



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

1900 SW 4th Avenue, Suite 5000 Portland, Oregon 97201 503-823-7300 Fax 503-823-5630 TTY 503-823-6868 www.portlandonline.com/bds

Date: January 12, 2009 To: Interested Person

Matt Wickstrom, Land Use Services From:

503-823-7840 / WickstromM@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 08-175233 AD

GENERAL INFORMATION

Applicant/Owner: James Thompson

3718 NE 33rd Ave

Portland, OR 97212-1752

Site Address: 3718 NE 33RD AVE

Legal Description: LOT 1&2 BLOCK 1, WILSHIRE

Tax Account No.: R919000010 State ID No.: 1N1E24DC 13400

Quarter Section: 2634

Neighborhood: Beaumont-Wilshire, contact Michael Rounds at 503-936-0740 **Business District:** North-Northeast Business Assoc, contact Joyce Taylor at

503-445-1321

District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156

R5h (Residential 5,000 with an Aircraft Landing Zone overlay) Zoning:

Case Type: AD (Adjustment)

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

Committee.

Proposal:

The applicant requests one Adjustment in association with plans to enlarge an existing accessory dwelling unit (ADU). An ADU is a separate independent dwelling unit with its own cooking facilities which is located on a site with a larger primary residence. The current ADU at this site consists of a small one-bedroom and one-bathroom apartment within a 2-story detached garage structure. The applicant plans to remove some internal area devoted to the garage/workshop, make improvements to the second-story storage area and convert it to living area for the ADU in order to increase its size to a two-bedroom, two-bathroom apartment. No exterior changes are proposed to the structure with the exception of increasing the size of two windows and adding another window and an exterior door. The Portland Zoning Code limits

the size of ADUs to 33 percent of the living area of the main house or 800 square feet, whichever is less. The ADU proposed by the applicant is 1,022 square feet in area. The applicant proposes one Adjustment to increase the maximum size of the ADU from 800 square feet to 1022 square feet and 35 percent of the living area of the house.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of 33.805.040 A-F, Adjustments.

ANALYSIS

Site and Vicinity: The 10,900 square foot site is located at the corner of NE 33rd Avenue and NE Bryce Street. The site has 128 feet of frontage along NE Bryce Street and 111 feet of frontage along NE 33rd Avenue. The site is composed of two lots of record and is developed with a two-story single-dwelling residence and a two-story garage/accessory dwelling unit structure. The garage is accessed from NE Bryce Street. An approximately 6-foot tall hedge is growing along the NE Bryce Street frontage and along the east property line between the accessory structure and the neighboring house. Homes in the area are primarily single-dwelling residences. Most homes have single-car attached or detached garages. On-street parking is possible on both sides of NE Bryce Street however, parking along NE 33rd Avenue, although it may be legal, appears problematic due to the amount of traffic on that street.

Zoning: The site is zoned R5h. The R5 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. The "h" overlay limits the height of structures and vegetation in the vicinity of the Portland International Airport. The "h" overlay does not apply to this proposal.

Land Use History: City records indicate that prior land use reviews include the following:

<u>VZ 173-90 (90-032509)</u> – Approval of a 1990 request to increase the height of hedges along both street frontages to 6 feet.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **November 24, 2008**. The following Bureaus have responded:

- The Site Development and Life Safety Sections of BDS, the Bureau of Environmental Services as well as the Parks and Fire Bureaus responded with no concerns (Exhibit E-1).
- The Water Bureau responded with no concerns and stated that the existing 1-inch metered service from the 8-inch main in NE $33^{\rm rd}$ Avenue appears to be adequate to serve the existing house and dwelling unit (Exhibit E-2)
- The Development Review Section of Portland Transportation responded with no objections and stated that the site is 85 feet from service provided by Tri-Met and therefore the Zoning Code does not require on-site parking (Exhibit E-3).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 24, 2008. A total of four written responses have been received from notified property owners in response to the proposal. The letters mentioned a range of concerns with the proposal with the common theme being the availability of on-street parking and the potential that the proposal may negatively impact that availability. Several letters commented that the residents of the site do not use the existing two-car garage or driveway and that another driveway on the site has been eliminated and replaced with shrubs. A couple letters mentioned a utility trailer which is sometimes parked on the street as well as communications between the applicant and neighbors about a desire for homeowners to be able to park on the street in front of their own homes. Two letters mentioned safety concerns, one with regards to the potential for a collision when a car turns from NE 33rd Avenue onto NE Bryce Street, the other with regards to difficulty backing out of a driveway when cars are parked on the street but too close to the driveway. A

couple letters mentioned concerns about barking dogs. One letter stated that the proposal does not meet the approval criteria and one requested that the Adjustment be denied because the current regulations were put in place for a reason.

Staff response: Issues related to the availability of on-street parking are addressed as part of the findings of this land use review. The applicant's use or lack of use of the existing driveway and garage are not discussed as part of the findings because on-site parking is not required in this location due to the proximity of the site to frequent bus service. Utility trailers are not allowed to be parked on the street and must be parked on-site – the applicant has been informed of this requirement. Concerns that neighbors may not be able to park on the street in front of their own home are not addressed as part of the findings because, as one letter stated, "street parking is for public use". However, if on-street parking in front of one's home is necessary for reasons of a disability, the resident may apply for an on-street handicapped parking space through the Bureau of Transportation (503-823-5185). The safety concerns mentioned by the neighbors are not addressed as part of this land use review because these situations would be present with or without the Adjustment request and the Bureau of Transportation responded to the proposal with "no concerns". General concerns about noise are addressed as part of the findings of this review; however, specific concerns about barking dogs should be directed to Multnomah County (http://www.co.multnomah.or.us/dbcs/pets/). One letter stated that the proposal should be denied because the Zoning regulations were in place when the applicant bought the house and altering the regulations violates the "countless hours, deliberation and thought that is the foundation of the existing law". This point will not be addressed as part of this land use review as the Zoning Code was created with an explicit option for individuals to pursue an Adjustment Review if they feel their proposal equally or better meets the purpose of the regulation and this option applies to regulations related to accessory dwelling units.

ZONING CODE APPROVAL CRITERIA

Title 33.805.10 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 code's regulations would preclude all use of the site. Adjustment reviews provide flexibility for unusual situations and to 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.

33.805.40 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 are met.

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The applicant requests one Adjustment to increase the maximum allowed size of the existing accessory dwelling unit (ADU) from 800 square feet to 1,022 square feet and 35 percent of the living area of the house. The purpose of the ADU regulations is listed below:

Purpose 33.205.030 Accessory Dwelling Unit Design Standards

Standards for crating 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 house, or manufactured homes; and
- Provide adequate flexibility to site buildings so that they fit the topography of sites.

When evaluating the proposal to increase the size of the ADU beyond the size allowed by right, it is first important to consider the characteristics of the site. This site is 10,900 square feet in area and located in the R5 zone which allows a maximum density of one-unit per 5,000 square feet of site area. This site is also already platted as two separate lots. Based on this information, the applicant could theoretically create two separate buildable lots through an administrative Lot Confirmation and Property Line Adjustment process. If the two lots were of equal size, each would be 5,450 square feet in area. It is then necessary to consider the size of home which could be built on a 5,450 square foot lot. A lot of this size is allowed a maximum building coverage (footprint) of 2,317 square feet. Assume the house was two stories and a total of 4,634 square feet of floor area (livable space) could be constructed. This 4,634 square feet of floor area is significantly more than the 1,022 square feet of floor area requested as part of this Adjustment Review. Considering that two full-sized homes could be constructed on this site, the proposal to increase the maximum size of the ADU from 800 square feet to 1,022 square feet is compatible with the desired character of the R5 zone.

The proposal also respects the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards. In fact, the proposal doesn't change the footprint of the garage and ADU structure at all. As far as exterior changes are concerned, only one additional window and an additional door are proposed to be added to the structure. The project continues to allow both the home and the ADU to share use of the driveway and garage as well as yard area. The proposed 1,022 square foot size of the ADU is still considerably less than the 2,894 square foot size of the existing house on the site.

Letters received from neighbors expressed concerns that the proposal could negatively impact the livability of the area, primarily neighbors mentioned that the availability of on-street parking would be negatively impacted. When evaluating impacts to the livability of an area, it is important to compare the proposal with development which would be allowed by right. The Zoning Code does not require on-site parking for ADU's although it also limits the size of ADU's to 800 square feet which presumably limits the number of vehicles associated with the unit. However, the Zoning Code also states that no on-site parking is required for sites within 500 feet of frequent transit service. In this case, the site is within 500 feet of two bus lines (the 10 and the 33) both of which in combination provide frequent transit service. Therefore, no on-site parking is required for either the existing home or the ADU and all vehicle parking could potentially occur on-street. Based on this information, it would be difficult to state that livability would be negatively impacted as a result of the proposal when on-site parking is not required in this location regardless of whether a land use review is requested.

It is also important to note that the site has approximately 128 feet of frontage along NE Bryce Street. Assuming that vehicles should not park within about 25 feet of an intersection and the existing driveway occupies 24 feet of the NE Bryce Street frontage and this driveway is 5 feet from the south property line, approximately 74 feet of frontage along NE Bryce Street is available for on-street vehicle parking in front of the applicant's house and the garage/ADU structure. The Zoning Code considers the average vehicle length to be 18 feet. Based on this information, the applicant has a total of 4 on-street parking spaces located in front of their house on NE Bryce Street. Add these 4 spaces to the 2 potential spaces in the applicant's garage and the 2 spaces in the applicant's driveway and a total of 8 parking spaces are easily accessible for this site. Therefore, regardless of whether the applicants or their tenants choose to park on-site or on NE Bryce Street in front of their own property, it would be difficult to state that the proposal to increase the maximum allowed size of the ADU will have significantly negative impacts on the availability of parking for the neighborhood. Furthermore, Portland Transportation reviewed the proposal and responded with no concerns. Generally speaking their review considers potential impacts on the availability of on-street parking.

Other concerns expressed by neighbors included that of noise; however, once again, it is not possible to directly associate the negative impacts of noise to the proposal to increase the maximum allowed size of the ADU from 800 square feet to 1,022 square feet. The City of Portland has a noise ordinance in place to limit the negative impacts of noise in residential neighborhoods, especially after 10 PM at night. Furthermore, Multnomah County has regulations which pertain to noise associated with barking dogs. When two full-sized homes could potentially be built on this site, it would be difficult to state that enlarging the ADU so that it is 222 square feet over the size limit would create substantial negative impacts.

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 significantly detract from the livability or appearance of the residential area.

Livability: Issues related to livability are largely addressed under Criterion A. The availability of on-street parking may decrease as a result of the proposal. However, considering that no onsite parking is required for the house or the ADU and a considerable amount of easily accessible parking is available, negative impacts associated with the availability of on-street parking cannot be substantiated. Furthermore, two full-sized homes could potentially be built on this site and these homes would presumably have greater impacts with regards to noise and on-street parking than the proposal. Privacy is also of concern when discussing livability. The neighbor whose privacy would primarily be affected by the proposal lives to the south of the site. The existing garage and ADU structure is separated from the shared property line by a more than 6-foot tall hedge. This hedge provides adequate privacy between the ADU and the neighbor. It is also important to note that the garage and ADU structure is set back 5 feet from the south property line. Considering that the only exterior changes proposed on the south elevation of the garage and ADU structure are an additional, mostly solid, door and an elevated window which would provide limited views to the neighbor's property, privacy should not substantially change as a result of the proposal.

Appearance: The structure is already existing. No changes to the building footprint are proposed. The exterior changes which are proposed are minor and in keeping with the overall architectural style of the garage and ADU structure with one exception. Aside from the elevated horizontal window on the south side which helps to protect privacy for the neighboring property, all windows should be vertically oriented. To ensure that this occurs, staff has added a condition of approval which states that the horizontal slider window shown on the rear elevation should be replaced with one or more vertical windows of a proportion which compliment the existing windows. The condition also notes that the location of windows may change provided additional window area is not added on the south façade.

Based on this information and considering the condition of approval, this criterion is met.

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

Findings: Findings above note that potential impacts associated with the full development of the site would be greater than the impacts which could result from the proposed Adjustment. Impacts associated with the availability of on-street parking are addressed through the proximity of the site to frequent transit service as well as the overall size of the site and amount of frontage along NE Bryce Street. Potential impacts resulting from noise cannot be considered in excess of those which would occur were the site developed to its full potential and City and County regulations are in place which address noise issues in residential neighborhoods.

Finally, the project is designed to minimize impacts on privacy for the neighbor to the south. 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.
- **D.** City designated scenic resources and historic resources are preserved; and
- **F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resources and resource value as is practical.

Findings: Only one adjustment is requested, the site does not contain any identified scenic or historic resources and the site is not located in an environmental zone; therefore, these criterion are 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 proposes one Adjustment associated with plans to expand an existing accessory dwelling unit. As noted in this report, the proposal is able to meet the approval criteria with approval granted based on the size of the site and its proximity to frequently operating bus service. With approval requiring that the permit drawings substantially conform with the site plan and elevation drawings attached, the request meets the applicable criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to 33.205.030.C.6 to increase the maximum allowed size of the accessory dwelling unit on this site from 800 square feet to 1,022 square feet and from 33 percent of the living area of the house to 35 percent, per the approved site plans, Exhibits C-1 through C-2, signed and dated January 8, 2009, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE Case File LU 08-175233 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The horizontal slider window shown on the rear elevation should be replaced with a vertical window of a proportion which compliments the existing windows of the structure.

Decision rendered by: ______ on January 8, 2009

By authority of the Director of the Bureau of Development Services

Decision mailed: January 12, 2009

Staff Planner: Matt Wickstrom

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 November 3, 2008, and was determined to be complete on November 17, 2008.

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 November 3, 2008.

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 January 26, 2009 at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., 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 contact the receptionist at 503-823-7967 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 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 January 27, 2009 (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;

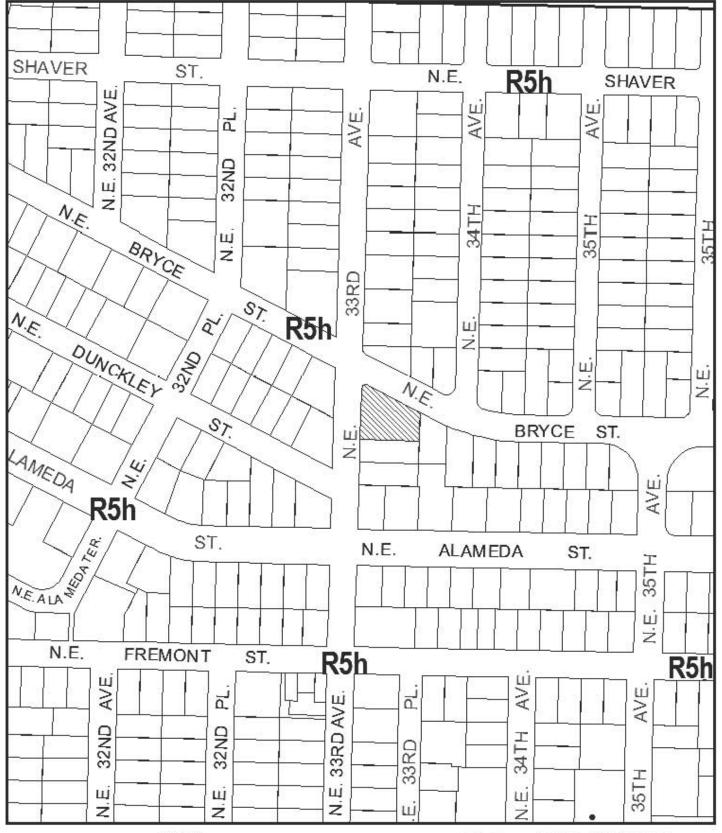
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
 - 1. Incomplete letter from Matt Wickstrom to James Thompson dated November 17, 2008
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation Drawings (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Summary sheet of Agency Responses
 - 2. Water Bureau
 - 3. Development Review Section of Portland Transportation
- F. Correspondence:
 - 1. George and Sharla Rickles, November 30, 2008, concerns about on-street parking and traffic
 - 2. Gregg Kahle, December 6, 2008, concerns about on-street parking and safety
 - 3. Patricia Matteri, received December 10, 2008, parking concerns, noise, questions need for Adjustment
 - 4. Bill and Fran Johnston, received December 15, 2008, parking issues
- G. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING



File No. LU 08-175233 AD

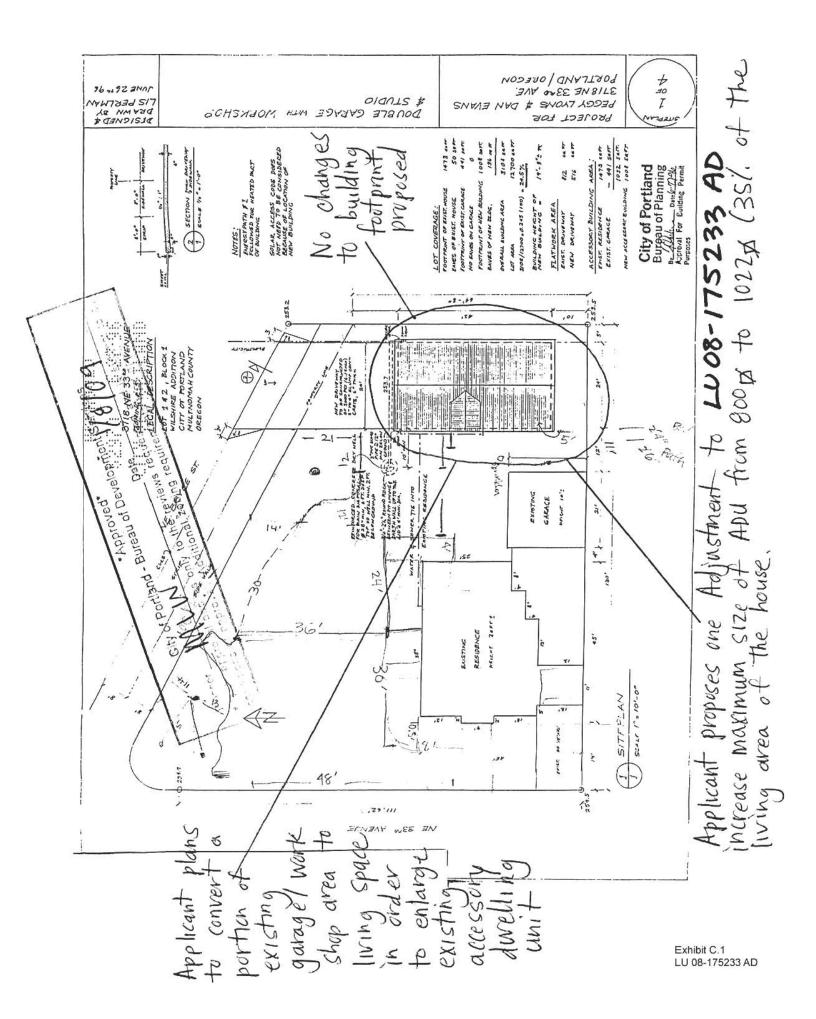
1/4 Section 2634

Scale 1 inch = 200 feet

State_Id 1N1E24DC 13400

Exhibit B (Nov 07,2008)





LU 08-175233 AD