



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

FROM CONCEPT TO CONSTRUCTION

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Date: August 3, 2016
To: Interested Person
From: Matt Wickstrom, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The 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 16-185704 AD

GENERAL INFORMATION

Applicant: Dave Spitzer
DMS Architects
2325 NE 19th Ave
Portland OR 97212

Property Owner: James C Moore
10260 Rio Vista Pl
Tucson, AZ 85749

Site Address: 16634 SE TIBBETTS ST

Legal Description: WUNDERVOLL, BLOCK 4, LOT 1
Tax Account No.: R931251200, R931251200
State ID No.: 1S3E07BD 11800, 1S3E07BD 11800
Quarter Section: 3347

Neighborhood: Centennial, contact Tom Lewis at 503-347-5715
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550

Zoning: R7 (Residential 7,000)

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

Proposal:

The applicant plans to convert the existing detached garage on this site to an accessory dwelling unit (ADU). The proposal will eliminate vehicle parking in the garage, however, the applicant proposes to keep the existing driveway for off-street parking. The Portland Zoning Code requires off-street parking to be a minimum of 9 feet wide and 18 feet deep. It is also not

allowed in the street setback, in this case the first 5 feet of the site from SE Tibbetts Street. As such, the applicant proposes one Adjustment allow an 18-foot deep parking space to encroach within the 5-foot street side setback.

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 7,038 square foot site is developed with a single-dwelling residence. It is at the southwest corner of SE Tibbetts Street and SE 167th Avenue. The 1-2 story house faces SE Tibbetts Street and the main entrance and the driveway are also accessed from SE Tibbetts Street.

Zoning: The site is zoned R7 (Residential 7,000). The R7 zone is a Single-Dwelling Residential zone. These zones are intended to preserve land for housing and provide housing opportunities for individual households. The Portland Zoning Code allows an ADU to be added to a house, attached house, or manufactured home in residential, commercial and some employment zones.

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 **July 1, 2016**. The following Bureaus have responded with no issues or concerns:

- The Bureau of Environmental Services responded that the requirements of the Stormwater Management Manual are not triggered with this proposal; however, a safe stormwater disposal location that does not impact adjacent structures must be shown on building permit drawings (Exhibit E-1);
- The Life Safety section of the Bureau of Development Services (BDS) responded that a building permit has been issued for the proposed ADU (Exhibit E-2);
- The Site Development section of BDS responded with no objections to the proposal and included information about site conditions and erosion control (Exhibit E-3); and
- The Fire Bureau, Bureau of Environmental Services and the Water Bureau responded with no concerns (Exhibit E-4).

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the Notice of 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 one Adjustment to allow an 18-foot deep parking space to be located within the 5-foot street side setback. The purpose for the parking location regulations is found in 33.266.120, which states:

Purpose: The size and placement of vehicle parking areas are regulated in order to enhance the appearance of neighborhoods.

The proposed Adjustment maintains adequate room to park a car in the driveway without hanging over the street or sidewalk. To ensure cars don't overhang the street, the Portland Zoning Code requires parking spaces to be located outside of the 5-foot side setback (unless the car is parked behind another parking space that is at least 18 feet from the street property line). In this situation, the driveway is 22 feet 6 inches in depth or only 6 inches short of the required 23 feet which allows an 18-foot deep parking space to be located outside the 5-foot side setback. Furthermore, the street property line is located 6 inches inside the inner edge of the sidewalk which compensates for the 6 inch encroachment of the parking space into the side setback.

Based on this information, 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 not significantly detract from the livability or appearance of the residential area. As described above, the project involves minor alterations to the existing house with no addition of building area. The proposed parking space location will not cause vehicles to overhang the sidewalk because it only encroaches 6 inches into the 5-foot side street setback and there is an additional 6 inches separating the sidewalk from the SE Tibbetts property line. Furthermore, there are no changes to the site itself. The parking space encroaching into the setback will be located on the existing driveway. Based on this information, 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 being requested; therefore, this criterion is not applicable.

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

Findings: No City-designated scenic or historic resources are located 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 adjustments. 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: 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 requests one Adjustment to allow an 18-foot deep on site parking space to encroach 6 inches into the side setback. The proposal meets the applicable approval criteria due to the small encroachment proposed and the distance of the side street property line being located 6 inches inside the inner edge of the sidewalk. Based on the findings above, the proposal is approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to allow a 9-foot by 18-foot parking space to be encroach 6 inches into the side street setback (33.110.220.B), per the approved site plans, Exhibit C-1, signed and dated July 29, 2016, subject to the following condition:

- 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 Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-185704 AD."

Staff Planner: Matt Wickstrom

Decision rendered by:  **on August 1, 2016**
By authority of the Director of the Bureau of Development Services

Decision mailed: August 3, 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 June 9, 2016, and was determined to be complete on June 23, 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 June 9, 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, applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: October 21, 2016.**

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

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

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

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

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on August 17, 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 **August 18, 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.

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:

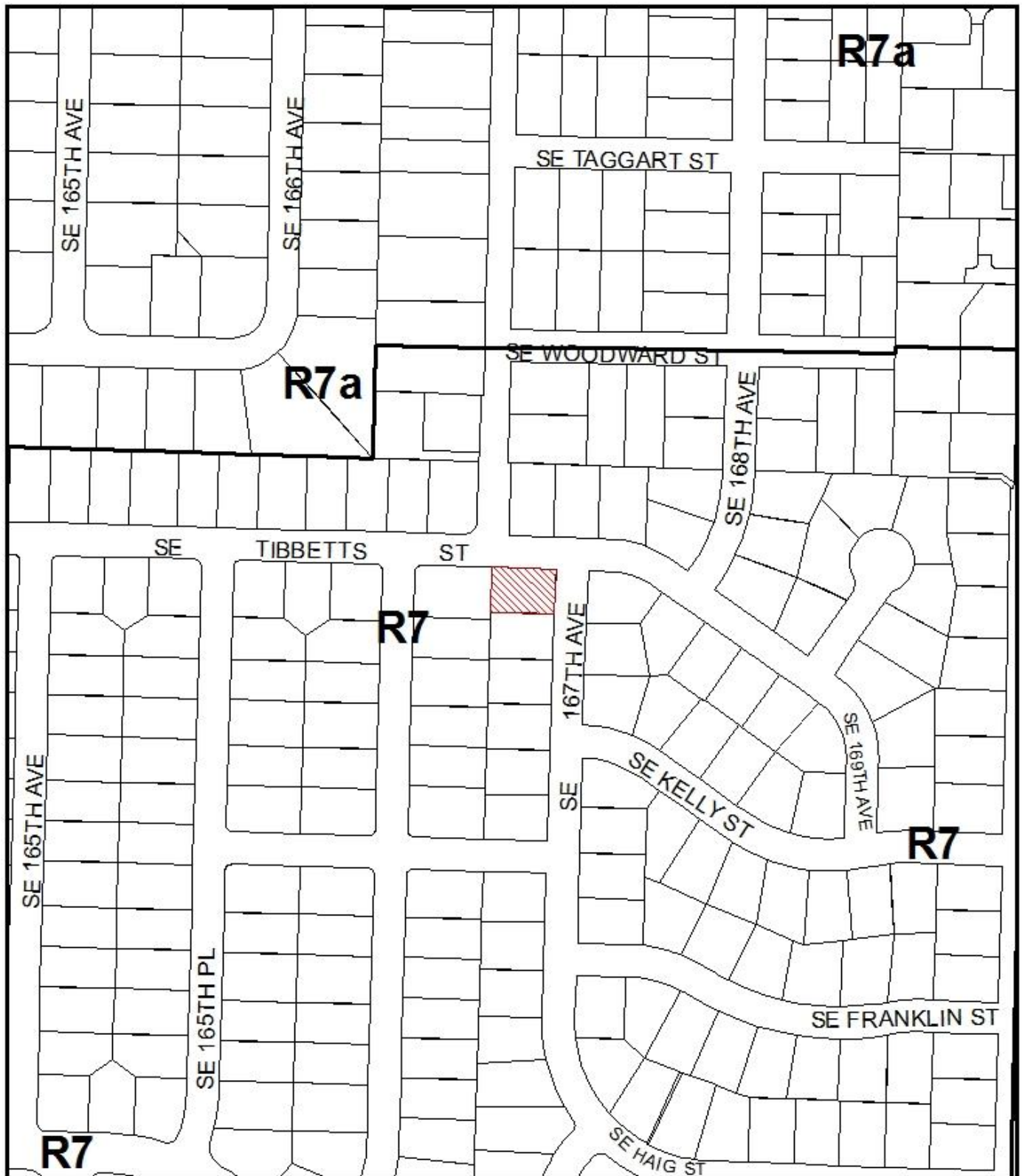
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Life Safety Section of BDS
 - 3. Site Development Review Section of BDS
 - 4. Summary sheet of agency responses
- F. Correspondence: None received

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



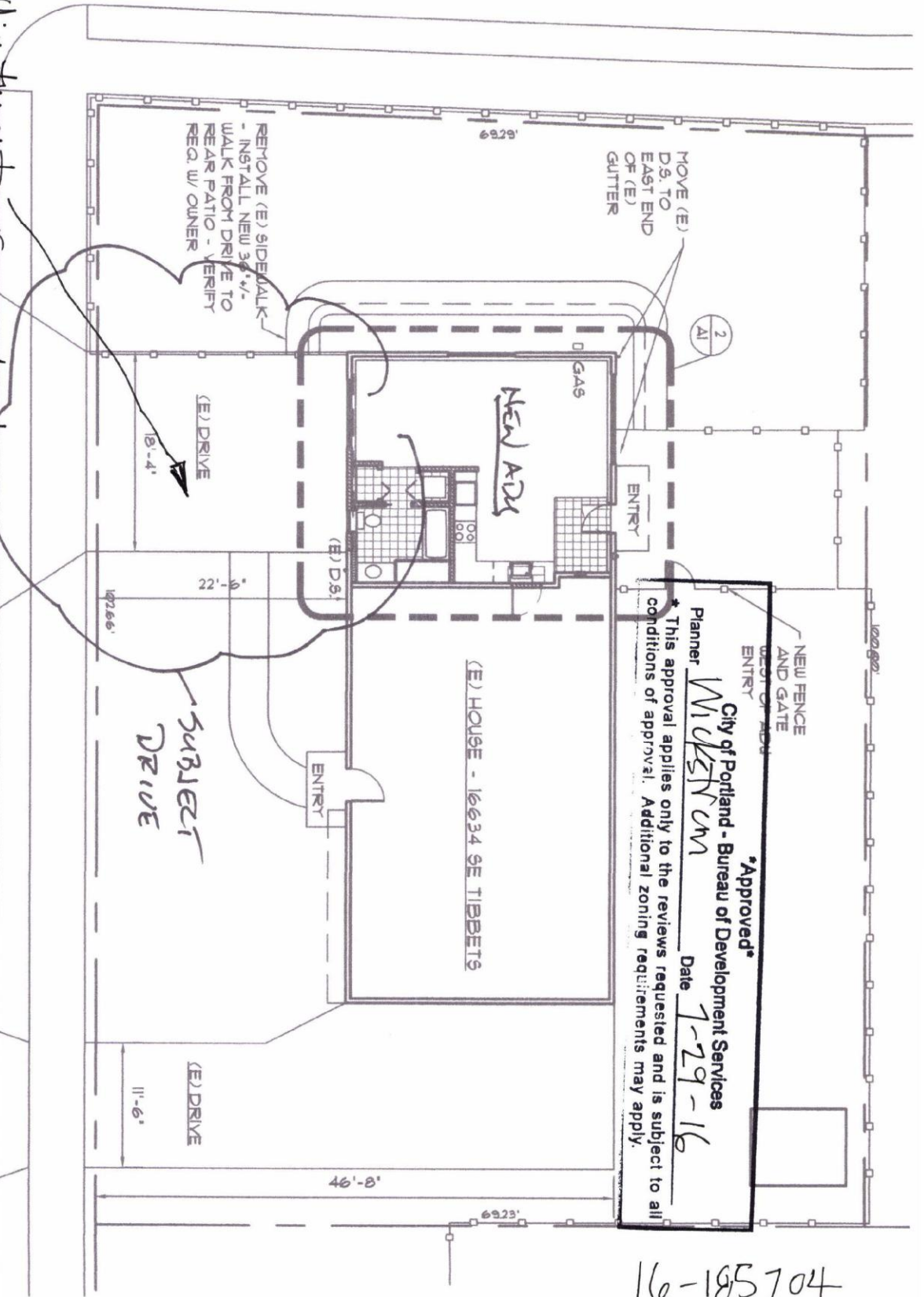
File No. LU 16-185704 AD
 1/4 Section 3347
 Scale 1 inch = 200 feet
 State_Id 1S3E07BD 11800
 Exhibit B (Jun 13, 2016)

SE 16TH AVENUE



1 SITE PLAN to conversion of garage to ADU.

Adjustment request to allow 9' x 18' parking space to be located in 5-foot street setback due to 16-185704 AD



Approved
 City of Portland - Bureau of Development Services
 Planner WICKEN CM
 Date 7-29-16
 *This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

16-185704
Exhibit C-1