



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

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
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www.portlandoregon.gov/bds

Date: September 21, 2016
To: Interested Person
From: Lauren Russell, Land Use Services
503-823-7817 / Lauren.Russell@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 16-210585 AD

GENERAL INFORMATION

Owner/Applicant: Natalya Osinnyaya
8053 SE Henry St
Portland, OR 97206

Site Address: 8053 SE HENRY ST

Legal Description: TL 7100 0.11 ACRES, SECTION 17 1S 2E
Tax Account No.: R992170550
State ID No.: 1S2E17DD 07100
Quarter Section: 3638
Neighborhood: Mt. Scott-Arleta, contact Andrew Cecka at msanalandusechair@gmail.com
Business District: Eighty-Second Ave of Roses Business Association, contact Nancy Chapin at nchapin@tsgpdx.com
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010.
Plan District: None
Other Designations: None
Zoning: R1a – Multi-Dwelling Residential 1,000, Alternative Design Density Overlay
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant has constructed a 12-foot by 28-foot shed at the northwest corner of the property, which is located within the side and rear building setbacks. Per Zoning Code Section 33.120.280.C.2.b(2), a detached covered accessory structure is allowed in the side and rear building setbacks if the structure has dimensions that do not exceed 24 feet by 24 feet, excluding eaves. Because the shed exceeds 24 feet in length, it is not allowed within the required building setbacks. Therefore, the applicant requests the following adjustments:

- Reduce the required side setback from the west property line from 5 feet to between 3 feet and 2.8 feet for the building wall and from 5 feet to between 2 feet and 1.8 feet for the roof eave; and
- Reduce the required rear setback from the north property line from 5 feet to 3 feet for the building wall and from 5 feet to 2 feet for the roof eave.

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 subject site is a 5,000 square foot lot located on the north side of SE Henry Street between SE 80th Avenue and SE 82nd Avenue. It is developed with a one-and-a-half story single-dwelling residence, carport, and a shed. A flag lot is located just north of the subject site. The adjacent properties are similarly developed with one- to two- story single-dwelling residences and accessory structures. Commercial development is located approximately 200 feet east along SE 82nd Avenue.

Zoning: The R1 zone is one of the City's multi-dwelling zones, which are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing. The development standards work together to create desirable residential areas by promoting aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The Alternative Design Density (a) overlay zone is an optional overlay zone that provides opportunities for increased density in limited situations, provided that additional design compatibility requirements are met for the project. The overlay zone does not apply to this proposal.

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 August 24, 2016. The following Bureaus have responded with no issues or concerns:

- 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 properties or structures must be shown on the building permit drawings (Exhibit E-1);
- Bureau of Transportation Engineering responded that there are no transportation-related approval criteria associated with the proposed land use request and that Transportation has no objections to this Adjustment (Exhibit E-2);
- Fire Bureau responded with no concerns (Exhibit E-3);
- Site Development Section of BDS responded with no concerns (Exhibit E-4); and
- Life Safety Review Section of BDS responded that exterior walls less than 3 feet to a property line shall be one-hour fire-rated with no openings allowed. Roofs and eaves may project not closer than 2 feet to a property line and eaves fewer than 3 feet to a property line must be protected on the underside as required for one-hour fire-rated construction (Exhibit E-5).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on August 24, 2016. One written response has been received from a notified property owner in response to the proposal (Exhibit F-1).

This response was in opposition to the proposal. The respondent questioned whether the site plan accurately shows the location of the shed and whether the shed would be used as storage

or for some other use. The respondent also raised concerns about fire and life safety issues and stormwater management. Lastly, the respondent provided photographs of the shed as viewed from a neighboring property and stated that it blocks views and sunlight.

Staff response: The applicant provided photographs confirming the 3-foot measurement from the shed building wall to the rear property line (Exhibit A-5). The applicant has stated that the shed will be used for storage.

At the time of building permit, the applicant will need to show that the shed is compliant with building code, including structural and fire code. The Life Safety Plan Reviewer noted that eaves that are fewer than 3 feet to a property line must be protected on the underside as required for one-hour fire-rated construction (Exhibit E-5). The applicant provided photographs (Exhibit A-4) showing that 5/8" 4-foot by 8-foot firecode drywall had been applied to the underside of the roof eaves. The Fire Bureau reviewer did not have any concerns about the shed (Exhibit E-3). The Bureau of Environmental Services reviewer noted that a safe stormwater disposal location that does not impact adjacent properties and structures must be shown at the time of building permit submittal.

The respondent stated that the new shed is an eyesore as viewed from the adjacent property and that its height and bulk block views and sunlight. The respondent's photographs show that the shed is visible over the fence that divides the properties. The findings for Approval Criteria A and B below discuss how the shed equally meets the purpose of the setback regulations and does not significantly detract from the livability and appearance of the surrounding residential area. Any relevant impacts to neighborhood livability and appearance is discussed in the approval criteria findings below.

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 applicant has demonstrated 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 is requesting the following two Adjustments:

- Reduce the required side setback from the west property line from 5 feet to between 3 feet and 2.8 feet for the building wall and from 5 feet to between 2 feet and 1.8 feet for the roof eave; and
- Reduce the required rear setback from the north property line from 5 feet to 3 feet for the building wall and from 5 feet to 2 feet for the roof eave.

The purpose of the setback requirement in the R1 zone is stated in Zoning Code Section 33.120.220.A:

Purpose. *The building setback regulations 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 multi-dwelling development in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They provide adequate flexibility to site a building so it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity;*
- *Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users; 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.*

Maintain light, air, and separation: The shed has 8-foot tall walls and a 10-foot tall roof peak. It is located over 10 feet from the house on the property to the west and over 25 feet from the house on the property to the north. Therefore the placement of the shed maintains light and air. The Fire Bureau reviewer had no concerns about the requested Adjustments. Therefore the placement of the shed also maintains separation for fire protection and access for fire fighting.

Reflect general building scale and placement: There are several neighboring properties that also have large detached accessory structures behind the house near the side and rear lot lines. 8029 SE Henry Street has a 720 square foot detached garage located near the northwest corner of the lot. 8041 SE Henry Street has a 560 square foot detached garage located close to the western side lot line. 6314 SE 80th Avenue has an 800 square foot detached garage located close to the northern side lot line. 8110 SE Tolman Street has a 360 square foot detached garage located close to the southern rear lot line. Therefore the size and placement of the 336 square foot shed on the subject site reflects the general building scale and placement of development in the neighborhood.

Promote a reasonable physical relationship between residences: The shed is located over 10 feet from the house on the property to the west, which is equal to the distance if both the shed and house met the 5 foot side setback. The shed is located over 25 feet from the house on the property to the north, which is a greater distance than if both the shed and house met the 5 foot side/rear setback. Therefore despite being located within the side and rear setback, it maintains a reasonable physical relationship between residences.

Promote options for privacy: The south wall of the shed contains a door and the east wall contains a door and window. The shed walls that abut the western side property line and the northern rear property line do not contain any windows or doors, which promotes privacy for the neighboring properties.

Provide adequate flexibility: As stated above, the shed on the subject site reflect the general building scale and placement of development in the neighborhood so it is therefore compatible with the neighborhood.

Setback requirements along transit streets: SE Henry Street is not a transit street so this purpose statement is not applicable.

Provide room for a car: The applicant's proposal does not affect the on-site parking area. There will continue to be room for a car to park without

overhanging the street or sidewalk and driver visibility when backing onto the street.

Based on these reasons, the proposed Adjustments equally meet the intent of the regulation and 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: Because the subject site is located in a multi-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. As discussed in the findings for Approval Criterion A, the location of the shed maintains light, air, and separation; reflects general building scale and placement; promotes a reasonable physical relationship between residences; and promotes options for privacy. For these reasons, the proposal will not detract from neighborhood livability or appearance. 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: Two Adjustments have been requested. The overall purpose of the R1 zone is to preserve land for urban housing and to provide opportunities for multi-dwelling housing. The proposal to legalize the shed built within the side and rear setbacks does not preclude the site from providing land for urban housing or multi-dwelling housing opportunities. Therefore the requested Adjustments maintain consistency with the purpose of the R1 zone. This criterion is met.

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

Findings: City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. Because there no scenic or historic resource designations are mapped on the subject site, this criterion is not applicable.

E. Any impacts resulting from the Adjustment are mitigated to the extent practical; and

Findings: As discussed in the findings for Approval Criteria A and B, the proposal has no adverse impacts on the livability or appearance of the surrounding residential area for which mitigation would be required. Therefore, 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). Because no environmental overlay zone is mapped on subject site, 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 proposal to reduce the required side and rear setbacks equally meets the intent of the regulations and does not have any adverse impacts on the livability and appearance of the surrounding residential neighborhood. The applicant has demonstrated that the applicable approval criteria have been met. Because the approval criteria are met, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the required side setback from the west property line from 5 feet to between 3 feet and 2.8 feet for the building wall and from 5 feet to between 2 feet and 1.8 feet for the roof eave (Zoning Code Section 33.120.280.C.2.b(2)).

Approval of an Adjustment to reduce the required rear setback from the north property line from 5 feet to 3 feet for the building wall and from 5 feet to 2 feet for the roof eave (Zoning Code Section 33.120.280.C.2.b(2)).

The above approvals are granted per the approved site plans, Exhibits C-1 and C-3, signed and dated September 16, 2016, 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 and C-3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-210585 AD. No field changes allowed."

Note: The applicant is responsible for either replacing the 8-foot wide garage door with a narrower door or installing bollards to restrict the width of the entrance to fewer than 8 feet in order to avoid having to provide a paved driveway to the shed.

Staff Planner: Lauren Russell

Decision rendered by: Lauren Russell **on September 16, 2016.**
By authority of the Director of the Bureau of Development Services

Decision mailed: September 21, 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 July 25, 2016, and was determined to be complete on August 19, 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 July 25, 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. Unless further extended by the applicant, **the 120 days will expire on: December 17, 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 October 5, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 **October 6, 2016**.
- 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.

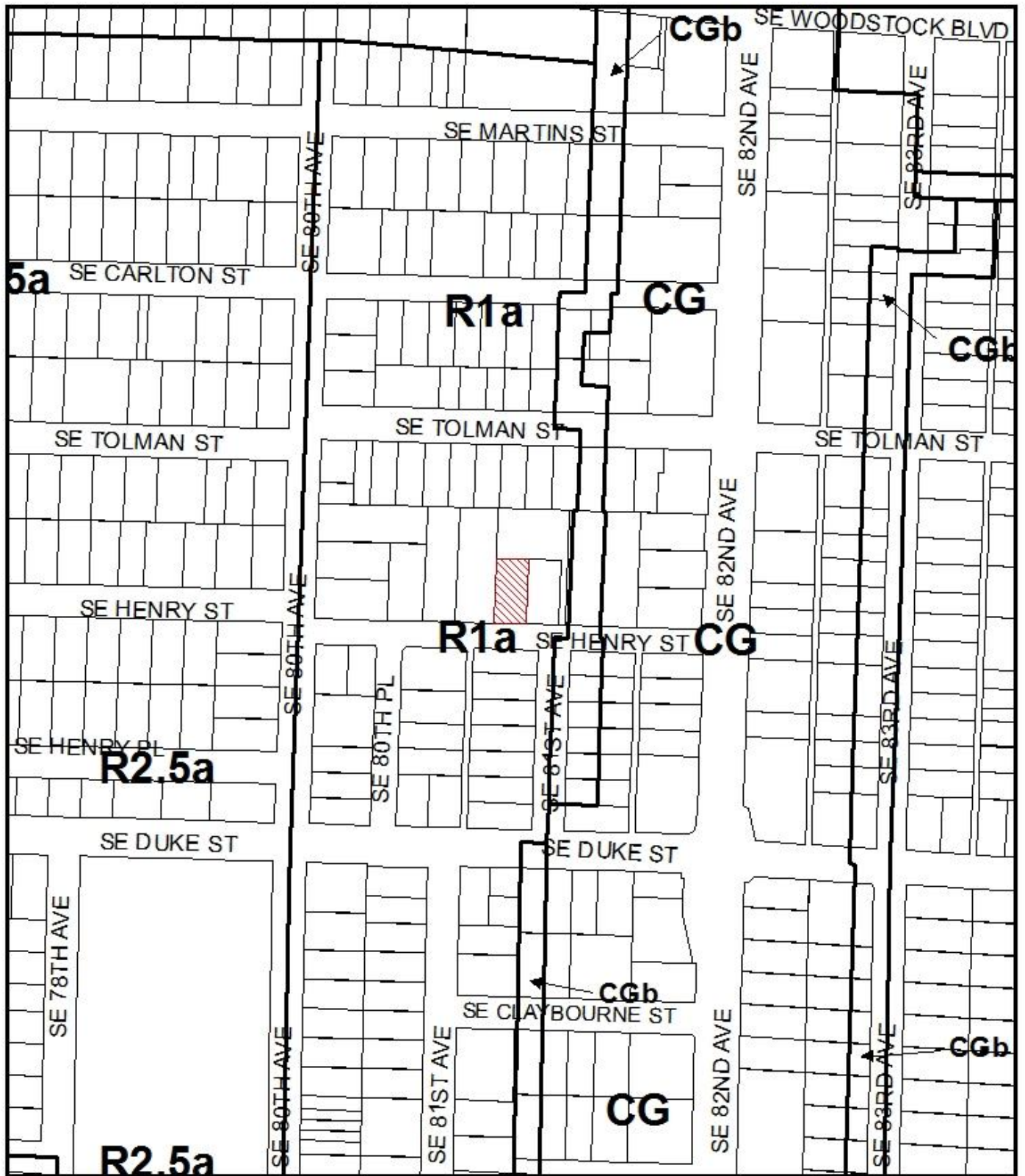
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Narrative and Plans 7/25/16
 2. Revised Elevations and Photographs 8/11/16
 3. Revised Narrative 8/11/16
 4. Photographs 8/18/16
 5. Photographs 9/15/16
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Full Size Site Plan
 3. Elevations (attached)
 4. Full Size Elevations
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services

2. Bureau of Transportation Engineering and Development Review
 3. Fire Bureau
 4. Site Development Review Section of BDS
 5. Life Safety Section of BDS
- F. Correspondence:
1. Margaret Hollyer, 9/14/16, Letter in Opposition
- G. Other:
1. Original LUR Application
 2. Incomplete Letter 8/8/16
 3. Emails to the Applicant

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

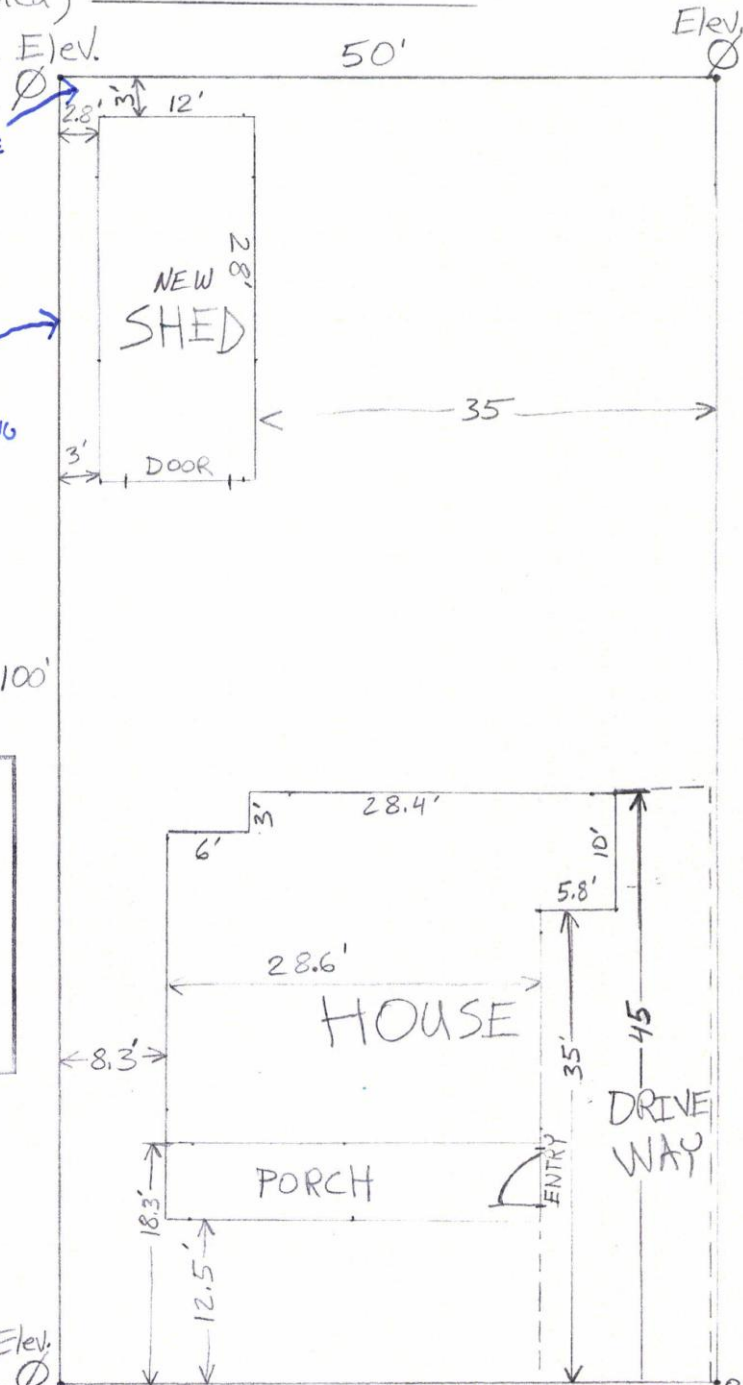


File No.	<u>LU 16-210585 AD</u>
1/4 Section	<u>3638</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E17DD 7100</u>
Exhibit	<u>B (Jul 27, 2016)</u>

IMPERVIOUS AREA
 DRIVEWAY 520 S.F. (House) **BUILDING COVERAGE**
 PATIO 168 S.F. (House) **BUILDING FOOTPRINT** 336 S.F. **LOT AREA** 5,000 S.F.
 WALK _____
 ROOF AREA (INCL. OVERHANG) 420 S.F. (Shed) **Site Plan**
 TOTAL 336 S.F. (SHED) Elev. _____ 50' _____ Elev. _____

LU 16-210 585 AD

- REQUEST FOR ADJUSTMENT TO REDUCE REQUIRED REAR SETBACK FROM 5' TO 3' FOR THE BUILDING WALL AND 5' TO 2' FOR THE ROOF EAVE.
- REQUEST FOR ADJUSTMENT TO REDUCE REQUIRED SIDE SETBACK FROM 5' TO BETWEEN 3' AND 2.8' FOR THE BUILDING WALL AND FROM 5' TO BETWEEN 2' AND 1.8' FOR THE ROOF EAVE.



Approved
City of Portland
 Bureau of Development Services
 Planner L Russell
 Date 9/16/16
 * This approval applies only to the reviews requested and is subject to all conditions of approval
 Additional zoning requirements may apply.

CASE NO. 16-210 585 AD
 EXHIBIT C-1

PROJECT LEGAL _____ PROJECT ADDRESS 8053 SE Henry St **SITE PLAN**
Portland, OR 97206 SCALE: $\frac{1}{8}'' = 1'$
16-202880-RS LU16-210585AD NORTH ARROW
 Ex C-1

LU 16-210585 AD

IMPERVIOUS AREA

BUILDING COVERAGE

LOT AREA

DRIVEWAY _____
PATIO _____
WALK _____

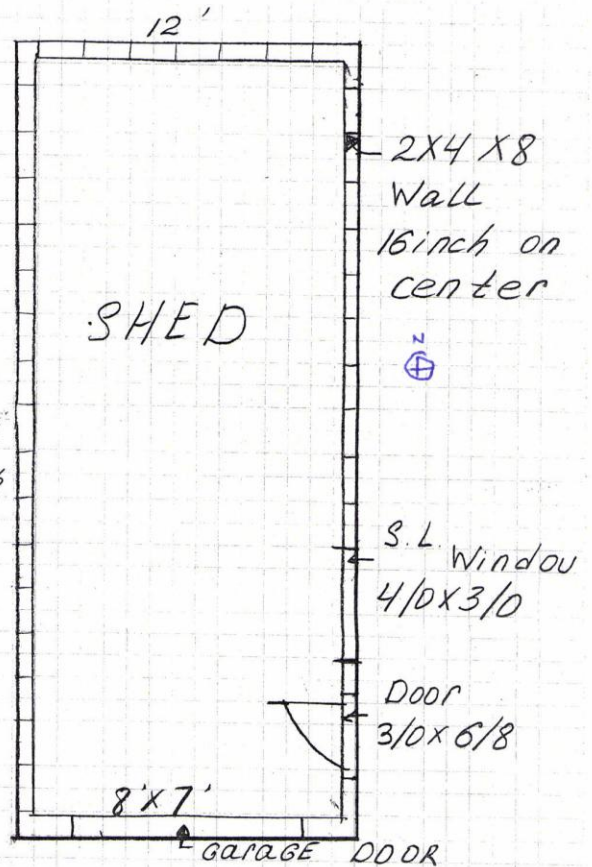
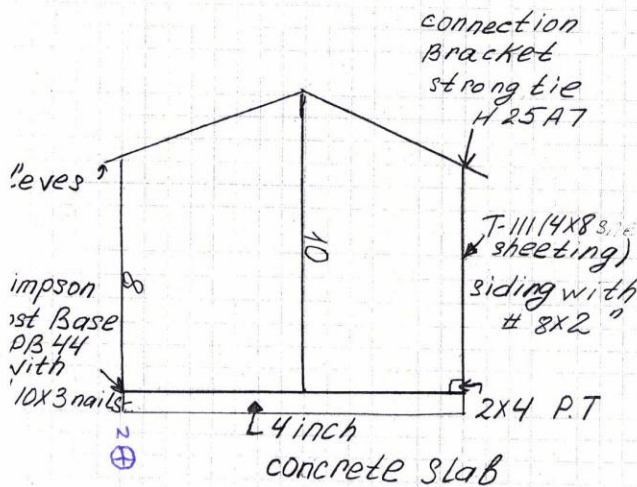
BUILDING FOOTPRINT 336 SF 5,000

Building plan.

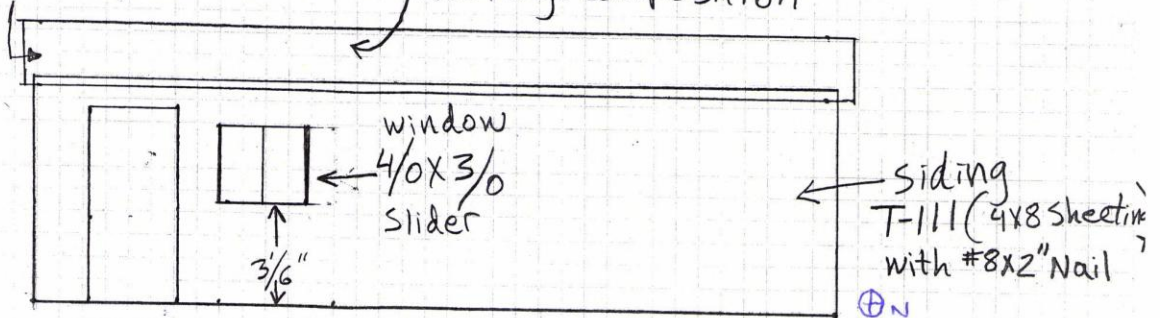
ROOF AREA
(INCL. OVERHANG) 420 S.F.

TOTAL 336 S.F.

Foundation: Concrete slab
walls: 2x4-
Roof: composition
Siding: T-111



Roof sheeting 4x8 OSB
1/2 inch thick, with #8x2" nails } Roofing: Composition



CASE NO. 16-210585 AD
EXHIBIT C-3

Approved
City of Portland - Bureau of Development Services

Planner L Russell Date 9/16/16
PROJECT LEGAL **PROJECT ADDRESS**
8053 SF Henry ST

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

SITE PLAN

SCALE: 1/4" = 1'
10'

