



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: June 28, 2010
To: Interested Person
From: Sheila Frugoli, Land Use Services
503-823-7817 / frugolis@ci.portland.or.us

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 10-109220 AD

GENERAL INFORMATION

Applicant: Josh Salinger
1633 SE 55th Ave
Portland, OR 97215-3341

Site Address: 1633 SE 55TH AVE

Legal Description: LOT 6 BLOCK 4, CRYSTAL SPR PK & PLAT 2
Tax Account No.: R189901630
State ID No.: 1S2E06DB 09300
Quarter Section: 3236

Neighborhood: Mt. Tabor, contact Bruce Treat at bruce.treat@mttaborpdx.org
Business District: Hawthorne Blvd. Bus. Assoc., contact Peter Rossing at 503-231-8704
District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.

Zoning: R5, Single-Dwelling Residential 5,000

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

Proposal: The applicant is proposing to demolish his existing garage and replace it with a 2-story detached accessory dwelling unit (ADU). To address applicable Zoning Code development standards, the applicant is requesting: (1) a reduction in the required side (south) building setback from 5 feet to 3 feet, 7 inches, with a 1 foot, 8 inch eave overhang and (2) to allow the roof pitch of the proposed ADU structure to differ from the pitch of the house.

The proposed ADU will be approximately 600 square feet. There will be no windows on the south building wall and a new fence will be constructed along the south property line.

ANALYSIS

Site and Vicinity: The site is developed with a single dwelling residence and detached garage. A tall chain link fence separates the driveway from the garage and back yard area. The 2-story house is similar in scale and architectural style to other homes on the street. Most of the other homes have one-story detached garages or accessory structures. The site is located approximately 5 blocks west of Mount Tabor Park. Because of the elevation increase towards the park, the homes on the east side of SE 55th Ave are elevated above the homes on the west and those on the west are elevated above the home fronting SE 54th Avenue. SE 55th Avenue is a narrow street with sidewalks, narrow planter strips, and curbs on both side of the street.

Zoning: The R5 zone is a high density single-dwelling zone. The R5 zone allows attached and detached single-dwelling residences.

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

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed May 17, 2010. The following Bureaus have responded with no objections or concerns:

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

The Bureau of Environmental Services and Site Development note that stormwater management requirements must be addressed at time of building permit review.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 17, 2010. One written response has been received from a notified property owners in response to the proposal. The response, from a western abutting property owner, raised concerns about the visual and privacy impacts of the 2-story accessory structure. Because the subject site is elevated above the western abutting lots, the upper-windows, west-facing deck will create livability impacts. The neighbor is requesting: (1) removal of the proposed deck, (2) a reduction in west-facing windows, (3) the installation of sight-obscuring fence along the west property line and (4) the planting of mature trees between the structure and the west property line. The neighbor submitted before and after photos, documenting that the applicant recently removed a high, dense row of trees that provided significant screening between his property and the lots to the west (Exhibit F.1).

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that either 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 purpose of the standards for accessory structures is explained under Section 33.110.250.A as follows:

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.

Further, the purpose of the setback standard requested for Adjustment is found in Section 33.110.220, Setbacks. The setback regulations for buildings and garage entrances 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.*

The applicant is requesting an Adjustment to reduce the side setback requirement for a detached ADU structure from 5 feet to 3.5 feet with an eave that will be approximately 2 feet from the south property line. The BDS Life Safety Plans Examiner's written response states that the building code requires a 3-foot setback for both buildings and eaves and the respective property lines. If closer than 3 feet the Building Code requires firewall protection. As proposed, the building wall will not require fire-rated construction. However, the eave, which is allowed to extend within 2 feet of the property line, must be protected on the underside as required for one-hour fire-rated construction. In order to approve, the plans must show an eave that extends no closer than 2 feet and is designed to meet fire-rated construction requirements. The Fire Bureau identified no concerns regarding the reduced setback.

Because the structure will have no windows on the south side of the accessory structure, the privacy for the abutting residents (at 1703 SE 55th Ave) should not be lessened. A window will be located on the northern (back) wall of the ADU. A neighbor who lives at one of the western abutting lots raised significant concerns regarding privacy impacts created by the proposed west-facing windows and deck. The proposed ADU will be located 22 feet from the rear (west) property line. There is no nexus between the reduced south building setback and privacy impacts to the western abutting lots.

The approval criterion is met for the side building setback reduction.

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

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

The applicant has requested an Adjustment to allow the roof pitch of the proposed ADU structure to differ from the pitch of the house. The ADU design standards are based on the expectation that ADU structures blend into a residential area when the dominant architectural elements of the primary structure are repeated on the ADU structure. With matching features, the smaller ADU structure will generally appear related and subordinate to the house. The west side of the structure with windows and deck above is not visible from the street. However, as a concerned neighbor pointed out, the wall of the structure is prominent due to the

topography of the site. The variation in roof pitch (and direction) will be clearly visible. To mask the difference in appearance, a condition will require the applicant to install 2 deciduous or broadleaf evergreen trees, selected from the Portland Tree and Landscaping Manual. The trees must achieve a canopy spread of at least 30 feet. The trees must be planted at least 5 feet from property lines, located between the ADU structure and the western property line and must be located within the southern half of the site.

Through compliance with conditions, the purposes of the regulation can be equally or better met. Therefore, this criterion can be 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 applicant is proposing to construct a 6-foot tall decorative wood fence along the south property. The fence will follow the contours of the sloped lot. Further, the applicant is proposing the use of a trellis-like structure with climbing vines along the south wall of the ADU.

If proposed planting fully covers the south wall, only roof area will be visible from the southern abutting lots. However, there is risk in relying fully on climbing vines or other plants to create an attractive façade. In order to ensure that the structure is compatible, exterior improvements must include the same exterior treatment proposed on the other sides of the structure. Specifically, horizontal lap siding must be installed on the south wall of the accessory structure.

The ADU development standards are intended to reduce impacts to livability by applying standards such as height limits and setbacks. Structures that are constructed as detached ADUs must also meet architectural standards for exterior finish materials, trim, windows, and roof pitch that match the house. These standards are intended to achieve a structure that matches key features of the home yet does not dominate the site. As stated above, the variation in roof pitch for the ADU structure will be obvious, particularly on the west side. The ADU structure will be of comparable height to the home. However, the west wall of the ADU structure will be approximately 30 feet closer to the rear property line. The difference in roof pitch is even more pronounced given that it is a 2-story structure. There are no other 2-story detached structures in the immediate area. To lessen the prominence of the varied roof line, a condition will require the installation of 2 deciduous or broadleaf evergreen trees planted between the structure and the west property line.

Through compliance with conditions, this criterion will be met.

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

Findings: The applicant is requesting two Adjustments. The purpose of the Single-Dwelling Residential zones is to “preserve land for housing and to provide housing opportunities for individual households (Zoning Code Section 33.110.010.). Individually and cumulatively, requested Adjustments for a new accessory dwelling unit are consistent with the purpose of the zone which is to provide housing opportunities. Therefore, this criterion is met.

- 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 zone. Historic resources are designated by a large dot. 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: An abutting neighbor raised concerns about privacy impacts and requested landscaping, a fence as well as a reduction in window area and the removal of the elevated deck. Required trees will eventually provide screening along the entire west façade, including the roof line. A fence, horizontal siding and landscaping will reduce the visual impacts of the reduced side building setback. Currently, the Zoning Code does not require the preservation of existing trees (except in environmentally-zoned areas) and does not require landscape screening. If set back 5 feet from the property lines, homes and detached accessory structures can be as tall as 30 feet in the R5 zone. West-facing windows and a deck do not create unique impacts that would be created by the requested Adjustments. The required conditions will adequately mitigate impacts. Through compliance with conditions, 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 there are no such designations on this site, 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 prominence of the varied roof pitch of the ADU will be diminished through the planting of 2 trees. In order to reduce the impacts of a solid wall near the south property line, horizontal siding and a 6-foot tall wood fence are also required. With compliance of the conditions, the approval criteria are satisfied and therefore the request should be approved.

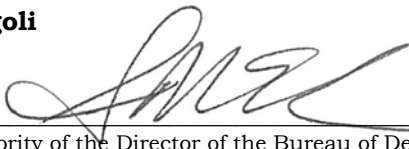
ADMINISTRATIVE DECISION

Approval of Adjustments to: (1) reduce the required side (south) building setback from 5 feet to 3 feet, 7 inches, with an eave overhang extending within 2 feet of the property line (Section 33.110.220.B) and (2) to allow the roof pitch of the ADU structure to differ from the pitch of the house (Section 33.205.030.C) for a 600 square foot, 2-story detached ADU structure, per the approved plans, Exhibits C.1 through C.4, signed and dated June 25, 2010, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through D) 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 10-109220 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. At least 2 deciduous or broadleaf evergreen trees must be planted between the ADU structure and the west property line. The trees must be selected from the Portland Tree and Landscaping Manual to achieve a canopy spread of at least 30 feet. The trees must be planted at least 5 feet from the property lines.

- C. Horizontal lap siding must be installed on the south exterior wall, to match the other sides of the ADU. The siding must be painted to match.
- D. A 6-foot tall wood fence must be installed along the south property line, per the approved plans (Exhibit C.3).

Staff Planner: Sheila Frugoli

Decision rendered by:  **on June 25, 2010**
By authority of the Director of the Bureau of Development Services

Decision mailed: June 28, 2010

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on February 4, 2010, and was determined to be complete on May 12, 2010.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 4, 2010.

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

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on July 12, 2010** at 1900 SW

Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

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

Recording the final decision.

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

- *Unless appealed,* The final decision may be recorded on or after **July 13, 2010 – (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.

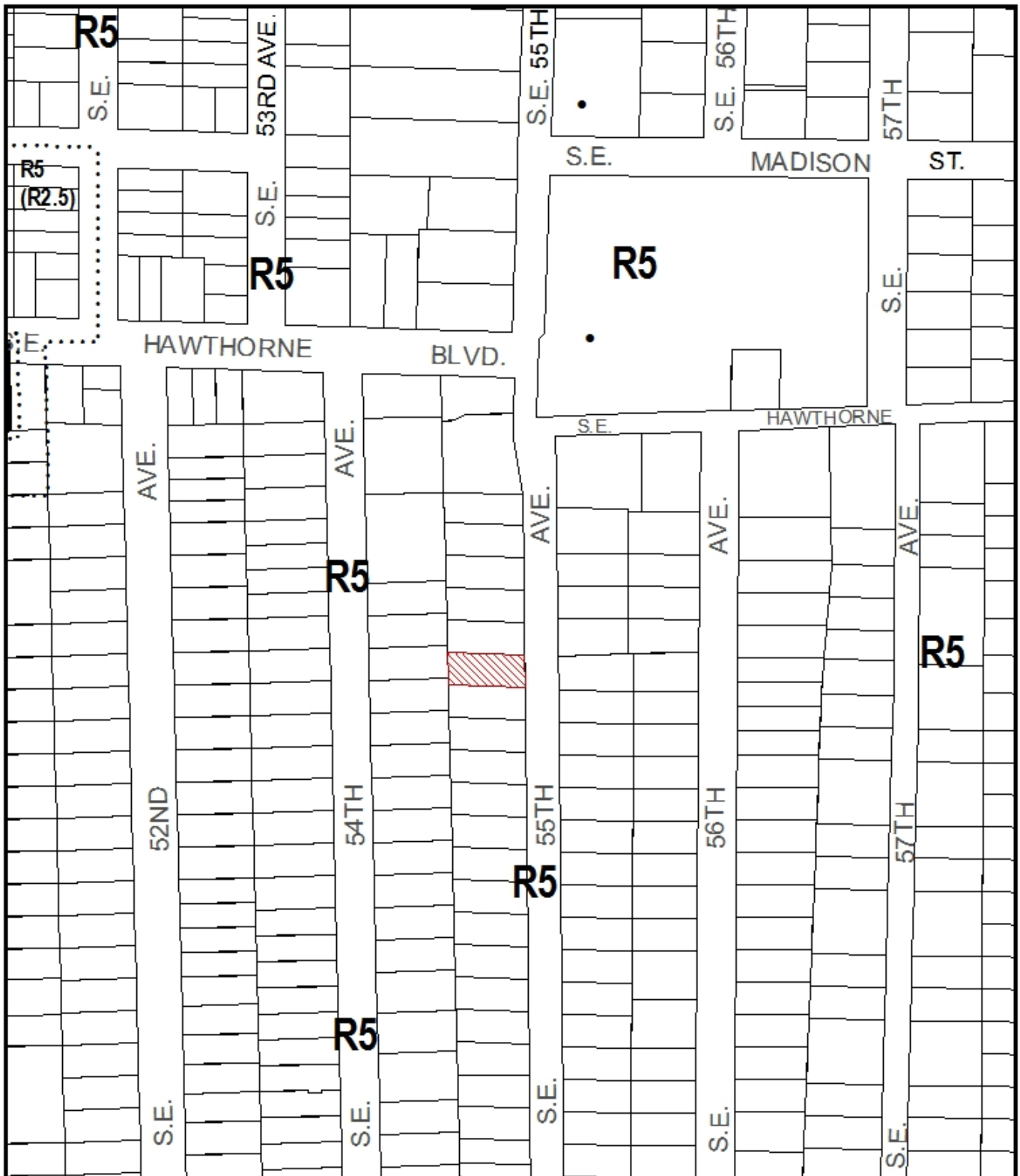
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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
 - 1. Original Narrative
 - 2. Supplemental Written Response to Request to Vary Roof Pitch
 - 3. Photos of House and Garage
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan, submitted May 11, 2010 (attached)
 - 2. Proposed West and East Elevations of ADU, submitted May 11, 2010 (attached)
 - 3. Proposed South Elevation of ADU, submitted May 11, 2010 (attached)
 - 4. Proposed North Elevation of ADU, submitted May 11, 2010 (attached)
 - 5. Proposed ADU Floor Plans
 - 6. Floor Plan of House – Sq. Footage Information
 - 7. Exterior Elevations of House
 - 8. ADU Elevations, submitted Feb. 4, 2010
 - 9. Site Plan, submitted Feb. 4, 2010
- 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. BDS, Life Safety Plans Examiner
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. TRACS Print-out
- F. Correspondence:
 - 1. Cory Eddy, May 19, 2010, letter with photos stating opposition to requested Adjustments
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete Application Letter to Applicant



ZONING



File No.	<u>LU 10-109220 AD</u>
1/4 Section	<u>3236</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E06DB 9300</u>
Exhibit	<u>B</u> (Feb 09,2010)

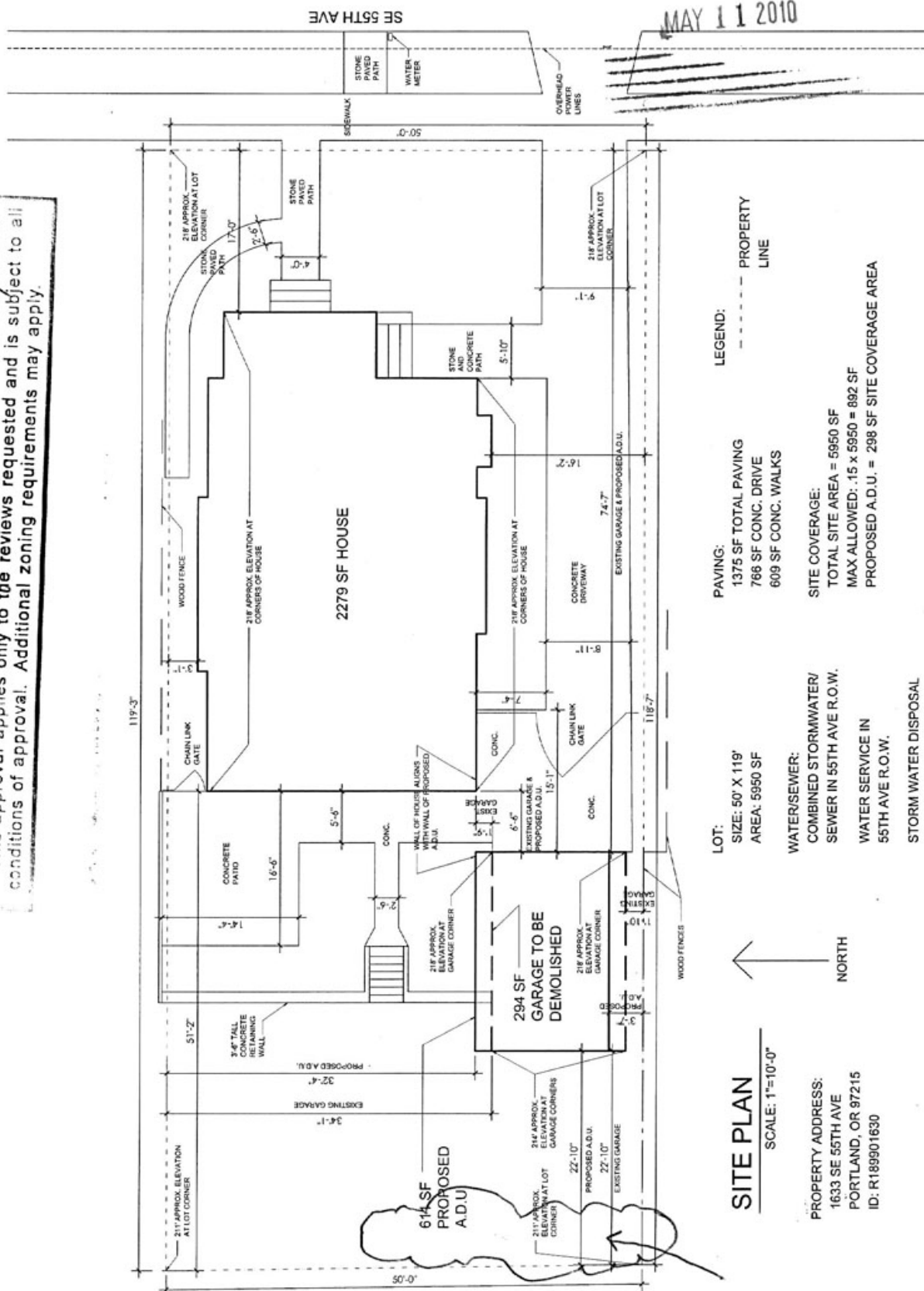
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

LU 10-109220 AD
Exhibit C.1

2 trees are required

RECEIVED

MAY 11 2010



SITE PLAN

SCALE: 1"=10'-0"

PROPERTY ADDRESS:
1633 SE 55TH AVE
PORTLAND, OR 97215
ID: R189901630

Lot:

SIZE: 50' X 119'
AREA: 5950 SF

WATER/SEWER:
COMBINED STORMWATER/
SEWER IN 55TH AVE R.O.W.

WATER SERVICE IN
55TH AVE R.O.W.

STORM WATER DISPOSAL
ON SITE

PAVING:

1375 SF TOTAL PAVING
766 SF CONC. DRIVE
609 SF CONC. WALKS

LEGEND:

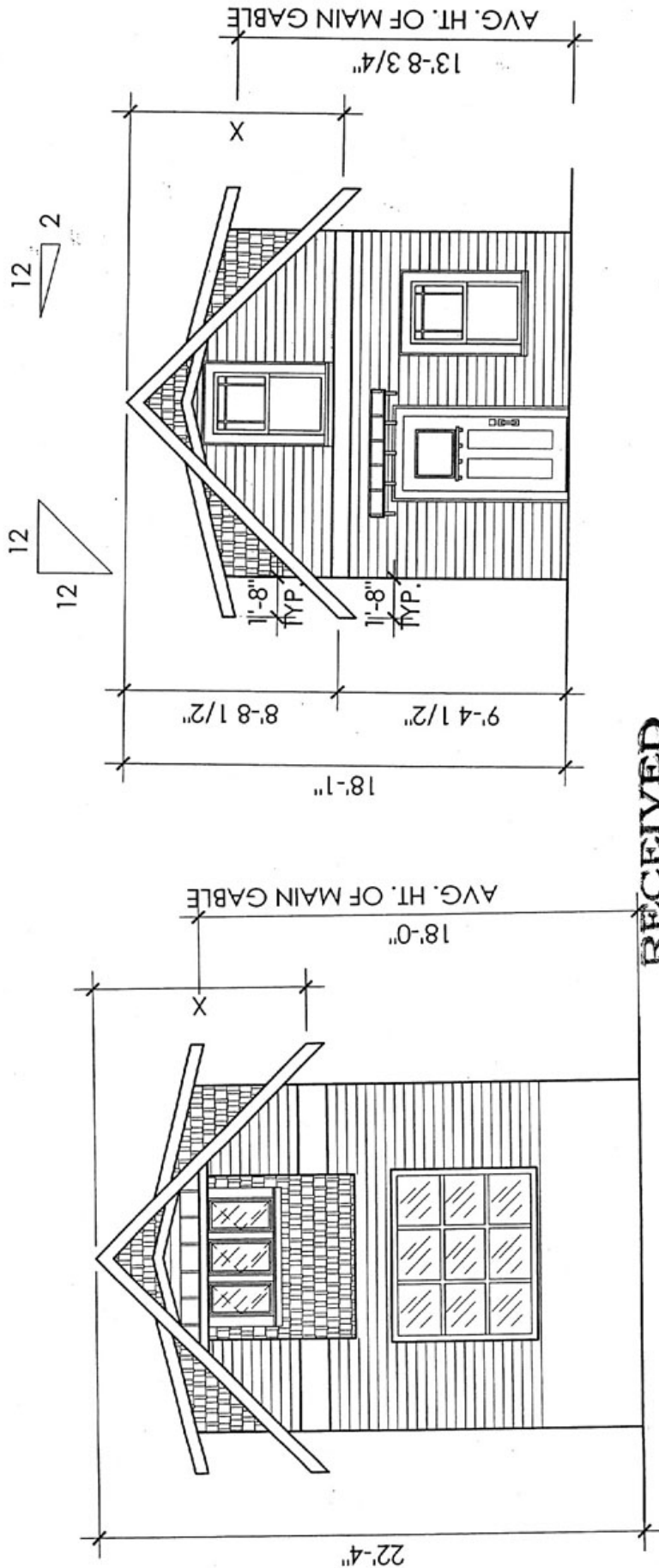
PROPERTY
LINE

SITE COVERAGE:

TOTAL SITE AREA = 5950 SF

MAX ALLOWED: $.15 \times 5950 = 892$ SF

PROPOSED A.D.U. = 298 SF SITE COVERAGE AREA



RECEIVED

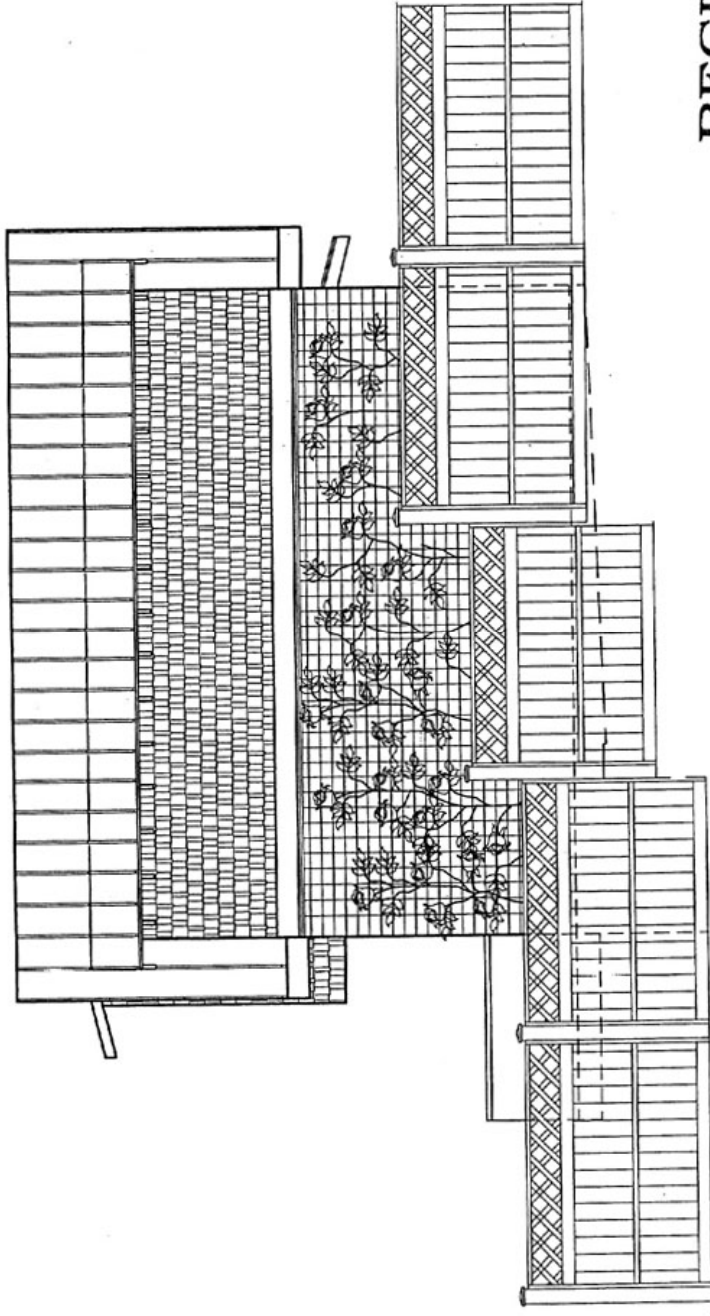
MAY 11 2010

WEST ELEVATION

EAST ELEVATION

LU 10-109220 AD
Exh. b. & c. 2

Approved
City of Portland - Bureau of Development Services
Planner Gheobart Truppi Date June 25 2010
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



RECEIVED

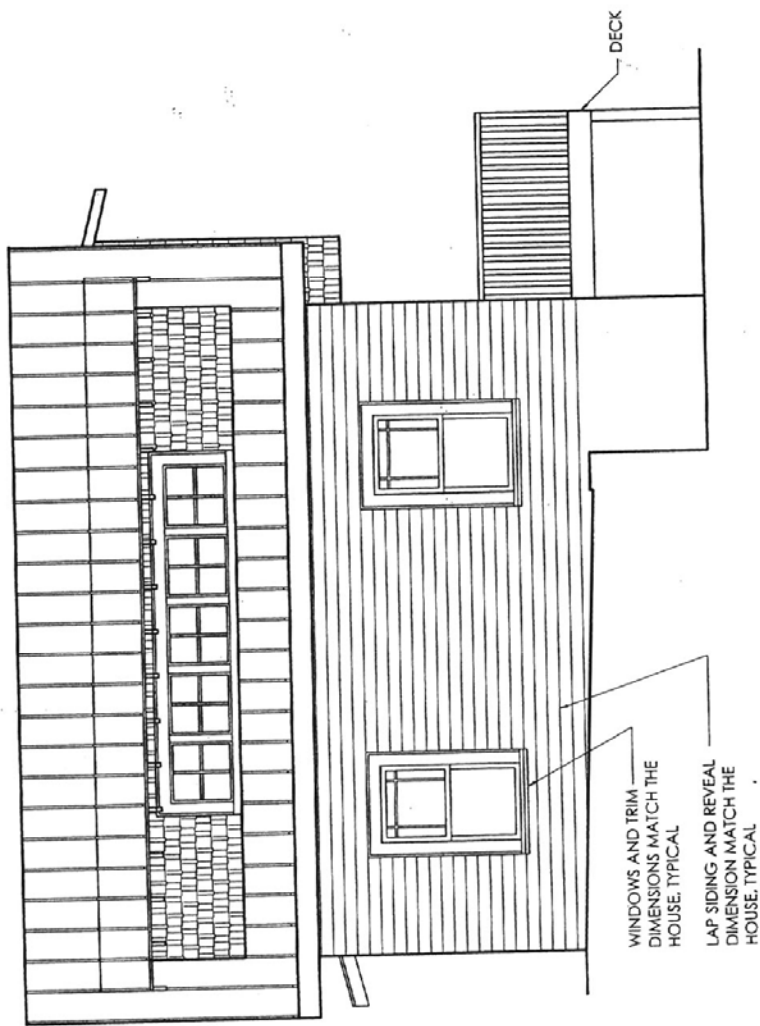
MAY 11 2010

SOUTH ELEVATION

LU 10-109220 AD
Exhibit C.3

PROPOSED A.D.U. - PLANS

Approved	
City of Portland - Bureau of Development Services	
Planner <i>Shelby Fingert</i>	Date <i>June 28, 2010</i>
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.	



RECEIVED

MAY 11 2010

NORTH ELEVATION

MARCH 2010

SCALE: 1/4" = 1'-0"

SALINGER A.D.U.

1633 SE 55TH AVE
PORTLAND OR

DRAWN BY SCOTT FURROW (safurrow@msn.com)

Approved

City of Portland-- Bureau of Development Services

Planner Shirley Trugli Date June 25, 2010

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

Lu 10-109220 AD
Exhibit C.4