



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

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**Date:** September 21, 2018  
**To:** Interested Person  
**From:** Lauren Russell, Land Use Services  
503-823-7817 / [Lauren.Russell@portlandoregon.gov](mailto: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 18-205955 AD**

#### **GENERAL INFORMATION**

**Applicant/ Owner:** Marilyn Devault Rosen  
4110 Virginia Way, Lake Oswego, OR 97035

**Site Address:** 7222 SW 4TH AVE

**Legal Description:** BLOCK 41 LOT 5, FULTON PK

**Tax Account No.:** R300401300

**State ID No.:** 1S1E21AD 00200

**Quarter Section:** 3728

**Neighborhood:** Hillsdale, contact at [contact@hna-pdx.com](mailto:contact@hna-pdx.com).

**Business District:** None

**District Coalition:** Southwest Neighborhoods Inc., contact Sylvia Bogert at 503-823-4592.

**Plan District:** None

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

**Case Type:** AD – Adjustment Review

**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The existing single-dwelling residence contains a 773 square foot, one-bedroom accessory dwelling unit (ADU) within the daylight basement. The primary dwelling unit is located on the main level of the house and also includes one bedroom in the daylight basement accessed by a staircase. The applicant proposes to reconfigure the units so that the ADU would now contain both of the bedrooms in the daylight basement, which would increase the size of the ADU and reduce the size of the primary dwelling unit. No exterior changes are proposed.

Per Zoning Code Section 33.205.040.C.3, the size of the ADU may be no more than 75-percent of the living area of the primary dwelling unit or 800 square feet of living area, whichever is less. Once reconfigured, the primary dwelling unit would be 944 square feet, which would limit the size of the ADU to 708 square feet. Because the ADU would not meet the maximum allowed size, the applicant requests an Adjustment to increase the size of the ADU from 773 square feet to 879 square feet, or 93-percent of the living area of the primary dwelling unit.

#### **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 east side of SW 4<sup>th</sup> Avenue between SW Nevada Court and SW Barbur Boulevard Frontage Road. The site slopes down from the street and is developed with one-story single-dwelling residence with an ADU in the daylight basement that is accessed from the rear of the house. Adjacent properties are similarly sloping and developed with single-dwelling residences. Some properties also have detached accessory structures.

**Zoning:** The R5 designation is one of the City's single-dwelling residential zones, which are intended to preserve land for housing and provide 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.

**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 September 17, 2018. The following Bureaus have responded with no issues or concerns regarding the requested Adjustment:

- Bureau of Environmental Services responded with no objections to the requested Adjustment (Exhibit E-1);
- Bureau of Transportation Development Review responded with no objection (Exhibit E-2);
- Water Bureau responded with no concerns (Exhibit E-3);
- Fire Bureau responded with no concerns (Exhibit E-4);
- Site Development Section of BDS responded with no concerns (Exhibit E-5); and
- Life Safety Review Section of BDS responded with no objections to the approval of this proposal (Exhibit E-6).

**Neighborhood Review:** A total of four written responses have been received, three from notified neighbors and one from the Neighborhood Association, in response to the Notice of Proposal.

The first response was from a neighbor that lives one block east of the subject site (Exhibit F-1). This respondent expressed concerns that the increased size of the ADU could increase the demand for on-street parking on the narrow and steep streets of the neighborhood and that increasing the size of the ADU would turn the house into a duplex.

The second response was from a neighbor that lives across SW 4<sup>th</sup> Avenue (Exhibit F-2). This respondent opposed the Adjustment request because it would convert a single-dwelling residence into two apartment units, could increase the demand for on-street parking on the narrow and steep streets of the neighborhood, and could set a precedent for more apartment development in the neighborhood.

The third response was from a neighbor that lives across SW 4<sup>th</sup> Avenue (Exhibit F-3). This respondent opposed the Adjustment request because the zoning should stay the same and not be changed for certain people.

The fourth response was from the Land Use Co-Chair of the Hillsdale Neighborhood Association. The neighborhood association opposed the Adjustment request because the request is effectively spot zoning to allow a duplex, vehicles parking at the site sometimes park on the lawn causing erosion issues, the owner did not attend the neighborhood association meeting to provide more information about the request, and nearby residents are concerned about the effects of a duplex being created in the middle of a single-family neighborhood.

*Staff note: Chapter 33.910 of the Zoning Code defines an accessory dwelling unit as a second dwelling unit created on a lot with a house that is auxiliary to, and is always smaller than, the house. There is already a legally-established ADU within the daylight basement of the house and if it is increased in size by 106 square feet to 879 square feet, it will still be auxiliary to and smaller than the primary dwelling unit on the main floor. Therefore, if this Adjustment request is*

*approved, the subject site would still be considered a house with a basement ADU and not a duplex.*

*Because no additional on-site parking is required for ADUs (Zoning Code Section 33.205.040.C.2) staff is unable to consider potential on-street parking impacts or existing on-site vehicle parking locations as part of this decision.*

*Per Zoning Code Section 33.805.010, the adjustment review process provides a mechanism by which the regulations of the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Because the ADU size standard is not listed as an ineligible regulation under Zoning Code Section 33.805.030.B, it may be modified using the adjustment review process and if the applicant has demonstrated that the applicable approval criteria have been met, staff must approve the adjustment request.*

## **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 an Adjustment to increase the size of the existing ADU by 106 square feet from 773 square feet to 879 square feet or 93-percent of the living area of the primary dwelling unit.

The purpose of the ADU development standards is 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 desired character and livability of the R5 zone is stated in the purpose and development standards of the zone. The R5 zone is intended to preserve land for housing and provide housing opportunities for individual households. The existing ADU in the daylight basement is not visible from the street. The primary unit is accessed from the main entrance door that faces the street and the ADU entrance would remain at the rear of the house. No exterior changes are proposed so the style of the house would be maintained. Because the ADU would continue to be accessed by a door at the rear of the house, the proposal would preserve the structure's clear appearance as a single-dwelling residence with just one entrance door visible from the street.

The R5 zone development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and

recreational opportunities. Because the size of the existing ADU would be increased by just 106 square feet and no exterior changes are proposed to any of the house's façades, the aesthetics of the house would be maintained, as would safety and privacy. The attached ADU would continue to promote energy conservation because it would not result in a new building on site. The existing building scale and placement on the lot would be maintained, which would allow for the continued sharing of common space on the lot, which can be used for recreational opportunities. The proposed size increase of the ADU would therefore support the livability of the residential area.

The size of the ADU is proposed to increase to 879 square feet, which would be approximately 93-percent of the size of the primary unit on the main floor of the house, so the basement-level ADU would remain smaller in size than the primary unit. Because the ADU is located within the existing house and not within a new, separate detached structure, it would not be apparent from the street that the ADU is any larger than the allowed 708 square feet. Additionally, because the expanded ADU will be limited to the daylight basement of the house, the primary unit on the main floor will visually remain the primary unit on the site. Based on these reasons, the proposed ADU size Adjustment equally meets the purpose 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 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 discussed above in the findings for Approval Criterion A, the ADU would continue to be located within the daylight basement existing house and not within a new, separate detached structure, so it would not be apparent from the street that the ADU is any larger than the allowed 708 square feet. No exterior changes are proposed to any façades so the style of the house would be maintained. Because the ADU would continue to be accessed by a door at the rear of the house, the proposal would preserve the structure's clear appearance as a single-dwelling residence with just one entrance door visible from the street. The proposed size increase of the ADU would therefore be compatible with the desired character and livability of the residential area. For these reasons, the proposal will not significantly 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:** Because 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. Because 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 requirements of Title 11 can be met, and 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 increase the size of the ADU equally meets the purpose of the regulations and does not have any impacts on the livability and appearance of the surrounding residential area. 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 increase the size of the existing ADU in the daylight basement from 708 square feet to 879 square feet (Zoning Code Section 33.205.040.C.3), granted per the approved site plan and floor plans, Exhibits C-1 through C-2, signed and dated September 12, 2018, 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 Exhibits C-1 – C-2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 18-205955 AD. No field changes allowed."

**Staff Planner: Lauren Russell**

**Decision rendered by:** Lauren Russell **on September 12, 2018.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: September 21, 2018**

**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 20, 2018, and was determined to be complete on August 13, 2018.

*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 20, 2018.

*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 11, 2018.**

**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, 2018** 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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **October 5, 2018** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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:

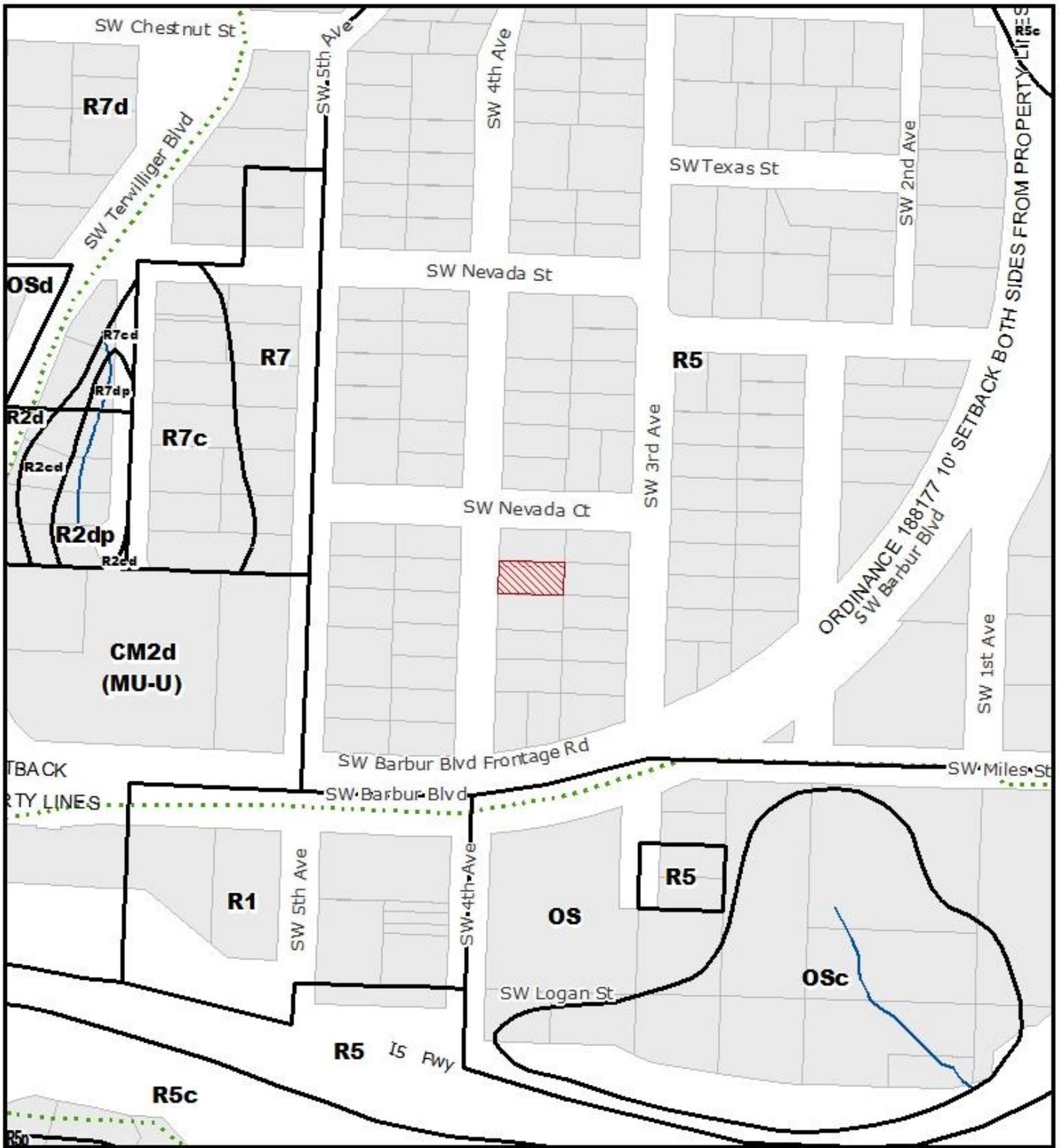
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Narrative and Plans submitted 7/20/18
  2. Revised Narrative received 8/13/18
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. Floor Plans (attached)
- 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. Water Bureau
  4. Fire Bureau
  5. Site Development Review Section of BDS
  6. Life Safety Section of BDS
- F. Correspondence:
  1. Leslie Pohl-Kosbau, received 8/27/18, email expressing concerns
  2. Martha John, received 8/30/18, email in opposition
  3. Doug Simpson, received 9/7/18, email in opposition
  4. Hillsdale Neighborhood Association, received 9/7/18, letter in opposition
- G. Other:
  1. Original LU Application
  2. Incomplete Letter mailed 8/6/18

**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



Stream

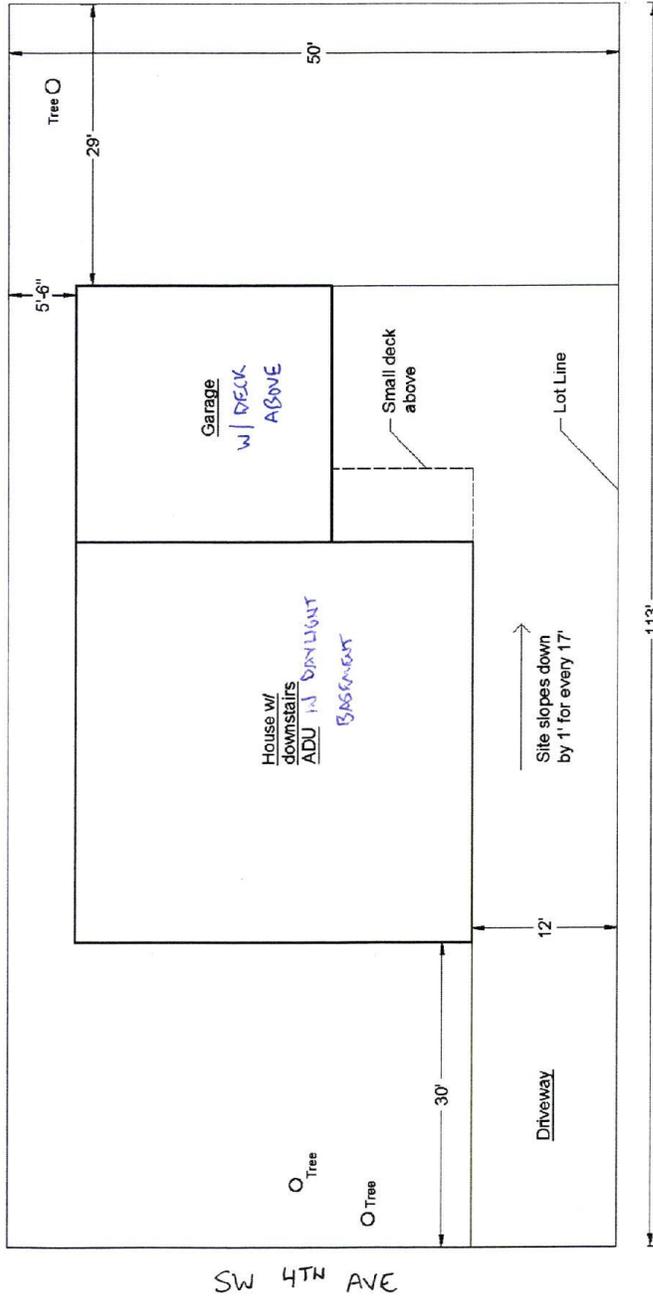


Recreational Trails

File No.	LU 18-205955 AD
1/4 Section	3728
Scale	1 inch = 200 feet
State ID	1S1E21AD 200
Exhibit	B Jul 23, 2018

SITE PLAN

**\* Approved\***  
 City of Portland - Bureau of Development Services  
 Planner Jason Roush Date 9/12/18  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



EXISTING SITE PLAN  
 NTs

7222 SW 4TH AVE. PORTLAND, OR 97219

CASE NO. 18-205955 AD  
 EXHIBIT C-1

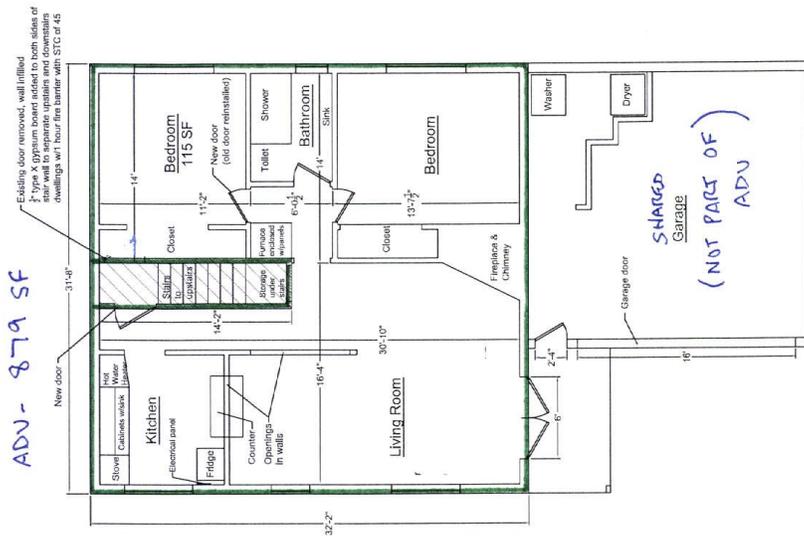
TYPE II LAND USE REVIEW APPLICATION  
 EXISTING PERMIT: 16-277312-000-00-RS  
 EXISTING IVR: 3928158  
 07.19.2018

LA 18-205955 AD

ADJUSTMENT REQUEST TO INCREASE THE SIZE OF THE ADU FROM 773 SF TO 879 SF.



PROPOSED UPPER FLOOR PLAN  
N.T.S.



PROPOSED BASEMENT ADU PLAN  
N.T.S.

**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner Zaven Rumbell Date 9/12/18  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

CASE NO. 18-205955 AD  
 EXHIBIT C-2

TYPE II LAND USE REVIEW APPLICATION  
 EXISTING PERMIT: 16-277312-000-00-RS  
 EXISTING IVR: 3928158  
 07.19.2018

LU 18-205955 AD