



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

Date: April 9, 2020
To: Interested Person
From: Don Kienholz, Land Use Services
503-823-7771 / 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 20-104725 AD

GENERAL INFORMATION

Applicant: Duncan Scovil
Waechter Architecture
3928 N Williams Ave
Portland OR 97227

Owners: Regina Condon and Daniel Cress
3532 SE Oak St
Portland, OR 97214-2063

Site Address: 3532 SE OAK ST

Legal Description: BLOCK 94 E 1/2 OF LOT 2, LAURELHURST
Tax Account No.: R479121980
State ID No.: 1N1E36DC 05000
Quarter Section: 3034

Neighborhood: Laurelhurst, contact Peter Meijer at <http://www.laurelhurstpdx.org>
Business District: None
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010 x313

Plan District: Laurelhurst-Eastmoreland
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 a new, two-story accessory building with a gym and storage area on the main floor for the existing dwelling and an Accessory Dwelling Unit (ADU) on the second floor. The accessory building is 16.5-feet wide and just under 33-feet long, with 3-foot deep

eaves. While the building walls are set back 7-feet from the west side property line, 5-feet from the south rear property line and nearly 11-feet from the east side property line, the eaves on the south side encroach 3-feet into the setback. Portland Zoning Code Section 33.110.220.C allows certain elements of a building, such as eaves, to extend 20% into a required setback. For the required 5-foot minimum rear setback, that would allow an eave to encroach 1-foot. Because the proposed building has eaves that encroach 3-feet into the rear setback, an Adjustment is necessary to reduce the minimum setback for the eaves.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are in Portland Zoning Code Section 33.805.040.A through F.

ANALYSIS

Site and Vicinity: The subject site is a 9,000 square foot lot developed with a single-family dwelling and a detached garage established in 1939. The property is in the Laurelhurst neighborhood and immediately south and across the street from Laurelhurst park. The site is one block north of SE Stark Street, a major east-west arterial street that represents the southern boundary of the Laurelhurst neighborhood. The site is approximately 800-feet west of SE 39th/Cesar E Chavez Blvd, a major north-south arteria connecting SE Portland to Interstate 84 and 800-feet south of E. Burnside, another major east-west street and commercial hub.

Zoning: The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The site development standards allow for flexibility of development while maintaining compatibility with in the City's various neighborhoods. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed. The development standards are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.

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 13, 2020**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1);
- Life Safety (Exhibit E.2);
- The Bureau of Parks-Forestry Division (Exhibit E.3);
- The Bureau of Transportation Engineering (Exhibit E.4);
- The Water Bureau and Fire Bureau; (Exhibit E.5); and
- Site Development (Exhibit E.6).

Neighborhood Review: One written response was received from a notified property owner in response to the proposal. Tom Walsh sent an email April 3, 2020 in opposition to the proposal, citing concerns with:

- An approval sets a precedent of allowing future structures to encroach in the setbacks;
- The 5-foot setback provides a minimal area for 'softening the divide between neighboring lots';
- There is no reason given for having 3-foot deep eaves and there is a concern of how the Adjustment may affect the character of the area;
- There is no mitigation proposed;
- How stormwater will be managed; and
- What will happen with a PGE easement.

Staff Response: The Adjustment review process provides the option for an applicant to choose to vary from the development standards if the applicant can demonstrate the proposal equally

or better meets the purpose of the standard being modified (see Portland Zoning Code Section 33.805.040.A). The Adjustment approval criteria do not require demonstrating that there is a unique hardship that prevents the proposal from meeting a particular development standard. The reasoning of a particular Adjustment isn't necessarily a required element of a proposal; if the approval criteria are met, it doesn't matter the reason for applying. Additionally, approval of an Adjustment does not set precedent as each development proposal and surrounding circumstances are unique to the specific property and project.

Some of the concerns raised above, such as examination of the impact of the eave encroachment into the rear setback, impact on the character of the area and mitigation, are reviewed through the approval criteria below. Other concerns, such as stormwater management, are required to meet specific standards that are applied at time of building permit review. The PGE easement is not relevant to the proposal as easements are agreements between private parties and do not involve the City.

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 to allow the eaves of a detached accessory dwelling unit to encroach 3-feet rather than 1-foot into the required minimum 5-foot rear setback of the south side of the subject property. The purpose statement for the setback requirement is found in Portland Zoning Code Section 33.110.220.A, with the applicable purpose statements in bold:

***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 over hanging the street or sidewalk, and they enhance driver visibility when backing on to the street.*

They maintain light, air, separation for fire protection, and access for fire-fighting

No part of the proposed ADU wall or living area will be within the 5-foot minimum required rear setback – only the south facing eave will encroach. Portland Zoning Code Section 33.110.220.C.1 allows eaves to encroach 20%, or 1-foot in this case, into the rear setback. The proposed eaves encroach 3-feet, or 60%. The eaves are an extension of the roof structure, approximately 8 to 12-inches thick, and have no structural elements below them, thus no significant bulk. No portion of the ADU building is

beneath the 3-foot deep eave, leaving an unobstructed 5-foot gap between the building wall and the rear property line, the same as the required minimum rear setback. The encroachment of the eave, being the low-profile and thin extension of the roof structure, will not block light for the potentially impacted property to the south because the sun's path in the sky traverses to the south, casting light north. The 5-foot separation allows air flow between the ADU and property line. Furthermore, the reduced rear setback for the eave encroachment is balanced by increasing the side setbacks for the ADU structure. While only a 5-foot setback is required from the side lot lines, a 7-foot deep setback is provided between the building wall and the west side lot line, with nearly an 11-foot deep setback from the east side lot line. These increased setbacks provide greater opportunities for light and air to reach the property to the south.

The 5-foot setback between the rear property line and the wall of the ADU structure also provides adequate separation for fire protection under the building code and allows access for fire-fighting personnel, if necessary.

Given these facts, the proposal will maintain light, air separation for fire-fighting protection and access for fire-fighting.

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

The proposal includes a two-story accessory building with a gym and storage area on the first floor and an ADU on the second floor. As such, the structure is not a 'house' as defined in the code. Nonetheless, the structure does have a residential unit on the second floor. The ADU is approximately 30-feet from the house on the property to the south; 50-feet from the house to the southwest; 70-feet from the house to the southeast; 50-feet from the house to the immediate west; and 70-feet from the house to the immediate east. The properties to both the east and west each have an ADU in the backyard with similar distances to homes on the surrounding properties. As such, the proposed building represents the general placement of other ADUs in the backyards of properties and their relative proximity to houses.

None of the living area or walls of the proposed ADU are within the rear setback; only the eaves. Eaves are allowed to encroach into the minimum required 5-foot deep rear setback under Zoning Code Section 33.110.220.C.1 up to 1-foot. The proposal is to allow the eaves to encroach an additional 2-feet into the south rear setback. While the eaves encroach an additional 2-feet into the setback, it will not be noticeable from the street or other public areas. Additionally, the applicant has noted that homes and accessory buildings in the Laurelhurst neighborhood are dominated by craftsman-style homes that tend to have oversized eaves. The applicant also noted that the following list of properties include structures that appear to have oversized eaves of 3-feet or more:

- 3562 SE Oak
- 3411 SE Ankeny
- 3925 SE Ankeny
- 4123 SE Ash
- 4137 SE Ash
- 109 SE 41st

Given this information, the proposal meets this purpose statement.

They promote a reasonable physical relationship between residences;

As noted above, the proposed ADU is more than 30-feet from any primary residence on the adjacent lots. Additionally, the bulk of the ADU itself, including all living area and walls, are outside of the required minimum setbacks. Given that by right, residences can be located within 10-feet of one another (each meeting the 5-foot minimum rear or

side building setbacks), the proposal promotes a reasonable physical relationship between residences.

They promote options for privacy for neighboring properties:

One of the primary functions of setbacks is to promote privacy. This is achieved by keeping windows from being on the property line and preventing second story decks being close to lot lines. The proposal is limited to allowing eaves to encroach into the rear setback. However; no portion of the ADUs wall will encroach into the setback; no windows will be in the required setbacks; and no deck is proposed, let alone an elevated one. As such, the proposal promotes privacy.

Based on the above facts, the proposal equally meets the purpose of the setback standard.

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 site is zoned R5, a residential zone. The proposal to allow the roof eave to extend 3-feet into the minimum required rear setback rather than the 1-foot allowed will not detract from the livability of the residential area because as discussed in Finding A above, there will be no impact on air flow, light or fire-fighting capabilities. The eaves have minimal bulk, including no wall structure with windows, and so will not impact privacy. Provided the above, the proposal will not detract from livability. The ADU is in the back yard, obscured by the primary house, so the appearance of the ADU and encroaching eaves will not be visible as seen from the public road. As seen from the property to the south, the walls of the ADU will be outside the required minimum rear setback, with more generous side setbacks provided than the minimum required. The eaves will encroach 2-feet further into the setback than allowed but with no other bulk in the setback and the eaves undiscernible from the street, the proposal will not detract from the appearance of the neighborhood.

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; and

Finding: Only one Adjustment is requested. This criterion is not applicable.

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

Finding: Scenic resources are identified on the zoning map with an 's' designation. The site does not have a scenic overlay on the zoning map. Historic resources are identified as being in a historic district, conservation district, or individual properties may be identified as part of the Historic Resource Inventory (HRI). The subject site is not in an historic or conservation district and is not listed on the HRI list.

Criterion met.

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

Finding: As discussed above in Finding A and B, there are no adverse impacts from the proposal so no mitigation is required.

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 practical.

Finding: Environmental zones are identified on the zoning map with either an 'e' or 'c' designation. The subject site does not have an environmental overlay identified on the zoning map. This criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant has carried the burden necessary to demonstrate allowing an eave to encroach 3-feet into the setback rather than the 1-foot allowed in Zoning Code Section 33.110.250.C.1 equally meets the purpose of the setback requirements; will not detract from the livability or appearance of the residential area; and will not impact historical, cultural or scenic resources. Given the approval criteria are satisfied, the proposal must be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to allow the south-facing eave of the detached accessory dwelling unit to encroach 3-feet (60%) into the rear building setback instead of the 1-foot (20%) allowed under Zoning Code Section 33.266.220.C.1, per the approved site plans, Exhibits C.1 through C.2, 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 to C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 20-104725 AD. No field changes allowed."

Staff Planner: Don Kienholz

Decision rendered by:  **on April 6, 2020**

By authority of the Director of the Bureau of Development Services

Decision mailed: April 9, 2020

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 January 13, 2020, and was determined to be complete on February 27, 2020.

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 January 13, 2020.

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: June 26, 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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received by 4:30 PM on April 23, 2020. **Towards promoting social distancing during the COVID-19 pandemic, the completed appeal application form must be e-mailed to BDSLUSTeamTech@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations for the appeal of Type II and IIX decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in the file, please contact the planner listed on the front of this decision. The planner can provide some information over the phone. Please note that due to COVID-19 and limited accessibility to files, only digital copies of material in the file are available for viewing. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <https://www.portlandoregon.gov/citycode/28197>.

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 **April 23, 2020** 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:

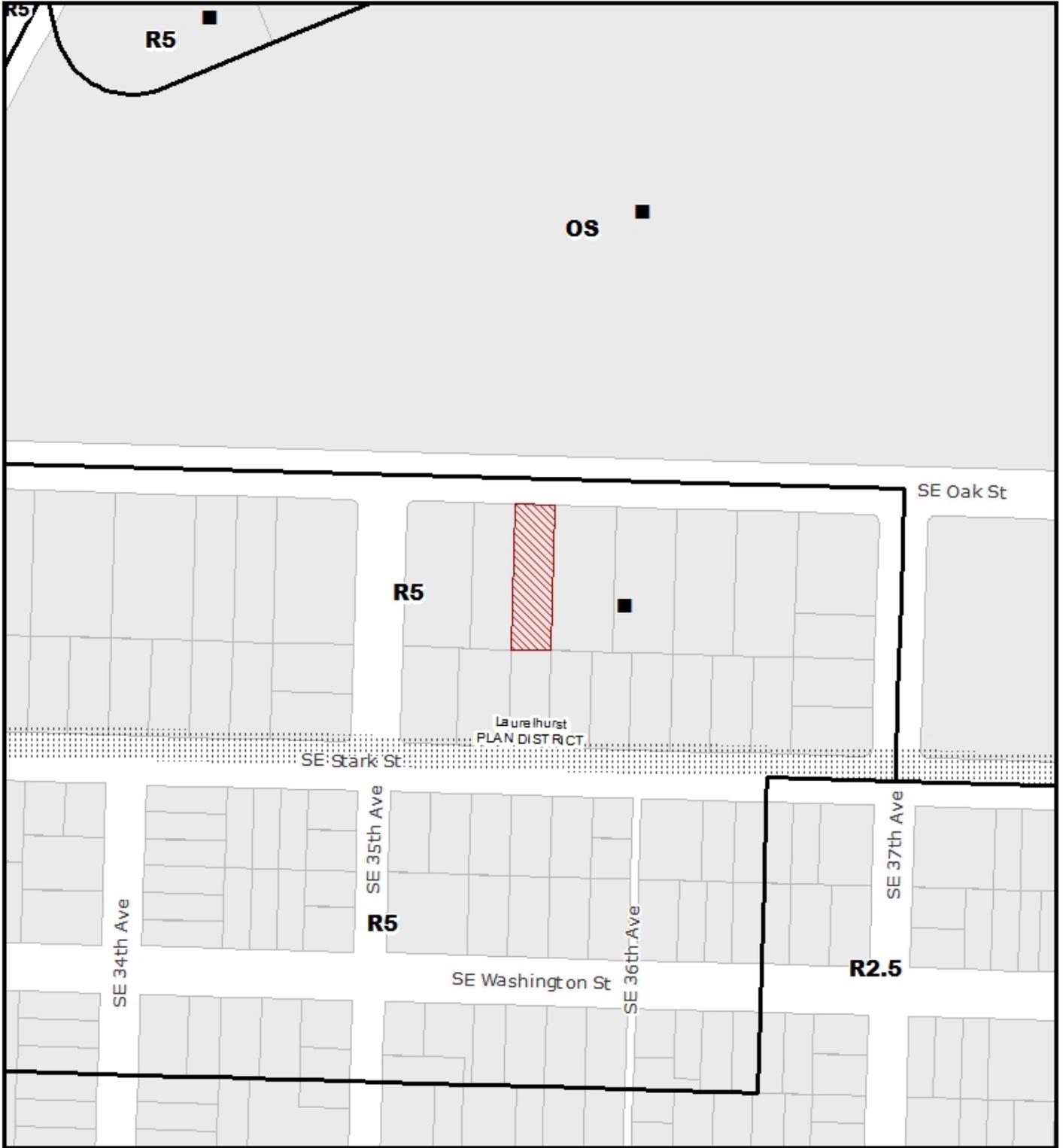
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Materials
- 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. Life Safety
 - 3. The Bureau of Parks-Forestry Division
 - 4. The Bureau of Transportation Engineering
 - 5. The Water Bureau and Fire Bureau
 - 6. Site Development
- F. Correspondence:
 - 1. April 3, 2020 Email From Tom Walsh Opposing the Proposal.
- G. Other:
 - 1. Original LU Application
 - 2. Copy of Fee Paid Receipt
 - 3. Incomplete Letter

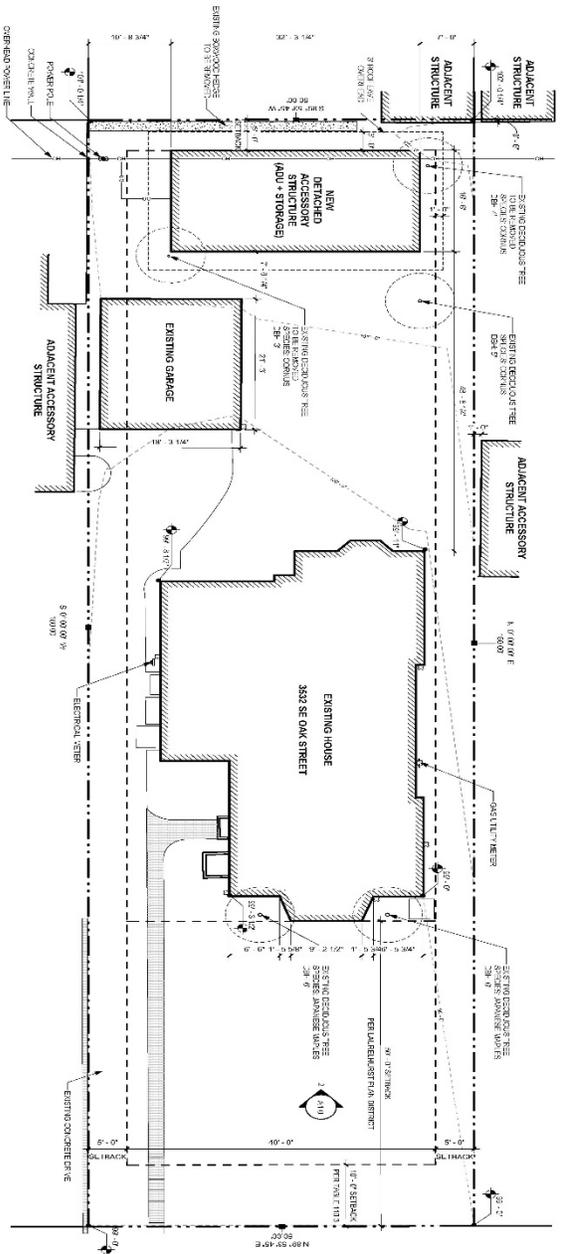
The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



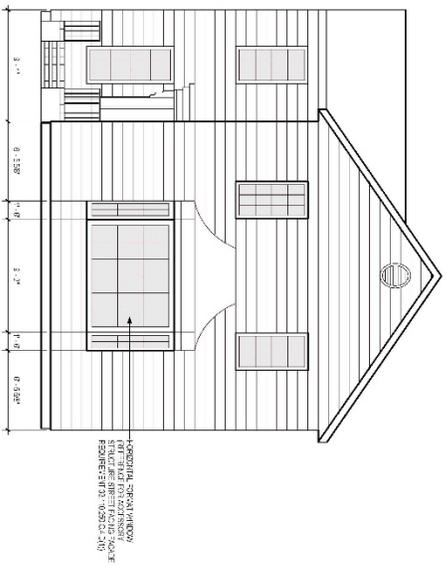
ZONING 
 NORTH
 LAURELHURST PLAN DISTRICT
 LAURELHURST HISTORIC DISTRICT

 Site
 Historic Landmark

File No. LU 20 - 104725 AD
 1/4 Section 3034
 Scale 1 inch = 163 feet
 State ID 1N1E36DC 5000
 Exhibit B Jan 15, 2020



1 SITE PLAN - PROPOSED
SCALE: 1/8" = 1'-0"



2 PRIMARY DWELLING - STREET ELEVATION
SCALE: 1/8" = 1'-0"

- LEGEND-UTILITIES**
- OVERHEAD POWER
 - UNDERGROUND POWER
 - NATURAL GAS LINE
 - SEWER LINES
 - WATER LINES
 - STORMWATER LINE

SE OAK STREET

WA 001614 001 2018-106
OAK ADU
3522 SE OAK ST
PORTLAND, OR
97214

WAECHTER ARCHITECTURE
3928 NORTH WILLIAMS AVENUE
PORTLAND, OR 97227
47-3422 FAX 503-255-1640
www.waechterarchitecture.com



NON REGULATORY REVIEW ONLY
NOT FOR CONSTRUCTION

2/14/2020
ADJUSTMENT REVIEW

SITE PLAN

A1.0

