



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

Ted Wheeler, Mayor  
Rebecca Esau, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** October 31, 2019  
**To:** Interested Person  
**From:** Don Kienholz, Land Use Services  
503-823-7771 / [Don.Kienholz@portlandoregon.gov](mailto:Don.Kienholz@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 19-207377 AD**

#### **GENERAL INFORMATION**

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

**Owners:** David and Sally Morrow  
3577 NE Knott St  
Portland, OR 97212-5249

**Site Address:** **3577 NE KNOTT ST**

**Legal Description:** BLOCK 10 LOT 12, HOLLYROOD  
**Tax Account No.:** R397703340  
**State ID No.:** 1N1E25AC 15900  
**Quarter Section:** 2734

**Neighborhood:** Grant Park, contact Ken Peterson at [gpnalanduse@gmail.com](mailto:gpnalanduse@gmail.com).  
**Business District:** None  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-2778.  
**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 applicant is proposing to remove an existing garage and replace it with a detached accessory dwelling unit (ADU) that will be 3-feet from the rear property line and 1-foot from the east side property line. The ADU is proposed to be 'L' shaped with a wall measuring 28-feet in length along the rear property line and a wall measuring 26-feet in length along the side

property line. Portland Zoning Code 33.110.250.C.2 allows a detached accessory structure to encroach into the rear and side setbacks if it meets certain development standards, including having a footprint measuring 24x24-feet or less. With the proposed ADU exceeding the 24-foot limitation on both the rear and side walls, it is subject to the minimum 5-foot building setback along the rear and side property lines as required in 33.110.220 and Table 110-3. Because the ADU encroaches into the minimum rear and east side setbacks, an Adjustment is required.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are found in Portland Zoning Code Section 33.805.040 Adjustment Approval Criteria.

## ANALYSIS

**Site and Vicinity:** The subject site is a 5,000 square foot lot with an existing house built in 1925 and a detached garage. The site is relatively flat and nestled on a 250 by 350 linear foot block in the Grant Park Neighborhood that is surrounded by exclusively R5 zoned lots. Grant High School and the adjacent Grant Park is approximately 500-feet south. The Hollywood town center is approximately 2,500 feet to the south east and Cesar E. Chavez Boulevard, the major north-south travel corridor is located 1,000 to the west.

**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 **October 7, 2019**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1);
- Portland Bureau of Transportation (Exhibit E.2);
- Site Development, Fire Bureau, and the Water Bureau (Exhibit E.3); and
- Life Safety (Exhibit E.4)

**Neighborhood Review:** Two written responses have been received from notified property owners in response to the proposal. The responses focused on the concern that sunlight may be diminished for the property to the north because of the proposed location of the ADU. Those concerns are addressed in the findings below.

## ZONING CODE APPROVAL CRITERIA

### 33.805.040 Approval Criteria

The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met.

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

**Finding:** The proposal is for an ADU that exceeds the dimensional standards allowed in Portland Zoning Code Section 33.110.250.C.2.b for buildings in the rear and side setback, which makes it subject to the base development zone minimum setbacks of 5-feet for rear and side building lot lines. The purpose of setbacks, found in 33.110.220.A, are:

*"Purpose. The setback regulations for buildings and garage entrances 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 houses in the city's neighborhoods;***
- *They promote a reasonable physical relationship between residences;*
- ***They promote options for privacy for neighboring properties;***
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- ***They 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; 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.”***  
**(Emphasis added)**

They maintain light, air, separation for fire protection, and access for firefighting;

The proposal is to locate the one-story ADU 3-feet from the rear property line and 1-foot from the east side property line. Fire fighting personnel can access the proposed ADU from the south and west unfettered. The three feet between the ADU and north property line is enough to allow personnel between the building and property line should they need to get behind the ADU. The Fire Bureau also provided a response that they have no concerns with the proposal. The majority of the roof of the proposed ADU angles away from the north property line and the walls of the proposed ADU measure 9-feet, a full foot less than allowed by right. The building height, as measured in 33.930.030, is just over 12-feet, nearly 3-feet than allowed by right. The reduced wall height, reduced overall building height and angled roof will help maintain air and sunlight access to the property to the north.

They reflect the general building scale and placement of houses in the city's neighborhoods:

The regulations for accessory dwelling units, found in 33.205.040, generally push ADU's into back yards of residential lots. Combined with the development standards of detached covered accessory structures in 33.110.250.C, ADU's are commonly located within the rear and side building setbacks, such as in the subject proposal. However, the proposed ADU is 2-feet longer in length on the east side and 4-feet longer in width along the rear property line, which is more than the 24-foot limit commonly found in detached accessory structures in a setback. While the ADU is slightly longer and wider than ADU's allowed by right, it still reflects the general placement of detached accessory structures.

Along the east side, the additional 2-feet of the ADU wall represents an 8% increase in the allowed length and only 2% of the 100-foot side property line length. Along the rear property line, the ADU is 4-feet longer than a wall would be allowed by right. However, the neighboring property the wall is adjacent to is 150-feet deep, meaning the additional 4-feet of ADU wall represents only 3% of the side lot line. The ADU runs along approximately 18% of the side lot line of the property to the north. An ADU meeting the 24x24 foot size allowed by right adjacent to a typical 100-foot Portland subdivision lot represents 24% of the side yard length. In this proposal, both lot lines are side lot lines for the adjacent properties. Even with the longer walls, they represent a 26% length to the property to the east, (a 2% increase), and 17% length to the side lot line of the property to the north. Both small increases will not be a noticeable increase. Additionally, the ADU will be screened from views of from the house on the property to the north because of an approximately 36x20-foot accessory building that is located in the setback on the property to the north between that house and the ADU.

They promote options for privacy for neighboring properties;

The proposed ADU is proposed to be located 3-feet from the north rear property line and 1-foot from the east side property line. Neither wall within a setback will have a window or door, preventing eyes looking into the adjacent properties.

They 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; and

As noted earlier, the location of the proposed ADU is consistent with the building pattern of Portland's older neighborhoods by locating a detached accessory structure in a back corner of a lot. The proposed location is consistent and compatible with the building pattern of the nearby residential

area. The site is relatively flat and does not impact the location of the proposed ADU. The proposed ADU will also still provide for a 12x12 outdoor area of at least 250 square feet. The proposed ADU is not more than 15-feet in building height so does not trigger a review of the ADU's architecture pursuant to Zoning Code Section 33.110.250.C.4.

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.

The proposal will remove an existing garage on the subject property. However, the driveway will still exist and includes a 9x29-foot area that provides a parking space that meets the dimensional requirements of Portland Zoning Code Section 33.266.120. As such, there is room to park on the site without overhanging the street or sidewalk and allows substantial visibility for a vehicle backing out.

Based on the above, this criterion is met.

*Criterion met.*

**B. If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area;**

**Finding:** The subject property is in the R5 zoning district, a residential zone. This standard evaluates two different factors: livability and appearance.

Livability incorporates privacy and impacts on an adjacent neighbor. Neither wall within the side or rear setback on the subject lot will have doors or windows, which will preserve privacy between the subject lot and adjacent lots. Another key impact to livability is bulk, or the 'towering' effect of a structure on a neighboring property. As noted in Finding A above, the additional length requested represents 26% of the total length of the east side property line and 18% of the north property line, which is a side lot line for the northern property. The wall is 1-foot away from the eastern side property line where the neighbor has a parking pad and driveway, and thus no impact on the usage of the back yard. The walls within the north and east building setbacks will be 9-feet in height, 1-foot less than allowed by right. The ADU's overall building height is proposed at 12-feet, 3-feet less than allowed by right. These dimensions will reduce the overall bulk from what would be allowed by right and will not detract from livability.

The proposed ADU incorporates elements of the primary dwelling such as lap siding and a gabled roof and will not contrast with the overall character of the area. The ADU will be a single story, set back in the rear of the property and will not intrude neighboring properties or the public space. Considering these facts, the ADU in the reduced setbacks will not detract from the appearance of the residential area.

*Criterion 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;**

**Finding:** Two Adjustments are proposed – one to the rear building setback and one to the side building setback. Each one addresses the same dimensional standard, but to a different wall. The proposal does not include Adjustments to height or building coverage – standards that would increase the overall bulk of a structure and have a cumulative impact. The proposed ADU is 'L' shaped and encompasses 505-square feet. An ADU sized 24x24, which would be allowed by right in the setbacks, would encompass 576 square feet. As proposed, the two Adjustments will not have a cumulative effect on the overall bulk of the proposed ADU and will keep the project consistent with the base zone and its development standards.

*Criterion met.*

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

**Finding:** City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” while historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. The subject property is not within a City-designated ‘s’ overlay zone nor within proximity to an Historic Resource. With the property not being identified as having a city-designated scenic or historic resource, staff finds development will not adversely impact scenic or historic resources and they will be preserved.

*Criterion met.*

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

**Finding:** As found in Findings A and B above, there are no anticipated impacts from the increase in the wall length in the rear and side building setbacks.

*Criterion 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.**

**Finding:** 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 the subject site, this criterion is not applicable.

*Criterion met.*

**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 applicant has demonstrated that reducing the minimum north rear building setback from 5-feet down to 3-feet and reducing the minimum east side building setback from 5-feet to 1-foot (33.110.220 and Table 110-3) equally meets the purpose of the setback development standard. The reductions will not adversely impact the livability or appearance of the nearby area; will fit in with the existing and historic development pattern; and will not compromise safety. Additionally, the proposed ADU will not be sited in a scenic, historic or environmentally significant area. As the application has met the approval criteria, the proposal must be approved.

**ADMINISTRATIVE DECISION**

Approval of a reduction to the minimum east side building setback from 5-feet down to 1-foot and reduction of the minimum 5-foot rear building setback down from 5-feet to 3-feet (Portland Zoning Code Section 33.110.220 and Table 110-3), per the approved site plans, Exhibits C.1 through C.2, signed and dated October 25, 2019, 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-C.2. The sheets on which this information appears

must be labeled, "Proposal and design as approved in Case File # LU 19-207377 AD. No field changes allowed."

**Staff Planner: Don Kienholz**



**Decision rendered by:** \_\_\_\_\_ **on October 25, 2019**

By authority of the Director of the Bureau of Development Services

**Decision mailed: October 31, 2019**

**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 August 9, 2019, and was determined to be complete on September 25, 2019.

*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 August 9, 2019.

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: January 23, 2020.**

**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 November 14, 2019** 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 **November 14, 2019** 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 Materials
  - 1. Applicant's Narrative
  - 2. Original Site Plan
- B. Zoning Map (Attached)
- C. Plans/Drawings:
  - 1. Site Plan (Attached)
  - 2. Elevation 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. Site Development, Fire Bureau, and Water Bureau
  - 4. Life Safety
- F. Correspondence:
  - 1. Nora Herrera, October 9, 2019, Letter Raising Concern of Potential Loss of Sunlight and Preference of ADU Meeting Setbacks
  - 2. Jaime Herrera, October 10, 2019, Letter Concerned Over Livability Impact of ADU; Question Regarding Building Height and Window Location
- G. Other:
  - 1. Original LU Application
  - 2. Copy of Fee Payment Receipt
  - 3. August 28, 2019 Incomplete Letter

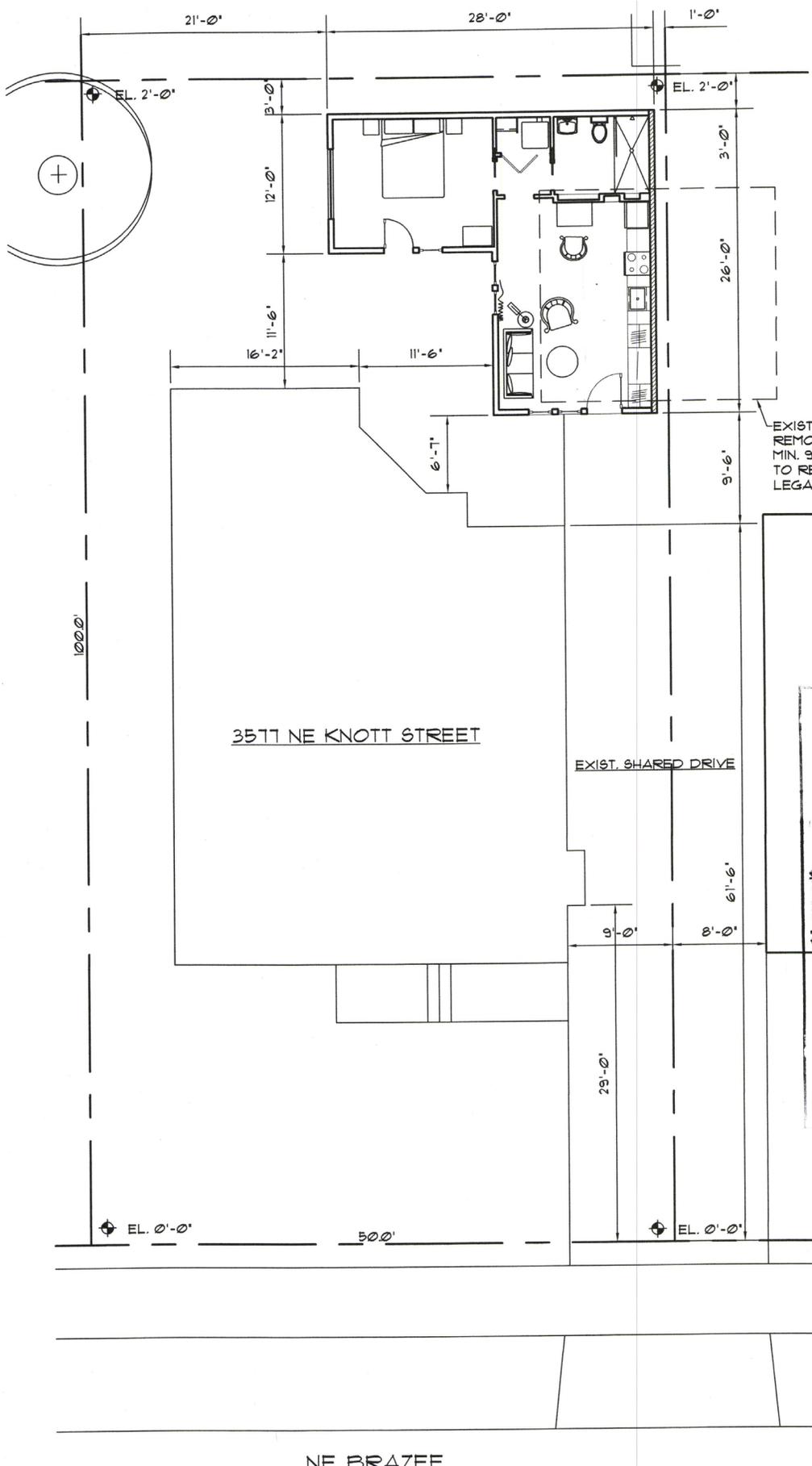
**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



**ZONING**  NORTH

 Site

File No.	LU 19-207377 AD
1/4 Section	2734
Scale	1 inch = 200 feet
State ID	1N1E25AC 15900
Exhibit	B Aug 12, 2019



EXIST. GARAGE TO BE REMOVED SHOWN DASHED - MIN. 9'X18' CONC. PARKING P. TO REMAIN FOR NEIGHBORS LEGAL PARKING SPACE

\*Approved\*  
 City of Portland - Bureau of Development Services  
*Don Pender* Date: 10/25/19  
 This approval is only to the reviews requested in the attached permit application and does not constitute a final approval of the project.

CASE NO. 66119-20737 AD  
 EXHIBIT C-1

3511 NE KNOTT STREET

EXIST. SHARED DRIVE

NE BRAZEE

↑ 1 SITE PLAN  
 AI

1/8" = 1'-0"



STATE OF OREGON  
 REGISTERED ARCHITECT  
 DAVID GREEN  
 LICENSE NO. 12345

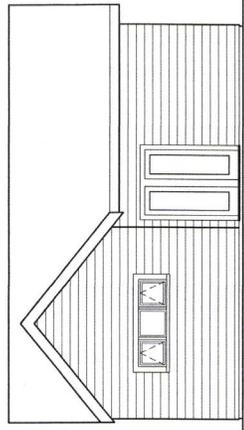
3577 NE KNOTT STREET  
 PORTLAND, OREGON 97212

MORROW ADU  
 EXTERIOR ELEVATIONS  
 SHEET CONTENT

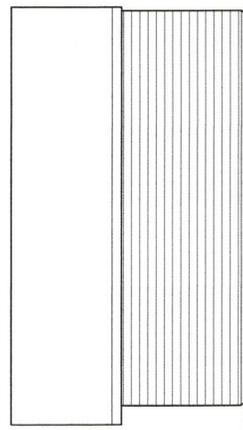
JOB NO.	000016
DRAWN	DMS
CHECKED	DMS
DATE	8-1-19
REVISIONS	
SHEET	A2 of 2

PRELIMINARY

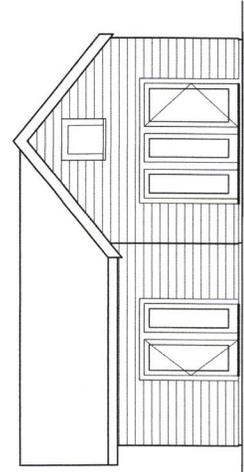
\*Approved\*  
 City of Portland - Bureau of Development Services  
 Date: 10/25/19  
 This project is subject to the reviews requested and in addition, to all other applicable codes, rules and regulations. Additional zoning requirements may apply.



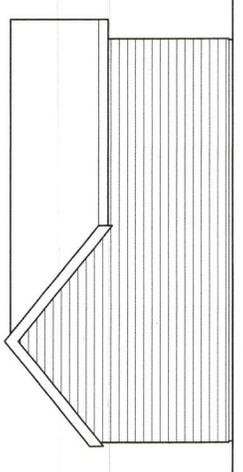
2 WEST (SIDE) ELEVATION  
 1/8" = 1'-0"



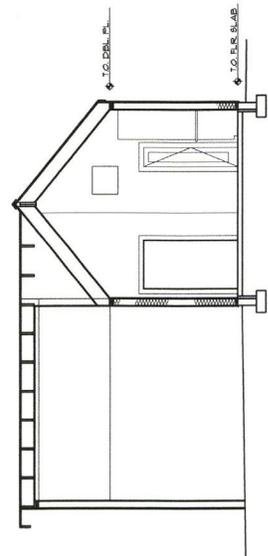
4 EAST (SIDE) ELEVATION  
 1/8" = 1'-0"



1 SOUTH (FRONT) ELEVATION  
 1/8" = 1'-0"



3 NORTH (REAR) ELEVATION  
 1/8" = 1'-0"



5 CROSS SECTION  
 1/8" = 1'-0"

6 LONGITUDINAL SECTION  
 1/8" = 1'-0"

CASE NO. LU 19-207377 AD  
 EXHIBIT C.2

LU 19-207377 AD  
 SHEET A2 of 2