



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

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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** May 23, 2013  
**To:** Interested Person  
**From:** Shawn Burgett, Land Use Services  
503-823-7618 / [shawn.burgett@portlandoregon.gov](mailto:shawn.burgett@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 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 13-133943 AD**

#### **GENERAL INFORMATION**

**Applicant:** Richard Probasco  
4121 NE Alameda St Portland, OR 97212-2910

**Site Address:** 4121 NE ALAMEDA ST

**Legal Description:** BLOCK 9 W 35' OF LOT 9 E 31' OF LOT 10, BEAUMONT  
**Tax Account No.:** R060801550  
**State ID No.:** 1N2E30BB 09300  
**Quarter Section:** 2734, 2735  
**Neighborhood:** Beaumont-Wilshire, contact Michael Rounds at 503-936-0740.  
**Business District:** Beaumont Business Association, Dan Johnson at 503-445-2157.  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.  
**Zoning:** R5h (Single Family Residential 5,000 with "h" aircraft landing zone overlay)

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

#### **Proposal:**

The applicant has proposed to convert the second floor study (approximately 550 square feet) in the existing detached garage on the site into an Accessory Dwelling Unit (ADU). Zoning Code section 33.205.030.D.2 requires Accessory Dwelling Units (ADU) to be less than 18 feet in height. The existing detached garage/study is approximately 22 feet in height (measured at the mid-point of the roof). Converting the second floor of the existing structure to an ADU moves the detached structure out of conformance with the ADU height standard. The applicant has requested an adjustment to this standard.

#### **Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria have been met.

## ANALYSIS

**Site and Vicinity:** The 6,600 square foot lot is developed with a single dwelling residence that was built in 1929. An existing detached garage is located in the northwestern corner of the property 5 feet from north and western property lines, behind the existing house. NE Alameda Street is improved with sidewalks, planter strips, curbs and a paved road. The area is made up of predominantly single family homes of various types.

**Zoning:** The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

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.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**Agency Review:** The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Police Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on April 19, 2013. One written response (exhibit F-1) has been received from a notified property owners in support of the proposal. It should be noted that a Notice of Proposal (exhibit D-3 & D-4) was mailed out on April 18, 2013 with the incorrect site plan and zoning map attached to the document. The corrected notice (exhibit D-1 & D-2) was mailed out the following day.

## ZONING CODE APPROVAL CRITERIA

### 33.805.010 Purpose (Adjustments)

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

### 33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown 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:

Section 33.205.030 identifies the purposes of the ADU design standards, as follows:

- *Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;*
- *Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;*
- *Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and*
- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

The proposal will equally meet the purpose of the ADU design (height) standards based on the following findings:

The ADU is being proposed within an existing study area in a detached garage. The detached garage is currently 22 feet in height. No exterior alterations are proposed to the building, including no changes in building height. The building and site will appear no different with the addition of the ADU than the current conditions that exist on the site today. The proposed conversion of study area to an ADU allows the proposal to meet the scale and character of the zone.

The intent for limiting ADU's to a maximum height of 18 feet is to ensure that they appear physically (and visually) smaller than the primary dwelling on the site. In this case, the primary dwelling unit on the site has a building foot print which is approximately three times larger than the detached garage/study (exhibit A-2). Thus, allowing the primary dwelling on the site to remain the primary structure physically and visually. The existing detached garage/study will only exceed the ADU height limitation by 4 ft. which allows it to respect the scale of the neighborhood.

The floor area of the proposed ADU will still be considerably smaller than that of the primary dwelling on the site, further ensuring that the ADU remains "accessory" to the primary dwelling. As indicated above, while the ADU will have a floor area of approximately 550 square feet, the primary residence on the site has a floor area of approximately 3,000 square feet, almost six times that of the floor area of the ADU.

As proposed, the Adjustment request equally meets the intent of the ADU design standards, and this criterion is met.

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

**Findings:**

The requested Adjustment to the ADU height standards will not result in a proposal that detracts from the livability or appearance of the surrounding residential area. The scale of the building that will contain the ADU is consistent with building heights and setbacks throughout this area. At 22 feet, the building is considerably less than the maximum 30 foot height allowed for most primary structures in this zone.

The proposal will not significantly detract from the livability or appearance of the residential area, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

**Findings:** The applicant has only requested one adjustment, this criterion is not applicable.

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

**Findings:** City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

**Findings:** As found under criterion A and B, the requested Adjustments will not create impacts and therefore do not require mitigation to lessen their effect. This approval criterion is satisfied.

**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:** The site is not within an environmental zone. 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

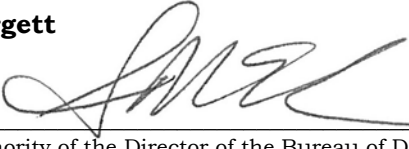
Based upon the findings of this report, each applicable approval criterion is met.

## ADMINISTRATIVE DECISION

Approval of Adjustment to allow the ADU to exceed the maximum height standard of 18 feet per Zoning Code section 33.205.030.D.2 by allowing the ADU within a structure that is approximately 22 feet in height; per the approved plans, Exhibits C.1 and C.2 signed and dated May 21, 2013, 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 and C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-133943 AD"

**Staff Planner: Shawn Burgett**

**Decision rendered by:**  **on May 21, 2013**

By authority of the Director of the Bureau of Development Services

**Decision mailed: May 23, 2013**

**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 March 29, 2013, and was determined to be complete on April 12, 2013.

*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 March 29, 2013.

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.

**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 June 6, 2013** 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. 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 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 **June 7, 2013**.
- 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.

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

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

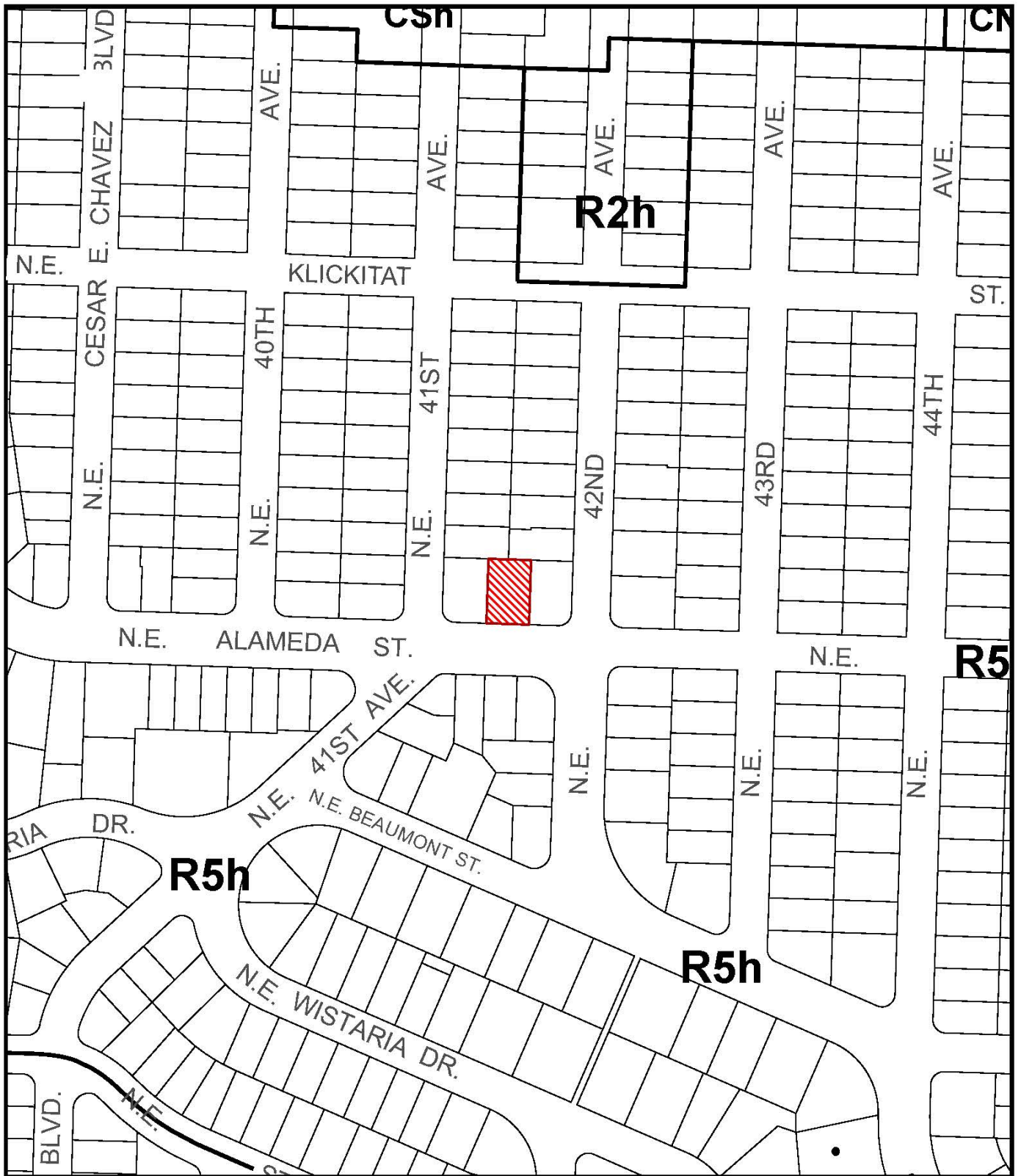
**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Applicants narrative
  2. Photos of site
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. Elevations (attached)
  3. Floor plan of ADU
- D. Notification information:

1. Mailing list dated 4/19/13
  2. Mailed notice dated 4/19/13
  3. Mailing notice dated 4/18/13 with incorrect site plan/zoning map
  4. Mailing listed dated 4/18/13 with incorrect site plan/zoning map
- E. Agency Responses:
1. Bureau of Environmental Services
  2. Bureau of Transportation Engineering and Development Review
  3. Water Bureau
  4. Fire Bureau
  5. Site Development Review Section of BDS
  6. Bureau of Parks, Forestry Division
  7. Life Safety
- F. Correspondence:
1. David N. Rianda, 4140 NE Alameda Portland, OR 97212
- G. Other:
1. Original LU Application
  2. Site History Research

**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



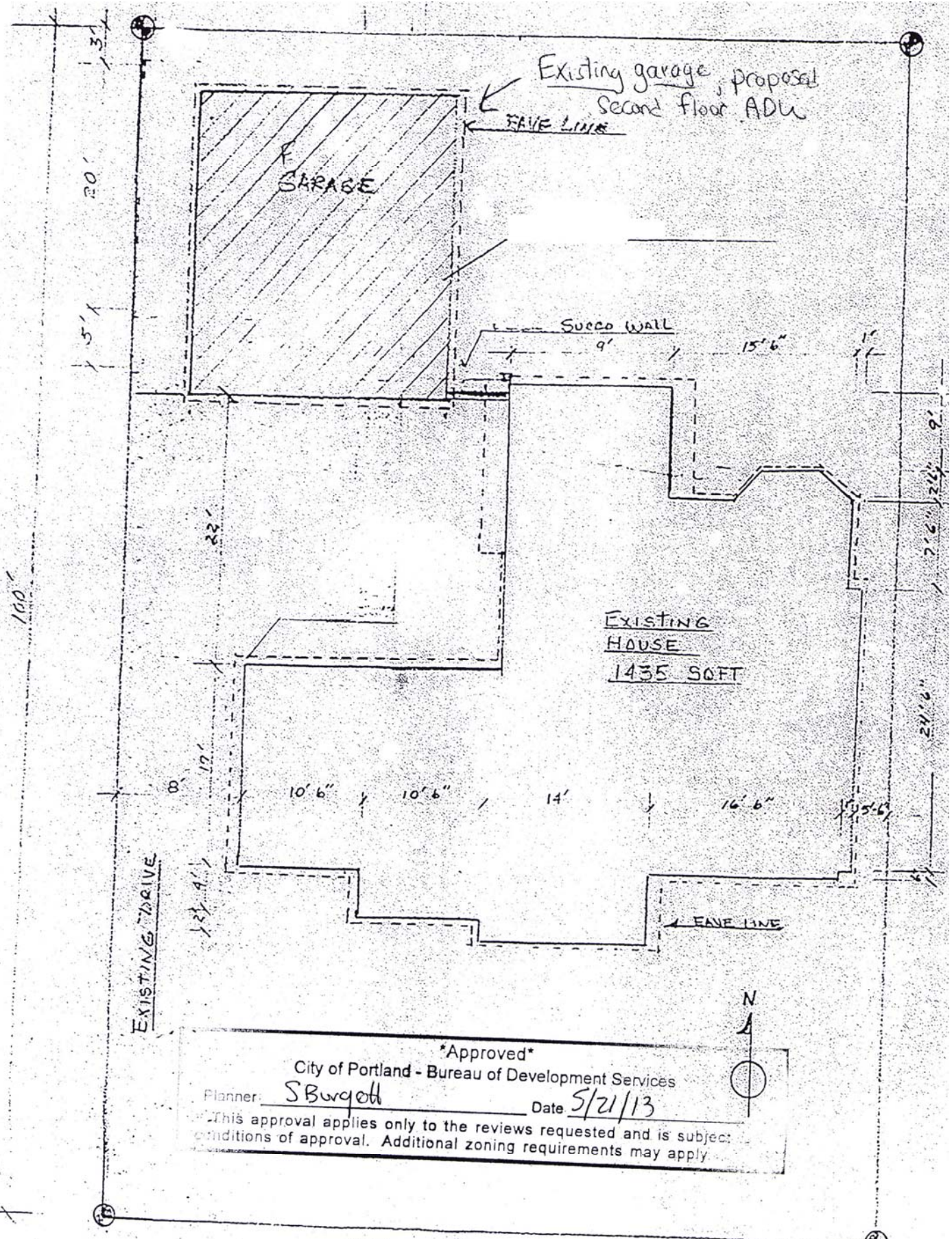
Site



NORTH

File No. LU 13-133943 AD  
 1/4 Section 2735  
 Scale 1 inch = 200 feet  
 State\_Id 1N2E30BB 9300  
 Exhibit B (Apr 08,2013)

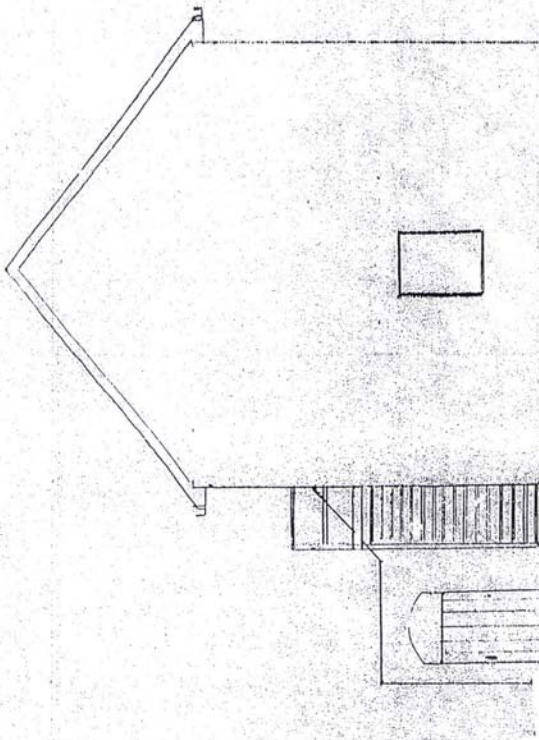




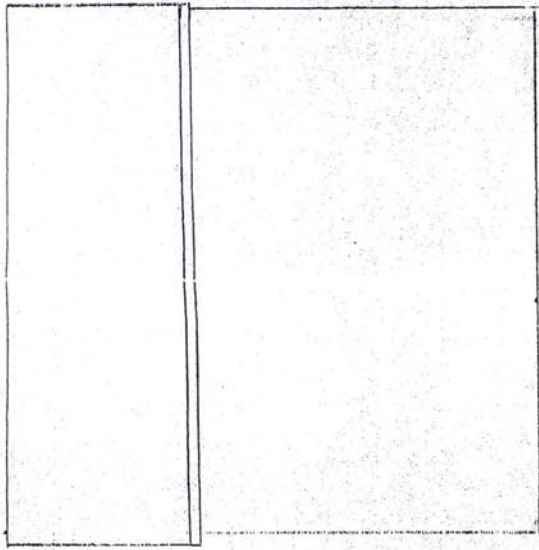
\*Approved\*  
City of Portland - Bureau of Development Services  
Planner: SBurgott Date 5/21/13  
This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.



Existing Detached Garage

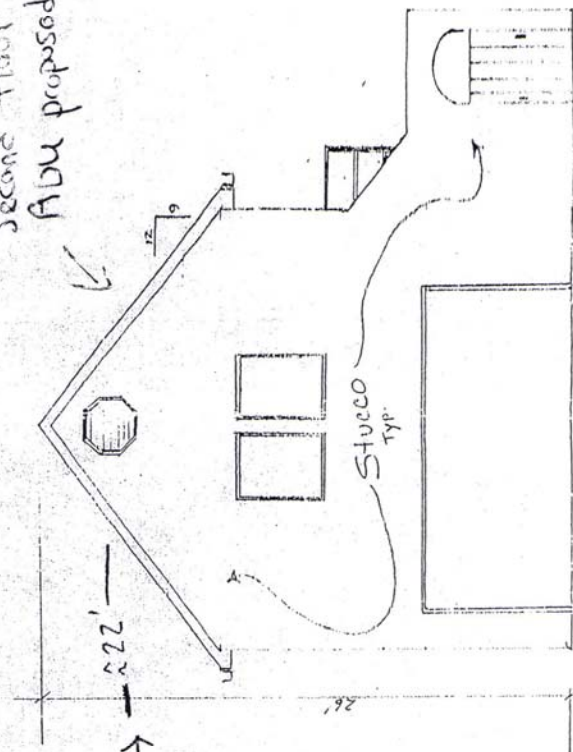


NORTH ELEV.

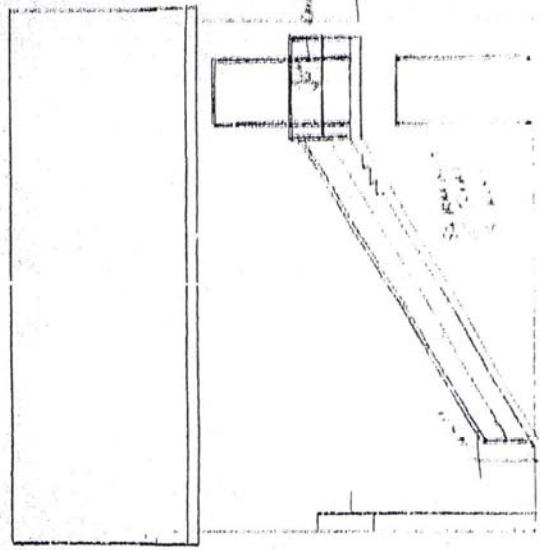


WEST ELEV.

Second floor  
ADU proposed



SOUTH ELEV.



EAST ELEV.

Adjustment  
to height

\*Approved\*

City of Portland - Bureau of Development Services

Planner S. Burchett Date 5/21/13

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

CASE NO. 13-133943  
EXHIBIT C-2