

City of Portland, Oregon

Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

Date: March 21, 2014 **To:** Interested Person

From: Amanda Rhoads, Land Use Services

503-823-7837 / Amanda.Rhoads@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 14-104427 AD

GENERAL INFORMATION

Applicant: Stephen Smith/Design Build Portland

1333 NE 47th Ave/Portland, OR 97213

Owners: Jennifer and Marshall Willis/4529 NE 14th Pl/Portland, OR 97211-5017

Site Address: 4529 NE 14TH PL

Legal Description: BLOCK 66 LOT 3, VERNON

Tax Account No.: R860712740 **State ID No.:** 1N1E23AC 25300

Quarter Section: 2532

Neighborhood: Sabin Community Assoc., contact Rachel Lee at 503-964-8417.

Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321. **District Coalition:** Northeast Coalition of Neighborhoods, contact Claire Adamsick at 503-

388-9030.

Plan District: None

Zoning: R5ah – Residential 5,000 with Alternative Design Density "a" Overlay

Zone and Aircraft Landing "h" Overlay Zone.

Case Type: AD – Adjustment Review

Procedure: Type II, an administrative decision with appeal to the Adjustment

Committee.

Proposal:

The applicant proposes to add onto an existing garage and convert it into an Accessory Dwelling Unit (ADU). The garage is legally located within the minimum required five-foot north side setback at 1 foot from the property line with eaves at 0 feet.

With the additions, the structure will be 34 feet long on the side of the building in the setback, and be located one foot from the property line. A two-story addition makes the structure 16.5 feet tall. The two-story portion will be located outside the required side setback. The roof pitch, window proportions, trim and siding reveal will all match the primary house on the site as per ADU requirements. The ADU is proposed to have 446 square feet of living space. The existing house is 1,522 square feet, so the ADU has approximately 29% of the square footage of the primary house, well below the allowed 75% maximum.

The applicant requests an Adjustment to Zoning Code Section 33.110.220.B to allow the ADU to be located 1 foot from the north property line (extending 4 feet into the required 5-foot setback) with eaves at the property line (extending 5 feet into the required 5-foot setback).

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. 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 5,450 square foot site is located on the west side of NE 14th Place, just between NE Prescott and NE Going Street. The site is developed with a one-and-a-half-story, single-dwelling home originally built in 1927. As with several other homes on the street, there is a slight slope up to the house, with 9 steps leading up from the street to the front door. The site has an existing detached, one-car garage with a gable roof located in the northwest corner of the site. The garage has a driveway leading back to it on the north side of the site. The site has a six-foot-tall sight-obscuring fence around the sides and back, going up to edges of the existing garage.

Within 200 feet of the subject site, development is a mix of residential and commercial uses. To the north, east, and west development is mixed single- and multi-dwelling residential. To the south, development is a mix of residential and commercial/retail.

Zoning: Zoning for the site is Residential 5,000 (R5) with Alternative Design Density "a" Overlay Zone and Aircraft Landing "h" Overlay Zone.

The R5 single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 5,000 square feet of site area.

The "a" overlay is in place 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 concept for the zone is to allow increased density for development that meets additional design compatibility requirements. The applicant is not using provisions of the "a" overlay.

The "h" overlay provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. This overlay is not applicable to residential zones, where base zone standards for height apply instead.

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 **February 20, 2014**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services;
- Water Bureau;
- Fire Bureau:
- Site Development Section of BDS;
- Bureau of Transportation:
- · Bureau of Parks-Forestry Division; and
- Life Safety (Building Code) Plans Examiner.

Neighborhood Review: One written response has been received from the Chair of the Land Use and Transportation Committee of the Sabin Community Association. The letter was neutral but pointed out that the addition brings the accessory structure much closer to the primary house and that the Fire Department should be consulted about whether the proposal maintains enough separation between structures for fire protection and access. The second observation related to the impact that increasing the length of the accessory structure would have on the neighbor to the north and their light.

Staff response: The Fire Bureau had no concerns about the proposal (Exhibit E.4). The other comment will be addressed in the approval criteria findings below.

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: There are two parts of the code that are relevant and provide purpose statements regarding accessory structures and minimum required setbacks. The first is from the Zoning Code Section on Accessory Structures, 33.110.250:

33.110.250, Accessory Structures

<u>Purpose</u>: This section regulates structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards provide for necessary access around structures, help maintain privacy to abutting lots, and maintain open front setbacks.

The second relevant purpose statement is Zoning Code Section 33.110.220, Setbacks:

33.110.220 Setbacks

Purpose: The building setback regulations serve several purposes:

- They maintain light, air, separation for fire protection, and access for fire fighting;
- They reflect the general building scale and placement of houses in the City's neighborhoods;
- They promote a reasonable physical relationship between residences;
- They promote options for privacy for neighboring properties;
- They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;
- They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and

• They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.

Each of the purpose statements from the two sections will be addressed separately.

• This section regulates structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site.

Findings: The proposed Accessory Dwelling Unit (ADU) will be located entirely behind the primary house on the site. The closest point of the ADU will be 64 feet back from the front property line. The ADU is proposed to contain 600 square feet, which includes 154 square feet of storage in the loft that does not qualify as living space, compared to the primary house square footage of 1,522. The ADU will be 16.5 feet high in the area of the loft, but the loft area will be largely invisible from the street since it sits behind the primary house. The rest of the accessory structure will maintain the existing height of the garage, which is 12 feet. The primary house has a height of 13.5 feet, and with its roof oriented the opposite direction from the garage, it gives the appearance from the street of having significantly more mass than the garage. Given the differences between the two structures in size, location and height, it is clear that even with the Adjustment for the setback, the ADU will continue to appear incidental to the primary house on the site.

- The standards provide for necessary access around structures;
- They maintain light, air, separation for fire protection, and access for fire fighting;

Findings: The proposed ADU will still allow light and air to circulate. There is no structure on the adjacent property to the north that would inhibit either airflow or access for firefighting. The home to the north is approximately 9 feet away from the property line, and is located further east on the property than the proposed ADU. On the subject site, the proposed ADU will be separated from the corner of the primary house by 4 feet (and further at all other points) which ensures enough room for access to all points of the primary house and ADU.

The proposal does call for an extension of the existing garage wall by some 11 feet, located 1 foot from the north property line. This could potentially block light to the property to the north; however, in this circumstance, the effect would be minimal. The subject site already has a 6-foot-tall fence along the north property line. The garage wall will be only 3.5 feet taller in this area, with the gable sloping up to 12 feet at 5 feet from the property line. Given that the ADU height limit is 18 feet and is allowed by right to be built at this height 5 feet from the property line (and other accessory structures are allowed to be built to the height limit of the base zone, in this case, 30 feet), the proposed height of this structure maintains reasonable light and air for the adjacent property.

- They reflect the general building scale and placement of houses in the City's neighborhoods;
- They promote a reasonable physical relationship between residences;

Findings: The garage/ADU structure is not technically considered a house under the Portland Zoning Code, which defines a house as "a detached dwelling unit located on its own lot." However, in the immediate neighborhood, there are other examples of garages and even dwelling units built up to or close to the side or rear property lines. In fact, directly behind the existing garage there is a backyard dwelling unit which is in addition to the primary house on that site. This dwelling unit has a much larger footprint than the existing garage on the subject site and is more in scale with the proposed garage/ADU. This adjacent example of a similar use puts the proposal in context with the immediate neighborhood.

Furthermore, the proposed expansion will go largely unnoticed from the street. The structure will be located 12 feet closer to the street, but will appear the same height/scale as the existing garage. The second story of the ADU will be built in the center of the backyard, behind the primary house, and will not be visible from the street. Since the proposal does not move the structure into the rear setback, it will maintain a reasonable physical relationship with the existing dwelling unit in the backyard of the property behind the subject site. The proposed structure will not be built next to the property to the north since that house is generally in line with the subject site's primary house. Therefore, there will be no impact to the relationship of adjacent residences.

- The standards ... help maintain privacy to abutting lots;
- They promote options for privacy for neighboring properties;

Findings: The proposal most directly affects the property to the north, since it is in the north side setback that the building is to be converted and expanded. While the garage will be converted to a living unit, this conversion will not result in decreased privacy for the adjacent property. To mitigate any impacts to the northern neighbor, the proposal calls for no windows on the north side. One small window is proposed for the loft area of the ADU, which would be located 7 feet from the north property line and therefore outside the setback. However, this loft area is not livable space and will be used only for storage with no permanent stairs for access, so will not provide views into the neighboring backyard from active living space.

- The standards ... maintain open front setbacks.
- They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;

Findings: All of the work is proposed for the rear yard and does not impact the front yard. These purpose statements are not relevant.

• 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

Findings: The proposed ADU meets all other design standards for ADUs. Because of the placement of the structures and the ample size of the lot (50 feet by 109 feet), the buildings will fit the site. It is not unusual in this area to have garages in the setbacks, and there is another example immediately behind the site of another backyard living unit. The development leaves room for a sufficient outdoor area – an area 48 feet by 24 feet is left in the southwest part of the backyard, and other areas in the front and rear yards remain. Finally, the ADU including the storage area above will be approximately 600 square feet, significantly smaller than the existing house at 1,522 square feet, meaning the proposed ADU will remain compatible with other accessory structures in the neighborhood.

• They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.

Findings: After the conversion, the driveway will remain about 64 feet long, which is more than sufficient to park a car outside of the 10-foot front setback.

Therefore, because the proposed ADU has no windows on the north side of the building that is within the setback, does not increase height within the setback, does not compromise privacy or the building scale and placement of structures, will largely be unnoticed from the street and is significantly smaller than the primary

house, the Adjustment request equally meets the purpose of the setback standards. For these reasons, *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: As stated above, there will be little change in the appearance of the accessory structure after conversion. The garage door will be replaced with a window and door 12 feet closer to the street. The loft area will be largely invisible from the street. A 6-foot fence around much of the property, a street tree and extensive foliage at each of the adjacent neighbors' homes will minimize the visibility of the expansion, meaning the proposal will not significantly detract from the appearance of the area.

Livability will not be compromised if this Adjustment is granted. The existing garage is already located close to the north property line, with a 6-foot-tall fence separating the subject site and the property to the north. The proposal does call for expanding this wall by 12 feet, but no windows will be located on the north side, meaning privacy will not be impacted. The fence will remain along the rest of the length of the property line, so the impact for that 12 feet is simply a wall 3 feet higher than the existing fence. This expansion will not impact the livability 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: Only one adjustment is requested. 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 stated above, the north elevation will have no window openings in the area of the setback; the only window at all will be outside the setback, and will open only to storage space. The entire loft area is also located outside the setback. The existing 6-foot-tall fence will remain.

This criterion is met.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

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 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

This proposal would extend an existing building line 1 foot from the property line for a conversion of a one-car garage into an Accessory Dwelling Unit. There would be no height increase within the setback, no windows on the north elevation in the setback, and the conversion would have limited visibility from the street. No neighbors wrote in opposition to the proposal. The proposal meets the approval criteria and thus should be approved.

ADMINISTRATIVE DECISION

Approval of Adjustment to the side setback standard, Zoning Code Section 33.110.220.B, to allow the ADU to be located 1 foot from the north (si de) property line, with eaves at the property line, for a conversion and expansion of an existing one-car garage to an Accessory Dwelling Unit, per the approved site plans, Exhibits C.1 through C.3, signed and dated March 19, 2014, subject to the following conditions:

A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 14-104427 AD."

Staff Planner: Amanda Rhoads

Decision rendered by:

By authority of the Director of the Bureau of Development Services

On (March 19, 2014.)

Decision mailed: March 21, 2014

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 14, 2014, and was determined to be complete on February 13, 2014.

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 14, 2014.

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 14, 2014.**

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 April 4, 2014** 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.

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 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 April 7, 2014 (the 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

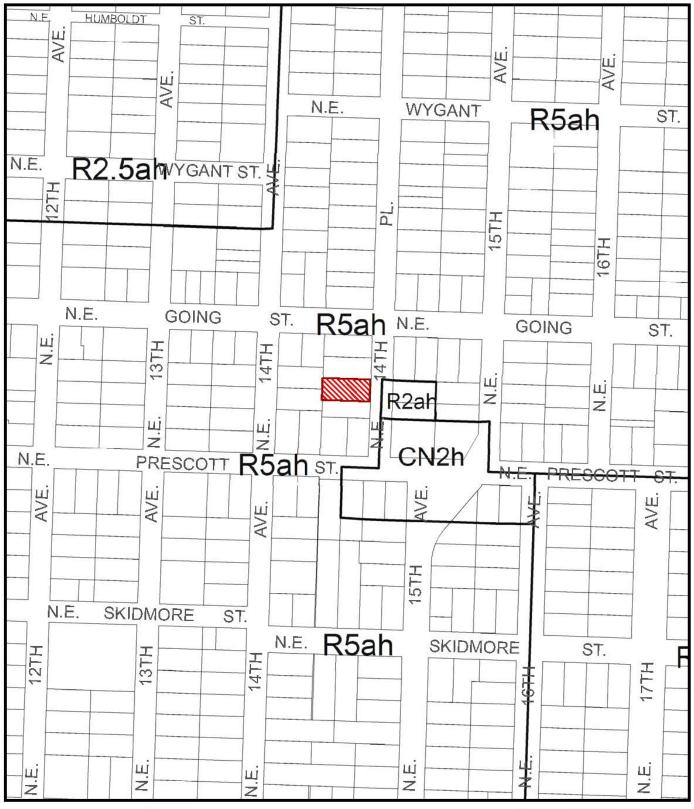
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant narrative, submitted with application
 - 2. Response to incomplete letter, January 27, 2014
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. ADU Elevations (attached)
 - 3. Street-Facing Façade (attached)
 - 4. ADU First Floor Plan
 - 5. ADU Loft Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety (Building Code) Plans Examiner
- F. Correspondence:
- 1. Rachel Lee, Chair, Sabin Land Use and Transportation Committee, March 6, 2014, neutral with comments

G. Other:

- 1. Original LU Application
- 2. Incomplete Letter, January 27, 2014

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



File No. LU 14-104427 AD

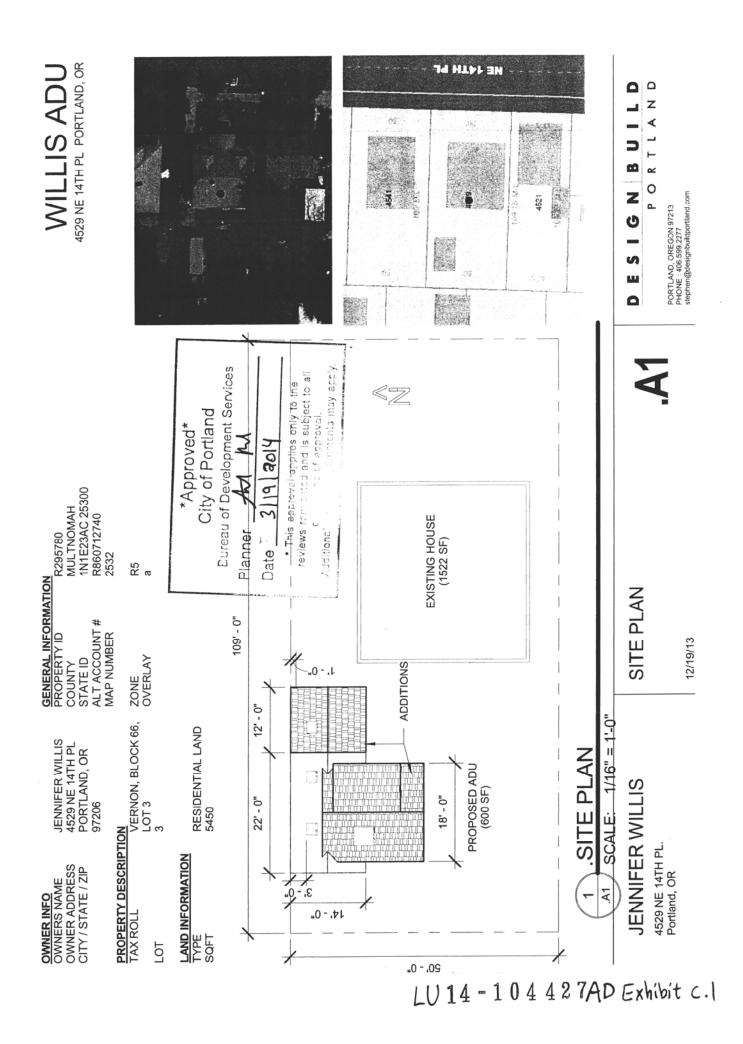
1/4 Section 2532

Scale 1 inch = 200 feet

State_Id 1N1E23AC 25300

Exhibit B (Jan 15,2014)





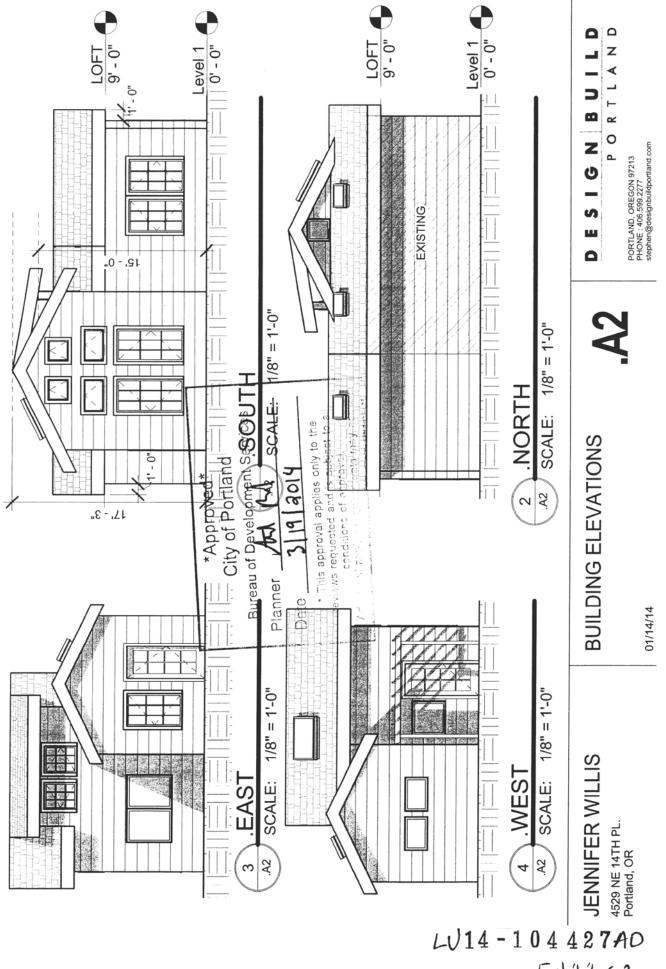
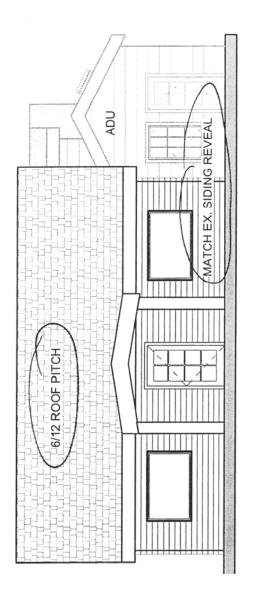


Exhibit C.2





MAIN HOUSE

1/8" = 1'-0"SCALE: .A5

PITCH - 6/12 ADU TO MATCH ROOF

REVEAL TO MATCH PAINTED LAP SIDING - WOOD SIDING

WINDOWS

(2) LARGE FIXED WINDOWS ON FRONT DOUBLE HUNG TYP ON SIDES AND REAR SMALL WINDOWS AT DORMER

1.TYP ON HOUSE ADU TO MATCH EAVES

EXISTING HOUSE

4529 NE 14TH PL. Portland, OR

JENNIFER WILLIS

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PORTLAN

PORTLAND, OREGON 97283 ASE NO. Lu 14-104497 AD PHONE: 406.599.2277 stephen@designbuildportlang-graphBIT C.5

02/06/14