



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

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**Date:** February 18, 2011  
**To:** Interested Person  
**From:** Douglas Hardy, Land Use Services  
503-823-7816 / [Douglas.Hardy@portlandoregon.gov](mailto: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 11-102800 AD**

#### **GENERAL INFORMATION**

**Applicant:** William M. Wallberg, listed property-owner  
401 NE 61st Avenue, #B  
Portland, OR 97213-3833

**Site Address:** 401 NE 61<sup>st</sup> Avenue

**Legal Description:** Block 1 S 1/2 of Lot 11&12, Orchard Homes  
**Tax Account No.:** R629800210  
**State ID No.:** 1N2E31DA 04400  
**Quarter Section:** 3036

**Neighborhood:** North Tabor, contact Southeast Uplift.  
**Business District:** Eighty-Second Avenue, contact Ken Turner at 503-484-6225  
**District Coalition:** Southeast Uplift, contact Leah Hyman at 503-232-0010

**Zoning:** R1 Multi-Dwelling Residential 1,000

**Case Type:** Adjustment (AD)  
**Procedure:** Type II, Administrative decision with appeal to Adjustment Committee

#### **PROPOSAL**

The subject site is currently developed with a one and one-half story, single-dwelling house, with a two-story, detached accessory building to the rear of the house. The detached accessory building has a garage on the first floor, with living area on the second floor. The applicant is proposing to convert the second floor to an Accessory Dwelling Unit (ADU). An ADU is an independent dwelling unit that includes accommodations for eating, living, sleeping and sanitation, and is considered accessory (in size and location) to the primary dwelling unit on a site.

Zoning regulations limit the maximum height of ADUs to 18 feet (measured to the midpoint of the highest gable). The height of the building in which the ADU is proposed is 21 feet, one

inch. The applicant is requesting an Adjustment to allow the ADU to be in a building that exceeds the maximum allowed 18 foot height by three feet, one inch.

**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 5,000 square foot site is located at the northwest corner of NE 61<sup>st</sup> Avenue and NE Flanders Street. The site currently is developed with a one and one-half story single-dwelling residential dwelling, with a two-story accessory building to the rear (west) of the single-dwelling. The accessory building has a garage on the first level, with living area (no kitchen) on the second level. The second level is proposed to be converted to an ADU. The living area is (and the proposed ADU will be) accessed by an exterior stairway located on the east building wall. The accessory structure is located 16 feet from the rear (west) lot line, approximately five feet from the south side lot line (along NE Flanders Street), and approximately 20 feet from the north side lot line. No exterior changes are proposed to the accessory building.

The surrounding area (including the immediate blockfronts along both NE 61<sup>st</sup> Avenue and NE Flanders Street) is characterized by a mixture of single- and multi-dwelling structures, ranging in height from one story to three stories. The property immediately north of the subject site is developed with two separate multi-dwelling buildings, two stories in height. The adjacent property to the west is developed with a one-story, single-dwelling building.

**Zoning:** The site is located in a Multi-Dwelling Residential 1,000 (R1) zone. Properties in the immediate vicinity, along NE Flanders Street, are also located in the R1 zone, with properties along the east side of NE 61<sup>st</sup> Avenue located in a Multi-Dwelling Residential 2,000 (R2) zone. Property in the R2 zone have a Comprehensive Plan Map designation of R1.

The Multi-Dwelling zones are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing. The use regulations are intended primarily to create and maintain higher density residential neighborhoods. The development standards work together to create desirable residential areas by promoting aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The development standards generally assure that new development will be compatible with the City's character. At the same time, the standards allow for flexibility for new development.

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

**Agency Review:** A Notice of Proposal was mailed on **January 21, 2011**. The following City bureaus have responded with no issues or concerns regarding the land use review:

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

**Neighborhood Review:** One written response was received from a notified property owner in response to the proposal. The property-owner, located immediately west of the proposed ADU,

wrote a letter requesting that a fence be installed on the property line separating the two properties as a means of preserving privacy. This issue is discussed, below, in the written response to Adjustment Approval Criterion B.

## **ZONING CODE APPROVAL CRITERIA**

### **33.805.010 Purpose**

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 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 is requesting an Adjustment to allow an ADU proposed within an existing building to exceed the maximum allowed height by three feet, one inch. The purpose for the design standards that apply to ADUs, as stated in Section 33.205.030.A of the Zoning Code, 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 proposal will equally meet the purpose of the ADU design standards based on the following findings:

- The ADU is proposed within an existing building that was constructed under a building permit issued in 2005 (05-157608 RS), at a height of 21 feet, 1 inch. As no exterior alterations are proposed to the building, including no changes in building height, the building and site will appear no different with the ADU than conditions that exist on the site today.
- The ADU is proposed on a site located in the R1 zone, which is a Multi-Dwelling zone. Buildings in this zone typically are allowed to have a maximum height of 45 feet, with a front setback of three feet, and side and rear setbacks of five feet (for a building of the size in which the ADU is proposed). As such, an ADU in a building having a height of 21 feet, one inch, with building setbacks from property lines that are greater than the minimum required, is consistent with the intended scale and character of the R1 zone.

- The intent for limiting ADUs to a maximum height of 18 feet is to ensure that they appear physically (and visually) smaller than the primary dwelling on the site. However, the concept of ADUs was that they would be constructed in single-dwelling zones, on sites developed with single-dwellings that typically have a height of two-stories. When ADUs are constructed in Multi-Dwelling zones, the maximum allowed 18 foot height for ADUs is less important given that other structures on the site can attain a height of four stories. For the subject site, an ADU of 21 feet, one inch in height will still appear visually smaller than the 45 foot tall primary building that could be constructed on the property.
- The floor area of the proposed ADU will be considerably smaller than that of the primary dwelling on the site, further ensuring that the ADU remains “accessory” to the primary dwelling. While the ADU will have a floor area of approximately 529 square feet, the primary residence on the site has a floor area of approximately 1,485 square feet, more than twice the floor area of the ADU.

As proposed, the Adjustment request equally meets the intent of the ADU design standards, 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 requested Adjustment will not result in a proposal that detracts from the livability or appearance of the surrounding multi-dwelling residential area. The scale of the building in which the ADU is proposed is less than that which is allowed in the R1 zone, primarily in terms of maximum allowed height and minimum building setbacks. At 21 feet, one inch in height, the building in which the ADU is proposed will be considerably less than the maximum 45 foot height allowed for building in this zone, with both side and rear setback substantially deeper than the minimum five feet required in this zone.

A neighbor requested that a fence be located along the site’s rear (west) lot line as a means of maintaining privacy for residents on the adjacent site. The adjacent site, while located in an R1 Multi-Dwelling zone, is developed with a one-story, single-dwelling residence. The concern about privacy for residents in the shorter single-dwelling residence is understandable, particularly when surrounded by taller multi-dwelling structures. However, there is no nexus between the applicant’s requested height Adjustment and impacts on privacy. The building in which the ADU is proposed is three feet, one inch taller than allowed; however, the portion of the building that is over the allowed height is limited to the roof, on which no windows are proposed. As such, the increased height has no impact on the privacy for residents on the adjacent lot, and a condition requiring a fence along the common lot line cannot be imposed. Additionally, any potential adverse impact on the adjacent neighbor related to the bulk of the over height building is mitigated by placing the building 11 feet farther from the rear lot line than the R1 standards require.

As the proposal will not significantly detract from the livability or appearance of the multi-dwelling residential area, this criterion is met.

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

**Findings:** As only one Adjustment is requested, this criterion is not applicable.

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

**Findings:** City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. Because there is neither a scenic nor historic resource designation on the site, this criterion is not applicable.

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

**Findings:** As indicated in responses to Approval Criteria A and B, the proposal:

- is consistent with the intended purposes of the regulation being adjusted; and
- has no impacts on the appearance or livability of the surrounding multi-dwelling residential area.

As such, there are no identified adverse impacts for which mitigation is required, and therefore 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 environmental overlay zones mapped on 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 of the Zoning Code in order to be approved during this land use review process. However, the plans submitted for a building permit must demonstrate that all development standards 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 approval criteria have been met. The request to allow an ADU in an existing building that exceeds the allowed height by three feet, one inch equally meets the intent of the ADU design standards. The proposal will not detract from the livability or appearance of the surrounding multi-dwelling residential area, and there are no adverse impacts for which mitigation would be required.

## ADMINISTRATIVE DECISION

Approval of an Adjustment Review to allow an ADU to be in an existing detached building that exceeds the maximum allowed 18 foot height (Section 33.205.030.D) by three feet, one inch, per the approved site plans and building elevations (Exhibits C1 and C2), signed and dated February 17, 2011, and 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 and C2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 11-102800 AD."



**Staff Planner: Douglas Hardy**

**Decision rendered by:** \_\_\_\_\_ **on February 17, 2011.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: February 18, 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 11, 2011, and was determined to be complete on **January 21, 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 11, 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 waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: May 21, 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 March 4, 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](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 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 **March 7, 2011 – the next business 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:

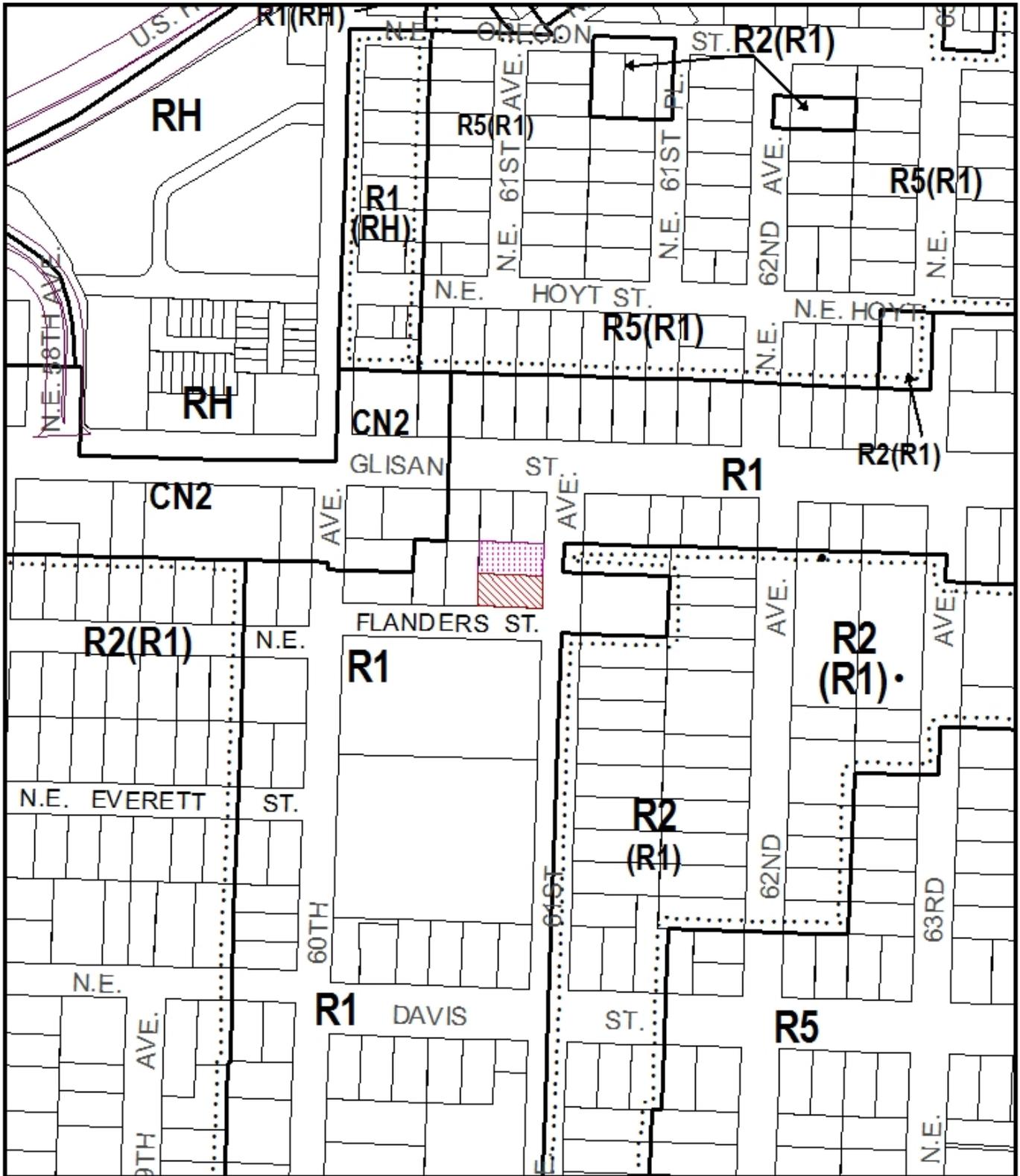
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Building Elevation (attached)
- 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 Plans Examiner
  - 7. Bureau of Parks & Recreation/Urban Forestry Division
- F. Correspondence:
  - 1. Susie and Richard Bushek, e-mail received on January 25, 2011
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research

**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
-  Also Owned
-  Historic Landmark



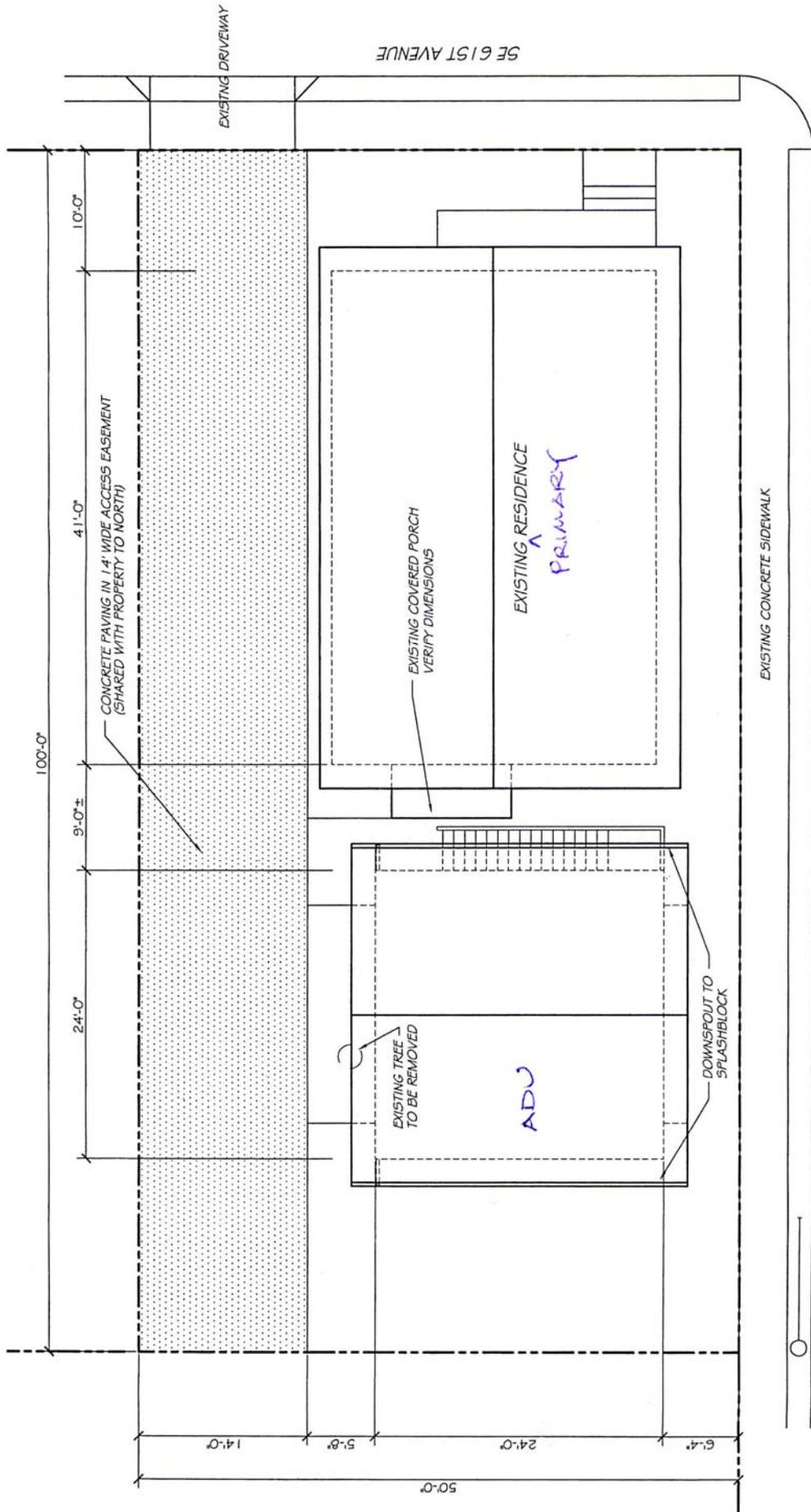
File No.	LU 11-102800 AD
1/4 Section	3036
Scale	1 inch = 200 feet
State Id	1N2E31DA 4400
Exhibit	B (Jan 13, 2011)

\*Approved\*

City of Portland • Bureau of Development Services

Form: \_\_\_\_\_ Date: 2.17.11

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



CASE NO. 11-102900AD  
EXHIBIT CI

SE FLANDERS STREET



1 SITE PLAN  
A2 1/8" = 1'-0"

