



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

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[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** June 18, 2010  
**To:** Interested Person  
**From:** Kathleen Stokes, Land Use Services  
503-823-7843 / [kstokes@ci.portland.or.us](mailto:kstokes@ci.portland.or.us)

## **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 reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

### **CASE FILE NUMBER: LU 10-133396 AD**

#### **GENERAL INFORMATION**

**Applicant:** Amy M Knight and Marc T Blackledge  
1436 SE Bidwell St  
Portland, OR 97202-6024

**Site Address:** 1436 SE Bidwell Street

**Legal Description:** BLOCK 13 E 1/2 OF LOT 1&2, MILLERS ADD  
**Tax Account No.:** R571203390  
**State ID No.:** 1S1E23CA 01800  
**Quarter Section:** 3831

**Neighborhood:** Sellwood-Moreland, contact Mat Millenbach at 503-239-1134.  
**Business District:** Westmoreland, contact Tom Brown at 53-381-6543.  
**District Coalition:** Southeast Uplift, contact Leah Hyman at 503-232-0010.

**Plan District:** None  
**Zoning:** R5a (R5,000, High Density Single-dwelling Residential with an Alternative Design Density Overlay)

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

**Proposal:** The applicants are proposing to replace their existing garage with a new garage, with space above the parking area to accommodate an accessory dwelling unit (ADU). The proposed garage would be in the same general location as the old garage, but would be five feet wider than the existing structure (17 feet wide by 27 feet deep, with an added deck on the west side and two entry areas on the north side). The applicants are proposing to locate the garage two feet from the south or rear property line. The garage entrance would be accessed from SE 15<sup>th</sup> Avenue and would set back 5 feet from the east side property line. The Portland Zoning Code requires garages that have any living area contained in the building to be located at least 5 feet from side or rear setbacks. Garage entrances are required to be setback 18 feet from the street lot line. Exceptions to these standards are approved through Adjustment Reviews if the relevant approval criteria are met or can be met through conditions of approval. The applicants are requesting approval of Adjustments to Code Section 33.110.220, to reduce the minimum

required setback from the rear (south) property line, from 5 feet to 2 feet for the building wall and from 4 feet to one foot for the eave, for the proposed garage/ADU structure and to reduce the required garage entrance setback from the east side property line, from 18 feet to 5 feet.

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

## ANALYSIS

**Site and Vicinity:** The applicants' site is a 5,000 square-foot property that is located on the southwest corner of SE 15<sup>th</sup> Avenue and SE Bidwell Street. The site is developed with a single-dwelling residence that was built in 1924. A small garage is located in the southeast corner of the property, facing to the east, with driveway access from SE 15<sup>th</sup> Avenue. The area around the site is developed with other residences, predominantly single-dwelling homes that were also built in the early 1900s.

**Zoning:** The site is zoned R5, High-Density Single-Dwelling Residential with an "a" or Alternative Design Density Overlay. The R5 zone requires an average lot area of 5,000 square feet, with a maximum allowed density of one unit per lot (generally 8.7 units per acre.) The "a" Overlay Zone allows opportunities for increased residential density in certain situations. The overlay zone does not apply to this situation.

**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 **May 14, 2010**. The following Bureaus have responded to indicate that there are no issues or concerns related to approval of the requested adjustments. Comments regarding building permit requirements from agencies that responded electronically are copied below. Agencies that provided written documents in response are noted with exhibit numbers:

- Environmental Services (BES) has no objection to the proposed adjustments to setbacks, provided that the applicant can demonstrate at the time of building permit review that stormwater from the new garage/ADU can be discharged safely and all requirements of the 2008 SWMM are met. Stormwater from the garage must be infiltrated on-site, if feasible. Infiltration testing may be required at the time of building permit review. Splashblocks may be utilized, if the total roof area is less than 500 square feet and setback requirements for stormwater facilities are met. There are public combination sewers in SE Bidwell and SE 15th; stormwater management facilities with overflow to the public sewer will be required if infiltration on-site is not feasible. (erc)
- Transportation Engineering stated that moving the garage entrance forward to five feet improves the present situation, where an eight-foot distance allows room for cars to park in front of the garage and block the sidewalk. There were no concerns expressed regarding approval of the reduced building setback from the rear property line (Exhibit E-1).
- Water Bureau provided information on the water service to the site and noted that a Water Bureau fixture count will be required at the time of building permit review (Exhibit E-2).
- Fire Bureau sent an electronic response stating that there were "no concerns."
- Site Development Section of BDS Site Development has no objection to the proposed Adjustments to setback requirements, provided that plans submitted at the time of building permit review include a stormwater management system that is acceptable to BES and meets the requirements of the Stormwater Management Manual, including setback requirements for storm water facilities. Site Development would have no objection to on-site infiltration of stormwater at this location.
- Life Safety Plan Review Section of BDS noted the requirement for building permits and referenced a previously approved Building Code Appeal, which included a two-foot "no-build" easement on the adjacent property to the south, in order to allow the proposed eave projection and windows on the structure (Exhibit E-3).
- Parks-Forestry Division sent an electronic response stating that there were "no concerns."

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on May 14, 2010. One written responses was received from the Neighborhood Association, in response to the proposal. The Land Use Chair of the Sellwood Moreland Improvement League sent a response that stated that they believe that the proposal meets the purposes of the regulations and will not detract from the livability or appearance of the residential area and so the neighborhood has no objection to approval of the requested Adjustments (Exhibit F-1).

## **ZONING CODE APPROVAL CRITERIA**

**33.805.010 Purpose of Adjustments** The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

### **33.805.040 Adjustment Approval Criteria**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below, have been met.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and
- 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
- 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
- D.** City-designated scenic resources and historic resources are preserved; and
- E.** Any impacts resulting from the adjustment are mitigated to the extent practical.
- 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 AND CONCLUSIONS**

The applicants' proposal meets all of the relevant approval criteria: *The purposes of building setback requirements are to maintain light, air, separation for fire protection, and access for fire fighting. Setback standards also reflect the general building scale and placement of development in the City's neighborhoods and promote a reasonable physical relationship between residences. They promote options for privacy for neighboring properties and provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity.*

*The minimum garage entrance setback requirement is intended to provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and to enhance driver visibility when backing onto the street.*

The applicants' are requesting exceptions to the rear setback requirement, to reduce the minimum setback on from the south property line, from 5 feet to 2 feet for the building wall and from 4 feet to one foot for the eave, for the proposed garage/ADU structure and to reduce the required garage entrance setback from the east side property line, from 18 feet to 5 feet. There will be no impacts on light, air, separation for fire protection or access for fire fighting from this proposal because the development will be situated to the north of the common property line of the abutting site to the south and a two-foot no-build easement will be procured on this adjacent lot, as condition of the approved building code appeal for this proposal. The structure will not be out of character with the general building scale and placement of development and the reasonable physical relationship between residences because it is of a modest scale and there will be adequate separation between the proposed building and the other structures on the abutting lot. The location of the proposed development will not create any impacts on privacy for surrounding neighbors because the windows on the south elevation are raised (clerestory) windows that provide light but are not intended for views to the south. The windows that do provide views from the building will be to the applicants' property and the abutting street. A small deck that is proposed at the rear of the building will not be large enough for any activity that would cause impacts on privacy for the adjacent property. The proposal is not driven by the topography of the site, but rather by the existing development. The proposal will not have any effect on the outdoor areas on the site and will maintain the existing architectural diversity of the area. Therefore, the purpose of the minimum building setback regulation is equally met.

The proposed 5-foot setback from the SE 15<sup>th</sup> Avenue street lot line for the garage entrance will provide room to maneuver a car around the existing power pole in the parking strip, so that the driver can enter into the garage. Because the distance between the garage entrance and the curb will only be 17 feet, there would not sufficient space to encourage parking a car so that it impedes pedestrian safety. The reduced distance from the entrance to the sidewalk will not impede driver visibility and is actually likely to increase driver caution when backing out of the garage. Therefore, the purpose of the minimum garage entrance setback is also equally met.

The proposal will not have any negative impacts on the appearance or the livability of the residential area because the structure will be compatible with the architectural style of the existing residence and will not introduce any activities or structural relationships that alter the character of this residential street.

No cumulative impacts are expected to occur from approval of the proposal and it is consistent with the purpose of the R5 zone, which is to preserve land for housing and to provide housing opportunities for individual households. There are no scenic or historic resources on this site; and no impacts have been identified for the abutting property or the surrounding residential area. The site is not located in an environmental zone, so the criteria related to these issues do not apply. Therefore, all of the relevant approval criteria are met and the proposal can be approved, in substantial compliance with the proposed site plan and elevation drawings.

## **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.

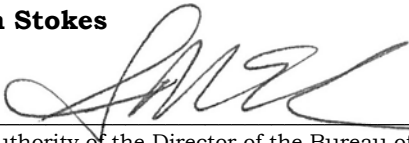
## **ADMINISTRATIVE DECISION**

Approval of Adjustments to Code Section 33.110.220, to reduce the minimum required rear building setback for the proposed garage/ADU, from 5 feet to 2 feet for the building wall and from 4 feet to 1 foot for the roof eave, and to reduce the minimum required garage entrance setback, from 18 feet to 5 feet from the east side property line, abutting SE 15<sup>th</sup> Avenue.

Approval is subject to substantial compliance with the approved site plan and elevation drawings, Exhibits C-1 through C-3, signed and dated June 16, 2010 and 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 10-133396 AD."
- B. A two-foot no-build easement must be obtained from the property owner of the abutting property to the south and proof of the recorded easement must be provided before building permits are issued.

**Staff Planner: Kathleen Stokes**

**Decision rendered by:**  **on June 16, 2010**

By authority of the Director of the Bureau of Development Services

**Decision mailed: June 18, 2010**

**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 April 30, 2010, and was determined to be complete on May 12, 2010.

*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 April 30, 2010.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. (Unless extended by the applicant, **the 120 days will expire on: September 10, 2010.**

**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 July 2, 2010** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **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. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the final decision.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed,* The final decision may be recorded on or after **July 6, 2010 – (the first County business day following the last day to appeal).**
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**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:

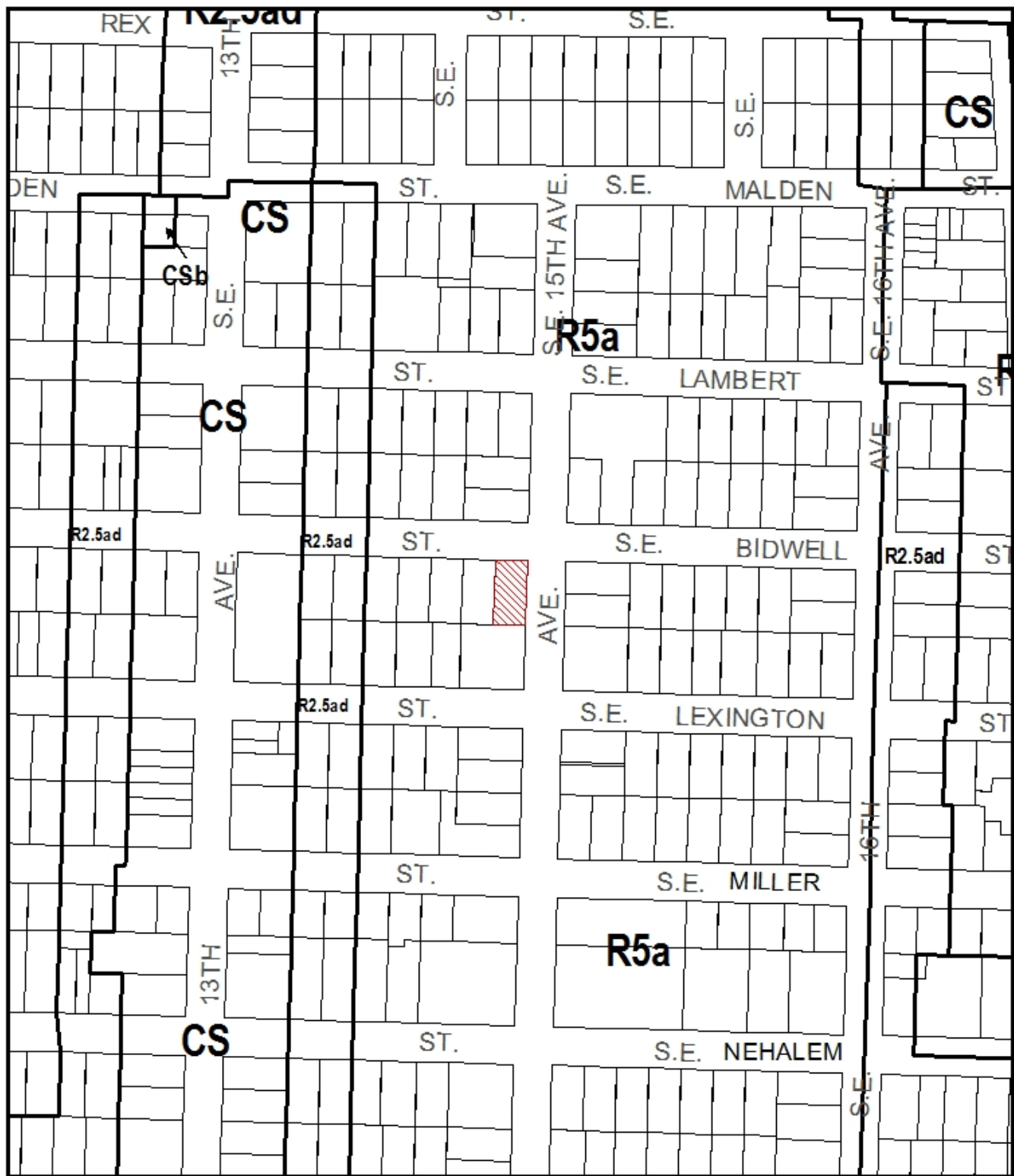
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation Drawings, front and rear (attached)
  - 3. Elevation Drawings, south and north sides (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Transportation Engineering and Development Review
  - 2. Water Bureau
  - 3. Life Safety Plan Review Section of BDS
  - 4. Summary of electronic responses from City agencies
- F. Correspondence:
  - 1. Mat Millenbach, Land Use Chair, Sellwood Moreland Improvement League
- G. Other: (none)

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



# ZONING

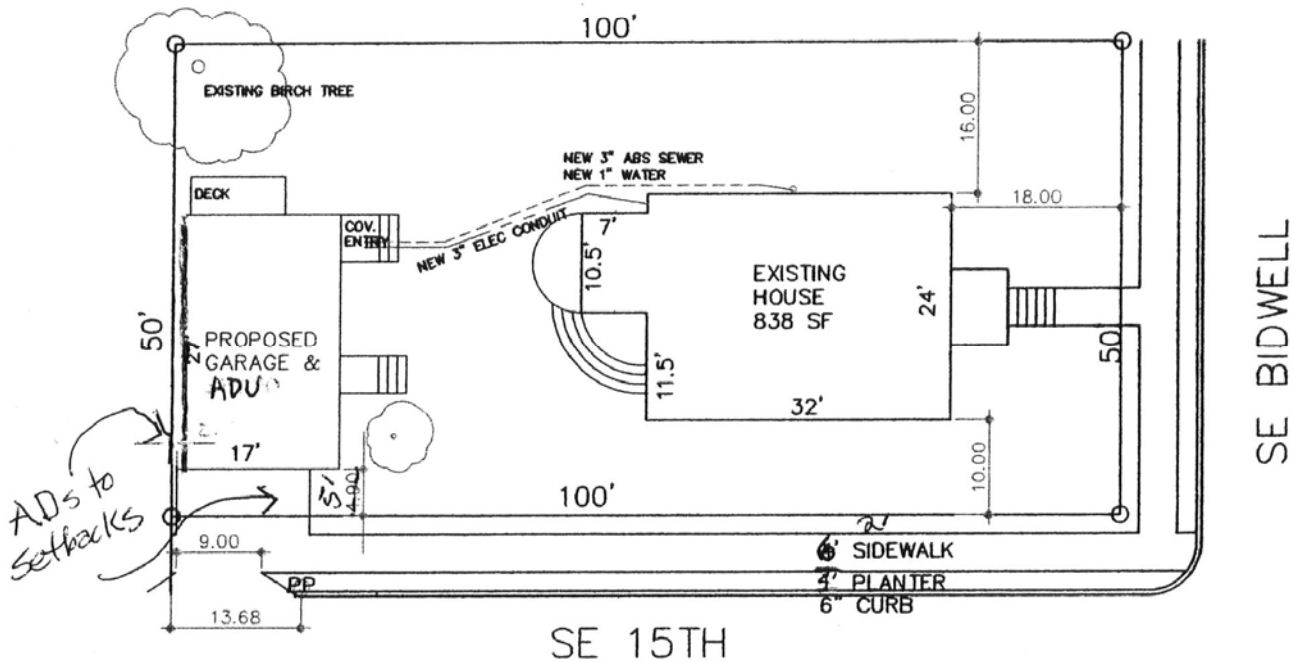
 Site



File No.	<u>LU 10-133396 AD</u>
1/4 Section	<u>3831,3832</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E23CA 1800</u>
Exhibit	<u>B</u> (May 04,2010)



# ADU Building Co.



\*Approved\*  
City of Portland - Bureau of Development Services  
Planner Kathleen A. Stokes Date June 16, 2010  
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

JOB #:

PLAN: NEW GARAGE & STUDIO

ADDRESS: 1436 SE BIDWELL., PORTLAND, OR

97202

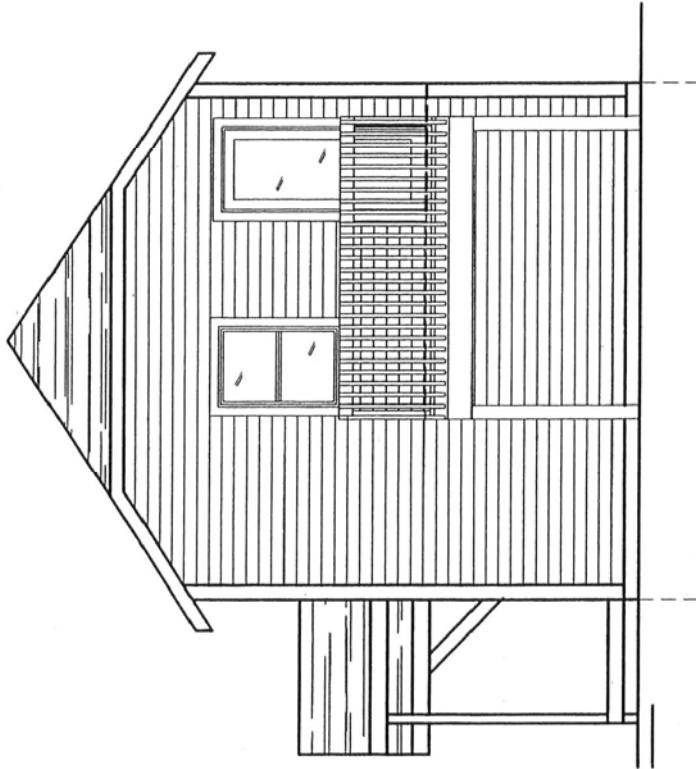
BLACKLEDGE-KNIGHT SITE PLAN

SCALE: 1" = 20' 11/10/09

T:01S R:01E S:23 Q:252 R219343

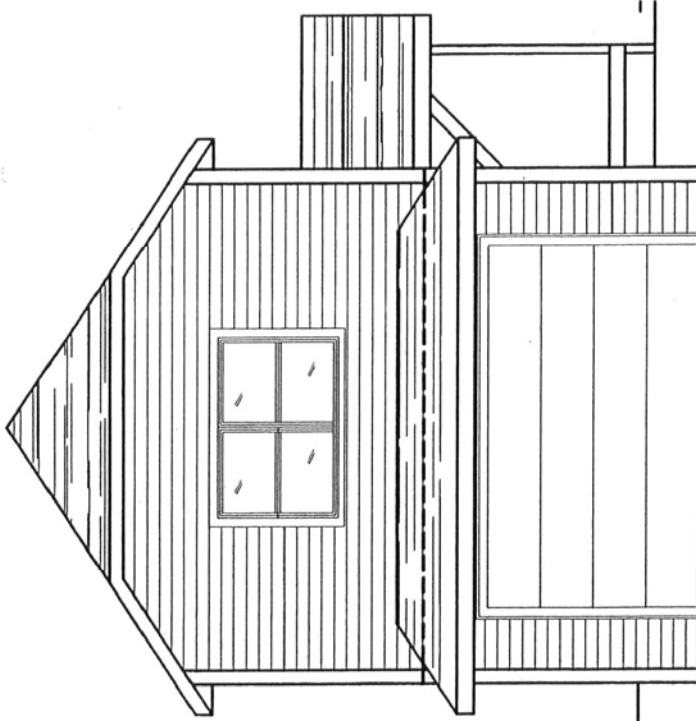
Exhibit C-1

LU 10 - 133396 AD



REAR ELEVATION

1/4"=1'-0"



FRONT ELEVATION

1/4"=1'-0"

Exhibit C-2

I, U10-133396 AD

I, U10-133396 AD

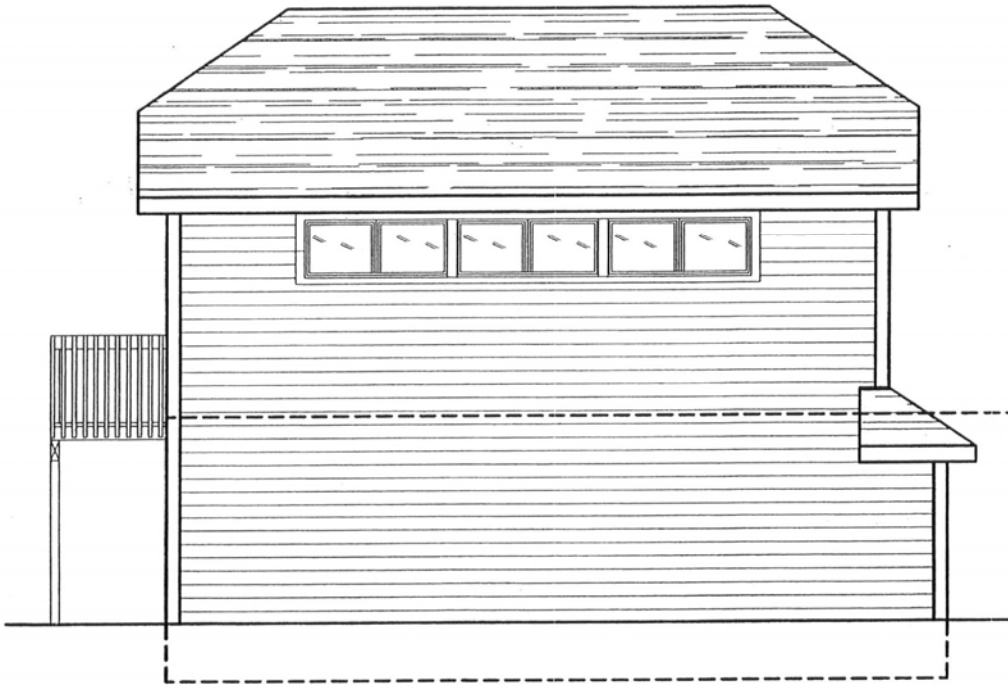
\*Approved\*

City of Portland - Bureau of Development Services

Planner Ratelle A. Stokes Date June 16, 2010

\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

L.U.10-133396AD



SOUTH SIDE ELEVATION

1/4"=1'-0"

\*Approved\*  
City of Portland - Bureau of Development Services  
Planner Kathleen A. Stokes Date June 16, 2010  
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



NORTH SIDE ELEVATION

1/4"=1'-0"

L.U.10-133396AD

Exhibit C-3