

City of Portland, Oregon

Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

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

Date: August 12, 2011

To: Interested Person

From: Douglas Hardy, Land Use Services

503-823-7816 / Douglas.Hardy@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 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 11-107704 AD

GENERAL INFORMATION

Applicant: Alexandra P. Clarke, property-owner

9225 SW Boones Ferry Road

Portland, OR 97219

Site Address: 9225 SW Boones Ferry Road

Legal Description: Block 7, Lot 4, Kilpatrick Collins Tract

Tax Account No.: R450501420 **State ID No.:** 1S1E28AA 02300

Quarter Section: 3928

Neighborhood: Collins View, contact Dave and Dixie Johnston at 503-636-0959 **District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592

Zoning: R7, Single-Dwelling Residential 7,000

Other Designations: Scenic Overlay Zone

Case Type: Adjustment (AD)

Procedure: Type II, Administrative Decision with appeal to Adjustment Committee

PROPOSAL

The applicant proposes to convert an existing accessory structure on the site from general living area for use by residents of the main house to an Accessory Dwelling Unit (ADU), approximately 318 square feet in size. The accessory structure is located as close as five feet from the front lot line, and approximately eight feet in front of the main house. No changes to the floor area or exterior appearance of the accessory structure are proposed at this time.

ADUs are required to be located at least 60 feet from the front lot line or six feet behind the main house. The applicant is requesting an Adjustment to this standard to allow the ADU to be located as close as five feet from the front lot line, and eight feet in front of the main house.

RELEVANT APPROVAL CRITERIA

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The 9,440 square-foot site is located on the west side of SW Boones Ferry Road, near the intersection with SW 4th Avenue. The property is developed with a single-dwelling residence located approximately 30 feet from the front lot line, and built close to the north side lot line. The residence is one-story in height with an exposed basement. The accessory structure that is proposed to be converted to an ADU is located close to the south lot line, and as close as five feet to the front lot line. (While the applicant indicates this structure may be farther from the front lot line, closer to 10 to 12 feet, a 2009 land use review approved an Adjustment to reduce the front setback for this structure to five feet.) This accessory structure is one story as viewed from SW Boones Ferry Road, and approximately two-stories in height as viewed from the east and west.

The site slopes considerably down from SW Boones Ferry Road, with dense vegetation, including mature conifers and deciduous trees and a seven to eight foot high evergreen hedge along most of the street frontage.

The surrounding area is developed predominantly with single-dwelling residential structures of a similar scale to that seen on the subject site, with buildings set back at various distances from the street.

Zoning: The site is zoned R7, Single-Dwelling Residential 7,000. The use regulations of the Single-Dwelling zones are intended to create, maintain and promote single-dwelling neighborhoods. The regulations allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood. The development standards of the Single-Dwelling zones work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

The site is also within an "s" or Scenic Resource Overlay, and specifically, within the SW Macadam/Taylor's Ferry/ Terwilliger/Boones Ferry Scenic Corridor. The Scenic Resource zone is intended to protect Portland's significant scenic resources as identified in the *Scenic Resource Protection Plan, and generally enhance* the appearance of Portland. The regulations create attractive entranceways to Portland and its districts, and implement the scenic resource policies and objectives of Portland's Comprehensive Plan. The purposes of the Scenic Resource zone are achieved by establishing height limits within view corridors to protect significant views and by establishing additional landscaping and screening standards to preserve and enhance identified scenic resources. In this case, the applicant proposes no new development or changes to existing landscaping within the "s" overlay.

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

• LU 09-113191 AD: Approval with conditions of an Adjustment to reduce the south side building setback for an accessory structure from five feet to three feet (and two feet for the roof eaves); to reduce the front building setback for the accessory structure from 15 feet to five feet; and to allow the accessory structure to be located within the 20-foot scenic corridor setback. (The accessory structure is the same structure in which the applicant now seeks to establish an ADU.) A condition of approval required the planting of a hedge that will conform to the L3 landscape standard along the south wall of the accessory structure. An inspection of the site indicates that plantings meeting the L3 landscape standard have been planted in this location.

A second condition required the removal of cooking facilities that were previously installed in the accessory structure. The condition stated that future plans to use the structure as an ADU would require a subsequent Adjustment Review in order to address the Zoning Code standards that apply to ADUs. The Adjustment Review being reviewed herein is intended to address those standards.

Agency Review: A Notice of Proposal was mailed July 15, 2011. The following City bureaus have responded with no issues or concerns regarding the requested Adjustment Review:

- Bureau of Environmental Services;
- Bureau of Transportation Engineering;
- Portland Water Bureau;
- Portland Fire Bureau;
- Bureau of Development Services Site Development Section;
- Bureau of Development Services Life Safety; and
- Portland Parks & Recreation Urban Forestry Division.

Neighborhood Review: No responses have been received from notified property-owners or the Neighborhood Association.

ZONING CODE APPROVAL CRITERIA

33.805.010 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 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 to provide certainty and rapid processing for land use applications.

33.805.040 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, have been met.

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

Findings: The applicant is requesting an Adjustment from the design standard that requires detached ADUs to be located at least 60 feet from the front lot line, or six feet behind the house (Zoning Code Section 33.205.030.D.1). The purpose of the design standards that apply to ADUs, as stated in Zoning Code Section 33.205.0030 is as follows:

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 requested Adjustment equally meets the intent of the relevant elements of this purpose statement based on the following findings:

- The purpose and desired character of Portland's Single-Dwelling zones is to create maintain and promote single-dwelling neighborhoods. While the ADU will be located closer to the street than the primary dwelling on the subject site, the primary dwelling will visually remain the dominant structure, with development on the site remaining single-dwelling in appearance. The entire front façade of the primary dwelling, at one-story with an exposed basement, is visible from the street, whereas much of the bulk of the ADU is hidden from the street given the steep drop in grade and extensive landscaping. From the street, the ADU appears more like a small garage than a second dwelling unit. Additionally, the stairs and path that lead from the street to the front door of the primary dwelling further announce the prominence of the primary dwelling. The exterior door to the ADU, and path from the street to the ADU, are largely hidden. These characteristics ensure that the ADU continues to be viewed as an accessory structure, with the primary dwelling remaining the dominant architectural element on the site.
- The ADU will not only ADU appear visually smaller than the primary dwelling, but the actual floor area also will be considerably less than that of the primary dwelling. The primary dwelling includes approximately 1,865 square feet of livable floor area on the first floor and partial basement, while the ADU will be limited to approximately 318 square feet on one floor. Whereas the zoning regulations would allow an ADU with floor area as large as 800 square feet on this site, the proposed ADU will have a floor area that is only 17 percent of that in the primary dwelling.
- The juxtaposition of the ADU and the primary dwelling still allow the sharing of common space on the lot. An open, landscaped area will remain behind the ADU, approximately 90 feet in depth and 50 feet in width that can be used by residents of both the ADU and the primary dwelling. Additionally, the proposal to convert the accessory structure to an ADU will not change the configuration of the existing driveway. A driveway, leading from the street to the front of the ADU, will remain, and provide parking for two vehicles.

Based on these findings, the proposal will be consistent with stated purpose of the regulation being adjusted, and this criterion is met.

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

Findings: The proposed ADU will not significantly detract from the appearance or livability of the residential area. Regarding appearance:

- while the ADU will not be located at least six feet behind the primary house on the site (or 60 feet or more from the front lot line), the ADU is proposed in an existing structure that will not change in appearance from its current condition;
- as viewed from the street, the diminutive size of the ADU structure and its existing architecture make it appear more as a detached garage than a structure occupied by an ADU; views of the structure from the closest side lot line (to the south) will be screened over time by the recently planted shrubs that were required along this lot line as part of the 2009 Adjustment Review (LU 09-113191 AD); and
- having a building containing living area within the required front building setback is a characteristic seen elsewhere in the immediate neighborhood; the single-dwelling residence immediately north of the subject site is approximately five feet from the front lot line, with the residence north of that lot having portions of the residence within approximately seven feet of the front lot line. Structures along the neighboring SW Fourth Avenue frontage are also within the required front setback.

Regarding livability, while the Adjustment criterion does not describe what is meant by this term, elsewhere in the Zoning Code factors considered when evaluating "livability" include such things as noise, vibration, odor, dust, glare and smoke. Other factors considered include potential for litter, vehicle trips to the site, and impacts on on-street parking. The Adjustment request is not to allow an ADU in a zone or on a lot where one would not be allowed. Such an Adjustment could have minor impacts on increased vehicle trips to and from the site, and potentially on on-street parking. However, in this situation, an ADU is an allowed use on the site, and the Adjustment is limited to allowing the ADU to be closer to the street. Even in the location proposed, there is room between the front of the ADU and the street for two on-site parking spaces. As such, allowing the ADU to be closer to the street does not have an adverse impact on livability.

As proposed, the request will not significantly detract from the appearance or livability of the residential area, and this criterion is met.

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

Findings: The applicant is requesting as part of the current review only one Adjustment. However, in 2009, the applicant requested additional Adjustments for the same structure, which included an exception to the front and south side building setbacks, and an exception the scenic corridor setback. All of these adjustments were requested so that the accessory structure could be maintained, and slightly enlarged, in the same location as the historic outbuilding on the site. As indicated below, the current Adjustment, even when considered in combination with the Adjustments approved in 2009, will still result in a project that is consistent with the overall purpose of the Single-Dwelling Zones.

As stated in Zoning Code Section 33.110.010, the use regulations of the Single-Dwelling zones are intended to create, maintain and promote single-dwelling neighborhoods. The development standards of the Single-Dwelling zones are intended to work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. As indicated above, in response to Approval Criteria A and B, the location of the proposed ADU close to the street will not have an adverse impact on maintaining the character and appearance of a single-dwelling neighborhood. The small scale of the ADU in relation to house maintains the prominence of the house on the lot, with the ADU looking little different than a small garage as viewed from the street. The extensive evergreen landscaping along the site's front lot line, and the required L3 shrubs along the south side lot line further obscure views of the ADU. Because the ADU will locate in an existing building that is allowed to have living area, there will be no increased impacts on safety, privacy, energy conservation, and recreational opportunities.

As the proposal is consistent with the overall purpose of the Single-Dwelling zones, this criterion is met.

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

Findings: The site has a scenic resource overlay because it is located along the SW Boones Ferry Road Scenic Corridor. The structure in which the ADU is proposed is located within this Scenic Corridor. However, as there are no exterior changes proposed to the structure in which ADU is proposed, and no removal of any trees within the Scenic Corridor, the proposal has no adverse impacts on this scenic resource.

This criterion is met

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

Findings: As indicated in the findings above, the proposal has no adverse impacts for which mitigation would be required. As such, 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 located in an environmental zone. Therefore, this criterion does not apply.

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 via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant has demonstrated that the applicable criteria have been met. The ADU, while not located at least 60 feet from the front lot line or six feet behind the house, is still consistent with the stated intent of the specific regulation. The ADU will locate in an existing accessory building on the site, and will appear little different than a small garage located near the front lot line. The proposed ADU in this location will not detract from the livability or appearance of the surrounding residential area, and will still be consistent with the purpose of the Single-Dwelling zone.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum required front setback for an ADU (33.205.030.D) located within an existing accessory structure from 60 feet to as close as five feet, and to allow the ADU to be located eight feet in front of the primary dwelling, per the approved site plan and building elevations (Exhibits C1 through C5), signed and dated August 11, 2011, subject to the following conditions:

A. As part of the building permit application submittal, each of the four required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C1 through C5. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 11-107704 AD."

Staff Planner: Douglas Hardy

Decision rendered by: on August 11, 2011.

By authority of the Director of the Bureau of Development Services

Decision mailed: August 12, 2011

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 26, 2011, and was determined to be complete on July 15, 2011.

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 26, 2011.

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 extend the 120-day review period. Unless further extended by the applicant, **the120 days will expire on November 12, 2011.**

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 August 26, 2011,** 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 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 August 29, 2011 (the next work 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.

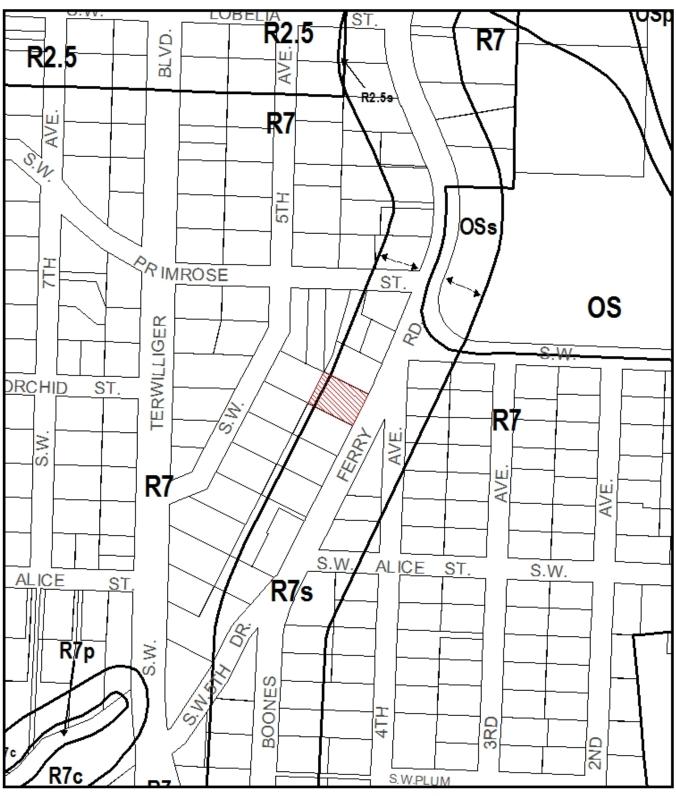
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. East Building Elevation (attached)
 - 3. West Building Elevation (attached)
 - 4. South Building Elevation (attached)
 - 5. North Building Elevation (attached)
 - 6. ADU Floor 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. Bureau of Development Services/Site Development Review Section
 - 6. Bureau of Development Services/Life Safety
 - 7. Bureau of Parks, Forestry Division
- F. Correspondence (none)
- G. Other:
 - 1. Original LU Application
 - 2. Notice of a Type II Decision on LU 09-113191 AD

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).

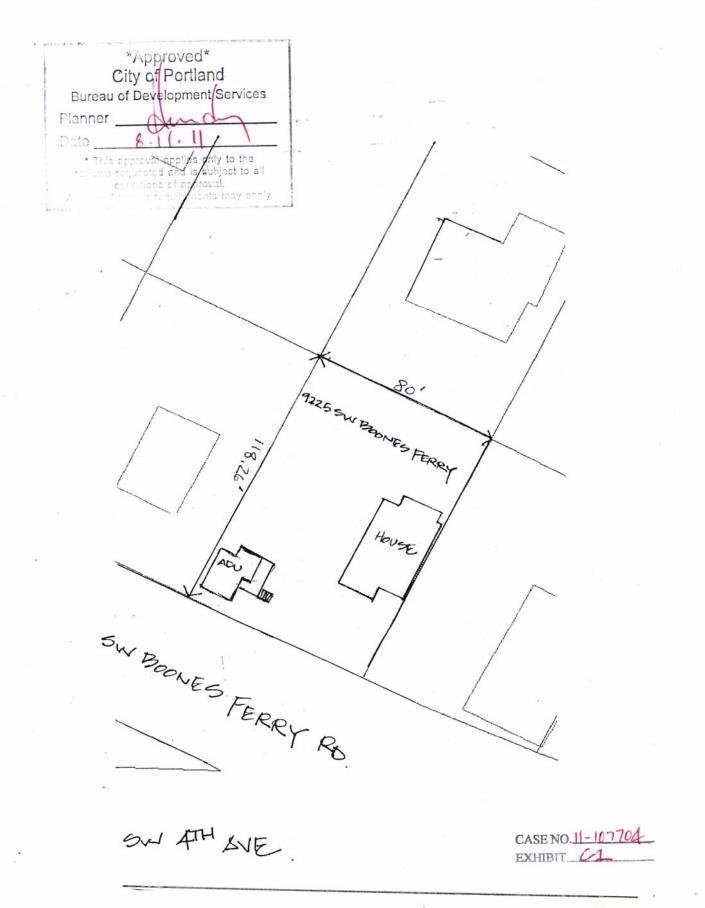


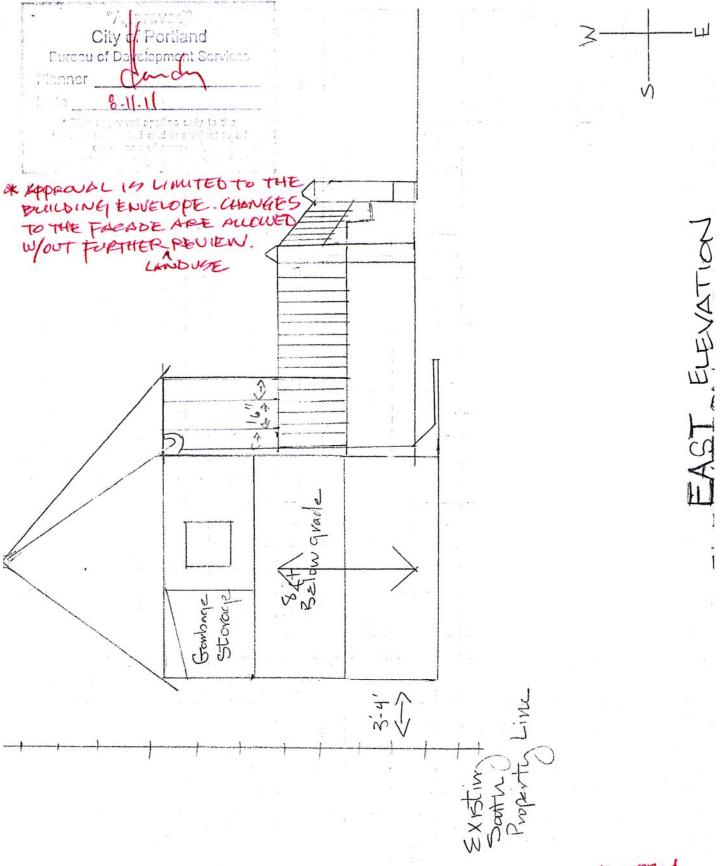
ZONING Site



LU 11-107704 AD File No. _ 3928 1/4 Section 1 inch = 200 feet Scale. 1S1E28AA 2300 State Id В (Feb 01,2011) Exhibit.







CASE NO. 11-107704 EXHIBIT 62

