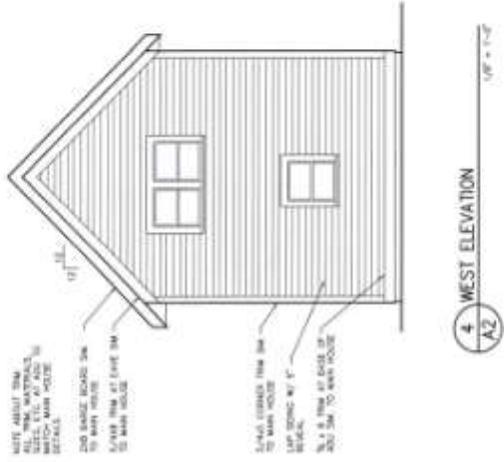
1 EAST ELEVATION
1/8" = 1'-0"



2 NORTH ELEVATION
1/8" = 1'-0"



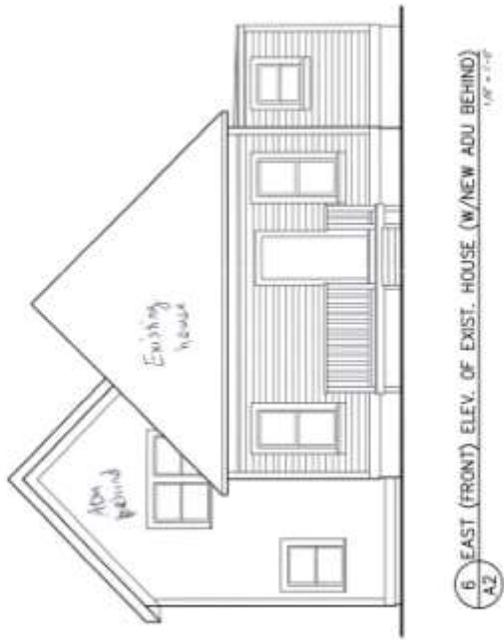
3 WEST (REAR) ELEVATION OF EXISTING HOUSE
1/8" = 1'-0"



4 WEST ELEVATION
1/8" = 1'-0"



5 SOUTH ELEVATION
1/8" = 1'-0"



6 EAST (FRONT) ELEV. OF EXIST. HOUSE (W/NEW ADU BEHIND)
1/8" = 1'-0"

Approved
City of Portland - Bureau of Development Services

Planner: *[Signature]* Date: May 22, 2015

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