



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

Chloe Eudaly, Commissioner  
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Phone: (503) 823-7300  
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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** April 17, 2017  
**To:** Interested Person  
**From:** Kathleen Stokes, Land Use Services  
503-823-7843 / [Kathleen.Stokes@portlandoregon.gov](mailto:Kathleen.Stokes@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 17-128386 AD**

#### **GENERAL INFORMATION**

**Applicant:** Chris Davis, Chris Davis Design Architecture and Interiors  
4605 NE Fremont St, Ste 202  
Portland, OR 97213

**Owners:** Howard and Barbara F Ginsberg  
41 Commonwealth Ave  
San Francisco, CA 94118

**Site Address:** 6105 NE 28TH AVE

**Legal Description:** BLOCK 28 LOT 18&20, IRVINGTON PK  
**Tax Account No.:** R421308620  
**State ID No.:** 1N1E13CB 08800  
**Quarter Section:** 2433

**Neighborhood:** Concordia, Garlynn Woodsong at 503-936-9873.  
**Business District:** North-Northeast Business Assoc, contact at [chair@nnebaportland.org](mailto:chair@nnebaportland.org)  
**District Coalition:** Northeast Coalition of Neighborhoods, Jessica Rojas at 503-388-5030.

**Zoning:** R5a, h (Residential 5,000, High Density Single-Dwelling, with Alternative Design Density and Aircraft Landing Overlay Zones)

**Case Type:** Adjustment Review  
**Procedure:** Type II, administrative decision with appeal to Adjustment Committee.

**Proposal:** The applicant is proposing construction of an Accessory Dwelling Unit (ADU), which would be located in the southwest corner of the property. The garage that is currently located in this area would be removed and parking would occur on the existing driveway. The proposed structure would be located two feet from the south side property line and would be zero feet from the west or rear property line, which abuts a public alley. The Portland Zoning Code generally requires structures to be located a minimum of five feet from side and rear property lines. The regulations allow some smaller structures to be exempt from the setback requirement. There is no setback required along a property line that abuts an alley. The proposed structure does not meet all of the thresholds that would allow it to be located within

the south side setback on this site, without approval through an Adjustment Review. Exceptions to the regulations are approved through Adjustment Review, when all of the relevant approval criteria are met or when the criteria can be met through reasonable conditions of approval. Therefore, the applicant is requesting approval of an Adjustment to Code Section 33.110.220 B, to reduce the minimum setback from the south side property line from five feet to two feet for the proposed accessory structure.

**Relevant Approval Criteria:** To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

## ANALYSIS

**Site and Vicinity:** The site is a 5,000 square-foot property, comprised of two platted lots, that is located on the west side of NE 28<sup>th</sup> Avenue. The rear property line abuts a public alley that provides access for lots on the northern half of the block but is not developed adjacent to this site or other properties in this southern end of the block. The site is developed with a single-dwelling residence that was constructed in 1936. There is currently one small accessory structure, a single-car, detached garage, that is located in the southwest corner of the site. This structure is proposed to be removed to allow space for the proposed ADU. The area around the site is developed with other single-dwelling residences of a similar age and size.

**Zoning:** The site is zoned Residential 5,000 (R5, High Density Single-Dwelling), with an “a” or Alternative Design Density Overlay. This zone is intended to accommodate single-dwelling development, with an average of one unit per 5,000 square feet of site area and a maximum density of one unit per lot (generally 8.7 units per acre.) The “a” Overlay Zone allows opportunities for increased residential density in certain situations. The overlay zone does not apply to this situation. This site also has an “h” or Aircraft Landing Overlay. The provisions of this overlay zone, that limit the height of structures within the aircraft landing approach patterns for the Portland International Airport, are not relevant 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 **March 21, 2017**. The following Bureaus have responded with no issues or concerns:

- Environmental Services had no issues with the Adjustment request but noted that the project will be subject to the regulations of the City’s Stormwater Management Manual at the time of building permit review (Exhibit E-1).
- Life Safety Plan Review Section of BDS stated that a building permit has been applied for and is currently under review. Comments regarding any life-safety issues will be attached to the building permit review comments (Exhibit E-2).
- The other City service agencies sent a response of “no concerns,” with no additional comments. These included Transportation Engineering, Water Bureau, Fire Bureau and Site Development Section of BDS (Exhibit E-3).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on March 21, 2017. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

**33.805.010 Purpose of 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 to provide certainty and rapid processing for land use applications.

**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., stated below, have been met.

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

**Findings:** The request is for an Adjustment to Code Section 33.110.220 B, to reduce the minimum setback from the south side property line from five feet to two feet for the proposed accessory structure.

*The purpose of building setback requirements are to maintain light, air, separation for fire protection, and access for fire fighting. Setback standards also reflect the general building scale and placement of development in the City's neighborhoods and promote a reasonable physical relationship between residences. They promote options for privacy for neighboring properties and 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.*

The proposal calls for a one-story ADU, with dormers on the north and south sides of the roof. The planned location is in the southwest corner of the site, where the current one-story single-car garage is located. This location abuts the alley, which is undeveloped and is largely unpassable, with trees, garden areas and chicken coops filling the space between the houses.

The proposed structure will be fairly small in size, with exterior dimensions of 24 feet, east to west, and 23 feet, 11 5/8 inches, north to south. The height, as measured from grade to the average height of the highest gable (the midpoint of the sloped roof) will be 15 feet. The dormers rise slightly above this point, but are allowed because they do not extend above the ridge line of the main roof and also do not extend all the way to the edges of the main roof. The larger dormer, with the more significant taller presence is faced toward the north and fronts onto the back yard of the primary residence. The smaller dormer, on the south side of the building, is proposed to be set back 3 feet from the roof edge. The west wall, which faces the alley, has the largest façade. There is no setback requirement for buildings adjacent to an alley.

Overall, the structure will maintain light and air. The dormer on the south side is set back the required five feet from the side property line. The only portion of the building that will be at the reduced two-foot setback is the low first story wall. Even the doorway that faces the west property line is proposed to be located within an area that is recessed, placing the entry at five feet from the south side property line. This also means that the structure will be constructed to meet fire codes, which ensures that separation for fire protection and access for fire fighting is preserved. Options for privacy for neighboring properties will be preserved because the windows on the south side will be five feet from the south property line and the windows do not look directly at the neighboring residence. Also, an existing fence along the common property line is proposed to be retained. The fence is wood and is generally six feet tall. Due to the slope of the ground, the applicant reports that it varies in height, from 77 inches on the west end to 80.5 inches on the east end. A condition of approval will require the fence be retained, or if replaced that it be in the same location and be of the same type of materials and the same height as the existing fence.

The ADU will be in keeping with the style of the existing home and will not rise above the ridge line of the house so it will not be readily visible from the street edge and will be proportionate with surrounding development. In this way, the addition will reflect the scale and placement of development in the area, promote a reasonable physical relationship between residences, and be generally compatible with the neighborhood and fit the topography of the site. The location of the addition will not restrict the required outdoor area on the site. As noted, the ADU will be consistent with the style of the house and

maintain the significant architectural diversity that is found in this neighborhood. With the condition to retain a fence along the south property line, the purposes of the setback requirements can be equally met and therefore, 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:** Livability will not be affected by this proposal because there will be no impacts from noise or glare and no negative effects on privacy or safety as a result of the reduced setback. The appearance of the ADU is attractive and well planned, to be consistent with the architectural style of the existing residence. The proposed location, tucked to the rear of the house and adjacent to the undeveloped alley, ensures that the expansion of development on this site will have minimal impact on the surrounding residential neighbors. At the same time, the addition of another living unit will upgrade the residential development of this property and add to the housing opportunities in the area. Therefore, approval of the request to reduce the required setback for the proposed ADU will not detract from the livability or the appearance of the residential area, and so, 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 does not apply.

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

**Findings:** City-designated scenic resources are shown on the City's zoning maps by an "s" or Scenic Overlay Zone. City-designated historic resources are shown on the City's zoning maps, either as an adopted landmark, or as a site that is located within the boundaries of a Historic Conservation or Historic Design District. There are no City-designated scenic or historic resources on the site. Therefore, this criterion does not apply.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical.

**Findings:** No potential impacts from approval of the requested Adjustment have been identified by staff. Therefore, no mitigation is needed and 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 zones are designated with either a lower case "c," for the Environmental Conservation Overlay, or "p," for the Environmental Protection Overlay. The site is not located in an environmental zone. Therefore, this criterion does not apply.

## **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.

## **CONCLUSION**

All of the relevant approval criteria can be met. The purpose of the setback regulation can be equally met because the location of the ADU, in the southwest corner of the site, will not impact light or air for the neighboring property,. The construction meets fire codes to ensure the separation for fire protection and access for fire fighting, No windows give direct views to the neighboring residence and a condition of approval to maintain the six-foot tall wood fence on the south property line will ensure that options for privacy continue to be preserved. The

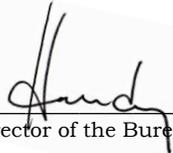
proposed location will be consistent with site topography, the scale and placement of homes and the physical relationship of houses in the area. Further, due also to this choice of location for the ADU, there will be no impacts on the appearance and livability of the residential area. The proposal can be approved, in general compliance with the site plans and elevation drawings and subject to the condition to maintain the fence on the south property line.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.110.220 B, to reduce the minimum setback from the south side property line from five feet to two feet for the proposed accessory structure, in general compliance with the approved site plans and drawings, Exhibits C-1 through C-2, signed and dated April 13, 2017, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 17-128386 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. In order to preserve options for privacy, the existing wood fence must be retained along the south property line, in the location identified on Exhibit C-1. The fence can be replaced, but any new fence must be constructed in the same location, at minimum, and must be at least 6 feet tall and fully sight-obscuring, in accordance with the F-2 standard of Title 33 (Zoning Code Section 33.248.020 G).

**Staff Planner: Kathleen Stokes**

**Decision rendered by:**  **on April 13, 2017**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: April 17, 2017**

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on March 1, 2017, and was determined to be complete on March 16, 2017.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on March 1, 2017.

*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: July 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 May 1, 2017** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> 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](http://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 **May 2, 2017– (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:

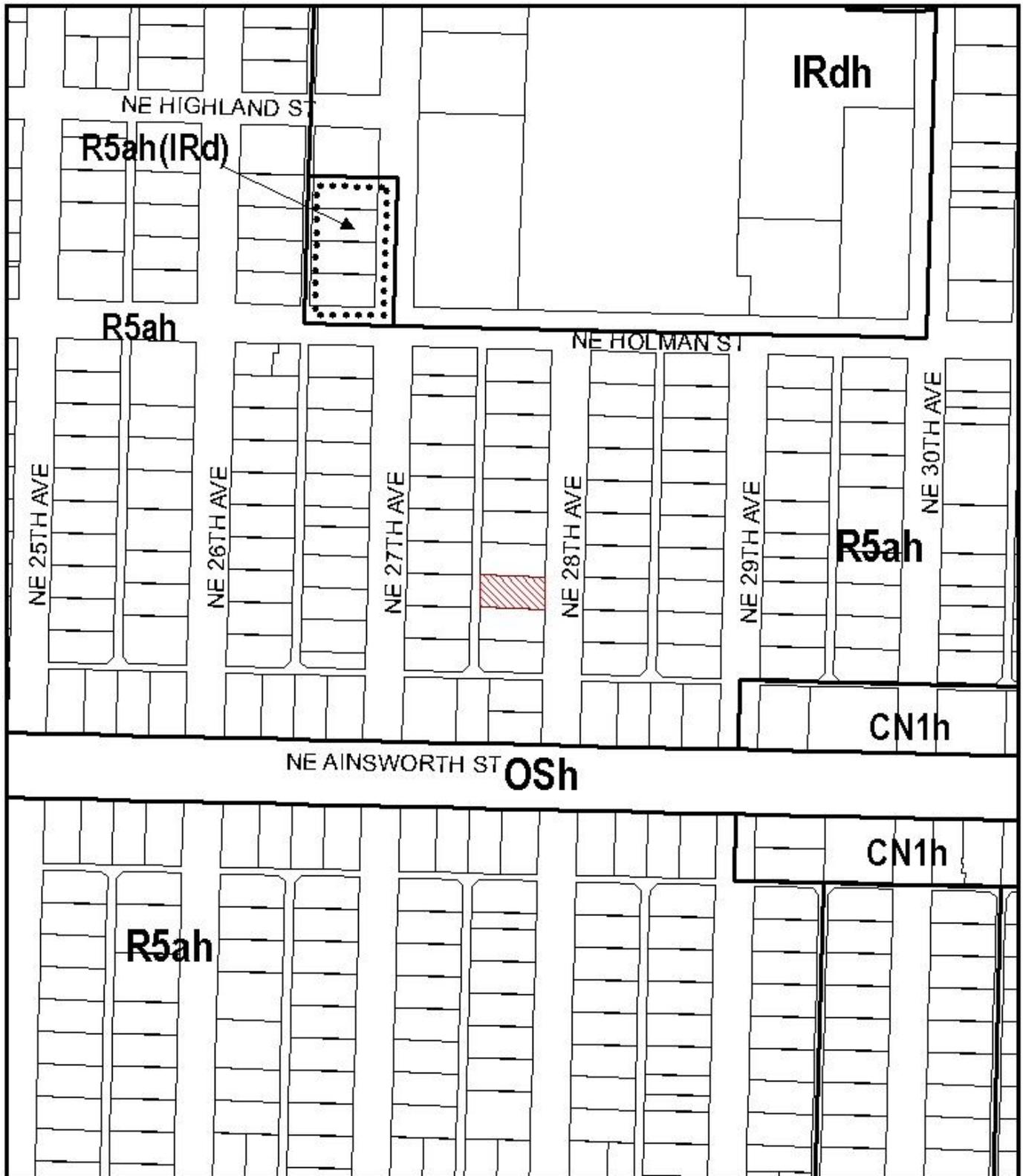
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Application and original narrative and plans
  2. Supplemental information (revised narrative and additional plans), received March 16, 2017
  3. Email from applicant with information regarding existing fence, April 12, 2016
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. Elevation Drawings (attached)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Environmental Services
  2. Life-Safety Plan Review Section of BDS
  3. Summary of City service agency responses (including Bureau of Transportation Engineering and Development Review, Water Bureau, Fire Bureau and Site Development Review Section of BDS)
- F. Correspondence: (None Received)
- G. Other:
  1. Letter from Kathleen Stokes to Chris Davis, March 9, 2017
  2. Email from David Bartley, BDS Plans Examiner, March 14, 2017

**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 17-128386 AD  
 1/4 Section 2433  
 Scale 1 inch = 200 feet  
 State\_Id 1N1E13CB 8800  
 Exhibit B (Mar 06, 2017)



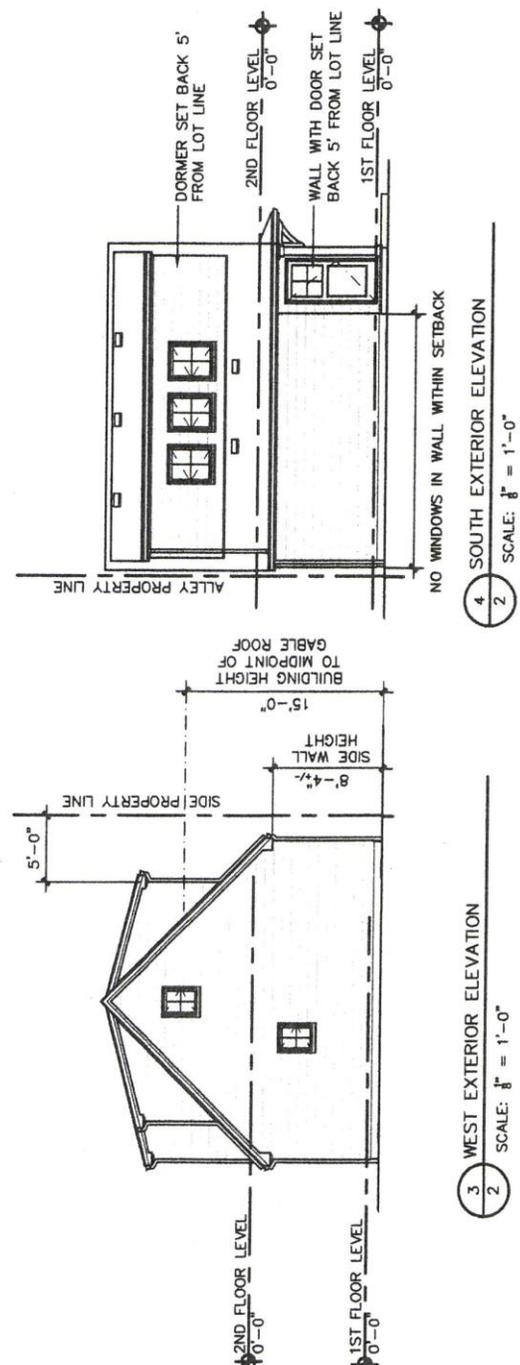
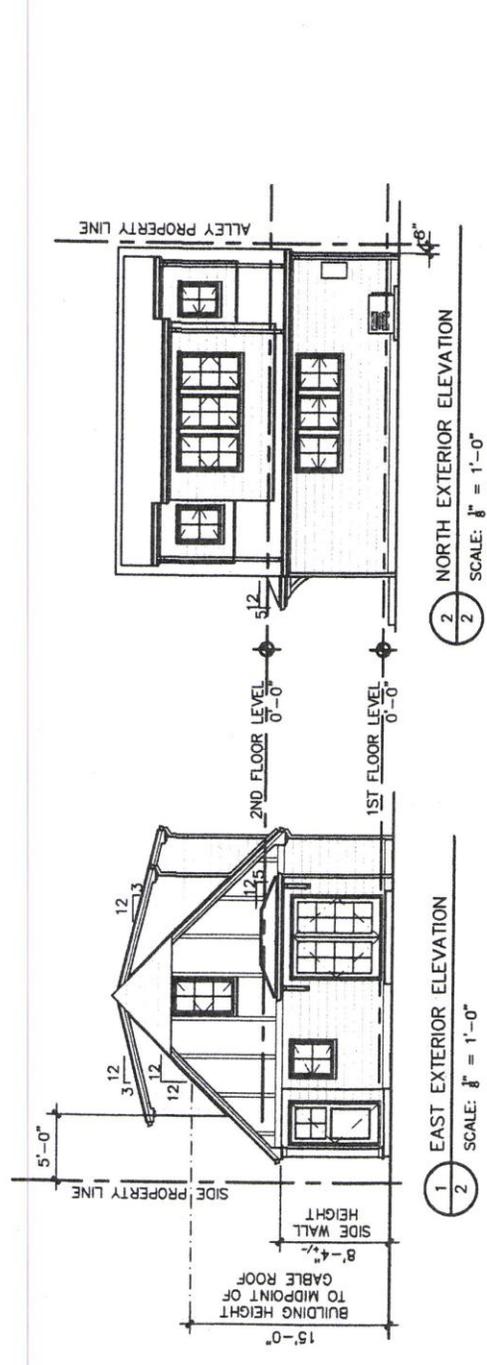
\*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner *Kathleen A. Stokes* Date *April 13, 2011*  
 \* This approval applies only to the reviews requested and is subject to the conditions of approval. Additional zoning requirements may apply.



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CHRIS DAVIS DESIGN  
 ARCHITECTURE & INTERIORS  
 4605 NE FREMONT ST., SUITE 202, PORTLAND, OREGON 97213 503-281-5282

LW 17-128386 AD



LW 17-128386 AD  
 Exhibit C-2