



**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 1, 2015  
**To:** Interested Person  
**From:** Matt Wickstrom, Land Use Services  
503-823-6825 / [Matt.Wickstrom@portlandoregon.gov](mailto:Matt.Wickstrom@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, including the written response to the approval criteria and to public comments received on this application, 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 15-129776 AD**

#### **GENERAL INFORMATION**

**Applicant:** Laura Migliori, Architect  
812 NW 17<sup>th</sup> / Portland, OR 97209

**Owners:** Brooke Reckett and Jeff Campbell  
2237 NE Regents Dr / Portland, OR 97212-1459

**Site Address:** 2237 NE REGENTS DR

**Legal Description:** BLOCK 7 LOT 1&2, HOMEDALE  
**Tax Account No.:** R399901970  
**State ID No.:** 1N1E23DD 17400  
**Quarter Section:** 2632

**Neighborhood:** Alameda, contact Jim Brown at 503-284-6455  
**Business District:** North-Northeast Business Assoc, contact Joice Taylor at 503-841-5032  
**District Coalition:** Northeast Coalition of Neighborhoods, contact [info@necoalition.org](mailto:info@necoalition.org)

**Zoning:** R5ah (Residential 5,000 with an Alternative Design Density Overlay Zone and an Aircraft Landing Zone overlay)

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

#### **Proposal:**

The property owners wish to demolish the existing detached garage at this site and construct a new two-car garage with and second story accessory dwelling unit (ADU). In order to ensure that ADUs match the primary house and remain secondary to a site, the Portland Zoning Code includes several regulations. One requires that the roof pitch of the ADU match the roof pitch of the house. In this instance due to the steep roof pitch of the house and the desire for a

second story ADU, the roof pitch causes the proposed ADU to exceed the 18-foot height limit by 4 feet. ADUs are also required to be located at least 6 feet behind the primary house or 60 feet from the front property line. In order to preserve backyard space for both the house and the ADU, the property owners propose for the ADU to be set back between 42 and 51 feet from NE Regents Drive (the front property line). In association with plans to construct an ADU, the applicant requests two Adjustments. The first is to increase the maximum height of the ADU from 18 feet to 22 feet and the second is to decrease the required setback from 60 feet from the front property line to 42 feet.

**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 9,700 square foot site is located at the northeast corner of NE Regents Drive and NE 23<sup>rd</sup> Avenue. It is developed with a large single-dwelling residence and detached garage accessed from NE Regents Drive. The surrounding vicinity, defined by this review as an area within 400 feet of the site, is developed with single-dwelling residences generally on 5,000 square foot lots.

**Zoning:** The site is zoned R5 (Residential 5,000). The R5 zone is intended to provide housing for single-dwelling residences on lots that average 5,000 square feet in area. ADUs are allowed by right on residentially zoned lots developed with a house, attached house or manufactured home.

**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 26, 2015**. The following Bureaus have responded:

The Bureau of Environmental Services responded with information on sanitary services and stormwater management. The response notes that the requested Adjustment does not appear to have an impact on stormwater disposal at this site (Exhibit E-1).

The Water Bureau responded with information on water service (Exhibit E-2).

The Portland Bureau of Transportation responded with information on how transportation requirements related to the Adjustment Review approval criteria (Exhibit E-3).

The Life Safety section of the Bureau of Development Services (BDS) responded with information on building code requirements (Exhibit E-4).

**Neighborhood Review:** A total of two written responses have been received from notified property owners in response to the Notice of Proposal.

The first neighbor who lives two blocks away responded that he does not support the proposal. The neighbor states that the proposal should meet the requirements of the Portland Zoning Code and no exceptions should be granted in this circumstance. The neighbor states that the garage and ADU should be rebuilt in the current location of the garage and if that were the case, he would not object to the proposal.

*Staff response: The Portland Zoning Code includes a mechanism for applicants to request to vary from development standards, in this case the height and location requirements for ADUs. The approval criteria for these types of requests do not address whether the applicant could*

*potentially meet the development standards by right, without the requested Adjustment; therefore these comments cannot be considered as part of this land use review.*

The second neighbors who live on NE 22<sup>nd</sup> Avenue and whose rear property line abuts the new back yard of the site, replied that in general they are supportive of the Adjustment request because it adheres to the approval criteria and is a pleasing design. Their concern is that with the removal of the existing garage and location of a new garage/ADU located closer to NE 23<sup>rd</sup> Avenue would create the potential for the property owners to plant large trees that shade the neighbors' backyard. The neighbors state they would object to the proposal unless conditions of approval are included that cap the mature height of trees in the property owners' backyard, cap the mature height of shrubs at 10 feet and verify this information through the Oregon Association of Nurseries.

*Staff response: The proposed location of the garage/ADU would allow for trees and shrubs to be planted in the new backyard area, adjacent to the neighbors' backyard; however, the proposal is not requiring the planting of large trees and shrubs. The Portland Tree Code will apply preservation and planting requirements as a result of the proposed development, but an existing large tree in the northeast corner of the site will likely satisfy these requirements, provided an arborist states that the tree can survive the construction that will occur partially within its root protection zone. If the tree needs to be removed (the applicant and property owners have to plans to remove the tree), replacement trees may need to be planted if other trees do not meet Tree Code regulations. In no case are the property owners required to plant large trees in locations that would shade the neighbors' backyard. The letter was forwarded to the property owners so they are aware of the neighbors' desire to keep large trees from shading their backyard.*

## **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:** The applicant requests two Adjustments. The first Adjustment request is to increase the maximum allowed height for the two-story garage/ADU structure from 18 feet to 22 feet. The second Adjustment Request is to reduce the setback of the proposed structure from 60 feet from the front property line to between 42 and 51 feet.

The purpose of the design standards for accessory dwelling units is found in 33.205.030, which states:

Purpose: Standards for creating accessory dwelling units address the following purposes:

- 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 proposed Adjustment to increase the maximum allowed height from 18 feet to 22 feet for the garage/ADU structure is consistent with this purpose statement.

The structure is compatible with the desired character of the single-dwelling residential zones. The Portland Zoning Code defines desired character as follows:

The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area."

In this location, the desired character is defined by the purpose statement of the single-dwelling residential zones. This purpose statement reads:

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 proposal is consistent with this purpose statement, it will preserve land for housing and to provide housing opportunities for individual households. In fact, the site is 9,700 square feet in size and could be divided and developed with two full-sized single dwelling homes that meet or exceed the 30-foot height limit in the R5 zone, as opposed to the request to increase the allowed height to 22 feet.

The proposed garage/ADU structure will not impact the livability of the residentially zoned area. As mentioned above, the site is large enough to divide and develop with two homes. The new home could meet the 30-foot height limit of the R5 zone. Therefore the impacts on livability associated with the height of the garage/ADU structure are negligible because a new full-sized single-dwelling home could be built on this portion of the site, and in this location. The placement of the proposed ADU on the lot, however, makes dividing this lot less likely, as the ADU sits in the middle of the open east portion of the site.

The garage/ADU structure is designed with minimal north facing windows so impacts on privacy are minimized. An existing evergreen tree that is proposed to remain is located between the garage/ADU structure and the lot to the north. The tree will provide screening between the lot and the garage/ADU. The garage/ADU structure is set back 22 feet from the lot to the north property line to accommodate the preservation of the tree. The applicant is advised to get an arborist report to document the tree can be preserved with development otherwise tree preservation and planting requirements may apply.

The applicant provided a drawing to show the building scale of the garage/ADU structure respects general building scale on the site and in the vicinity. The Portland Zoning Code regulations for ADUs require the roof pitch of an ADU to match the roof pitch of the house (primary structure) on the lot. When a 2-story ADU is proposed and the roof pitch of the house is as steep as the house at this site, this standard cannot be met and an Adjustment Review is required. The drawing shows that the ADU respects the building scale of the site. It measures 21 feet in height, whereas the house measures 25 feet in height. The height is also consistent with surrounding development. The proposed 22-foot height is mostly the result of the required roof pitch

which results in an attractive and complimenting design. The placement of the garage/ADU structure allows for sharing of common space on the lot such as driveways and yards.

The ADU is smaller than the house. It measures 800 square feet in floor area and the house measures 3,300 feet in floor area. The site is flat and topography is not a factor in the applicant's proposal.

Based on the information above, 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 proposal will not detract from the livability or appearance of the residential area. Livability was discussed above under Criterion A.

The garage/ADU structure is designed to compliment the house on the site. It has a steep roof, interesting window selection, attractive garage doors and pop-outs and other features that are visually interesting and tie the design of the structure to the house. The appearance and design are exceptional while also allowing the garage/ADU structure to appear as secondary to the house.

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:** Two Adjustments are requested. However, whether the Adjustment results in a project consistent with the R5 zone is discussed above under Criterion A.

This criterion is met.

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

**Findings:** No City-designated scenic or historic resources are located on this site; therefore, this criterion is not applicable.

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

**Findings:** There are no discernible impacts that would result from granting the requested adjustments. 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:** 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

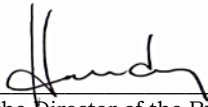
The applicant requests two Adjustments related to the proposed construction of a two-story structure on this site. The structure will contain a garage on the ground floor and an ADU on the second floor. The proposal meets the approval criteria for the requested Adjustments to ADU height and setback from the front property line. The lot is large enough to be divided to accommodate two houses and the garage/ADU structure is designed to compliment the home on the site. Based on this information and the findings above, the proposal meets the approval criteria and should be approved.

## ADMINISTRATIVE DECISION

Approval of two Adjustments. The first to increase maximum allowed height for a garage/ADU structure from 18 feet to 22 feet. The second to decrease the maximum ADU setback from the front property line from 60 feet to 42 feet, per the approved site plans, Exhibits C-1 through C-3, signed and dated April 28, 2015, 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-C.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 15-129776 AD."

**Staff Planner: Matt Wickstrom**

**Decision rendered by:**  **on April 28, 2015**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: April 30, 2015**

**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 6, 2015, and was determined to be complete on March 20, 2015.

*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 6, 2015.

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: July 17, 2015.**

**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 May 15, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> 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 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 **May 18, 2015 – (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.

**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.

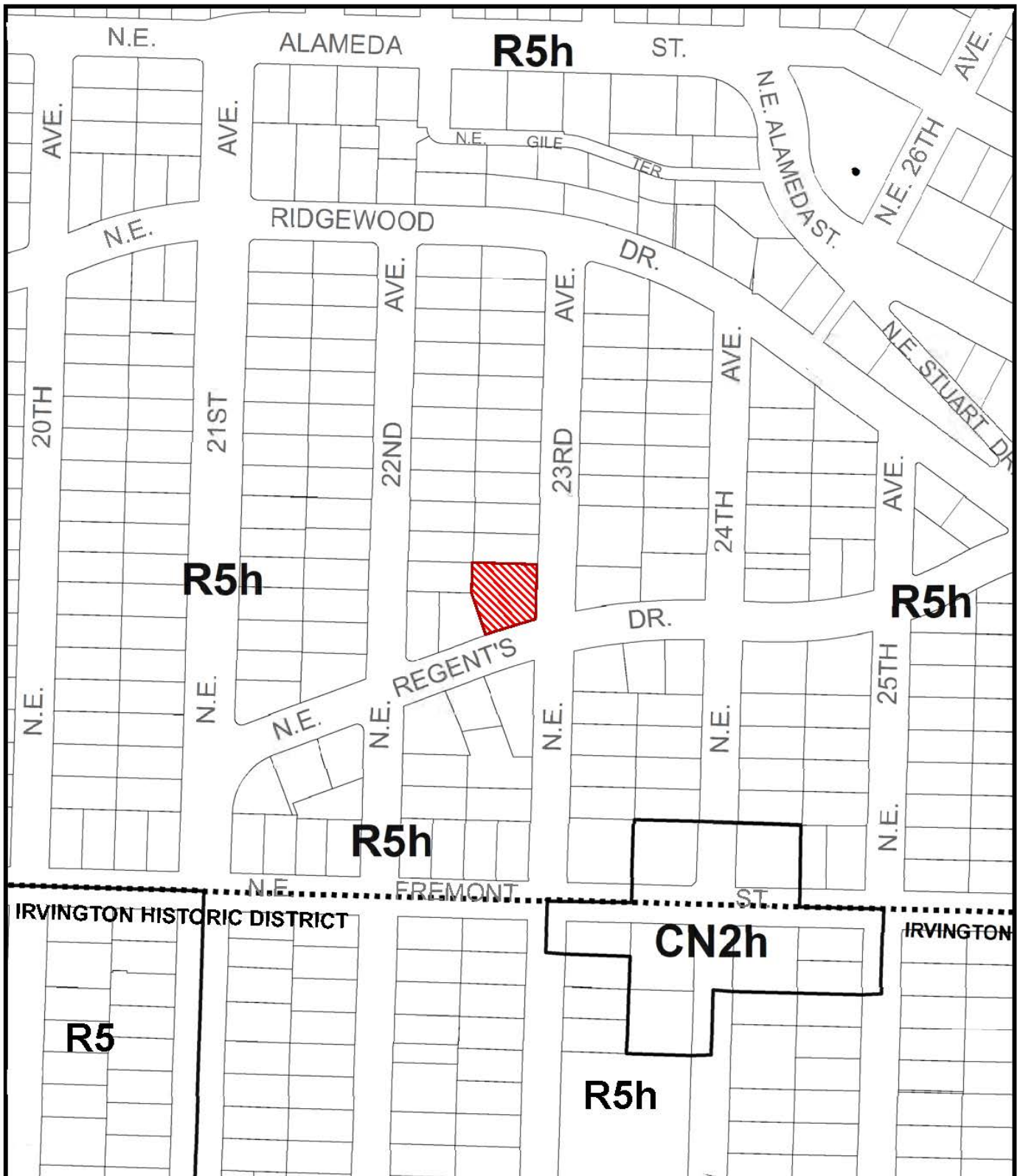
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's statement and original LU Application
  1. Incomplete letter from Matt Wickstrom to Laura Migliori dated March 18, 2015
  2. Revised submittal from Laura Migliori to Matt Wickstrom dated March 20, 2015
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. ADU Elevation Drawings (attached)
  3. Primary House and New Garage and ADU Elevation Drawings (attached)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Environmental Services
  2. Water Bureau
  3. Portland Bureau of Transportation
  4. Life Safety section of BDS
  5. Summary sheet of Bureau responses
- F. Correspondence:
  1. Dave Johnson, April 15, 2015, project should meet Portland Zoning Code requirements
  2. Matt and Michelle Lancaster, April 15, 2015, support but with concerns that trees could be planted that shade backyard

**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).**



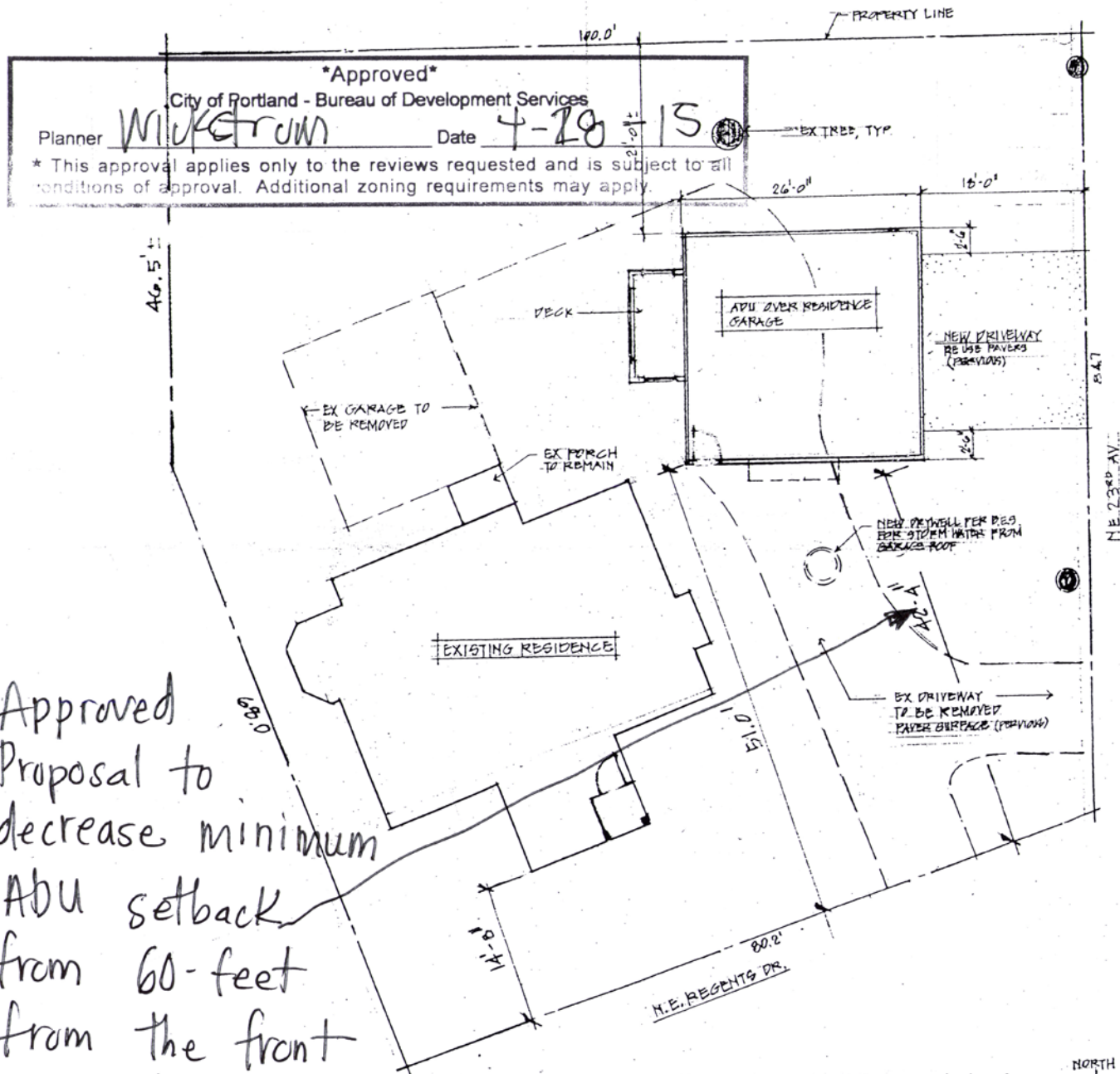


# ZONING



File No.	<u>LU 15-129776 AD</u>
1/4 Section	<u>2632</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N1E23DD 17400</u>
Exhibit	<u>B (Mar 10, 2015)</u>

Approved  
Proposal to demolish existing garage +  
replace it with new 2-car garage and  
second story ADU



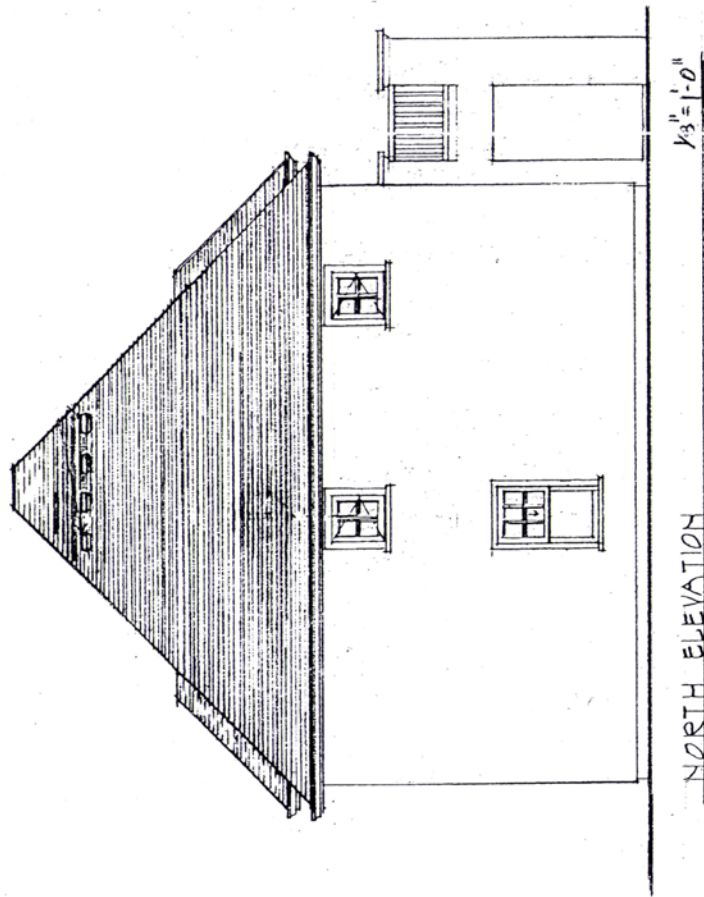
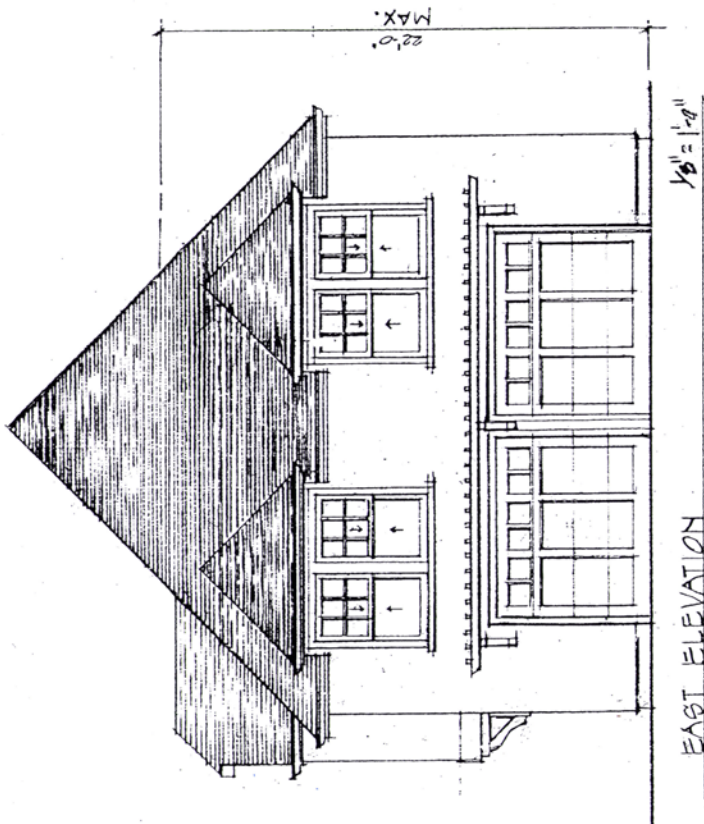
Approved  
Proposal to  
decrease minimum  
ABU setback  
from 60-feet  
from the front  
property  
line to  
42 feet.

SITE PLAN  
BECKETT/CAMPBELL GARAGE AND ADJ  
2237 NE REGENTS DRIVE

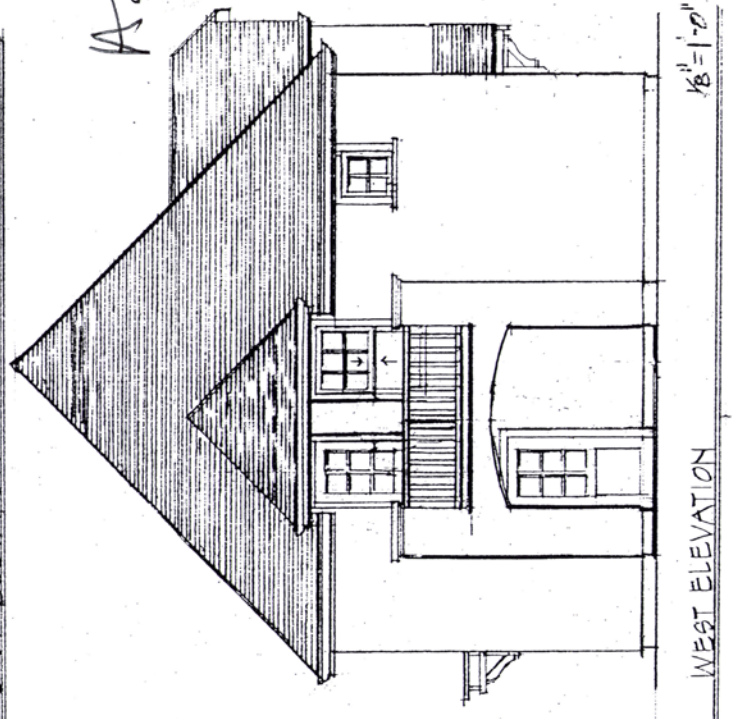
$V_{K''} = 1.0$

Exhibit C-1

W 15-129776-AD



Approved Proposal to increase maximum allowed height of ADU from 18 feet to 22 feet.



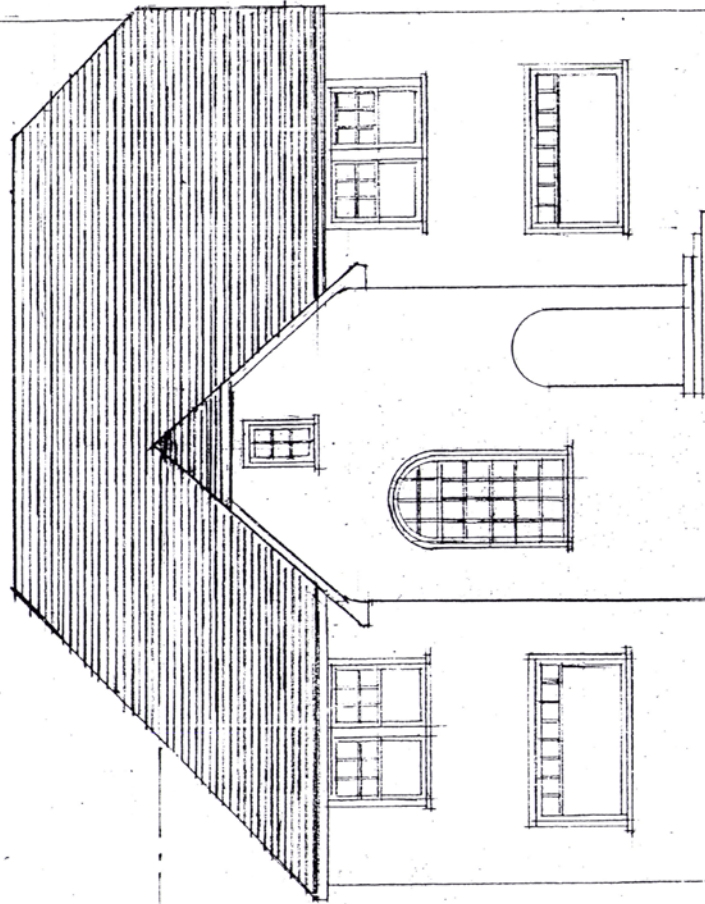
\*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner Wickstrom Date 4-28-15  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

BECKETT/CAMPBELL GARAGE & ADU  
 2237 NE REGENTS DRIVE W 15-129776-AD

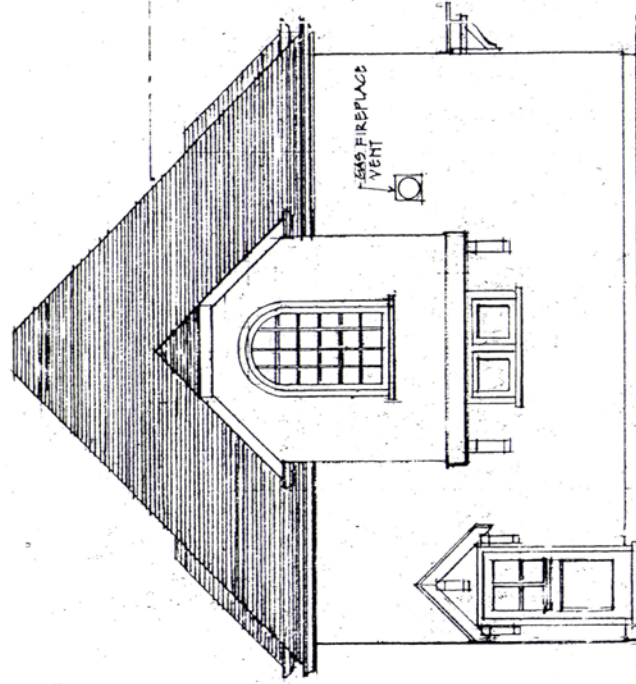


ADU in comparison to primary house

\*Approved\*  
City of Portland - Bureau of Development Services  
Planner Wickstrom Date 4-29-15  
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



EXISTING RESIDENCE



NEW GARAGE AND ADU

SOUTH ELEVATION

1/8" = 1'-0"

6415-129776-AD

Exhibit C-3