



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

FROM CONCEPT TO CONSTRUCTION

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

Date: May 19, 2016
To: Interested Person
From: Sheila Frugoli, Land Use Services
503-823-7817 / Sheila.Frugoli@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 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 16-150302 AD

GENERAL INFORMATION

Applicant: Dave Spitzer, Designer
2325 NE 19th Ave
Portland, OR 97212

Owners: Matt and Nicole Pozos
2823 SE Taylor St
Portland, OR 97214-4030

Site Address: 2823 SE TAYLOR ST

Legal Description: BLOCK 24 W 1/2 OF LOT 5&6, HANSONS ADD & 2ND
Tax Account No.: R358102420
State ID No.: 1S1E01BC 00700
Quarter Section: 3133

Neighborhood: Sunnyside, contact Daniel Rutzick at drutzick@gmail.com
Business District: None
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010.

Zoning: R5 – Single-Dwelling Residential 5,000 zone

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

Proposal: The applicant is requesting an Adjustment to reduce the required side (east) building setback from 5 to 3 feet and the required rear (north) setback from 5 to 1 foot for a proposed 564 square-foot, 1-story, detached Accessory Dwelling Unit (ADU). The new ADU will replace a detached garage. The existing driveway will be used for on-site parking.

New detached accessory structures, including ADUs, may be located within the required 5-foot side and rear setback if the structure is designed to meet requirements, including:

- The structure is at least 40 feet from a front lot line, and if on a corner lot, at least 20 feet from a side street lot line;
- The structure has dimensions that do not exceed 24 feet by 24 feet, excluding eaves;
- The structure is no more than 15 feet high, and the walls of the structure are no more than 10 feet high, excluding the portion of the wall within a gable;
- The portion of the structure within the setback must be screened from adjoining lots by a fence or landscaping, unless it is enclosed within the setback by a wall.
- Walls located within the setback do not have doors or windows facing the adjacent lot line;

The proposed new ADU has two windows in the east building wall. Because the structure will include windows in a wall that is located closer than 5 feet to the property line, it is subject to the 5 foot building setback requirement.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are Adjustment Review – 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The subject site is developed with a two-story home with a narrow driveway and small detached garage. The residence, like other nearby homes, reflects the scale and architectural details of homes built in the early 1900s. Many of homes in the Sunnyside neighborhood have detached accessory structures. The eastern abutting property is a corner lot. The owners have obtained a land use review approval—setback Adjustments and Building Permits to construct a new approximately 17.5-foot tall detached garage. Across the street, on the south side of SE Taylor is a relatively large Group Living residence.

Zoning: The R5 zone is a single-dwelling zone that is intended to preserve land for housing, and to provide housing opportunities for individual households. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

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

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **April 19, 2016**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation (Exhibit E.5);
- Fire Bureau (Exhibit E.5.); and
- BDS Life Safety Plan Review Section (Exhibit E.4).

The Bureau of Environmental Services responded with information about the property's current "nonconforming/party sewer and requirements that will apply to bring the sewer connection into conformance with current standards. (Exhibit E.1)

The Water Bureau responded with information about water service/location requirements. (Exhibit E.2)

The Site Development Section of BDS responded with information about a possible former on-site cesspool. (Exhibit E.3)

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the mailed "Notice of Proposal".

ZONING CODE APPROVAL CRITERIA

33.805.040 Adjustment 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 has requested an Adjustment to reduce the minimum side (east) setback from 5 feet to 3 feet to construct a new detached accessory dwelling unit (ADU). The relevant purpose statements and associated findings are found below:

33.110.220 Setbacks

The setback regulations for buildings and garage entrances serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *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 proposed ADU has been designed to meet all but one requirement for detached structures that are located near side and rear property lines. Because the east wall will contain windows, the setback exception cannot be used. The east wall will be located 3 feet from the property line which meets Building Code fire separation requirements. The windows will face a City approved new garage that will be located 2 feet from the shared property line. The wall of this new garage will have no opening. When combined, there will be 5 feet of separation between the two detached structures which allows access for fire fighting, provides a reasonable physical relationship between the buildings. The Fire Bureau and BDS Life Safety Plan Review Section have reviewed the request for reduced setbacks, and responded with no concerns (Exhibit E.5 and E.4). East-facing windows on the ADU will not impact privacy of the neighbors to the east, as the large garage will screen views onto their property. Lastly, many of the surrounding residences in this area have detached accessory structures built within the side and rear setbacks. This proposal will be compatible with the development pattern in this neighborhood.

For all the reasons discussed above, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The detached ADU will be relatively small and tucked back at the rear of the lot. The 1-story structure will be less prominent than the taller homes and the new garage on the neighboring property. The design of the ADU, with traditional architectural elements—pitched roof, horizontal siding and horizontal windows, will be compatible with the primary residences and other nearby homes. As noted above, the east facing windows will be screened by the new garage on the east lot. Therefore the livability of the neighbors to the

east will not be sacrificed by the desire for natural light for the residents of the ADU. For these reasons, staff finds 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: Both the side and rear setback requirement is being adjusted, but only one development standard will not be met. The cumulative effect of this Adjustment request will be consistent with the overall purpose of the single-dwelling residential zone, which is to provide housing opportunities for individual households. This criterion is met.

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

Findings: City designated scenic resources are identified on the Official Zoning Map with a lower case “s” and historic resources are designated by a large dot or as being within the boundaries of a Historic or Conservation district. 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: As discussed under criterion A and B, the reduced setback will not create impacts that necessitate mitigation. 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 Map with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). No environmental zoning is applied to the site; therefore, this criterion is not applicable.

DEVELOPMENT STANDARDS

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

CONCLUSIONS

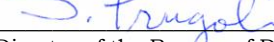
As reflected in the findings of this report, the request to reduce the required building setback standard for the proposed 1-story ADU with east-facing windows meets the approval criteria and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the required side (east) building setback from 5 to 3 feet and the required rear (north) setback from 5 to 1 foot for a proposed 564 square-foot, 1-story, detached Accessory Dwelling Unit (ADU), per the approved site plan, Exhibit C.1, signed and dated May 16, 2016, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and 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 16-150302 AD".

Staff Planner: Sheila Frugoli

Decision rendered by:  _____ **on May 16, 2016**
By authority of the Director of the Bureau of Development Services

Decision mailed: May 18, 2016

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 April 12, 2016, and was determined to be complete on April 15, 2016.

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 April 12, 2016.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on June 1, 2016** 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 2, 2016 – (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:

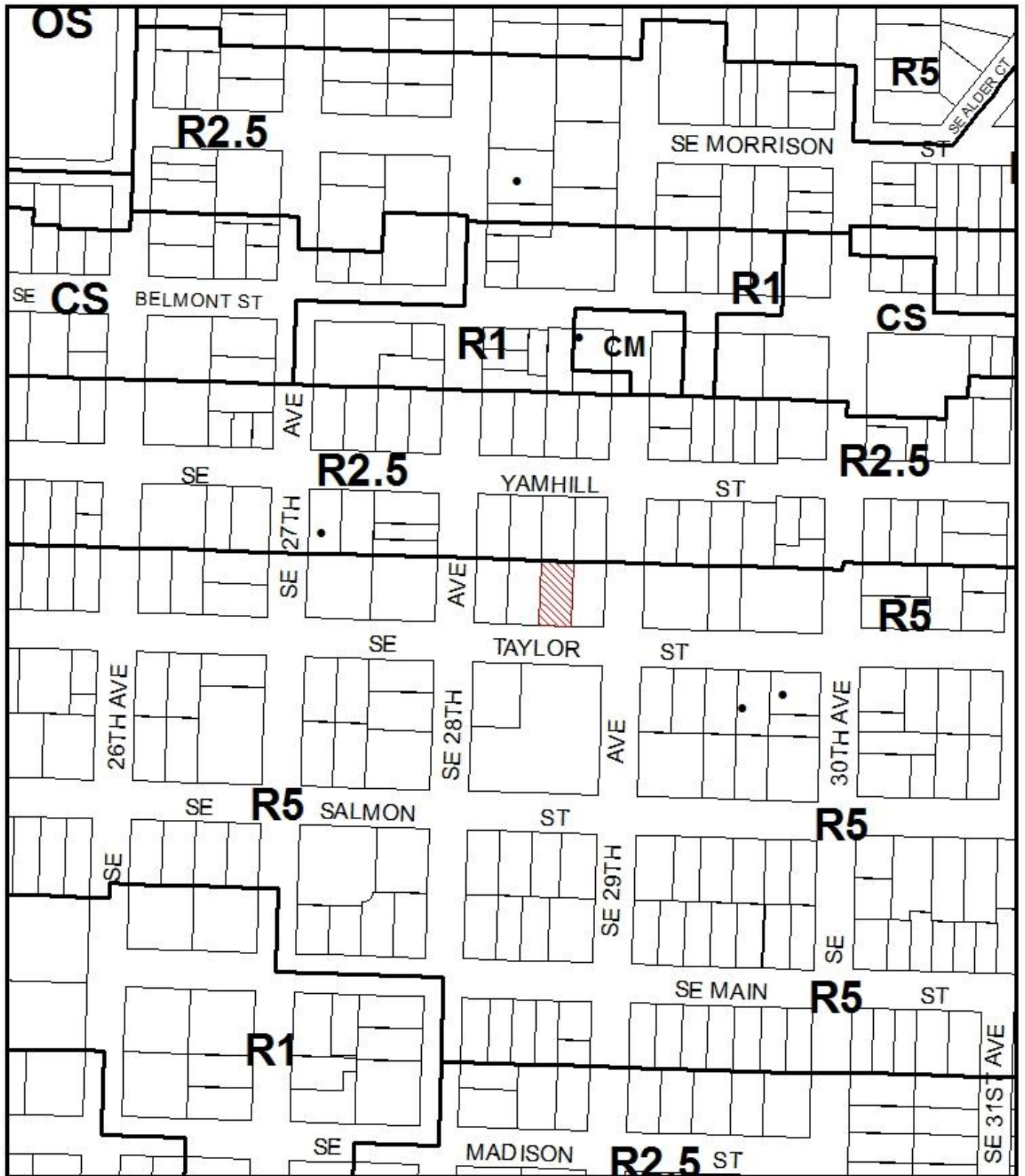
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan/ADU Floor Plan (attached)
 - 2. ADU Exterior Elevations (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
 - 3. Site Development Review Section of BDS
 - 4. Life Safety Plan Review Section of BDS
 - 5. TRACS Print-Out, "No Concerns" from Bureau of Transportation and Fire Bureau
- F. Correspondence: NONE
- 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).

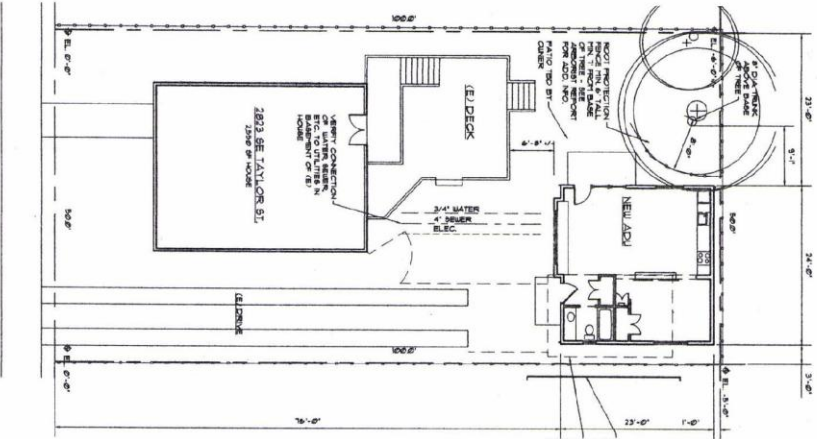


ZONING

-  Site
-  Historic Landmark



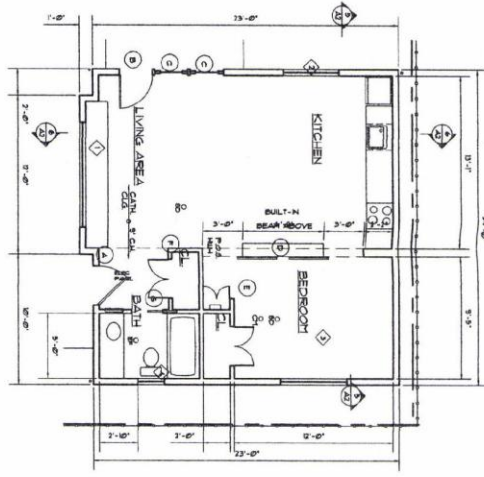
File No.	<u>LU 16-150302 AD</u>
1/4 Section	<u>3133</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E01BC 700</u>
Exhibit	<u>B</u> (Apr 14, 2016)



1 SITE PLAN

SITE NOTES:

- 1. LOT AREA: 10,000 SQ FT
- 2. TOTAL LOT COVERAGE: 10%
- 3. LOT COVERAGE PERCENTAGE: 10%
- 4. ADU TO HOUSE RATIO: 1:1
- 5. ADU TO HOUSE RATIO: 1:1



2 FLOOR PLAN

WINDOW SCHEDULE

NO.	SIZE	TITLE	NOTES
1	3'-0" x 4'-0"	BR/INT/INT	14' x 16' LIVING AREA
2	3'-0" x 4'-0"	BR/INT/INT	10' x 12' KITCHEN
3	3'-0" x 4'-0"	BR/INT/INT	10' x 12' BEDROOM
4	3'-0" x 4'-0"	BR/INT/INT	10' x 12' BATH
5	3'-0" x 4'-0"	BR/INT/INT	10' x 12' DECK

DOOR SCHEDULE

NO.	SIZE	TITLE	NOTES
1	3'-0" x 4'-0"	BR/INT/INT	14' x 16' LIVING AREA
2	3'-0" x 4'-0"	BR/INT/INT	10' x 12' KITCHEN
3	3'-0" x 4'-0"	BR/INT/INT	10' x 12' BEDROOM
4	3'-0" x 4'-0"	BR/INT/INT	10' x 12' BATH
5	3'-0" x 4'-0"	BR/INT/INT	10' x 12' DECK

City of Portland - Bureau of Development Services

Planner *S. Frugle*

Date *May 16, 2016*

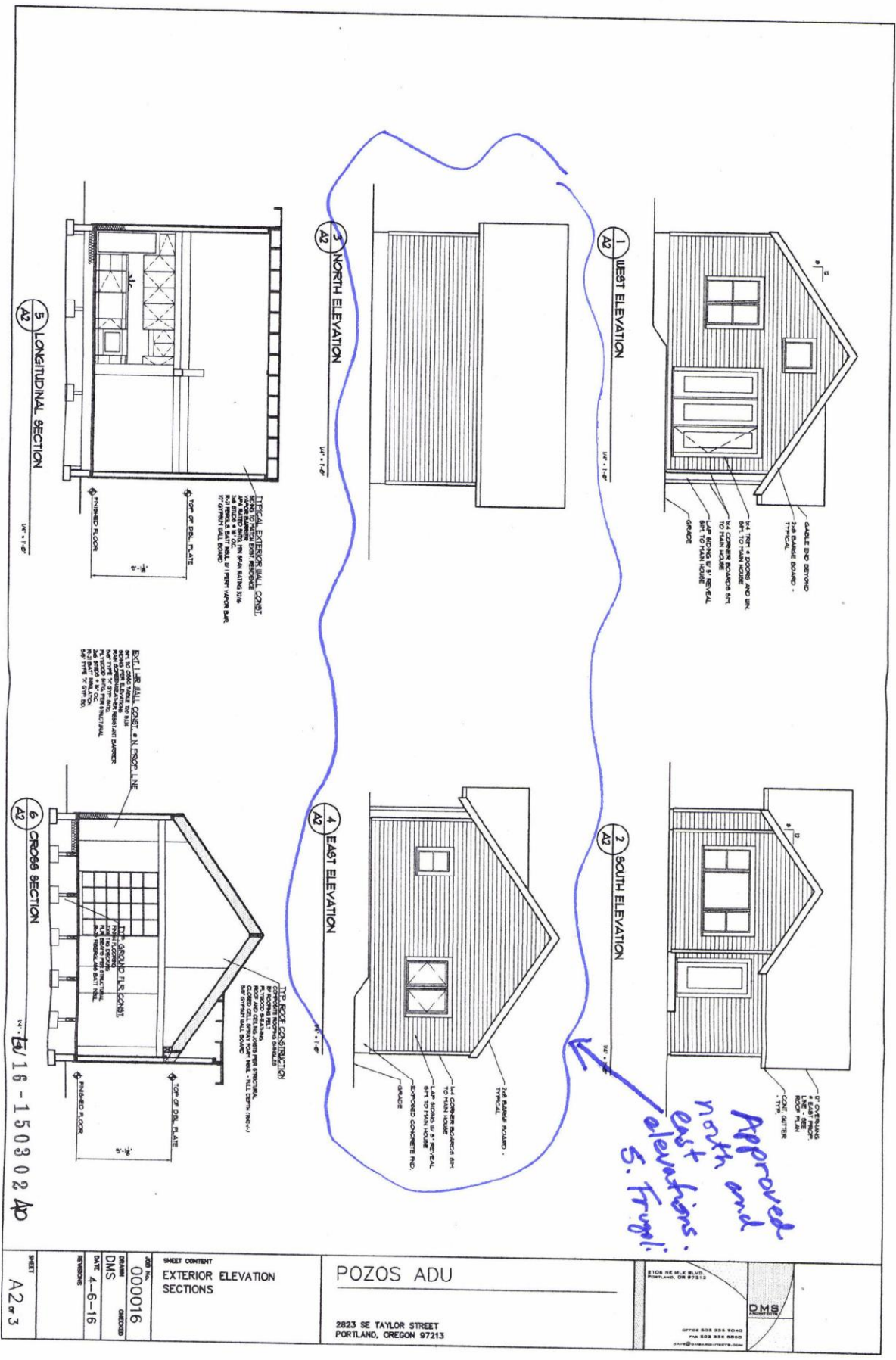
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

Approved*

WJ 16 - 150302 AD

Exh. bit C.1

<p>POZOS ADU</p> <p>2823 SE TAYLOR STREET PORTLAND, OREGON 97213</p>	<p>SHEET</p> <p>000016</p> <p>DMS</p> <p>DATE 4-6-16</p> <p>REVISION</p>
	<p>SHEET CONTENT</p> <p>SITE PLAN</p> <p>FLOOR PLAN</p> <p>NOTES/SCHEDULES</p>



Approved and north and east elevations. S. Frugal.

Exhibit C.2

Approved
 City of Portland - Bureau of Development Services
 Planner *S. Frugal*
 Date *May 16 2016*
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

SHEET A2 of 3	DATE 4-6-16	REVISIONS	SHEET CONTENT EXTERIOR ELEVATION SECTIONS	POZOS ADU 2823 SE TAYLOR STREET PORTLAND, OREGON 97213		8100 NE HALE BLVD PORTLAND, OR 97213 OFFICE 503.553.3500 FAX 503.553.3500 WWW.RMSARCHITECTS.COM
	DRAWN DMS	CHECKED				