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

Date: December 2, 2019

To: Interested Person

From: Andrew Gulizia, Land Use Services
503-823-7010 / Andrew.Gulizia@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 19-237094 AD

GENERAL INFORMATION

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

Property Owners: Martin, Matthew D Tr
Martin, Deborah Tr
3875 SW Jerald Way
Portland, OR 97221

Site Address: 2727-2735 NE Wygant St.

Legal Description: BLOCK 2 LOT 12, ELBERTA
Tax Account No.: R242300240
State ID No.: 1N1E24BC 02900
Quarter Section: 2533
Neighborhood: Concordia, contact Garlynn Woodsong at 503-936-9873
Business District: Soul District Business Association, contact at info@nnebaportland.org
District Coalition: Northeast Coalition of Neighborhoods, contact Laura Becker at 503-388-6088
Zoning: R5ah – Single-Dwelling Residential 5,000 base zone with Alternative Design Density ("a") and Aircraft Landing ("h") overlay zones
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The applicant proposes to construct a single-story, 415-square-foot accessory structure (shop building) on the western part of this site, in approximately the same location as a fire-damaged garage that was removed. A new curb on NE Wygant Street will be installed to

close the current driveway, making that area available for on-street parking. The maximum building coverage for this 4,000-square-foot site is 1,875 square feet (Zoning Code Section 33.110.225.B). The building coverage of the existing duplex on the site is 1,616 square feet. In order to construct the new 415-square-foot accessory structure, the applicant requests an Adjustment to increase the allowable building coverage on the site by 156 square feet, from 1,875 square feet to 2,031 square feet.

Relevant Approval Criteria: To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The subject site is a 4,000-square-foot lot on the northwest corner of NE 28th Avenue and NE Wygant Street. The site is developed with a one-story duplex that was constructed in 1953. A detached garage in the western part of the property was damaged by fire and removed, but the driveway remains. Surrounding properties are developed with one-story and two-story houses. Commercial development along NE Alberta Street is one block north of the site.

Zoning: The R5 single-dwelling residential zone is 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 Alternative Design Density ("a") and Aircraft Landing ("h") overlay zones. 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. The Aircraft Landing ("h") overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation in employment, industrial, and open space zones. The regulations of the "a" and "h" overlay zones do not affect the Adjustment proposal on the subject site.

Land Use Review History: There are no prior land use reviews for this site.

Agency Review: A "Notice of Proposal" was sent October 31, 2019. The following Bureaus responded with no objections to the proposed Adjustment:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4);
- Site Development Section of BDS (Exhibit E-5);
- Life Safety Review Section of BDS (Exhibit E-6); and
- Bureau of Parks-Urban Forestry Division (Exhibit E-7).

Neighborhood Review: In response to the mailed "Notice of Proposal," two neighbors opposed to the application submitted letters (Exhibits F-1 and F-2). These neighbors stated the loss of off-street parking would negatively impact the neighborhood because tenants of the duplex on the site have several cars. The neighbors also stated a tenant in the duplex operates a scrap metal business which disturbs neighbors. Finally, the neighbors questioned whether the proposed accessory structure would be used as a dwelling unit, since a bathroom in the structure is proposed.

Two additional neighbors submitted an e-mail in support of the application (Exhibit F-3). These neighbors stated they had no objections or concerns about the proposal.

Staff response: No off-street parking is required in this location (Zoning Code Section 33.266.110.B.1), so denial of this Adjustment Review would not force the applicant to maintain off-street parking on the property. The scope of this review is limited to the proposed building coverage.

While not relevant to the proposed Adjustment, staff notes that any business activities on the site must comply with the accessory home occupation requirements in Zoning Code Chapter 33.203. For example, the maximum noise level for a home business is 50 decibels, measured at the property line (Zoning Code Section 33.203.050.C). Suspected violations of Chapter 33.203 requirements can be reported to BDS' Code Compliance Section at (503) 823-CODE.

The current Zoning Code would not allow a kitchen in the proposed accessory structure, but the Zoning Code would not prohibit the structure from being used as a bedroom with a bathroom or other type of living space. Staff's findings for the approval criteria below were based on the bulk of the proposed structure rather than its potential use.

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 purpose of the building coverage standard in the R5 zone is stated in Zoning Code Section 33.110.225.A:

> *Purpose. The building coverage standards, together with the height and setback standards control the overall bulk of structures. They are intended to assure that taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses. Additionally, the standards help define the character of the different zones by limiting the amount of buildings allowed on a site.*

The proposed Adjustment increases the allowable building coverage by about 8% (from 1,875 square feet to 2,031 square feet) to accommodate a new one-story accessory structure in the rear yard. The accessory structure will be relatively small (415 square feet) and relatively low in height (15 feet tall to the top of the shed roof, which is 5 feet lower than the maximum height allowed for accessory structures). All building setback requirements will be met: the structure will be 5 feet from the northerly neighbor's lot line, as required; 15 feet from the street lot line to the south, exceeding the 5-foot minimum; and 2 feet from the alley lot line to the west, even though no minimum setback is required from an alley (Zoning Code Section 33.110.220.D.8). The shed roof slopes away from the only abutting property, with the tallest wall facing south toward the street rather than north toward the abutting lot.

The proposal will allow a typical arrangement of buildings for a residential lot: one primary structure (the existing duplex) and one smaller accessory structure in the rear yard.

For these reasons, staff finds the proposed bulk will not overwhelm any neighboring home or significantly affect the character of the neighborhood. Staff finds approval criterion A is 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; and

Findings: Since the site is in a residential zone, the proposed building coverage Adjustment must not detract from the livability or appearance of the surrounding residential area.

As mentioned above, the one-story accessory structure will be relatively small (415 square feet) and relatively low in height (15 feet tall to the top of the shed roof). All minimum building setback requirements will be met, and the tallest wall will face away from the only abutting lot.

The accessory structure will have a more modern design than most homes in the neighborhood, including the existing duplex on the subject site. However, as mentioned above, staff finds the accessory structure will be too small to significantly affect the character of the neighborhood. The horizontal lap siding and large street-facing windows will promote compatibility despite the difference in building style.

For these reasons, staff finds the proposed increase in the building coverage allowance to accommodate the new structure will not significantly detract from the livability or appearance of the neighborhood. Staff finds approval criterion B 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 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 above, staff finds the modest (8%) increase in the building coverage allowance for the new accessory structure will be consistent with the purpose of the building coverage standard and will not significantly detract from the livability or appearance of the area. There are no adverse impacts specifically related to the Adjustment request for which mitigation would be needed. Therefore, 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 the 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 proposed accessory structure will be relatively small (415 square feet) and relatively low in height (15 feet tall to the top of the shed roof). Staff finds the proposed increase in the building coverage allowance equally meets the intent of the building coverage regulation and will not significantly detract from the livability and appearance of the neighborhood. Since the applicable approval criteria are found to be met, the Adjustment must be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.225.B to increase the allowable building coverage on the site by 156 square feet, from 1,875 square feet to 2,031 square feet, per the approved plans, Exhibits C-1 and C-2, signed and dated November 25, 2019, 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 19-237094 AD."

Note: At the time of building permit review and inspection, the applicant will be required to reconstruct the curb in front of the former driveway to Portland Bureau of Transportation (PBOT) standards.

Staff Planner: Andrew Gulizia

Decision rendered by: _____ **on November 25, 2019**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 2, 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 October 7, 2019 and was determined to be complete on October 28, 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 October 7, 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 February 25, 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 December 16, 2019** 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 will be recorded with the Multnomah County Recorder. *Unless appealed,* the final decision will be recorded after **December 16, 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 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.

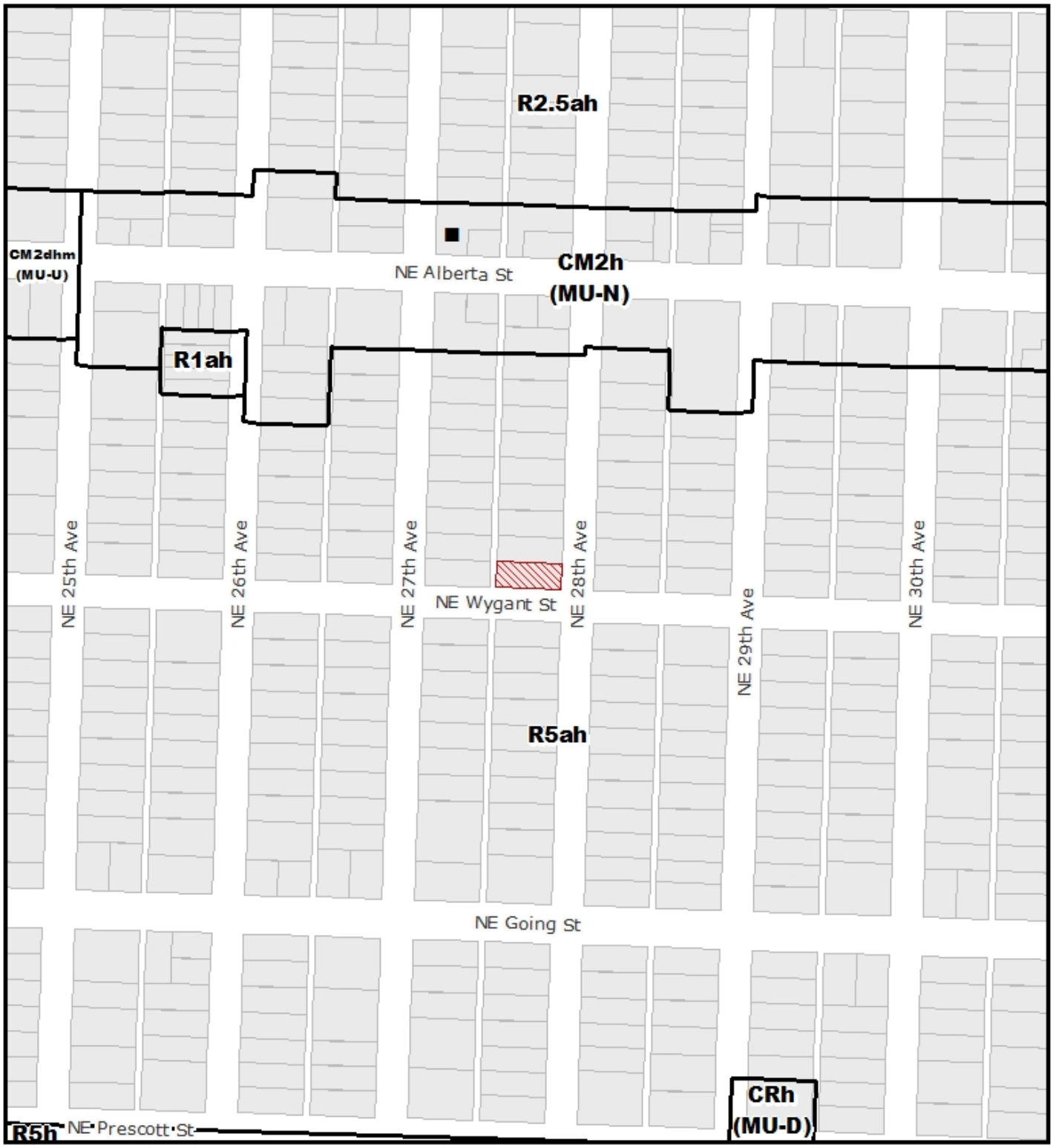
Applying for permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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 original narrative
   2. Applicant's revised narrative
   3. Demolition plan from permit # 18-257355 RS
   4. Original building plans, prior to revision (superseded by Exhibits C-1 and C-2)
B. Zoning Map (attached)
C. Plans/Drawings:
   1. Site plan (attached)
   2. Building elevations and floor plan (attached)
D. Notification Information:
   1. Mailing list
   2. Mailed notice
E. Agency Responses:
   1. Bureau of Environmental Services
   2. Portland Bureau of Transportation
   3. Water Bureau
   4. Fire Bureau
   5. Site Development Review Section of BDS
   6. Life Safety Review Section of BDS
   7. Bureau of Parks, Forestry Division
F. Correspondence:
   1. Letter in opposition, received November 15, 2019
   2. Letter in opposition, received November 19, 2019
   3. E-mail in support, received November 20, 2019
G. Other:
   1. Land use application form and receipt
   2. Incompleteness determination letter, dated October 18, 2019

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

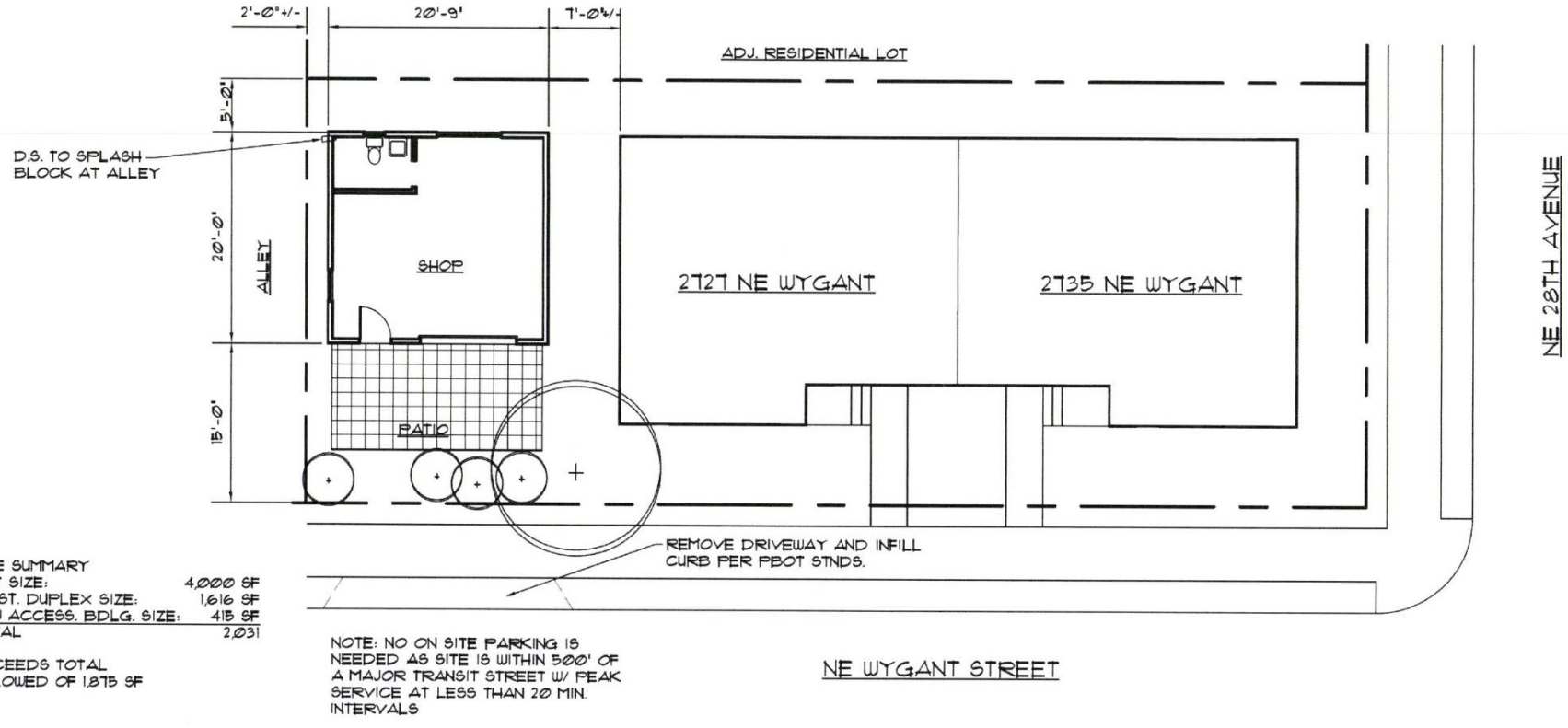
Site

Historic Landmark

File No.	LU 19 - 237094 AD
1/4 Section	2533
Scale	1 inch = 200 feet
State ID	1N1E24BC 2900
Exhibit	B Oct 09, 2019

LU 19-237094 AD
Exhibit C-1

Approved
City of Portland - Bureau of Development Services
Planner A Gulizia Date 11/25/19
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



SITE SUMMARY

LOT SIZE:	4,000 SF
EXIST. DUPLEX SIZE:	1,616 SF
NEW ACCESS. BDLG. SIZE:	415 SF
TOTAL	2,031

EXCEEDS TOTAL ALLOWED OF 1,875 SF

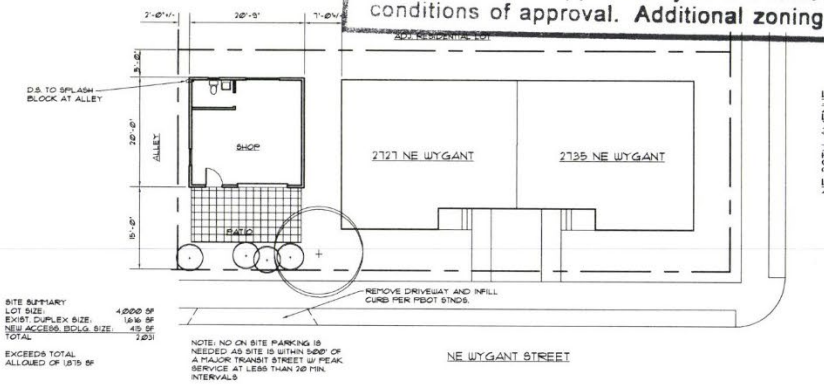
NOTE: NO ON SITE PARKING IS NEEDED AS SITE IS WITHIN 500' OF A MAJOR TRANSIT STREET W/ PEAK SERVICE AT LESS THAN 20 MIN. INTERVALS

1 / A1 SITE PLAN

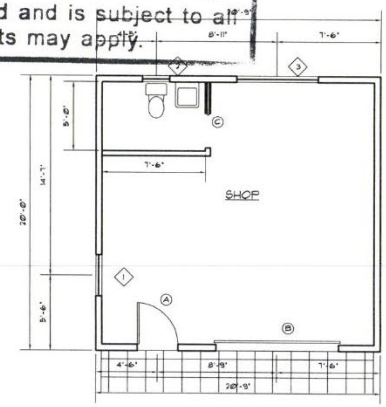
1" = 10'

Approved
City of Portland - Bureau of Development Services
Planner A Gulizia Date 11/25/19
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

LU 19-237094 AD
Exhibit C-2

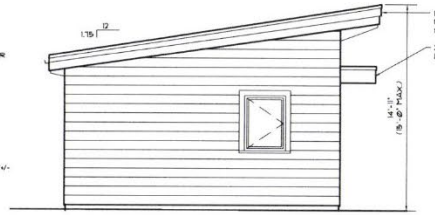


1 / A1 SITE PLAN
1" = 10'

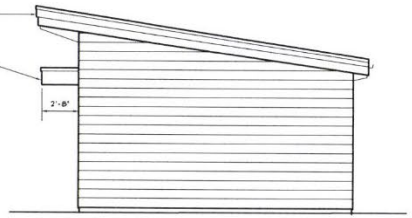


2 / A1 FLOOR PLAN
1/4" = 1'-0"

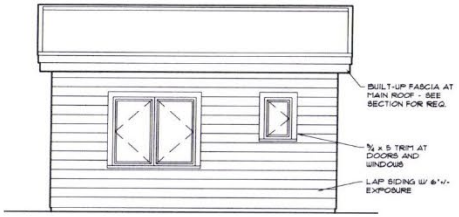
3 / A1 SOUTH (FRONT) ELEVATION
1/4" = 1'-0"



4 / A1 WEST (SIDE) ELEVATION
1/4" = 1'-0"



5 / A1 EAST (SIDE) ELEVATION
1/4" = 1'-0"



6 / A1 NORTH (REAR) ELEVATION
1/4" = 1'-0"

GENERAL NOTES:

GENERAL PROJECT SCOPE: CONSTRUCT NEW 415 SF GARAGE IN SAME LOCATION AND FOOTPRINT AS GARAGE DEMOLISHED PER PERMIT 2018-251356-RS

THIS PROJECT IS DESIGNED UTILIZING THE LATEST EDITION OF THE OREGON RESIDENTIAL SPECIALTY CODE (ORSC). NOTIFY ARCHITECT IMMEDIATELY IF ANY DISCREPANCIES ARE FOUND BETWEEN THIS DESIGN AND CODE REQUIREMENTS. ANY ITEM NOT SPECIFICALLY COVERED WITHIN THESE DRAWINGS SHALL MEET THE REQUIREMENTS OF THE IRC

FOUNDATION AND UNDERFLOOR

ALL WOOD IN CONTACT WITH CONCRETE AND ALL EXPOSED WOOD SUPPORTING PORCHES AND DECKS, TO BE PRESSURE TREATED OR OF NATURAL RESISTANCE TO DECAY.

LOTS MUST BE PROVIDED WITH ADEQUATE DRAINAGE SO AS TO DRAIN SURFACE WATER AWAY FROM THE FOUNDATION WALLS.

FOUNDATION WALLS SHALL EXTEND 6" ABOVE ADJACENT GRADE.

DOOR SCHEDULE

#	SIZE	TYPE	NOTES
A	3'-0" x 8'-0"	ENTRANCE	FULL LIGHT
B	9'-0" x 8'-0"	OVERHEAD GARAGE	--
C	2'-4" x 7'-0"	INTERIOR	POCKET

WINDOW SCHEDULE

#	SIZE	TYPE	NOTES
1	3'-0" x 4'-0"	CASEMENT	--
2	2'-0" x 3'-0"	CASEMENT	--
3	6'-0" x 5'-0" FIX	CASEMENT	CENTER ON GARAGE DOOR

NEW GROUND FLOOR WINDOWS TO HAVE 8'-0" HEADER HEIGHT

RADON CONTROL

NEW STRUCTURE SHALL HAVE RADON GAS MITIGATION. THE METHOD OF MITIGATION TO BE INSTALLED SHALL BE ONE OF THE FOLLOWING:

SLAB-ON-GRADE OR BASEMENT CONSTRUCTION.
PASSIVE DEPRESSURIZATION SYSTEM, WITH 4" THICK LAYER OF GAS-PERMEABLE AGGREGATE BELOW SLAB.

REGISTERED ARCHITECT STATE OF OREGON

D.M.S. ARCHITECTS
DAVID M. SCHWARTZ
PORTLAND, OR 97213
OFFICE 503 233 9240
FAX 503 233 9810
DAVE@DMSARCHITECTS.COM

PRELIMINARY

MARTIN GARAGE

2727 - 2735 NE WYGANT STREET
PORTLAND, OREGON 97211

SHEET CONTENT
SITE PLAN
GENERAL NOTES/CODE
FLOOR PLAN
EXTERIOR ELEVATIONS

JOB No. 000016
DRAWN DMS
CHECKED
DATE 7-4-18
REVISIONS
SHEET A1 OF 2