



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

FROM CONCEPT TO CONSTRUCTION

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Date: October 17, 2016
To: Interested Person
From: Andrew Gulizia, 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 16-240158 AD

GENERAL INFORMATION

Applicant: Darren LeBlanc
2849 SE 70th Ave.
Portland, OR 97206

Property Owner: Fel Judar and Perla Judar
3012 SE 52nd Ave.
Portland, OR 97206

Site Address: 3012 SE 52nd Ave.

Legal Description: BLOCK 24 LOT 3, EAST CRESTON
Tax Account No.: R223801270
State ID No.: 1S2E07AC 21400
Quarter Section: 3336
Neighborhood: South Tabor, contact Shemuel Harding at 503-679-9066
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010
Zoning: R2.5a – Single-Dwelling Residential 2,500 with Alternative Design Density (“a”) overlay zone

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

Proposal: The back yard of the subject property contains an existing, detached accessory dwelling unit (ADU). The most recent building permit for this ADU (from 1985) shows a portion of the south side of the structure as a garage. At some point in the past, the garage portion of the structure was converted into a bedroom for the ADU without a building permit. In order to obtain a retroactive building permit for this prior conversion of the garage into living area, the applicant is requesting approval of an Adjustment to Zoning Code Section 33.205.040.C.3 to increase the maximum living area for an ADU from 800 square feet to 895 square feet. This Adjustment will not authorize any increase in the current size of the ADU; the Adjustment only

legalizes the existing condition. The parking requirement for the site is still met with the existing driveway and parking area in the rear yard.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Section 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The site is a 5,000-square-foot lot located on the east side of SE 52nd Avenue, between SE Tibbetts Street and SE Woodward Street. The site is developed with a one-story, single-dwelling house and a detached ADU in the rear yard. Most neighboring properties are also developed with one-story, single-dwelling houses. Franklin High School is one block north of the site, and a commercial corridor along SE Powell Boulevard is two blocks south.

Zoning: The R2.5 zoning designation is one of the City's single-dwelling residential zones, which are intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The site is also within the boundaries of the Alternative Design Density ("a") overlay zone, though the "a" overlay regulations are not applicable to this Adjustment request. The purpose of the "a" overlay zone is 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.

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

Agency Review: A "Notice of Proposal" was mailed September 20, 2016. The following Bureaus have responded with no concerns about the proposed Adjustment:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Fire Bureau (Exhibit E-3);
- Site Development Section of BDS (Exhibit E-4); and
- Life Safety Review Section of BDS (Exhibit E-5).

Neighborhood Review: Two letters were received in response to the mailed "Notice of Proposal." One notified property owner stated the proposed Adjustment was acceptable, and raised no issues related to the approval criteria (Exhibit F-1). The other letter (Exhibit F-2) stated the structure is closer to the lot line than shown in the building permit record from 1985. This neighbor requested the Adjustment be denied because the structure is too close to the lot line, and maintenance would require access from another property. This neighbor also suggested a survey to verify the location of the lot line.

Staff response: The current Adjustment request would legalize the prior conversion of garage space to living space, but would not affect the exterior size or location of the accessory building. The accessory building was constructed in 1954, and the building permit issued in 1985 (permit # 84-106688) approved the majority of the structure (except for the garage) to be living space. Although it's possible that the structure is closer to the lot line than shown in that site plan, staff finds the current Adjustment request does not affect that condition, and that there is no nexus in the applicable approval criteria to deny the Adjustment or require a survey based on that question. However, staff notes that any proposal to make the exterior envelope of the structure any larger in the future would require another Adjustment Review (which may or may not be approvable) and another building permit review and inspection. Today, building permit inspections which change the exterior envelope typically require a surveyor to locate lot lines. Furthermore, approval of this Adjustment does not obligate any other property owner to allow access to their property for maintenance of this structure.

ZONING CODE APPROVAL CRITERIA

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 Adjustment approval to increase the allowable living area for an ADU. The purposes of the development standards for ADUs are stated in Zoning Code Section 33.205.040.A:

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.*

The 895-square-foot ADU is significantly smaller than the 1,696-square-foot house on this site, and the modest building height (with 8-foot-tall walls and the roof peak 12.5 feet above the ground) minimizes negative impacts to neighborhood character or to the livability of neighboring properties. The location of the ADU at the back of the lot maximizes the shareable common space on the property and is a typical building placement for accessory structures in residential neighborhoods. Again, the proposed Adjustment will not authorize any increase in the current size of the ADU; the Adjustment only legalizes the prior conversion of the garage portion of the structure to ADU living area. For these reasons, staff finds the proposal equally meets the purposes of the standard, 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 site is located in a single-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. As mentioned above, the ADU structure is existing, and the Adjustment request will not authorize any increase in its current size. The Adjustment will only legalize the prior conversion of the garage portion of the structure to ADU living area. No neighbor-facing windows are shown in the former garage portion of the structure. Since no new construction is proposed with this review, and since the off-street parking requirement for the site is still met with the existing driveway and parking area in the rear yard, staff finds the proposed Adjustment will not detract from the livability or appearance of the residential area. 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: As only one Adjustment is being requested, this criterion is not applicable.

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. As there are no scenic or historic resource designations 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 criterion B, the proposal will have no adverse impacts on the livability of the surrounding residential area. As there are no identified adverse impacts for which mitigation would be required, this criterion is not applicable.

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 there are no environmental overlay zones mapped on 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 Adjustment to increase the living area limit for an ADU equally meets the intent of the regulation and will not adversely affect the livability and appearance of the surrounding residential neighborhood. The applicant has demonstrated that the applicable approval criteria have been met. Since the approval criteria are met, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.205.040.C.3 to increase the allowable living area for a detached ADU from 800 square feet to 895 square feet, per the approved plans, Exhibits C-1 and C-2, signed and dated October 12, 2016, subject to the following condition:

- A. As part of the building permit application submittal, each of the 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-2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-240158 AD."

Staff Planner: Andrew Gulizia

Decision rendered by:  **on October 12, 2016.**

By authority of the Director of the Bureau of Development Services

Decision mailed: October 17, 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 September 9, 2016, and was determined to be complete on September 16, 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 September 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, the applicant did not waive or extend the 120-day review period. Unless extended by the applicant, **the 120 days will expire on: January 14, 2017.**

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 31, 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 **November 1, 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:

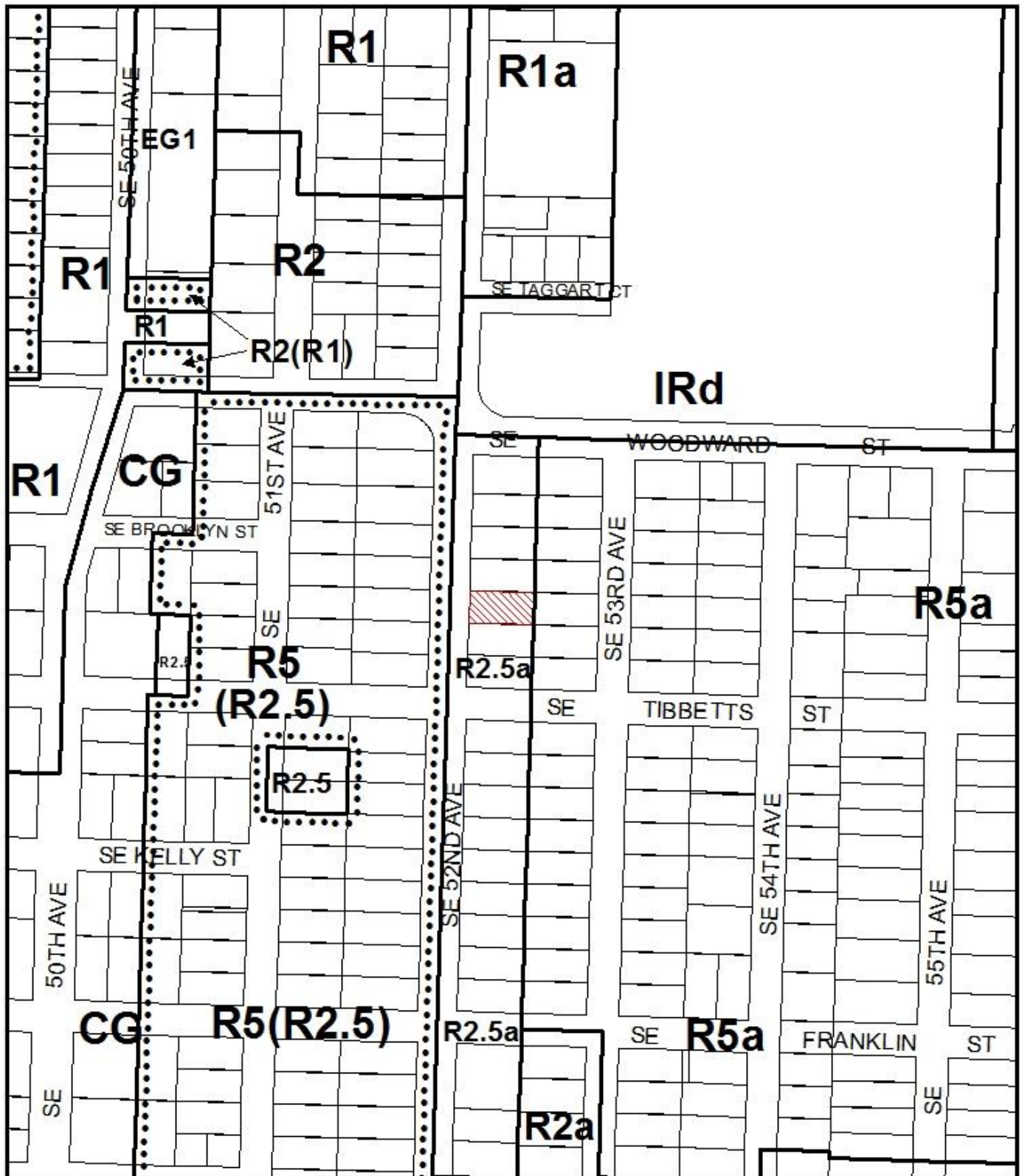
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Applicant's narrative and supplemental information from applicant
 - 2. Response to incompleteness determination letter, received September 16, 2016
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan (attached)
 - 2. Floor plan and building elevations (attached)
 - 3. Full-sized, scalable floor plan and building elevations
- D. Notification Information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Bureau of Transportation
 - 3. Fire Bureau
 - 4. Site Development Review Section of BDS
 - 5. Life Safety Review Section of BDS
- F. Correspondence:
 - 1. Letter in support from Patty Haines, received September 27, 2016
 - 2. Letter in opposition from Shane Gould, received October 10, 2016
- G. Other:
 - 1. Original LU application form and receipt
 - 2. Incompleteness determination letter, dated September 15, 2016

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

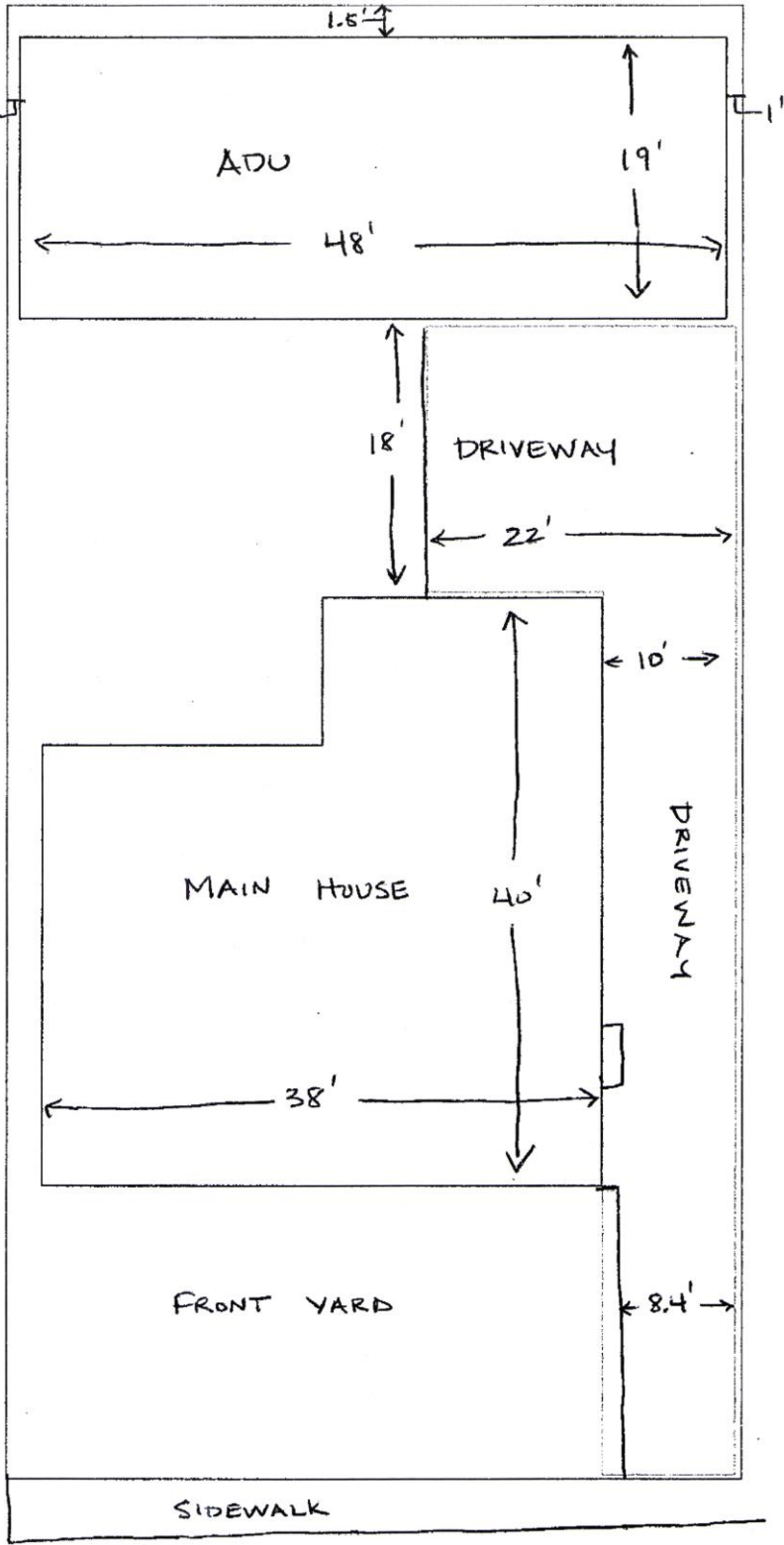


File No. LU 16-240158 AD
 1/4 Section 3336
 Scale 1 inch = 200 feet
 State_Id 1S2E07AC 21400
 Exhibit B (Sep 12, 2016)

SCALE 1" = 10.5'

3012 SE 52ND
AVE 1'

Approved
City of Portland - Bureau of Development Services
Planner A. Cruz Date 10/12/16
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



LU 16-240158 AD
Exhibit C-1

