



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** November 3, 2016  
**To:** Interested Person  
**From:** Lauren Russell, Land Use Services  
503-823-7817 / [Lauren.Russell@portlandoregon.gov](mailto:Lauren.Russell@portlandoregon.gov)

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

The Bureau of Development Services has denied a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision.

The reasons for the decision 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 16-239124 AD**

#### **GENERAL INFORMATION**

**Applicant:** Joe Robertson  
Shelter Solutions Llc  
1973 SE Duncan Dr  
Hillsboro, OR 97123

**Owner:** Sean J Lanusse  
3156 NE Fremont Dr  
Portland, OR 97220

**Party of Interest:** Zac Horton  
Faster Permits  
14334 NW Eagleridge Ln  
Portland, OR  
97229

**Site Address:** 3156 NE FREMONT DR

**Legal Description:** BLOCK 6 LOT 7, DOLORES HTS  
**Tax Account No.:** R212001120  
**State ID No.:** 1N2E28BB 07700  
**Quarter Section:** 2739  
**Neighborhood:** Madison South, contact Kimberly Botter at [mkbotter@msn.com](mailto:mkbotter@msn.com)  
**Business District:** Parkrose Business Association, contact [parkrosebusinessassociation@gmail.com](mailto:parkrosebusinessassociation@gmail.com).  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.  
**Plan District:** None  
**Other Designations:** None  
**Zoning:** R5h – Single-Dwelling Residential 5,000, Aircraft Landing Overlay  
**Case Type:** AD – Adjustment Review  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

**Proposal:**

The applicant proposes to construct a new 480 square foot accessory dwelling unit (ADU) atop an existing detached one-story two-car garage at the east corner of the property, which is located within the side building setback. The second story addition is proposed to be pulled back four feet from the garage wall, located one foot from the side property line, so that it is five feet from the side property line. Per Zoning Code Section 33.110.250.C.2.b(4), a detached covered accessory structure is allowed in the side building setback if the structure is no more than 15 feet high. Because the structure in which the ADU is proposed would be 20 feet high, it is not allowed within the required building setbacks. Therefore, the applicant requests an Adjustment to reduce the required side setback from 5 feet to 1 foot for the building wall and from 5 feet to 0 feet for the roof eave.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A through F of Section 33.805.040, Adjustment Approval Criteria, have been met.

**ANALYSIS**

**Site and Vicinity:** The subject site is a 5,500 square foot lot located on the northeast side of NE Fremont Drive between NE Dyer Street and NE Siskiyou Street. It is developed with a one-story single-dwelling residence and a detached one-story, two-car garage. The adjacent properties are similarly developed with one-story single-dwelling residences and one-story accessory structures, some of which are located in side and rear setbacks. This one-story development pattern is very consistent in the surrounding neighborhood.

**Zoning:** The R5 designation is one of the City's single-dwelling residential zones, which are intended to preserve land for housing and provide housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The Aircraft Landing (h) overlay zone provides for safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures, vegetation, and construction equipment. In Residential zones, structures are regulated by the base zone height limits rather than the height limits of the overlay zone. The overlay zone does not apply to this proposal.

**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 October 6, 2016. The following Bureaus have responded with no issues or concerns regarding the requested Adjustment:

- Bureau of Environmental Services responded that the pollution reduction and flow control requirements of the Stormwater Management Manual are not triggered; however, a safe stormwater disposal location that does not impact adjacent properties or structures must be shown at the time of building permit submittal (Exhibit E-1);
- Bureau of Transportation Engineering responded that there are no transportation-related approval criteria associated with the proposed land use request and that if the scope remains the same at the time of building permit, Transportation will have no requirements (Exhibit E-2);
- Water Bureau responded with no concerns (Exhibit E-3);
- Fire Bureau responded with no concerns (Exhibit E-4);

- Site Development Section of BDS responded that Site Development takes no exception to the proposed second story addition to the existing garage to create an ADU (Exhibit E-5); and
- Life Safety Review Section of BDS responded that a separate building permit is required for the work proposed and the proposal must be designed to meet all applicable building codes and ordinances, the construction as proposed will not meet prescriptive lateral design requirements and a lateral design analysis is required, and heated space within a dwelling must meet the insulation requirements of the Oregon Residential Specialty Code (Exhibit E-6).

**Neighborhood Review:** A total of two written responses have been received from notified property owners in response to the Notice of Proposal.

The first respondent owns the abutting property to the southeast and raised concerns that the proposed two-story structure will tower over their backyard and be overly intrusive on the privacy and ultimate enjoyment of the backyard, that the location of the garage so close to the property line may result in contractors needing access to their property or construction debris on their property, and that the two-story structure will be aesthetically unpleasing and an eye sore to the neighborhood given that the surrounding homes are single-story.

The second respondent owns the abutting property to the northwest and raised concerns that the proposed two-story structure will detract from the livability and appearance of the neighborhood that is maintained through the consistency of single-story buildings, that the increased height of the structure in the setback would cause it to tower over neighboring yards and affect livability and privacy, and that the second-story windows facing their property would directly affect their livability and privacy.

*Staff response: As discussed under “Zoning Code Approval Criteria” below, staff finds that the proposal does not meet applicable Adjustment approval criteria and should be denied. However, this decision is not based on concerns about privacy or contractors needing access to the neighboring property. Concerns about the appearance of the ADU are addressed in Criteria A and B.*

## 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 applicant has demonstrated 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 reduce the required side setback from 5 feet to 1 foot for the building wall and from 5 feet to 0 feet for the roof eave.

The purpose of the setback requirement in the R5 zone is stated in Zoning Code Section 33.110.220.A:

**Purpose.** *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.*

Maintain light, air, and separation: The proposed ADU would have 16'-4" high walls and an overall height of 23 feet at the roof peak. It would be located approximately 18 feet from the house on the property to the southeast, approximately 33 feet from the house on the property to the northwest, and over 60 feet from the houses on the two properties to the northeast. Furthermore the second story addition would be set back 5 feet from the southeast side property line and 9'-5" from the rear property line. Therefore the location of the ADU would maintain light and air. The Fire Bureau reviewer had no concerns about the requested Adjustments and access to the structure for fire fighting would be available from the front, side, and rear. Therefore the location of the ADU would also maintain separation for fire protection and access for fire fighting.

This purpose statement is met.

Reflect general building scale and placement: The subject site has a one-story house and one-story detached garage in the side setback. Likewise, the surrounding properties contain one-story houses and one-story detached accessory structures, often within the side setback. The built form is consistent across the surrounding properties. Converting the subject one-story garage located one foot from the side property line into a two-story ADU would result in a building with far greater bulk than any other nearby accessory building in a side setback. This would be the only two-story detached accessory structure in the nearby vicinity that is located in part of a required setback. The proposed ADU would not reflect the general building scale and placement of houses in the neighborhood.

This purpose statement is **not** met.

Promote a reasonable physical relationship between residences: The proposed ADU would be located approximately 18 feet from the house on the property to the southeast, approximately 33 feet from the house on the property to the northwest, and over 60 feet from the houses on the two properties to the northeast. Each of these distances is a greater distance than if both the ADU and neighboring houses only met the minimum 5-foot side or rear setback for a total of 10 feet. Therefore despite being located within the side setback, the ADU would maintain a reasonable physical relationship between residences.

This purpose statement is met.

Promote options for privacy: No portion of the structure within the side setback would contain any windows or doors, which promotes privacy for the abutting property to the southeast, whose house would be closest to the proposed ADU at 18 feet away. Three facades would contain second-story windows; however, each of these facades meets the minimum building setback and are allowed outright to have openings. Additionally, these windows would be located over 30 feet from the nearest houses on abutting properties, which would promote privacy for these neighboring properties.

This purpose statement is met.

Require larger front setbacks: The applicant's proposal does not affect the front setback.

This purpose statement is not applicable.

Provide adequate flexibility: Although the proposed ADU would be sited so that it could fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity, its location within the side setback would not be compatible with the neighborhood. The subject site has a one-story house and one-story detached garage in the side setback. Likewise, the surrounding properties contain one-story houses and one-story detached accessory structures, often within the side setback. The built form is consistent across the surrounding properties. Converting the subject one-story garage located one foot from the side property line into a two-story ADU would result in a building form that is not seen elsewhere in the surrounding neighborhood and would not be compatible with the clear development pattern within the neighborhood.

This purpose statement is **not** met.

Provide room for a car: The applicant's proposal does not affect the on-site parking area.

This purpose statement is not applicable.

Because the proposed Adjustment does not equally meet the intent of the applicable purpose statements in their entirety, **this criterion is not 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:** Because the subject site is located in a single-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. As discussed in the findings for Approval Criterion A, the proposed ADU would not detract from the livability of the residential area because it would maintain light, air, and separation; promote a reasonable physical relation between residences; and promote options for privacy.

However, converting the existing one-story garage located one foot from the side property line into a two-story ADU would result in a building with far greater bulk than any other nearby accessory building in a side setback and therefore would not reflect the general building scale and placement of houses in the neighborhood. Additionally, the two-story ADU would have a building form that is not seen elsewhere in the surrounding neighborhood and would not be compatible with the clear development pattern within the neighborhood. For these reasons, the proposal will significantly detract from the appearance of the residential area.

**This criterion is not 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:** Because only one Adjustment is being 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 no scenic or historic resource designations are mapped on the subject site, this criterion is not applicable.

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

**Findings:** As discussed in the findings for Approval Criteria A and B, the proposed ADU would adversely impact the appearance of the surrounding residential area. In the submittal, the applicant stated that the requested Adjustment would allow the existing two-car garage to be used as the first level atop which the second story ADU would be built pulled back 5 feet from the property line and that this design would have a softer look and less visual impact compared to a two-story ADU built outside the required setbacks, which would be allowed without a land use review. In response to initial staff concerns about approvability, the applicant also changed the ridgeline of the roof to run parallel with the subject house's ridgeline to eliminate the gable on the front elevation, although the gabled portions, with a greater mass, now face the abutting properties to the southeast and northwest.

Despite the stepped-back design, the right façade as depicted in Exhibit C-3 would still read as a two-story building one-foot from the property line. Additionally, because the ADU would be only one-foot from the property line, there would not be room for the installation of any landscaping that could help mitigate the height by providing a buffer to the building wall. This stepped-back design results in an awkward built form that draws attention to the incompatibility of a two-story accessory structure within the side setback in a neighborhood of one-story houses and one-story detached accessory structures.

Revising the ridgeline of the roof and stepping the second story back 5 feet from the side property line is not enough to mitigate for the proposed ADU's negative impact on the appearance of the residential area. There is no evidence in the record that the resulting impacts would be mitigated to the maximum extent practical

**This criterion is not 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). Because no environmental overlay zone is mapped on subject 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 applicant has not demonstrated that the proposal equally or better meets the purpose of the setback regulation nor that the proposal does not significantly detract from the appearance of the residential area. The applicant has not provided sufficient mitigation for the impacts that the proposal would cause on the surrounding area. Because the approval criteria cannot be met, the proposal should be denied.

**ADMINISTRATIVE DECISION**

Denial of the Adjustment to reduce the required side setback from 5 feet to 1 foot for the building wall and from 5 feet to 0 feet for the roof eave (Zoning Code Section 33.110.250.C.2.b(4)).

**Staff Planner: Lauren Russell**

**Decision rendered by:**  \_\_\_\_\_ **on October 31, 2016.**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: November 3, 2016**

**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 September 9, 2016, and was determined to be complete on October 3, 2016.

*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 September 9, 2016.

*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: January 31, 2017.**

**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 November 17, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 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.

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Narrative and Plans 9/9/16
  - 2. Revised Narrative and Plans 10/3/16
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Full Size Site Plan
  - 3. Elevations (attached)
  - 4. Full Size Elevations
- 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. Site Development Review Section of BDS
  - 6. Life Safety Section of BDS
- F. Correspondence:
  - 1. James Coon, 10/18/16, email in opposition
  - 2. Frank and Lisa Walsh, 10/19/16, letter in opposition
- G. Other:
  - 1. Original LUR Application
  - 2. Incomplete Letter

**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



File No.	<u>LU 16-239124 AD</u>
1/4 Section	<u>2739</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1N2E28BB 7700</u>
Exhibit	<u>B</u> (Sep 12, 2016)

# SHELTER SOLUTIONS, LLC

Accessory Dwelling Units & More!

792 SE DANCAN DRIVE  
 HILLSBORO, OR 97123  
 PHONE and FAX (503) 688-8940  
 www.Shelter-Solutions.net  
 info@Shelter-Solutions.com



3156 NE FREMONT DR - LANUSSE ADU  
 SITE PLAN

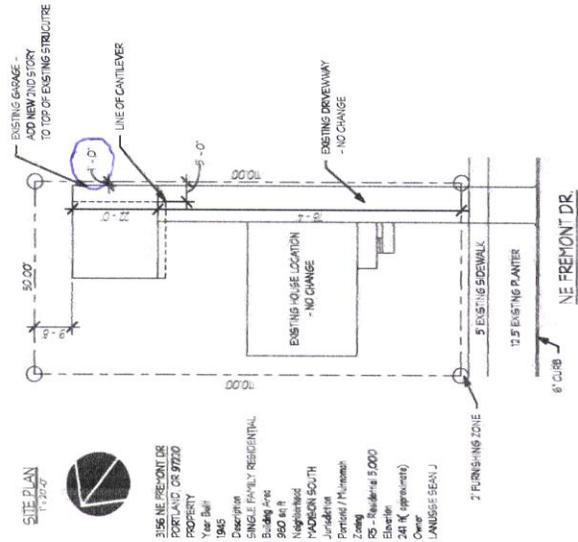
9/7/16

Forward

Sheet

SP

ADJUSTMENT REQUEST TO REDUCE THE  
 REQUIRED SIDE SETBACK FROM 5 FEET  
 TO 1 FOOT FOR THE BUILDING WALL  
 AND FROM 5 FEET TO 0 FEET FOR  
 THE ROOF EAVE.



SITE PLAN  
 1" = 20'-0"



3156 NE FREMONT DR  
 PORTLAND OR 97220  
 PROPERTY  
 Year Built 1945  
 Description SINGLE FAMILY RESIDENTIAL  
 Building Area 960 sq ft  
 Neighborhood MADISON SOUTH  
 Jurisdiction PORTLAND  
 Parcel(s) / Pictogram  
 Zoning OS - Single-Family 5000  
 Assessor's Parcel ID 501100000  
 2017 Assessment  
 Owner LANUSSE, SERA J

CASE NO. 16-239124 AD  
 EXHIBIT C-1

# SHELTER SOLUTIONS, LLC

Accessory Dwelling Units & More!

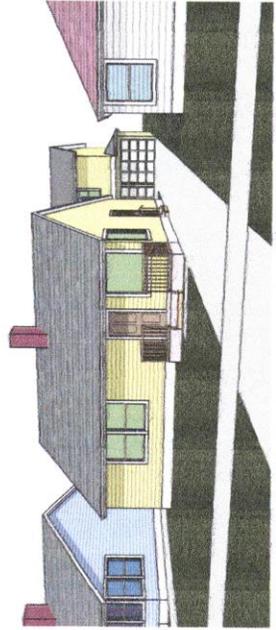
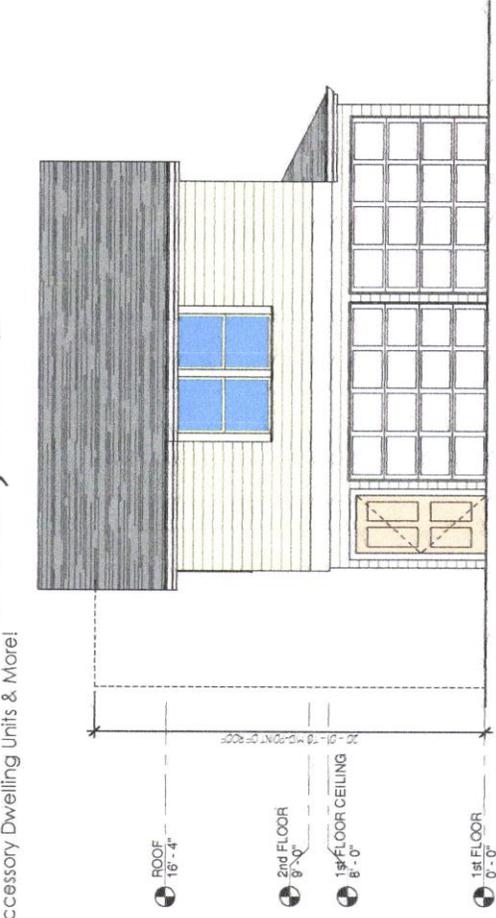
1975 SE RUNCAN DRIVE  
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www.Shelter-Solutions.com  
joe@Shelter-Solutions.com



3156 NE FREMONT DR - LANUSSE ADU  
ELEVATIONS AND ROOF PLAN

9/11/16  
Kovach

Sheet  
1



CASE NO. 16-239124 AD  
EXHIBIT C-3