



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

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

**Date:** March 11, 2020  
**To:** Interested Person  
**From:** Amanda Rhoads, Land Use Services  
 503-823-7837 / [Amanda.Rhoads@portlandoregon.gov](mailto:Amanda.Rhoads@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 19-269540 AD**  
**ADJUSTMENT TO ACCESSORY STRUCTURE HEIGHT FOR NEW ADU**

**GENERAL INFORMATION**

**Applicant:** Erica Dunn  
 Green Hammer Design Build  
 3060 NE 128th Avenue | Portland, OR 97209  
 (503) 804-1746 | [erica@greenhammer.com](mailto:erica@greenhammer.com)

**Owners:** Joy & Brad Bush  
 3060 NE 128th Ave | Portland, OR 97230

**Site Address:** 3060 NE 128TH AVE

**Legal Description:** BLOCK 1 LOT 5, ELSINORE HTS  
**Tax Account No.:** R250800200  
**State ID No.:** 1N2E26BA 10200  
**Quarter Section:** 2743

**Neighborhood:** Russell, contactat [ronglanville@gmail.com](mailto:ronglanville@gmail.com).  
**Business District:** Gateway Area Business Association, contact at [gabapdxboard@gmail.com](mailto:gabapdxboard@gmail.com)

**District Coalition:** East Portland Community Office, contact at 503-823-4550.  
**Plan District:** Glendoveer  
**Zoning:** R7h – Single-Dwelling Residential 7,000 with “h” Aircraft Landing Overlay Zoning

**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, detached Accessory Dwelling Unit (ADU) in the backyard of the existing house. The ADU is proposed to share a new deck with the main house.

In order to align the ADU main level with the main level of the house on this sloping lot, the applicant requests an Adjustment to Zoning Code Section 33.110.250.C.1 to increase the maximum height of this detached accessory structure from 20 feet to 22 feet, 8 inches.

**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:** This 11,800-square-foot site located at the end of a cul-de-sac is triangular in shape and is developed with a ranch-style home constructed in 1965. The site is in the Glendoveer Plan District and is immediately south and adjacent to the I-84 freeway; a sound barrier wall separates the site from the highway and the pedestrian/bicycle trail that runs along the highway. The primary house has an attached garage, a current raised deck off the back of the house, and a small accessory shed. Nearby homes are of similar vintage and style. Northeast 128<sup>th</sup> Ave is local service for all transportation modes.

**Zoning:** The Residential 7,000 (R7) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 4,200 square feet, with a minimum width and depth dimensions of 40 feet and 55 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 7,000 square feet of site area.

The Aircraft Landing Zone “h” overlay provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The overlay is not applicable to residential sites; therefore, the overlay has no impact on the current proposal.

The Glendoveer Plan District regulations are intended to ensure that the development patterns fostered by Ascot zoning and succeeding zoning provisions established by Multnomah County are protected and continued under City zoning regulations following annexation.

**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 **January 31, 2020**. The following Bureaus have responded with no issues or concerns:

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

The Life Safety Plans Examiner noted building code requirements that will need to be met at time of permit (Exhibit E.6).

**Neighborhood Review:** No written responses were received from either the Neighborhood Association or notified property owners in response to the 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 purpose of the maximum 20-foot height limit for detached accessory buildings in the single-dwelling zones is as follows (33.110.250.A):

“**Purpose.** This section regulates detached structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards limit the height and bulk of the structures, promote compatibility of design for larger structures, provide for necessary access around larger structures, help maintain privacy to abutting lots, and maintain open front setbacks.”

The lot slopes down to the north; the proposed detached ADU structure will sit behind an existing house. The height Adjustment request is largely driven by the desire to have the main living floor of the ADU be at the same level as the main living level of the primary house, and connected to the primary house by a rear deck. The applicant states, “Accessibility is the primary design and usability criteri[on]. To satisfy this need, the ADU living space and finish floor is aligned with that of the main home – promoting ease of passage and connectivity, yet independent living and future-proofing for future occupants” (Exhibit A.3). Because of the slope on the site, a first-story level on the primary house becomes a second-story living space in the ADU.

The proposed ADU shares design features with the primary house: both structures have a shallow 3:12 roof pitch; and the vertical board-and-batten exterior siding on the ADU will match the primary house. With regards to height and bulk, the ADU is slightly shorter than the main house with a much smaller footprint. Its placement behind the house and slightly lower will minimize its visibility from the adjacent cul-de-sac. The new ADU is located outside the 10-foot side and rear building setbacks required by the Glendoveer Plan District, providing for easy, generous access around the structures.

Concern for the neighboring property to the east drove some changes in the design during the course of the review. The applicant reduced the height of the structure by 1 foot, 4 inches; flipped the roof orientation so that the gable ends of the structure faced the primary house and the backyard instead of the neighboring property; and modified the site plan to show the existing mature landscaping that is proposed to remain at the eastern property line. There is a recessed covered area and access to the mechanical equipment on the east-facing façade, along with smaller vertical windows opening into a bathroom and kitchen. The main entrance to the ADU and second-story picture windows opening onto the main living area and the bedroom are internalized on the site. A larger covered area/patio faces the yard to the west but is separated from the neighbor to the east with a wall. Because of this, sound impacts offsite are largely limited. The deck that will be built between the primary house and the ADU includes a 6-foot-tall privacy fence that will minimize disturbance to the neighbors from pedestrian traffic to and from the ADU.

For these reasons, this criterion is met.

- B.** If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** The site is zoned R7, or Single-Dwelling Residential 7,000. The proposed outbuilding is located behind the house and is smaller than the main house, establishing a deferential relationship with the primary building on the site. Design elements in the architecture unify the appearance of the two buildings. As discussed in the findings for criterion A above, the design changes to the proposal increase the privacy for the neighbors to the east and reduce impacts on that property. For these reasons and those discussed above under findings for criterion A, the proposal will not significantly detract from the livability or appearance of the surrounding 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:** Only one adjustment is requested. This criterion is not applicable.

- 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:** Due to the changes to the design to match the exterior finish materials of the primary house – rotating the roof so the dormer ends face the primary house and rear property line, instead of the neighbor; and lowering the height of the ADU 1 foot, 4 inches – the impacts are mitigated to the neighboring property. For these reasons, 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 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. 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 proposed a new Accessory Dwelling Unit (ADU) on a property in the Glendoveer Plan District. The detached ADU is taller than allowed by 2 feet, 8 inches, but the

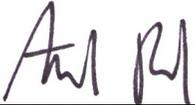
applicant has demonstrated the proposal meets the purpose for the height limit and does not create detrimental privacy or visual impacts to the surrounding neighbors. Because the approval criteria have been met, the request can be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.250.C.1 to increase the maximum height of a new detached accessory structure in the Glendoveer Plan District from 20 feet to 22 feet, 8 inches, per the approved plans, Exhibits C.1 through C.5, signed and dated March 9, 2020, subject to the following conditions:

- A. As part of the building permit application submittal, 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.5. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 19-269540 AD. No field changes allowed."

**Staff Planner: Amanda Rhoads**

**Decision rendered by:**  **on March 9, 2020**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: March 11, 2020**

**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 December 27, 2019, and was determined to be complete on January 28, 2020.

*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 December 27, 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 further extended by the applicant, **the 120 days will expire on: May 27, 2020.**

**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 25, 2020** 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.

**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 **March 25, 2020** 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 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:

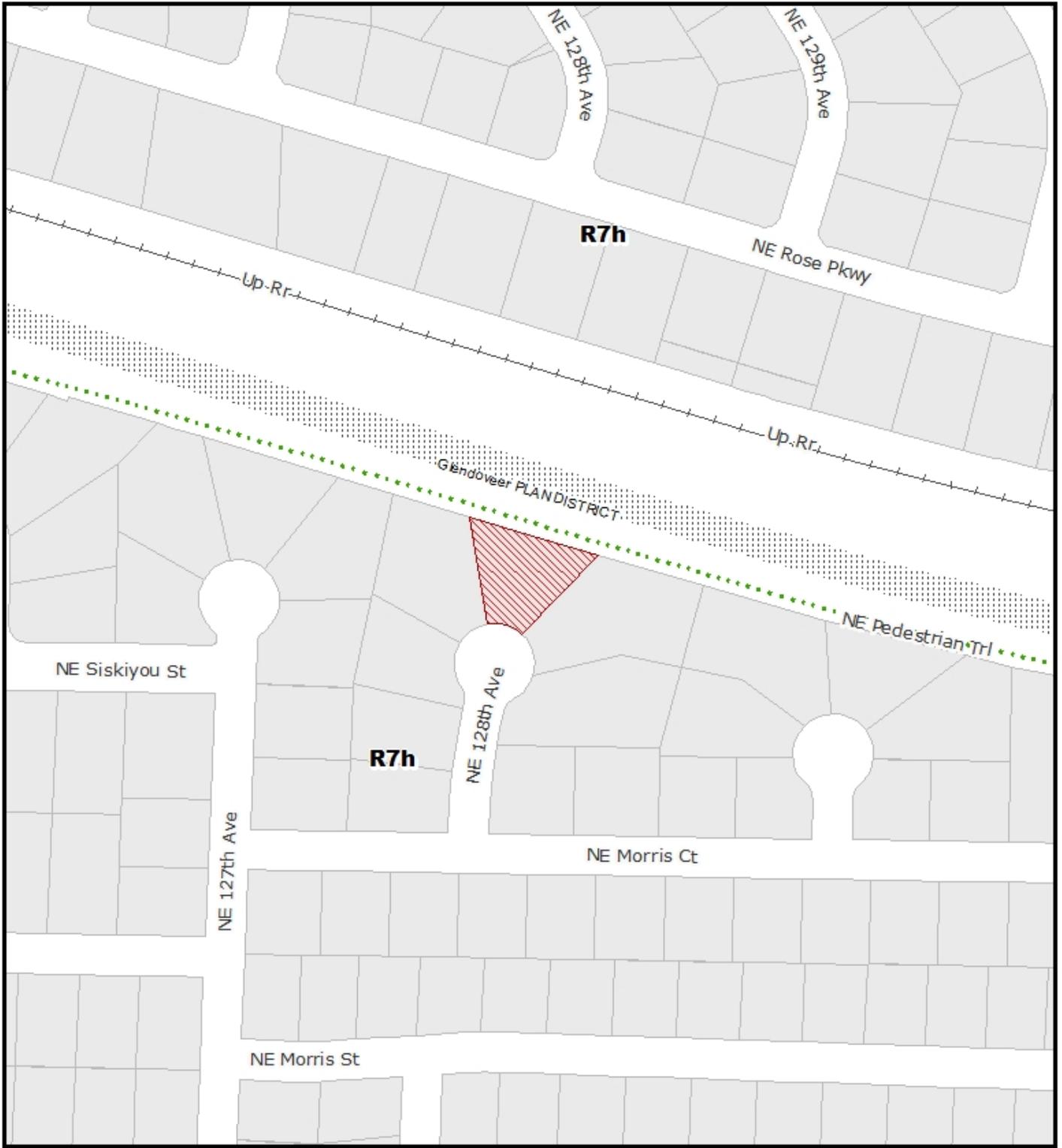
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Original Applicant Narrative
  - 2. Original Plan Set
  - 3. Updated Applicant Narrative, submitted January 28, 2020
  - 4. Building Coverage of Deck drawing, submitted January 29, 2020
  - 5. ADU Section Drawings, submitted January 28, 2020
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. East Elevation, Main House and ADU (attached)
  - 3. South and North ADU Elevations (attached)
  - 4. East and West ADU Elevations (attached)
  - 5. ADU Floor Plans
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Life Safety (Building Code) Plans Examiner
- F. Correspondence: none received
- G. Other:
  - 1. Original Land Use Application and Receipt
  - 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**   
 NORTH  
 GLENDOVEER PLAN DISTRICT

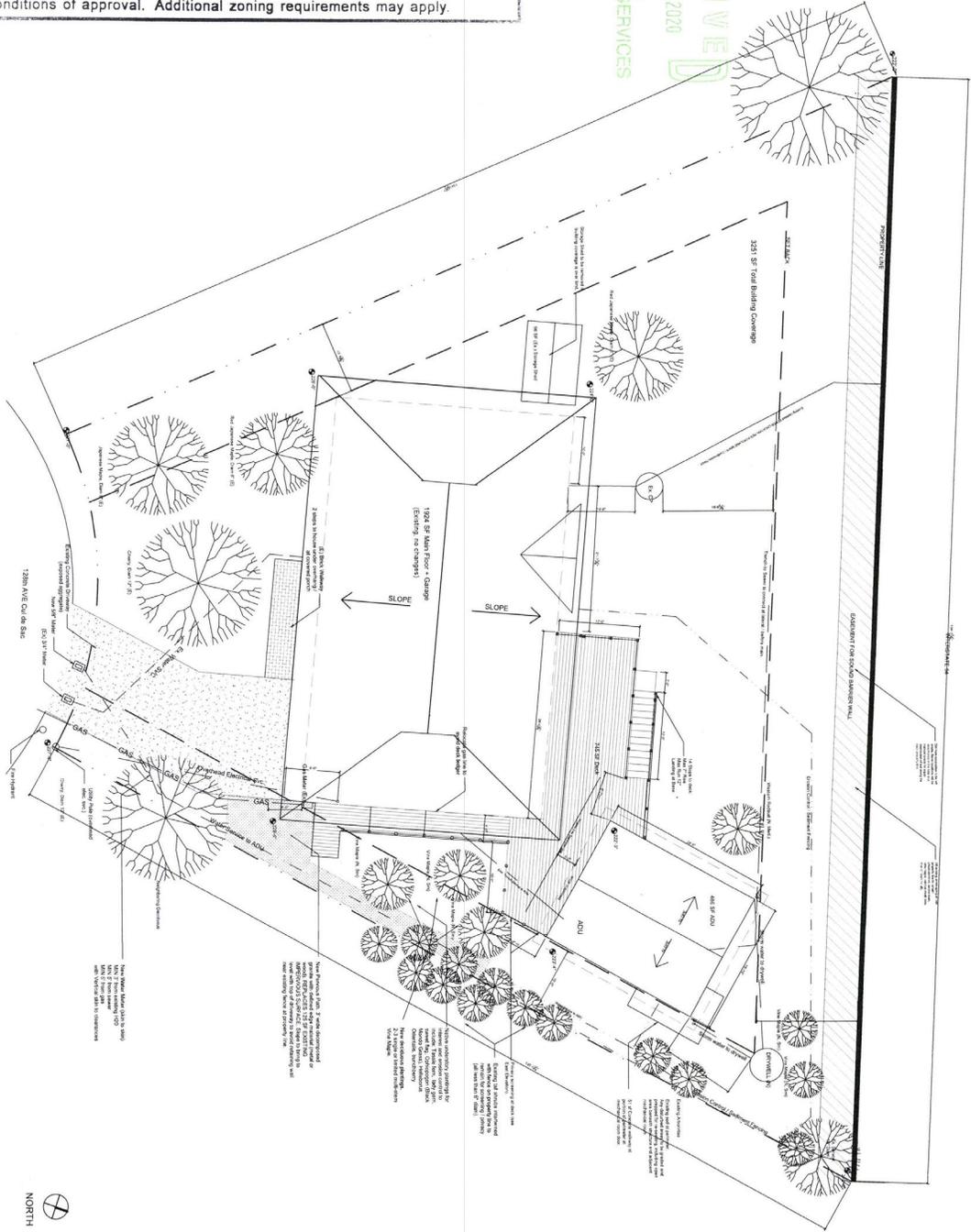
 Site  
 Recreational Trails

File No.	LU 19 - 269540 AD
1/4 Section	2743
Scale	1 inch = 163 feet
State ID	1N2E26BA 10200
Exhibit	B Jan 02, 2020

RECEIVED  
 MAR 03 2020  
 BUS  
 DOCUMENT SERVICES

**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner AMM Date March 9, 2020  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

1 Site Plan - Alternate Deck Approach w/Steps



CASE NO. LA19-202540 AD  
 EXHIBIT C-1

A102

DATE: 1.21.20  
 Revision: 1

Site Plan

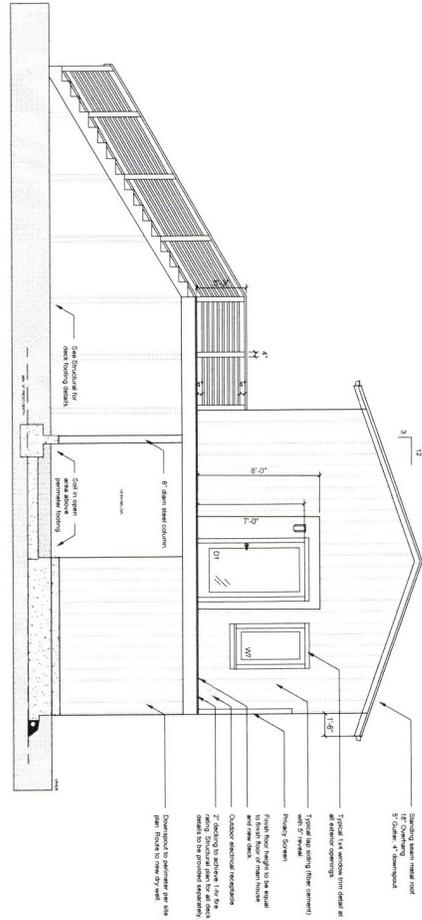


Burge-Ellingsen ADU  
 3060 NE 128th Avenue  
 Portland, OR 97230



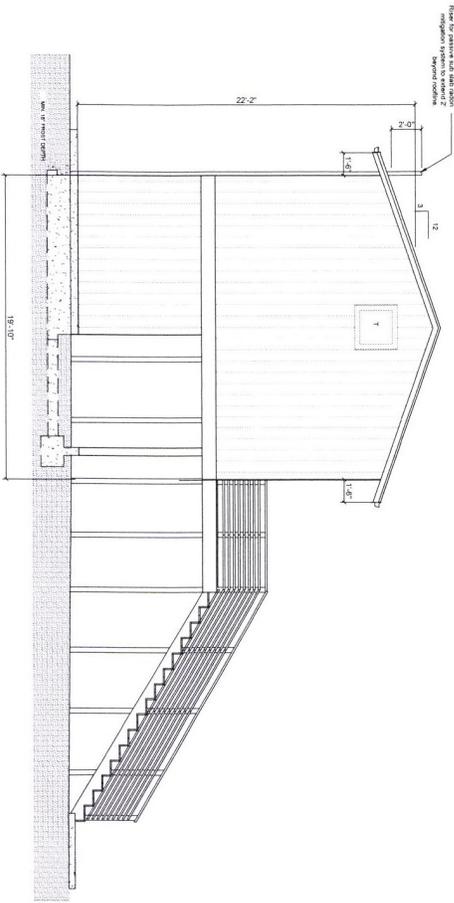


1 South Elevation (Entrance)



SCALE: 1/4" = 1'

2 North Elevation



SCALE: 1/4" = 1'

**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner AM M Date March 9, 2020  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

CASE NO. LU19-269540-00  
 EXHIBIT C.3

A301

DATE 1.21.20  
 Revision: -

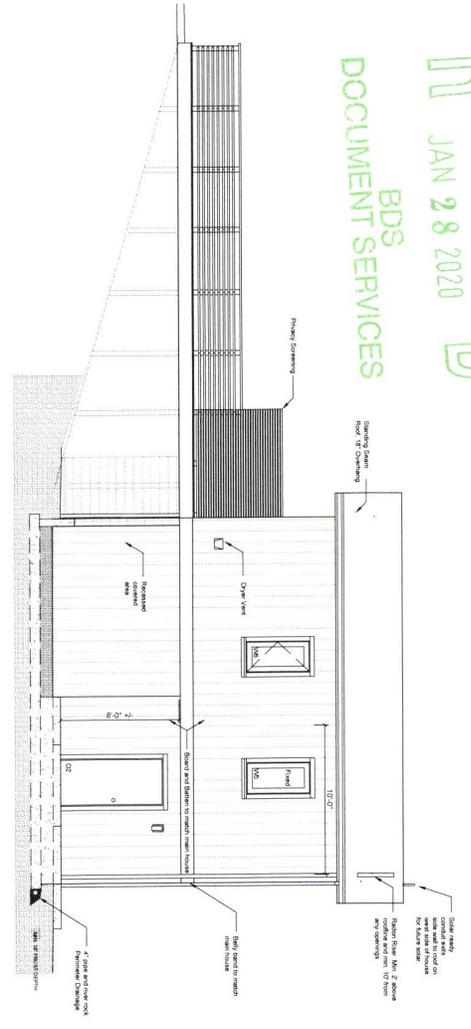
Exterior Elevations  
 North / South



Burge-Ellingsen ADU  
 3060 NE 128th Avenue  
 Portland, OR 97230



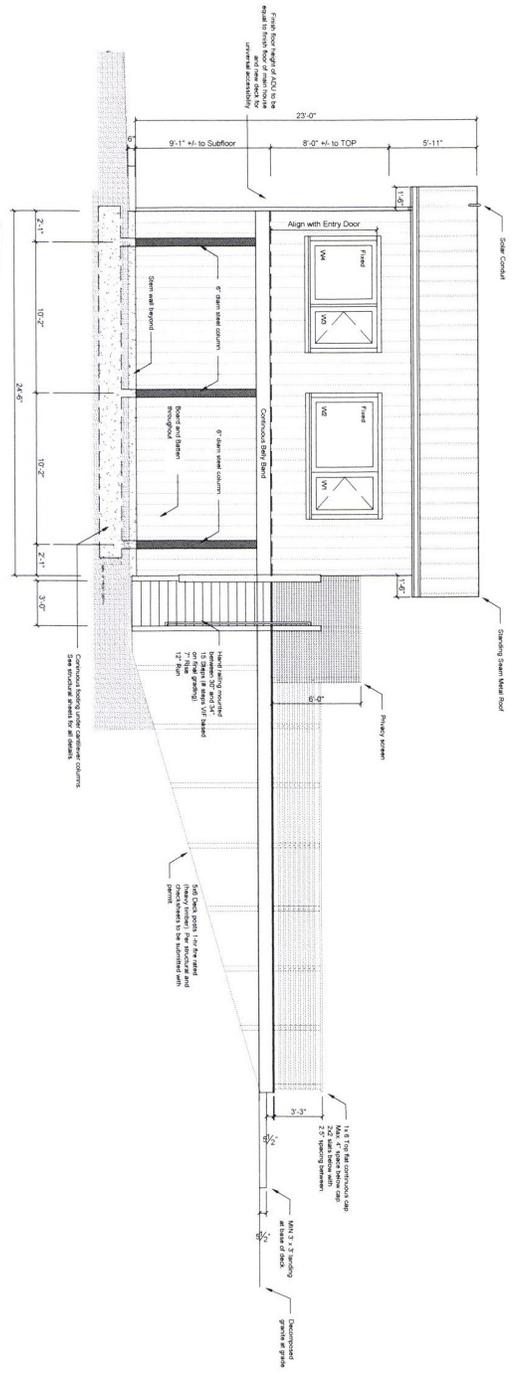
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 JAN 28 2020  
 BDS  
 DOCUMENT SERVICES



1 East Exterior Elevation

SCALE: 1/8" = 1'

CASE NO. LU 19-269540 AD  
 EXHIBIT C.4



2 West Exterior Elevation

SCALE: 1/8" = 1'

**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner AMW Date March 9, 2020  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



Burge-Ellingsen ADU  
 3060 NE 128th Avenue  
 Portland, OR 97230



Elevations  
 East and West  
 DATE: 1.21.20  
 Revision: -  
 A302