



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
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Date: April 24, 2015
To: Interested Person
From: Marguerite Feuersanger, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 15-124011 AD

GENERAL INFORMATION

Applicant: Arthur E Andrews
1704 SE 22nd Ave / Portland OR 97214

Owner: Irma M Andrews
10340 SW 41st Ave / Portland OR 97219-6953

Site Address: 3616 SE 37TH AVE

Legal Description: BLOCK 2 LOT 5, 39TH ST ADD
Tax Account No.: R830300240
State ID No.: 1S1E12DA 01300
Quarter Section: 3434
Neighborhood: Creston-Kenilworth, contact Zachary Smith at 503-866-8575.
Business District: Greater Brooklyn, contact David Weislogel at 503-872-9320.
District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.
Zoning: R5, Single Dwelling Residential 5,000 Zone
Case Type: AD, Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

An accessory dwelling unit (ADU) is proposed for the second floor and attic within the existing house. The main household living area will be within the first floor and basement level. ADUs are allowed in residential zones developed with a house, such as this site. Additional regulations apply to ADUs in part to ensure that they are smaller in size than the house and compatible with the desired area character. The applicant is requesting an Adjustment to exceed the maximum allowed living area of the proposed ADU, from 800 square feet to 1,112 square feet. The main household living area will be 1,921 square feet. No exterior changes to the house or property are proposed.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The

relevant approval criteria are found in Section 33.805.040.

ANALYSIS

Site and Vicinity: The 5,000 square foot site is developed with a 2-story single dwelling residence, constructed in the early 1900s. The house faces NE 37th, and is located less than 100 feet south of SE Powell Boulevard. Commercial one-story buildings are located immediate north of the site, and a veterinary clinic is located across the street, west of the site. Although commercial development along SE Powell Boulevard is a predominant part of the area character, well established single dwelling residential development exists south and east of the site.

Zoning: The site and surrounding properties are located in an R5, Single-Dwelling Residential 5,000 zone. The regulations of the Single-Dwelling zones are intended to create, maintain and promote single-dwelling neighborhoods. The development standards work together to preserve the character of neighborhoods, and promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

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 **February 5, 2015**.

The following Bureaus responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E-1)
- Bureau of Transportation (Exhibit E-2)

The following Bureaus responded with additional information:

- The Water Bureau responded with information on water service (Exhibit E-3)
- The Site Development Section of the Bureau of Development Services (BDS) responded with information about site characteristics and erosion control (Exhibit E-4).
- The Life Safety Section of BDS responded with information on obtaining a building permit (Exhibit E-5).

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the Notice of Proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

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

Findings: The applicant requests one Adjustment to increase the maximum allowed size for a proposed ADU from 800 square feet to 1,112 square feet. The purpose of the ADU design standards is listed below:

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 ADU is proposed to be located on the existing second floor and attic of the home. Given that no changes are proposed to the exterior of the house and site, the proposal to increase the allowed size of the ADU to 1,112 square feet will not impact the character or the livability of the surrounding area. The location of the ADU within the second floor and attic of the existing home will not affect the scale and placement of structures and will allow for the utilization of existing space on the site. Living area in the main house is 1,921 square feet including the basement. The proposed size of the ADU is smaller in size than the household living area, and represents about 37 percent of the house's total floor area (1,112 of 3,033 square feet). A new building or addition is not proposed, so the flexibility to site a building to fit the topography of the site is not an issue. For these reasons, 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: As highlighted in the findings of Criterion A above, the ADU will be located on the second floor and attic of the existing home, without exterior changes to the house or site. The request to allow a larger ADU than the maximum 800 square feet will not detract from the appearance of the residential area. The requested ADU has a living room, kitchen, bathroom, two bedrooms and attic storage space. Additionally, this site has the potential for two full size dwelling units because it is adjacent to a commercial zone (to the north) and is considered a "transition site." The existing house could be converted to a duplex or two attached houses if certain standards are met. The proposed ADU project is less intense than the allowed transition site options. The proposal is consistent with this criterion because it allows for a smaller additional dwelling unit on a site where its appearance and impact will be compatible with the surrounding houses. Based on this information, the proposed 1,112 square foot ADU will not significantly detract from the livability of the surrounding area as well. 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: Only one Adjustment has been requested; therefore, this criterion does not apply.

- 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; historic resources are designated by a large dot, and by historic and conservation districts. 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: The proposal is not expected to result in any impacts; therefore, mitigation is not necessary. This criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: The site is not within an environmental zone. This criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. A building permit is required to convert the existing second floor and attic to an ADU. Building plans submitted for a 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's request is to increase the allowed size of a proposed second-floor ADU from 800 to 1,112 square feet. All changes associated with the ADU are internal to the house with no changes proposed to the exterior of the house or site. Also, any impacts resulting from the proposed ADU will be minor due to the site's proximity to existing commercial development and commercial zoning. While the size of the ADU will be larger than a typical ADU, the proposal meets the applicable approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to increase the maximum allowed size of an Accessory Dwelling Unit from 800 to 1,112 square feet (33.205.030.C.6), per the approved plans, Exhibits C-1, C-4, and C-5, signed and dated April 22, 2015, subject to the following conditions:

- A. As part of the required building permit application submittal to convert a portion of the house to an ADU, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.9. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 15-124011 AD."

Staff Planner: Marguerite Feuersanger

Decision rendered by:  **on April 22, 2015.**

By authority of the Director of the Bureau of Development Services

Decision mailed: April 24, 2015

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

Procedural Information. The application for this land use review was submitted on February 24, 2015, and was determined to be complete on **March 26, 2015.**

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 24, 2015.

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

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

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

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

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

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 8, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th 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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

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

Recording the final decision.

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

- *Unless appealed,* The final decision may be recorded on or after **May 9, 2015 – (the day following the last day to appeal).**

- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

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

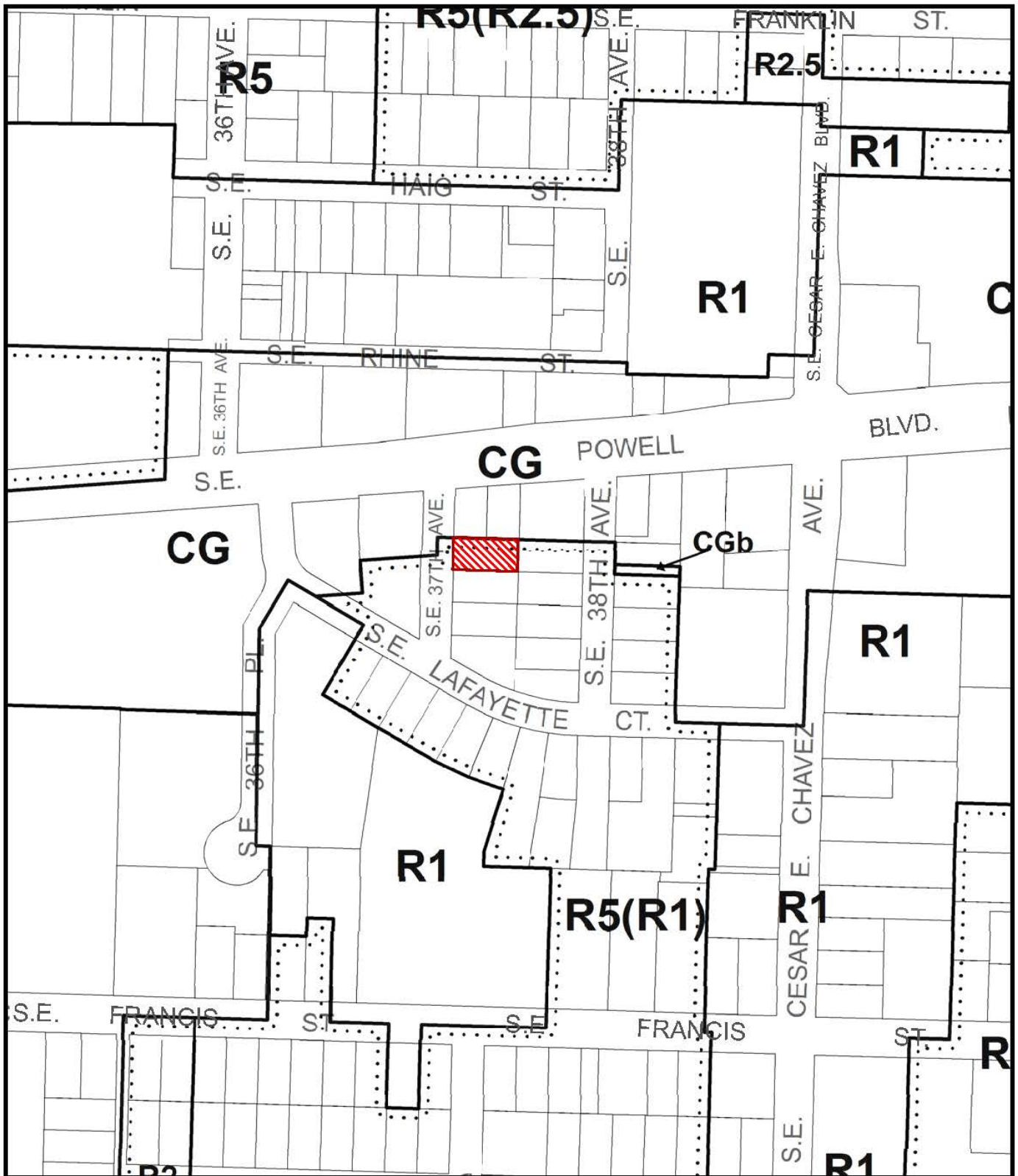
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- | | |
|---|--|
| A. Applicant's Statement and Photos | 2. Mailed notice |
| B. Zoning Map (attached) | E. Agency Responses: |
| C. Plans/Drawings: | 1. Bureau of Environmental Services |
| 1. Site Plan (attached) | 2. Bureau of Transportation Engineering and Development Review |
| 2. Basement Plan for Primary House | 3. Water Bureau |
| 3. First Floor Plan for Primary House | 4. Site Development Review Section of BDS |
| 4. Second Floor Plan for ADU (attached) | 5. Life Safety Plans Examiner of BDS |
| 5. Attic Plan for ADU (attached) | G. Other: |
| 6. Building Section | 1. Original LU Application |
| 7. Primary House Area Calculations | 2. Incomplete Application Letter to Applicant, March 4, 2015 |
| 8. ADU Area Calculations | |
| D. Notification information: | |
| 1. Mailing list | |

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



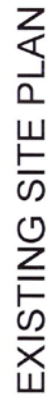
Site



NORTH

File No. LU 15-124011 AD
 1/4 Section 3434
 Scale 1 inch = 200 feet
 State_Id 1S1E12DA 1300
 Exhibit B (Feb 26, 2015)

Project ESTATE OF IRMA MERLE ANDREWS Scale: 1" = 10'-0" Date 03/13/2015	Location 3616 SE 37TH AVENUE PORTLAND OREGON 97202 USA	Title EXISTING SITE PLAN
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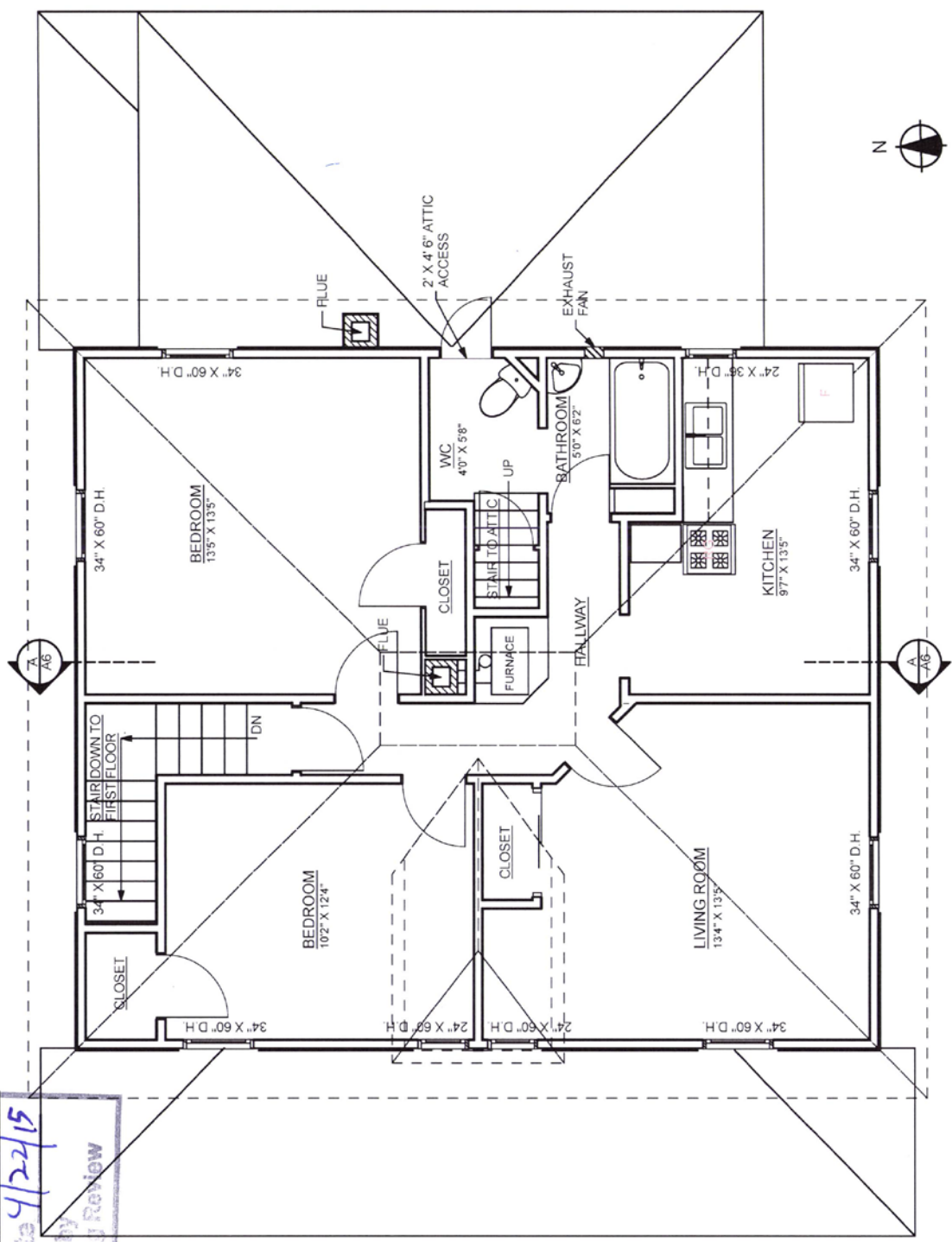
PROPOSAL: TO CONVERT
2ND FLOOR & ATTIC
TO AN ACCESSORY DWELLING
UNIT. (ADU)

rec. 3/25/15

EXHIBIT C-1

City of Portland
Bureau of
Development Services
By *[Signature]* Date *4/22/15*
Approved by
Planning & Zoning Review

Project	ESTATE OF IRMA MERLE ANDREWS	Scale	1/4" = 1'-0"	Date	03/13/2015
Location	3616 SE 37TH AVENUE PORTLAND OREGON 97202 USA	Project No.	120114	Dwg No.	A-4
Title	SECOND FLOOR PLAN				



PROPOSED SECOND FLOOR - LOWER ROOF PLAN FOR
PROPOSED ACCESSORY DWELLING UNIT (ADU.)

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

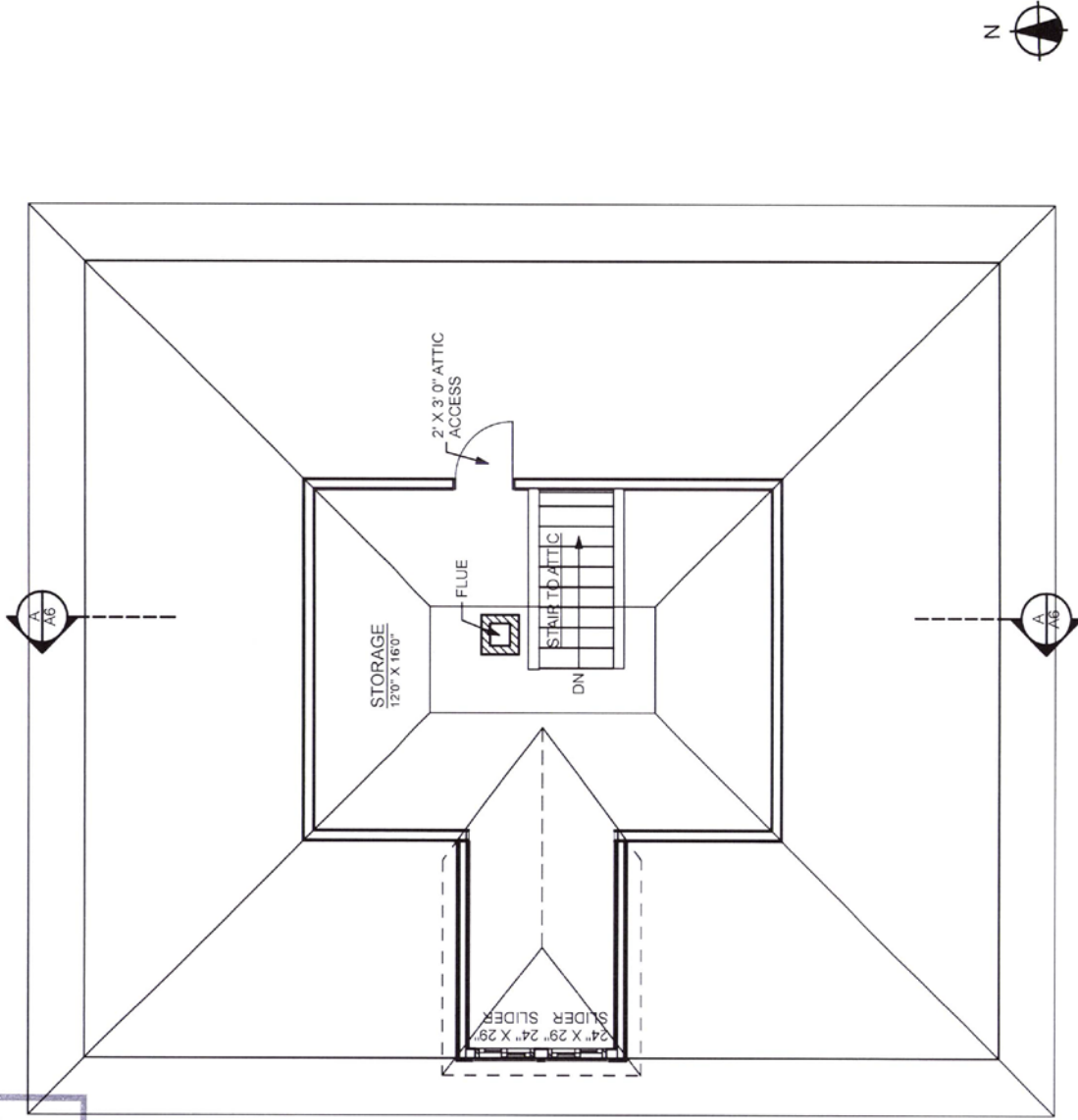
15-124011 AD EXHIBIT C-4

City of Portland
Bureau of
Development Services
Bv: *mlg* Date *4/22/15*
Reviewed by
Planning & Zoning Review

15-124011 AD EXHIBIT C-5

Project		ESTATE OF IRMA MERLE ANDREWS	
Location		3616 SE 37TH AVENUE PORTLAND OREGON 97202 USA	
Title		ATTIC FLOOR PLAN	
Project No.		120114	
Dwg No.		A-5	
Scale		1/4" = 1'-0"	
Date		03/13/2015	

PATRICK PAUL 22405 39th AVE SE BOTHELL WA, 98021 206-491-4135	
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Proposed ATTIC PLAN

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

PART OF PROPOSED A.D.U.