



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

Ted Wheeler, Mayor  
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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** August 12, 2019  
**To:** Interested Person  
**From:** Andrew Gulizia, Land Use Services  
503-823-7010 / [Andrew.Gulizia@portlandoregon.gov](mailto:Andrew.Gulizia@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 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 19-138361 NU**

#### **GENERAL INFORMATION**

**Applicant:** Peter F. Fry  
303 NW Upton Terrace #1B  
Portland, OR 97210

**Property Owner:** Chuck Kaady  
Kaady Car Washes  
2545 SW Spring Garden St. #200  
Portland, OR 97219

**Site Address:** 1909 W Burnside St.

**Legal Description:** BLOCK 277&278 TL 7300 LAND ONLY SEE R141210 (R180227421)  
FOR IMPS, COUCHS ADD

**Tax Account No.:** R180227420, R649691740

**State ID No.:** 1N1E33DB 07300, 1N1E33DB 08002

**Quarter Section:** 3028

**Neighborhood:** Northwest District, contact John Bradley at 503-313-7574

**Business District:** Nob Hill, contact Nob Hill at [nobhillportland@gmail.com](mailto:nobhillportland@gmail.com)

**District Coalition:** Neighbors West/Northwest, contact Mark Sieber at 503-823-4212

**Plan District:** Central City - Goose Hollow

**Zoning:** CXd - Central Commercial with Design ("d") overlay zone

**Case Type:** NU - Nonconforming Situation Review

**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer

**Proposal:** The applicant proposes to remodel the existing car wash on this site. The existing car wash building will be expanded and two new cashier booths outside the main building will be constructed. The existing coin-operated vacuums outside the car wash building will be removed, and the two existing driveways onto West Burnside will be consolidated into one. Nonconforming Situation Review is required for these changes because although the car wash

was established legally in 1972, the current Zoning Code would not allow a new car wash to be established at this location. Therefore, the car wash is considered a nonconforming use.

Design Review is also required for this project (case file LU 19-119690 DZM), and a separate public notice will be mailed for the Design Review.

**Relevant Approval Criteria:** To be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are in Zoning Code Section 33.258.080.B.

## ANALYSIS

**Site and Vicinity:** The site is located on the northwest corner of NW 19<sup>th</sup> Ave. and W Burnside and has been developed with a car wash since 1972. The site is improved with surface vehicle area, a single-story car wash building, and landscaping. Surrounding properties are developed with a mix of uses and development intensities. Some neighboring lots are developed with single-story commercial buildings and surface parking lots, while others are developed with multi-story residential buildings. West Burnside is a 4-lane arterial road connecting downtown Portland with west side neighborhoods. Providence Park is located one block south of the site.

**Zoning:** The CX zone is intended to provide for commercial and mixed-use development within Portland's most urban and intense areas. A broad range of uses is allowed in order to reflect Portland's role as a commercial, cultural, residential, and governmental center. Development is intended to be very intense with high building coverage, large buildings, and buildings placed close together.

The Design ("d") overlay zone is intended to promote the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural values. The "d" overlay regulations require a separate Design Review for the changes proposed in this Nonconforming Situation Review.

The site is also within the Central City plan district (Goose Hollow subdistrict). The Central City plan district implements the Central City Plan and other plans applicable to the Central City area. The district implements portions of these plans by adding code provisions which address special circumstances existing in the Central City area.

**Land Use Review History:** City records include the following prior land use reviews for the subject site:

- LU 18-165731 LC: 2018 approval of a Lot Consolidation request;
- LUR 01-00320: 2001 Design Review approval to modify a sign; and
- LUR 93-00872: 1994 Design Review approval for new coin-operated vacuums.

**Agency Review:** A "Notice of Proposal" was sent July 12, 2019. The following Bureaus responded with no objections to the Nonconforming Situation Review proposal:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Fire Bureau (Exhibit E-3);
- Site Development Section of BDS (Exhibit E-4); and
- Life Safety Review Section of BDS (Exhibit E-5).

**Neighborhood Review:** One written response to the mailed "Notice of Proposal" was submitted by a neighbor (Exhibit F-1). This response requested that construction work begin no earlier than 7:30am and that the garbage and recycling enclosure be located to avoid security issues.

**Staff response:** The approval criteria for the Nonconforming Situation Review are focused on the permanent impacts of the proposal rather than construction impacts, but the City's Noise

Control Code limits construction noise before 7:00am (Title 18.10.060.B). In the applicant's site plan (Exhibit C-1), the garbage and recycling enclosure is placed near the northeast corner of the site in a way that does not create dark or hidden areas around it. The Design Review that is also required for this proposal will evaluate the site plan for security concerns.

## **ZONING CODE APPROVAL CRITERIA**

### **33.258.038 Documenting A Nonconforming Situation**

A nonconforming use is one which is prohibited by the current zoning for a site, but which was allowed when established and which has continued over time. In 2018, the applicant requested confirmation from the City that the car wash is a nonconforming use (file PR 18-282501). In that review, the City confirmed the car wash is a nonconforming use based on building permit records which show the car wash was allowed when established and dated phone directory listings which show the use has continued over time. The letter confirming the nonconforming status is included as Exhibit G-3.

### **33.258.080 Nonconforming Situation Review**

**B. Approval criteria.** The request will be approved if the review body finds that the applicants has shown that all of the following approval criteria are met:

1. With mitigation measures, there will be no net increase in overall detrimental impacts (over the impacts of the last legal use or development) on the surrounding area taking into account factors such as:
  - a. The hours of operation;
  - b. Vehicle trips to the site and impact on surrounding on-street parking;
  - c. Noise, vibration, dust, odor, fumes, glare, and smoke;
  - d. Potential for increased litter; and
  - e. The amount, location, and nature of any outside displays, storage, or activities; and

**Findings:** Approval criterion B.1 requires the proposal to have no net increase in detrimental impacts on the neighborhood compared to the existing condition. Each of the factors listed in approval criterion B.1 is analyzed below.

#### Hours of operation

No change to the car wash's existing hours of operation is proposed (Exhibit A-1). Therefore, there will be no increased impacts related to the hours of operation.

#### Vehicle trips to the site and impact on surrounding on-street parking

The proposal will reorganize vehicle traffic through the site and extend the enclosed area of the existing car wash building (Exhibits A-1 and C-1). However, the number of vehicles the facility can serve will not increase, since vehicles will still pass through the car wash building one at a time. Therefore, the remodel will not cause an increase in the number of vehicle trips to the site or the number of vehicles parked on surrounding streets. The Portland Bureau of Transportation (PBOT) reviewed the proposal and responded with no objections to approval (Exhibit E-2). For these reasons, staff finds the proposal will not increase impacts related to vehicle trips or on-street parking.

#### Noise, vibration, dust, odors, fumes, glare and smoke

Car wash equipment produces noise and vibration, but the proposal will extend the enclosed area at the entrance and exit to the existing car wash building, not expand the car wash operation. The equipment will still operate inside the enclosed building. Noise from the site will be reduced since the existing coin-operated vacuums outside the car wash building will be removed.

Vehicles entering, maneuvering through, and exiting a car wash site may create noise and vibration from engines, odors and fumes from exhaust, and glare from headlights. However, as explained above, the proposal does not increase the number of vehicles the facility can serve.

The applicant states the exterior lights will focus light downward, avoiding glare impacts on neighboring properties (Exhibit A-2).

Nothing about the proposal will increase the potential for dust or smoke. The vehicle area will be paved, and no smoke-producing activities are proposed.

For these reasons, staff finds the proposal will have no net increase in detrimental impacts related to noise, vibration, dust, odors, fumes, glare, or smoke.

#### Potential for increased litter

Customers usually remain inside their vehicles during a visit to a car wash, and the number of vehicles that can be serviced through the car wash will not increase. Therefore, the proposal is not expected to increase litter. Garbage and recycling will be collected in a screened enclosure near the northeast corner of the site (Exhibit C-1).

#### Amount, location and nature of outside displays, storage or activities

The proposal does not include outside display or storage of goods or materials, and the amount of outside activity on the site will decrease since the existing coin-operated vacuums will be removed.

#### Summary

For the reasons discussed above, staff finds the proposal will not result in a net increase in detrimental impacts on the surrounding area. Approval criterion B.1 is met.

2. If the nonconforming use is in an OS, R, or IR zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the OS, R, or IR zoned area. This is based on taking into account factors such as:
  - a. Building scale, placement, and facade;
  - b. Parking area placement;
  - c. Buffering and the potential loss of privacy to abutting residential uses; and
  - d. Lighting and signs; and

**Findings:** Since the site is not in an OS, R, or IR zone, approval criterion B.2 is not applicable.

3. If the nonconforming use is in a C, E, I, or CI zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

**Findings:** The desired function and character of the CX zone is described in Zoning Code Section 33.130.030.F:

*The Central Commercial (CX) zone is intended to provide for commercial and mixed use development within Portland's most urban and intense areas, specifically the Central City and the Gateway Regional Center. A broad range of uses are allowed to reflect Portland's role as a commercial, cultural, residential, and governmental center. Development is intended to be very intense with high building coverage, large buildings, and buildings*

*placed close together. Development is intended to be pedestrian-oriented with a strong emphasis on a safe and attractive streetscape.*

A car wash is a fairly low-intensity, auto-centered use which is not generally supportive of the intent of the CX zone. However, as discussed previously, the car wash on the subject site has nonconforming rights under Zoning Code Chapter 33.258 to continue to operate. This approval criterion only evaluates proposed changes to the site. The proposed changes move the site closer to the desired function and character of the CX zone by increasing the size and coverage of the building and bringing the building closer to the street, supporting a more built-up, urban character. Also, the two existing driveways onto West Burnside will be consolidated into a single driveway, reducing potential conflicts with pedestrians. Finally, the Design Review required for the changes (case file LU 19-119690 DZM) will promote an attractive appearance for the project.

For these reasons, staff finds the proposal will not detract from the desired function and character of the CX zone. Approval criterion B.3 is met.

## 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 requirements of Title 11 can be met, and 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 car wash remodel will not increase detrimental impacts on the neighborhood compared to the current development on the site, and the proposed changes will not detract from the desired function and character of the CX zone. The applicable approval criteria are found to be met. Since the approval criteria are met, the Nonconforming Situation Review must be approved.

## ADMINISTRATIVE DECISION

Approval of a Nonconforming Situation Review to modify the existing car wash (a Quick Vehicle Servicing use and a Drive-Through Facility) on the subject site, per the approved plans, Exhibits C-1 through C-3, signed and dated August 6, 2019, subject to the following condition:

- A. As part of the building permit application submittal, each of the 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-3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 19-138361 NU."

**Staff Planner: Andrew Gulizia**

**Decision rendered by:** \_\_\_\_\_ **on August 6, 2019.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: August 12, 2019**

**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 March 26, 2019 and was determined to be complete on July 9, 2019.

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 March 26, 2019.

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 extended by the applicant, **the 120 days will expire on November 6, 2019.**

**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 Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on August 26, 2019** 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 Hearings Officer 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 Hearings Officer 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 will be recorded with the Multnomah County Recorder. *Unless appealed*, the final decision will be recorded after **August 26, 2019** by the Bureau of Development Services. The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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

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

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

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

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

#### **EXHIBITS**

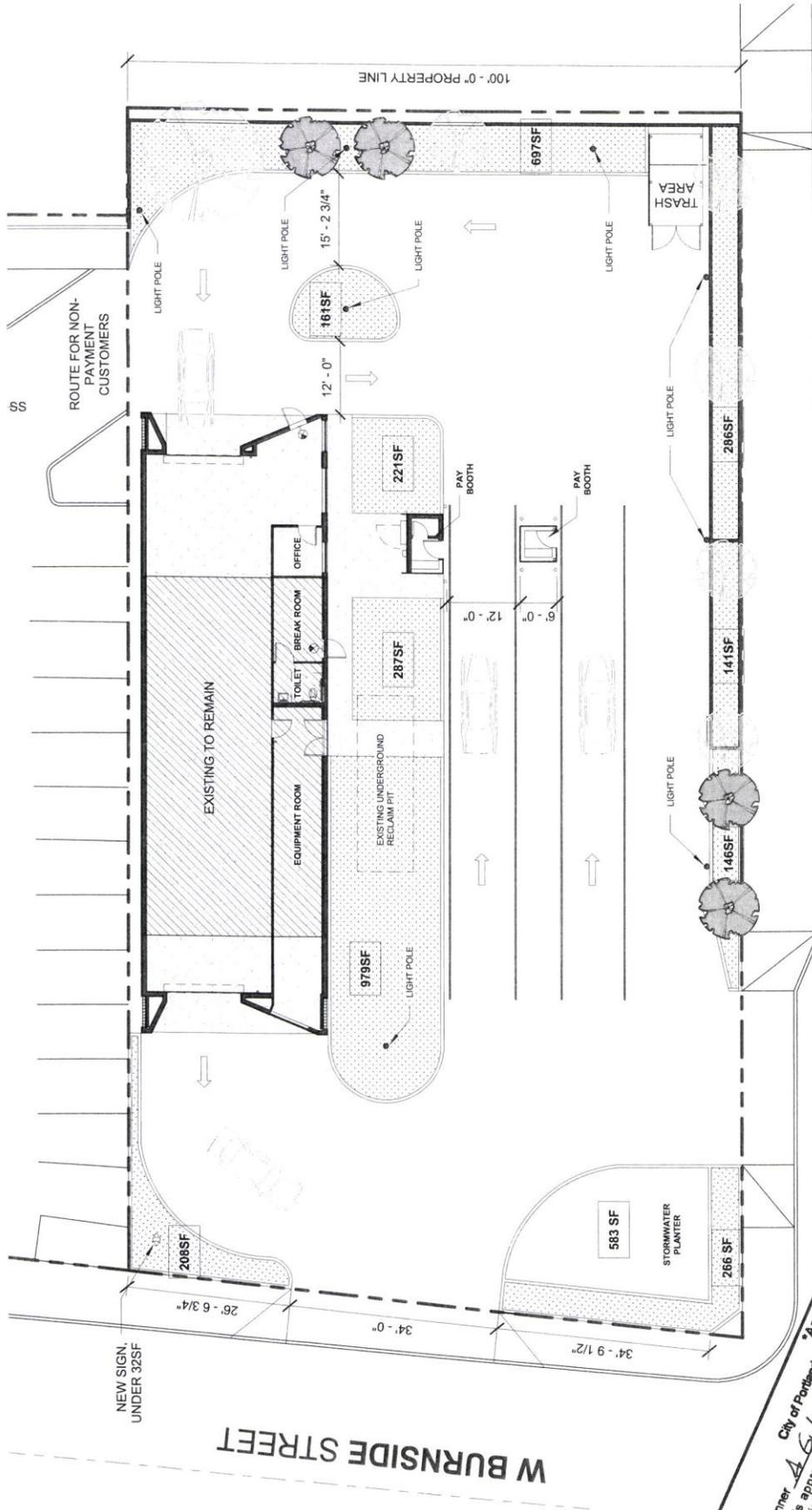
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
  - 1. Applicant's narrative
  - 2. Letter from applicant, dated May 16, 2019
  - 3. Letter from applicant, dated July 9, 2019
  - 4. Originally submitted site plan, superseded by final revised site plan in Exhibit C-1
  - 5. Revised site plan, superseded by final revised site plan in Exhibit C-1
  - 6. Vehicle maneuvering diagrams
  - 7. Utility plan
  - 8. Existing building elevations
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site plan (attached)
  - 2. Proposed north and east building elevations (attached)
  - 3. Proposed south and west building elevations (attached)
- D. Notification Information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Portland Bureau of Transportation

3. Fire Bureau
  4. Site Development Review Section of BDS
  5. Life Safety Review Section of BDS
- F. Correspondence:
1. E-mail from Erica Griffin and Tim Griffin, received July 24, 2019
- G. Other:
1. Land use application form and receipt
  2. Incompleteness determination letter, dated April 5, 2019
  3. Nonconforming situation letter – PR 18-282501

**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).**





**KAADY CAR WASH BURNSIDE**  
 Portland, Oregon  
 4119-13836 MU Exhibit C-1

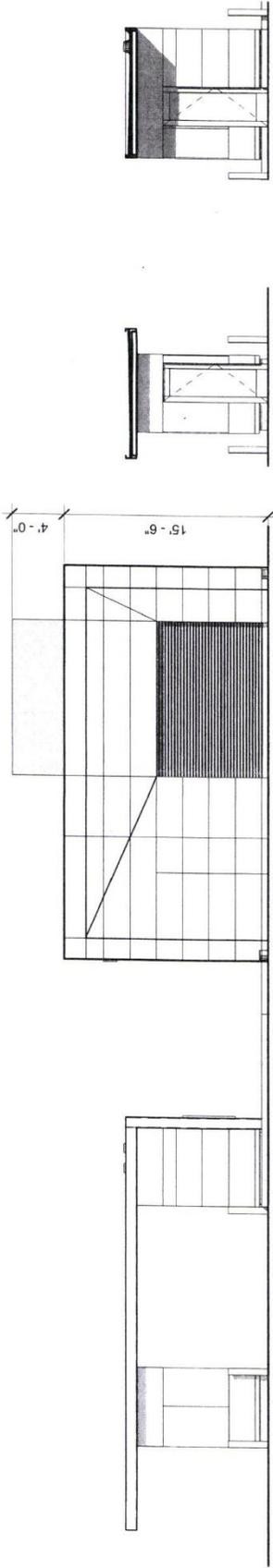
**A07**  
 SITE PLAN

**NW 19TH AVENUE**

Planner *A. Schick*  
 City of Portland - Bureau of Development Services  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.  
 \* Changes approved through *4119-119690 D24* are allowed.  
 Date *8/6/19*



tva architects inc.  
 phone: 503.270.0468 | www.tvaarchitects.com  
 1011 NW 19th Avenue, Portland, Oregon 97204

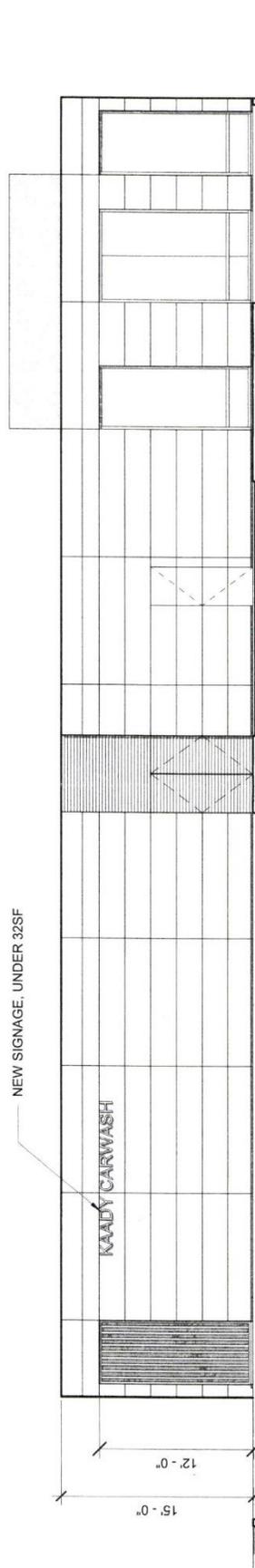


1 NORTH ELEVATION  
1/8" = 1'-0"

3 BOOTH - EAST ELEVATION  
1/8" = 1'-0"

4 BOOTH - EAST ELEVATION 2  
1/8" = 1'-0"

NEW SIGNAGE, UNDER 32SF



2 EAST ELEVATION  
1/8" = 1'-0"

**\*Approved\***  
City of Portland - Bureau of Development Services  
Planner A. G. Subiza Date 8/6/19  
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.  
*\*Changes approved through LU 19-117690 DZM are allowed.*

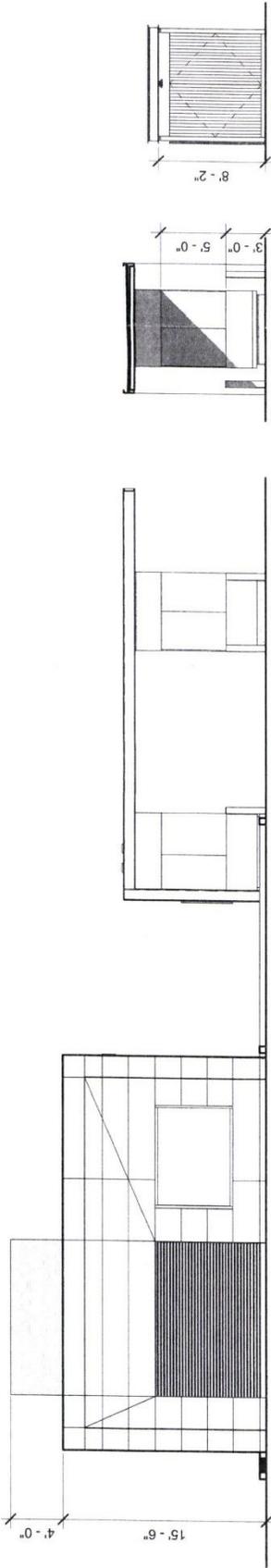


tva architects inc.  
520 sw sixth avenue | suite 1500 | portland, oregon 97204  
phone: 503 220 8668 | www.tvaarchitects.com

**A10**  
NORTH & EAST ELEVATIONS

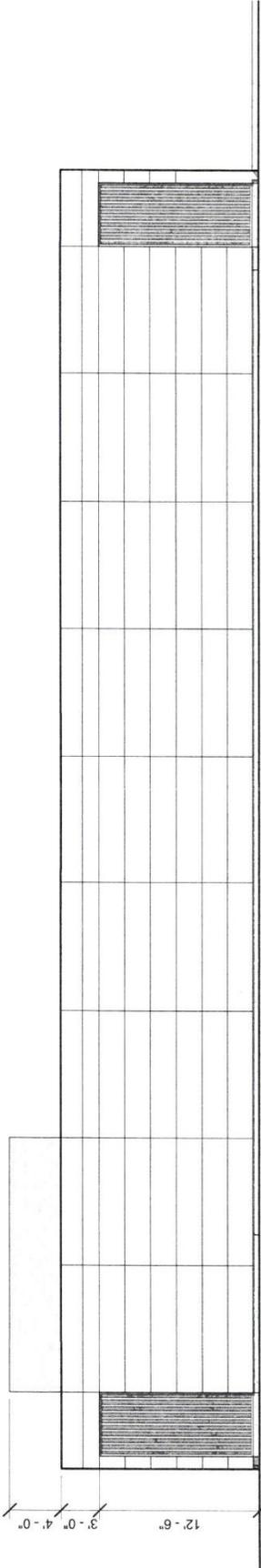
1/8" = 1'-0"  
3.12.2019 LU 19-138361 NU Portland, Oregon  
*Exhibit C-2*

KAADY CAR WASH BURNSIDE



1 SOUTH ELEVATION  
1/8" = 1'-0"

3 BOOTH - WEST ELEVATION - DRTRASH ENCLOSURE - DR  
1/8" = 1'-0"



2 WEST ELEVATION  
1/8" = 1'-0"

**\*Approved\***  
City of Portland - Bureau of Development Services  
Planner Ab Sukh-11 Date 8/6/19  
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.  
**\*Changes approved through LH 19-119696 DZA are allowed.**



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**A11**  
SOUTH & WEST ELEVATIONS

1/8" = 1'-0"  
3.12.2019

KAADY CAR WASH BURNSIDE  
Portland, Oregon  
19-138361 **Exhibit C-3**