



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

Charlie Hales, Mayor  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** March 15, 2013  
**To:** Interested Person  
**From:** Douglas Hardy, Land Use Services  
503-823-7816 / [Douglas.Hardy@portlandoregon.gov](mailto:Douglas.Hardy@portlandoregon.gov)

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

The Bureau of Development Services has **approved** a proposal in your neighborhood. The reasons for the decision are included in 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 13-107906 AD**

#### **GENERAL INFORMATION**

**Applicants:** Kurt Schultz, architect / SERA Architects  
338 NW 5th Avenue / Portland, OR 97209  
  
Lauren Golden Jones, owner / Capstone Partners  
1015 NW 11th Avenue, Suite 243 / Portland, OR 97209

**Site Address:** 2625 E Burnside Street

**Legal Description:** Block 6, W 10' of Lot 6, Lot 7-9, Lot 10-12 exc pt in st, W 10' of Lot 13 exc pt in st, Etna

**Tax Account No.:** R158638

**State ID No.:** 1N1E36CB 5000

**Quarter Section:** 3033

**Neighborhood:** Kerns, contact Steve Russell at 503-784-8785

**Business District:** East Burnside Business Association, Matt Bender at 503-803-4224

**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010

**Plan District:** None

**Zoning:** CS – Storefront Commercial

**Case Type:** Adjustment (AD)

**Procedure:** Type II, Administrative decision with appeal to Adjustment Committee

#### **PROPOSAL**

The applicant is proposing to develop a four-story building containing 131 dwelling units and one ground floor retail space (approximately 1,000 square feet). Structured parking for 51 parking spaces is also proposed within the building. The proposed development requires the following Adjustments:

- 1) **Maximum Building Height:** Buildings in the CS zone are limited to a maximum height of 45'. The applicant requests an Adjustment to increase the maximum allowed building height up to 57' for several elements of the building:
  - a portion of the building wall located at the southwest corner; the top of this element will extend approximately 48' above grade;

- a 42" high guard rail that surrounds a rooftop patio, also located at the southwest corner of the building; and
  - an enclosed penthouse structure that contains an exit stair, elevator, and a common room approximately 500 square feet in area, located just north of the rooftop patio; the top of this penthouse structure will extend 57' above grade.
- 2) Minimum Ground Floor Windows: At least 25% of the length and 12.5% of the area of the building's ground floor north facade (facing NE Couch Street) must be in window area. The walls of residential units are exempt from this standard, and the walls of structured parking are also exempt when set back 5' from the property line, with the setback containing landscaping. The sill of qualifying windows must be within 4' of the adjacent grade. On the building's north facade, the exterior wall of the structured parking is closer than 5' to the property line, and the sills of the windows above the structured parking are more than 4' above grade. The applicant therefore requests an Adjustment to waive the ground floor window requirement on the ground floor of the north facade.
- 3) Minimum Loading Standard: Two on-site loading spaces, measuring a minimum of 9' in width by 18' in length with an overhead clearance of 10' are required for a building containing the proposed number of residential units. The applicant requests an Adjustment to reduce the minimum clearance for two loading spaces to 8' 8".

[Note: The original proposal requested an Adjustment to eliminate one of the required on-site loading spaces. The applicant has since revised the proposal to provide both spaces.]

#### RELEVANT APPROVAL CRITERIA

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

#### ANALYSIS

**Site and Vicinity:** The 30,162 square foot site is located on the east side of NE 26<sup>th</sup> Avenue between E. Burnside Street and NE Couch Street. The site is currently developed with a single-story commercial building oriented to E. Burnside Street, with a surface parking lot located on the north one-half of the site and accessed from NE 26<sup>th</sup> Avenue. There is a gentle slope to the site, from E. Burnside Street downward to NE Couch Street.

Reflecting the varied zoning pattern in the nearby area, development on adjacent blocks ranges widely from a four-story, multi-dwelling residential use immediately west of subject site (across NE 26<sup>th</sup> Avenue), to a one to two-story manufacturing and distribution center on the block immediately north (across NE Couch Street), to a mixture of one to two-story residential, retail and vehicle repair uses on the block south of the site (across E. Burnside Street). The remainder of the block on which the site is located is generally developed with one to two-story retail uses.

**Zoning:** The subject site is located in a Storefront Commercial (CS) zone. The CS zone is intended to preserve and enhance older commercial areas that have a storefront character. The zone intends that new development in these areas will be compatible with this desired character. The zone allows a full range of retail, service and business uses with a local and regional market area. Industrial uses are allowed but are limited in size to avoid adverse effects different in kind or amount than commercial uses and to ensure that they do not dominate the character of the commercial area. The desired character includes areas which are predominantly built-up, with buildings close to and oriented towards the sidewalk especially at corners. While development is intended to be pedestrian-oriented with buildings having a storefront character encouraged, the standards of the zone do not require any commercial space, and in fact encourage the development of residential uses in the zone by exempting the floor area devoted to residential uses from the maximum allowed floor area ratio.

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

**Agency Review:** A Notice of Proposal was mailed February 7, 2013. The following City bureaus have responded with no issues or concerns regarding the requested land use review:

- Bureau of Development Services (BDS) Site Development Section (Exhibit E.1);
- Portland Water Bureau (Exhibit E.2);

The Portland Fire Bureau responded with no issues regarding the requested land use review, but noted that all Fire Code requirements must be met at the time of building permit review (Exhibit E.3). The Fire Bureau also noted that aerial access will be required for buildings that exceed 30' in height.

The Bureau of Environmental Services responded with no concerns regarding the requested land use review, but noted stormwater management and other requirements that must be met at the time of building permit review (Exhibit E.4).

Portland Parks and Recreation/Urban Forestry had no issues with the requested land use review but noted that street trees will be required along all street frontages (Exhibit E.5). This requirement will be implemented at the time of building permit review.

The Bureau of Development Services/Life Safety Plans Examiner responded with no concerns regarding the requested land use review (Exhibit E.6).

The Bureau of Transportation Engineering response focused on the Adjustment that seeks to reduce the clearance height for the two loading spaces given its potential impacts on the public right-of-way (Exhibit E.7). As addressed in findings for Approval Criterion A, below, PBOT finds this request equally meets the intent of the loading space standards. PBOT also included information in their response that will apply at the time of building permit review, including public right-of-way dedications and improvements.

**Neighborhood Review:** One letter was received in response to the Notice of Proposal from an area business located one block west of the subject site (Exhibit F.1). The neighbor had no concerns with the requested Adjustments to building height and on-site loading standards, but objected to the request to reduce the ground floor window standard. The neighbor cited the intent of the CS zone, and noted that the exterior elevations of the proposed building “depict a monolithic, homogenous character to the pedestrian streetscape with little differentiation from upper levels – owing to street level residential in lieu of commercial/retail occupancy as intended by the base zoning.”

*BDS Comment: While the stated intent of the CS zone is to encourage buildings that have a storefront character, the standards that implement the CS zone do not require any minimum amount of ground floor commercial space. Rather, several of the standards encourage residential development in the zone, including at the ground level, by exempting space devoted to residential use from the maximum amount of floor area allowed on development sites, and by exempting the walls of residential units from having to meet the ground floor window requirement. The findings included later in this decision expand on whether the Adjustment request to the ground floor window standard meets the applicable approval criteria.*

No written responses to the proposal were received from the notified neighborhood association, district coalition or business association.

## **ZONING CODE APPROVAL CRITERIA**

### **33.805.010 Purpose**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review

process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

### **33.805.040 Approval Criteria**

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

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

**Findings:** The applicant is requesting an Adjustment to three separate standards that regulate maximum building height, ground floor windows, and on-site loading. The purpose statement for each of these standards is identified below, followed by findings on how the Adjustment requests meet the applicable intent of the regulations.

#### Maximum Building Height

In the CS zone, buildings are limited to a maximum height of 45'; rooftop access stairways and mechanical equipment that cover no more than 10% of the roof area, and which are set back from the roof edges at least 15', may extend 10' above the 45' height limit. The applicant is requesting an Adjustment to allow the wall of the building in the southwest corner of the site to extend 3' above the 45' height limit. A penthouse enclosure that includes an elevator, stairwell and a 400 square foot common space will extend 12' above the 45' height limit, and a 42" high guard rail along the roof walkway will also exceed the allowed 45' building height standard.

The purpose for the maximum allowed building height, relevant to the CS zone, is stated in Zoning Code Section 33.130.210.A and reads as follows:

*The height limits are intended to control the overall scale of buildings. The height limits in the CO2, CM, CS, and CG zones allow for a greater building height at a scale that generally reflects Portland's commercial areas. Light, air, and the potential for privacy are intended to be preserved in adjacent residential zones.*

The Adjustment to increase the maximum allowed height for limited elements of the building equally meets the stated intent of the regulation based on the following findings:

- The tallest of the elements that exceed the maximum building height, the enclosed penthouse, will be placed approximately 21' back from the roof edge along NE 26<sup>th</sup> Avenue, and approximately 40' back from the roof edge along E. Burnside Street, thereby greatly reducing the visibility of this element as viewed from the street and nearby properties. Additionally, the footprint of this element is limited in area, covering less than 9% of the entire roof area.
- The portion of the building wall that exceeds the maximum allowed height by 3' is located at the southwest corner of the site, and will be visible from both the E. Burnside Street and NE 26<sup>th</sup> Avenue frontages. This element helps anchor the building at the site's most prominent corner, while also increasing visibility of the ground floor commercial tenant space that is located at this same corner. This design element helps emphasize the mixed-use character of the development that is desired in the CS zone.
- East Burnside Street at this location has a right-of-way width of 80 feet. The additional height at the southwest corner of the proposed development creates an overall building mass that is proportional to the width of this mixed-use corridor, and helps to architecturally define the public space between the blockfronts.

- The 42" guard rail that surrounds the rooftop patio, while exceeding the maximum allowed 45' building height, will be scarcely visible. The guard rail will be open in design and set back at least 18' from the nearest edge of the roof.
- The request for additional height does not have a significant impact on the amount of light and air reaching adjacent residential zones, or on maintaining privacy. The nearest residential area is mapped with an R1 (Multi-Dwelling Residential 1,000) zone and located on the block immediately west of the subject site, across NE 26<sup>th</sup> Avenue. An R2.5 (Single-Dwelling Residential 2,500) zone is located farther from the site, northwest of NE Couch Street.

Because the building elements that exceed the maximum height are located on the southwest corner of the building, and more than 175' from the area in the R2.5 zone, the height increase will have no impacts on light or air reaching these residential properties. While the elements that exceed the maximum building height are substantially closer to the R1-zoned area than the R2.5 zone, the intervening NE 26<sup>th</sup> Avenue right-of-way provides 50' of separation. Of the elements that exceed the maximum allowed height, the building wall in the southwest corner is closest to the R1 area. However, this portion of the building exceeds the maximum allowed height by only 3', and extends along only a small portion of the west and south facing building walls, thereby allowing ample opportunity for light and air to reach the R1 zoned properties.

Also, because the portion of this building wall that exceeds the height has no windows, the height increase will have no greater impact on privacy for residents across NE 26<sup>th</sup> than would a development that meets the maximum allowed building height. The enclosed penthouse structure that in part accommodates a common area for residents of the new building will not be occupied to the extent that a residential unit would, and will be set back approximately 20' from the roof edge, thereby having minimal impacts on privacy for residents to the west.

Based on these findings, the request to increase the maximum allowed building height for the identified elements will equally meet the intent of the regulation and the criterion is met for this Adjustment.

#### Ground Floor Windows

The regulations of the CS zone require that at least 25% of the length and 12.5% of the area of the building's ground floor north facade (facing NE Couch Street) be in window area. Because of the slope of the site, the windows of the first floor residential units along this facade are too high to meet the standard, and a portion of the exterior wall of the structured parking below is exposed along this frontage. The applicant requests an Adjustment to replace the required window area along this facade with a contrasting building material that is dimensioned to echo the windows above.

The purpose for the ground floor window standards, as stated in Zoning Code Section 33.130.230.A, is as follows:

*In the C zones, blank walls on the ground level of buildings are limited in order to:*

- *Provide a pleasant, rich, and diverse pedestrian experience by connecting activities occurring within a structure to adjacent sidewalk areas;*
- *Encourage continuity of retail and service uses;*
- *Encourage surveillance opportunities by restricting fortress-like facades at street level; and*
- *Avoid a monotonous pedestrian environment.*

The requested Adjustment equally meets the stated purpose of this standard based on the following findings:

- Given the length of the north-facing building wall, this standard would require windows to extend for a length of approximately 40' along the ground floor wall, and cover approximately 175 square feet of the ground floor wall. The ground floor wall is defined as the portion of the wall extending 9' above the adjacent grade. Portions of the windows of the residential units do extend along approximately 90 linear feet of the ground floor wall, and cover approximately 205 square feet of the ground level wall. However, because of the slope of the site, none of the window sills are within 4' of the adjacent grade, and therefore these windows do not count toward the standard. While these windows do not count toward meeting the standard, they are on the ground level facade (within 9' of the adjacent grade) and as such, what is being proposed is not a blank wall. The windows in this location do provide some architectural interest to the facade.

Towards providing a more visually appealing experience for the portion of the ground level wall beneath these windows, the applicant has proposed placing a wood paneling system (Accoya Wood) at the base of the north-facing facade. This panel system echoes the rhythm of the windows above, and reflects the wood panel system used on the E. Burnside Street frontage of the building, thereby tying the two pedestrian environments together. The wood panel system also provides visual interest for pedestrians.

- The building façade on which the reduction in window area is sought is opposite an Employment zone (EG1), a zone which is intended for industrial and industrially-related uses. The property in this EG1 zone is currently developed with a one-story concrete tilt-up industrial building with no windows. Because of this zoning and resulting development, NE Couch Street was not intended to be a pedestrian-oriented street lined with retail and other commercial uses that create a cohesive storefront character. Having a ground floor facade along this street that doesn't promote a continuity of commercial uses and that doesn't allow views into the building is therefore not inconsistent with the intended character of this street. Instead, the applicant has oriented the proposed commercial tenant space more appropriately to E. Burnside Street, which is a designated District Collector, Major Transit Priority Street, and City walkway, and a street on which ground floor commercial space is desired. The exterior walls of this tenant space, as well as the walls of the remainder of the first floor façade along the site's E. Burnside Street (and NE 26<sup>th</sup> Avenue) frontage, will exceed the minimum required ground floor window requirements.

As proposed, this criterion is met for the request to modify the ground floor window requirement on the north building façade.

#### On-Site Loading Standards

The proposed development requires that two, on-site loading spaces be provided, with the loading spaces having minimum length, width and height clearance dimensions of 18' x 9' x 10'. The applicant proposes reducing the height clearance for the two spaces from 10' to 8'8". The purpose for the on-site loading standards, as stated in Zoning Code Section 33.266.310.A, is as follows:

*A minimum number of loading spaces are required to ensure adequate areas for loading for larger uses and developments. These regulations ensure that the appearance of loading areas will be consistent with that of parking areas. The regulations ensure that access to and from loading facilities will not have a negative effect on the traffic safety or other transportation functions of the abutting right-of-way.*

The proposed loading spaces will be located within the new building's below-grade parking garage. PBOT reviewed this Adjustment request and noted that although the garage will not be able to accommodate larger sized moving trucks, it will provide opportunities for some smaller utilitarian vans. Given the size of the proposed dwelling units, PBOT finds that it is not likely future tenants will need large-size trucks when moving their furniture and other belongings. Accordingly, the slightly shorter clearance height (8'8" instead of the

required 10') will accommodate the smaller-sized vans that will be required to serve the needs of both the residential operations of the building (as well as any loading needs of the small retail space within the building). PBOT is supportive of the Adjustment request for a reduction in the clearance height requirement for the loading spaces from 10' to 8' 8", and the intent of the minimum height clearance standard is met.

#### Summary

Based on these findings the proposal equally meets the intent of the standards being adjusted and this criterion is met.

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

**Findings:** Because the site is located in a CS zone, the applicant must demonstrate that the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area.

#### Street Classifications

The site fronts on E. Burnside Street, NE 26<sup>th</sup> Avenue and NE Couch Street. The classifications of these streets, as identified in the Transportation Element of the Comprehensive Plan, are as follows:

Street	Traffic	Transit	Bikeway	Pedestrianway	Freight
E Burnside St.	District Collector	Major Transit Priority	Local	City Walkway	Truck Access
NE 26 <sup>th</sup> Ave.	Local Service	Local Service	Local Service	Local Service	Local Service
NE Couch St.	Local Service	Local Service	City Bikeway	Local Service	Local Service

Regarding Traffic designations, as stated in Policy 6.5.D of the Transportation Element of the Comprehensive Plan, land use and development along District Collectors should attract trips from the surrounding neighborhood or throughout the district, but not from a regional area. Land use and development along Local Service streets should not be auto-oriented (Policy 6.5.F). The proposal is consistent with the Traffic classifications as none of the requested Adjustments have any impact on where trips are drawn from, nor do the Adjustments result in development that is auto-oriented.

As for the Transit classifications, land uses along Major Transit Priority streets are intended to be transit-oriented, especially at corners, and auto-oriented development is discouraged (Policy 6.6.B). The Comprehensive Plan provides no specific recommendations for the type of envisioned land uses or development along Local Service transit streets (Policy 6.6.E). The Adjustment requests do not impact the ability of the proposed development to be transit-oriented along E. Burnside, the designated transit street. The main entrance, commercial tenant space and ground floor windows along this facade all promote transit-oriented development.

The Transportation Element of the Comprehensive Plan discourages auto-oriented uses along City Bikeways (Policy 6.7.A), with no land use or development recommendations along Local Service Bikeways (Policy 6.7.C). Again, as the requested Adjustments neither change the type of allowed uses on the site nor promote auto-oriented development, the proposal is consistent with the City Bikeway designation.

City Walkways are intended to serve areas with dense zoning, commercial areas, and major destinations (Policy 6.8.C), with Local Service Walkways intended to be located in

residential, commercial or industrial areas (Policy 6.8.E). The Adjustment requests do not impact the ability of the site to be developed at the density intended for the CS commercial zone, and therefore are consistent with the City Walkway designation along NE Couch Street.

Regarding the Freight classification, commercial land uses along Truck Access streets are intended to generate lower volumes of truck trips than the higher freight classifications (Policy 6.9.E), with Local Service freight streets intended to provide goods and service deliveries to individual commercial, employment and residential locations (Policy 6.9.F). The Adjustment requests do not impact the type, size or density of uses allowed along the Truck Access or Local Service freight streets that front the site, and therefore are consistent with the freight designations on these streets.

Based on these findings, the requested Adjustments are consistent with the classifications of the adjacent streets, and this aspect of the approval criterion is met.

#### Desired Character of Area

The “desired character” of an area is defined in Zoning Code Section 33.910.030 as the preferred or envisioned character based on the purpose statement or character statement of the base zone and any adopted area plans. For the subject site, the purpose statement of the CS zone will be used. The site is also located within the boundaries of the *Kerns Neighborhood Action Plan*, adopted by City Council in 1987. Absent a character statement included in this plan, the goal statements included in that plan will also be used.

The character statement for the CS zone, as stated in Zoning Code Section 33.130.030.F, reads as follows:

*The Storefront Commercial (CS) zone is intended to preserve and enhance older commercial areas that have a storefront character. The zone intends that new development in these areas will be compatible with this desired character. The zone allows a full range of retail, service and business uses with a local and regional market area. Industrial uses are allowed but are limited in size to avoid adverse effects different in kind or amount than commercial uses and to ensure that they do not dominate the character of the commercial area. The desired character includes areas which are predominantly built-up, with buildings close to and oriented towards the sidewalk especially at corners. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged.*

The requested Adjustments will still result in a proposal that is consistent with the character statement of the CS zone. The ground level building facade facing the street having the highest street, transit, pedestrian and freight classifications – E. Burnside Street – has the greatest amount of window area, with a commercial tenant space oriented to this street. The mixture of commercial and residential space along the ground level of this facade, with residential units above, is the character of development that is sought along such a street. The elements of the building that exceed the maximum allowed height are located at the southwest corner of the building, generally above the ground floor commercial tenant space. This increased height increases the prominence of this portion of the building, and helps reinforce the active commercial corner.

Nothing about the requested Adjustments adversely impacts the type of uses intended for this zone, nor detracts from the ability of the proposal to project a built-up, pedestrian and transit-oriented transit character, particularly along E. Burnside Street. The building will be built at or near the property line along all frontages, and rise four stories. While the ground floor of the north facade will not contain the minimum required window area, this is along a street frontage that does not have a storefront character. Additionally, the large windows on the upper portion of this ground floor facade, combined with the wood paneling system proposed at the base of this wall, provide visual interest for pedestrians.



As for consistency with the *Kerns Neighborhood Action Plan*, the plan includes a goal statement that reads as follows:

*Strengthen Kerns as a vital neighborhood and as an exciting and enjoyable place to live and work by creating and taking advantage of its location and of residential and employment opportunities.*

One of the stated intents of this goal is to take advantage of all opportunities to upgrade the appearance of both residential and commercial properties. The proposal, even with the Adjustments, results in development that better meets the desired appearance and qualities of development in the CS zone than existing development on the site. The existing one-story building on the site accommodates a single use, with a surface parking lot covering approximately one-half of the lot. The proposed development introduces a mixed commercial and residential use on the site, at a density that is encouraged for properties in the CS zone. The proposal will also present a transit, pedestrian-oriented façade to E. Burnside Street, the designated transit street and city walkway, with parking and loading associated with the development located within the interior of the building.

The Plan also includes a statement specific to the neighborhood commercial areas within the plan boundaries. This statement reads as follows:

*Provide a quality urban environment with compatible residential, commercial and retail uses and service amenities.*

One of the stated intents of this goal includes improving the quality and positive image of the E. Burnside Street commercial district, encouraging new development that provides a mixture of uses and is compatible with the surrounding area, and encouraging development on the upper floors of buildings along the E. Burnside Street corridor. The Adjustments have no impact on the ability of the proposal to meet these objectives. The development represents a substantial new investment in a commercial property along the E. Burnside Street corridor, and includes commercial space on the ground floor with residential uses on the upper floor. While the applicant requests an increase in the building height on a property that is proximate to residentially zoned areas, the elements of the building exceeding the maximum height are limited in size, and are either open in design or set back a considerable distance from the edge of the roof, thereby maintaining compatibility with nearby residential properties.

Based on these findings, the proposal is found to be consistent with the desired character of the area as expressed in both the character statement for the CS zone and the relevant goal statements included in the *Kerns Neighborhood Action Plan*. This aspect of the criterion is met.

#### Summary

As the proposal is found to be consistent with the classifications of the adjacent streets and the desired character of the 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:** The applicant is requesting Adjustments to the maximum allowed building height, the ground floor window requirements for the north façade, and the on-site loading standards. For the subject site, it must be found that the cumulative impacts of these Adjustments will be consistent with the purpose statement of the Commercial zones.

The purpose of the Commercial zones is stated in Zoning Code Section 33.130.010. The portion of that purpose statement that is relevant to the CS zone is as follows:

*In general, a wide range of uses is allowed in each zone. Limits on the intensity of uses and the development standards promote the desired character for the commercial*

*area. The development standards are designed to allow a large degree of development flexibility within parameters which support the intent of the specific zone.*

The cumulative impact of the Adjustments will have no impact on the type of uses allowed on the site. The CS zone allows a variety of commercial uses as well as residential use, and the Adjustment requests in no way preclude the ability of the site to accommodate these uses.

Likewise, the Adjustment requests in no way change the intensity of uses allowed on the site. The project will be well within the maximum allowed 3:1 floor area ratio for commercial uses, and there is no maximum floor area ratio for residential uses in this zone. While one of the Adjustment requests will allow an increase in the maximum allowed building height, the increase in building height will not result in an increase in intensity by allowing additional dwelling units or commercial space that would not otherwise be permitted by the standards of the CS zone.

The Adjustments are limited in nature, and generally are intended to allow some flexibility in the standards that apply to a building that on the whole will respect the intended uses, scale, intensity and appearance of development in the CS zone.

This criterion is met.

**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. As there are no scenic or historic resource designations 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 indicated in responses to Approval Criteria A, B and C:

- the proposal is consistent with the intended purposes of the regulations being adjusted;
- the proposal is consistent with the classifications of the adjacent streets and the desired character of the area; and
- the cumulative effect of the Adjustments will result in a project that is still consistent with the overall purpose of the Commercial zones.

As the proposal is consistent with these approval criteria, and there are no identified adverse impacts for which mitigation would be required. This criterion is met.

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

**Findings:** Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on site, this criterion is not applicable.

## DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards 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 via a land use review prior to the approval of a building or zoning permit.

## CONCLUSIONS

The applicant has demonstrated that the applicable approval criteria for the three requested Adjustments have been met. Granting the Adjustments will equally or better meet the purpose of the regulations to be modified. The approved Adjustments will still allow for a proposal that is consistent with the classifications of the adjacent streets and the desired character of the area, with the cumulative impact of the Adjustments resulting in a project that is still consistent with the overall purpose of the zone. Because all these criteria are met, there are no adverse impacts for which mitigation would be required.

## ADMINISTRATIVE DECISION

**Approval** of the following Adjustments:

- Increase the maximum allowed building height (Zoning Code Section 33.130.210.B) from 45' to a maximum of 57' for several elements generally located at the southwest corner of the building;
- Waive the ground floor window requirement (Zoning Code Section 33.130.230.B) on the building's north façade; and
- Reduce the minimum overhead clearance for the two on-site loading spaces from 10' to 8'8" (Zoning Code Section 33.266.310.D);

all per the approved site plan (Exhibits C.1), building elevations (C.2 and C.3), and roof plan (Exhibit C.6), signed and dated March 14, 2013, and subject to the following condition:

- A. As part of the building permit application submittal, each of the four required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.3 and C.6). The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-107906 AD."

**Staff Planner: Douglas Hardy**

**Decision rendered by:**  **on March 14, 2013.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: March 15, 2013**

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

**Procedural Information.** The application for this land use review was submitted on January 23, 2013, and was determined to be complete on **February 7, 2013.**

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 23, 2013.

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 extend the 120-day review period by five days. Unless further extended by the applicant, **the 120 days will expire on June 12, 2013.**

**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 29, 2013**, at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

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

**Recording the final decision.**

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

- *Unless appealed*, the final decision may be recorded on or after **April 1, 2013**.
- 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

1. Original Written Narrative, dated January 22, 2013
2. Revised Written Narrative, dated February 4, 2013
3. Revised Written Narrative, received March 5, 2013
4. Letter from Riverstone Residential Group, dated February 3, 2013
5. Letter from SERA (Kurt Shultz), dated February 21, 2013

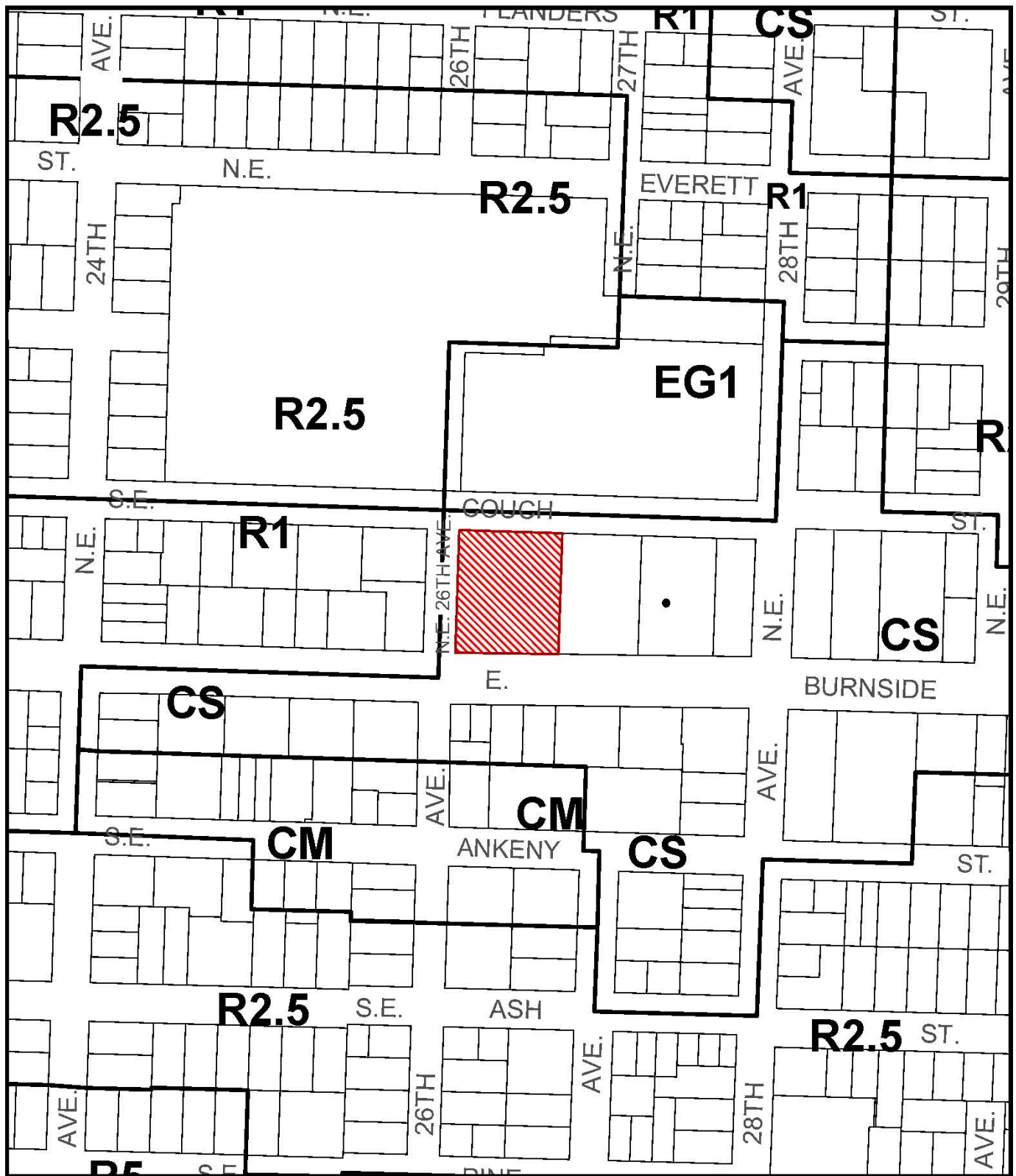
### B. Zoning Map (attached)

### C. Plans/Drawings:

1. Site Plan/First Floor Plan (attached)
2. South and West Building Elevations (attached)
3. North and East Building Elevations (attached)
4. Color Detail of North Facade
5. Sample Photo of Accoya Wood Siding
6. Roof Plan (attached)
7. Floor Plan Parking Level
8. Floor Plan Levels 2-4

- 9. Sections N/S at Courtyard
- 10. Schematic Rendering
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Development Services/Site Development Review
  - 2. Water Bureau
  - 3. Fire Bureau
  - 4. Bureau of Environmental Services
  - 5. Portland Parks and Recreation/Urban Forestry
  - 6. Bureau of Development Services/Life Safety Plans Examiner
  - 7. Portland Bureau of Transportation
- F. Correspondence:
  - 1. Scott/Edwards Architecture, letter dated February 12, 2013, objecting to ground floor window Adjustment
- G. Other:
  - 1. Original LU Application
  - 2. Letter of Incompleteness, dated January 28, 2013
  - 3. E-mail from Kurt Schulz requesting extension of decision date, received March 5, 2013

**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



Historic Landmark



NORTH

File No. LU 13-107906 AD

1/4 Section 3033

Scale 1 inch = 200 feet

State\_Id 1N1E36CB 5000

Exhibit B (Jan 23, 2013)



RECEIVED

MAR 05 2013



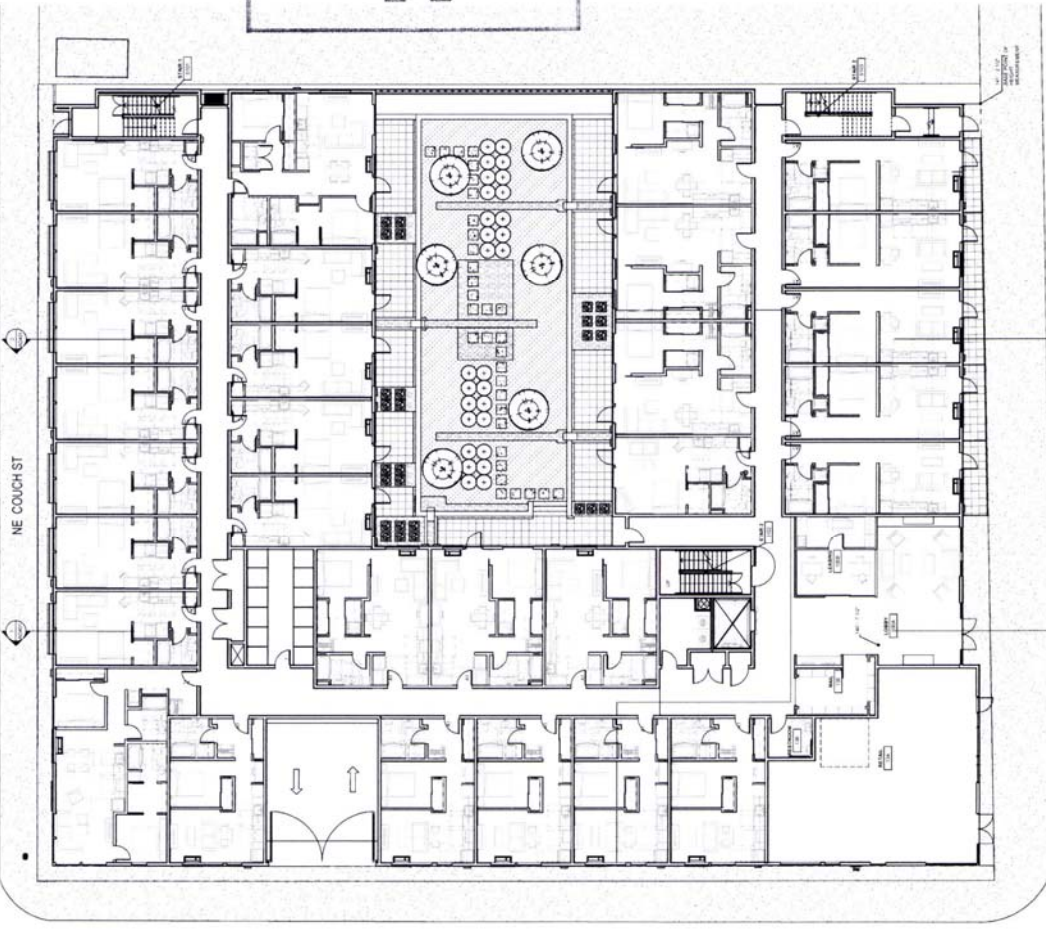
ARCHITECTURAL  
INTERIOR DESIGN  
LANDSCAPE DESIGN  
PLANNING  
ENGINEERING  
CONSULTING

PRELIMINARY

\*Approved\*  
City of Portland  
Bureau of Development Services  
Planner \_\_\_\_\_  
Date 3.14.13  
\* This approval applies only to the reviews requested and is subject to all conditions of approval.  
Additional zoning requirements may apply.

NE 26TH & BURNSIDE APARTMENTS

DESIGN DEVELOPMENT  
FLOOR PLAN  
- LEVEL 1 -  
AD101



LEVEL 1 FLOOR PLAN  
1/4" = 1' 0"

CASE NO. W13-107906  
EXHIBIT C-1



MAR 05 2013

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

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

**SOUTH ELEVATION** 2  
1/8" = 1'-0"

WEST ELEVATION 1

NE 26TH &amp; BURNSIDE APARTMENTS

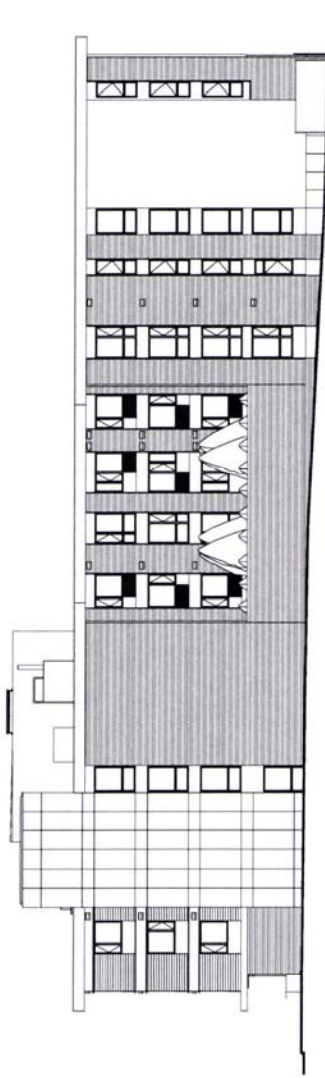
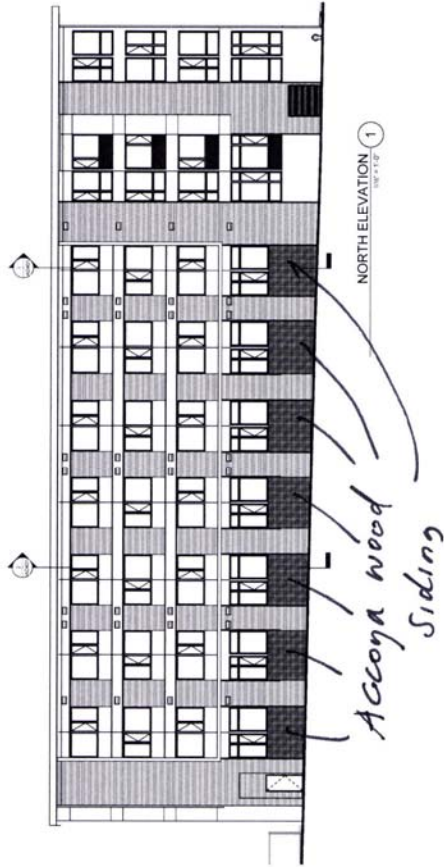
**AD301**  
EXTERIOR  
ELEVATIONS  
DESIGN DEVELOPMENT

CASE NO. 13-10790 AD  
EXHIBIT C2

RECEIVED

MAR 05 2013

\*Approved\*  
City of Portland  
Bureau of Development Services  
Planner [Signature]  
Date 3.14.13  
\* This approval applies only to the views requested and is not valid if all conditions of approval are not met. Additional conditions may apply.



NE 26TH & BURNSIDE APARTMENTS

PRELIMINARY  
2025 E BURNSIDE ST  
PORTLAND, OR 97214  
PRELIMINARY PROPOSAL  
PRELIMINARY PROPOSAL

DESIGN DEVELOPMENT  
EXTERIOR ELEVATIONS  
AD302

RECEIVED

MAR 05 2013

SERA

ARCHITECTURAL  
SERVICES - CLARENCE  
ARCHITECTURAL

PRELIMINARY

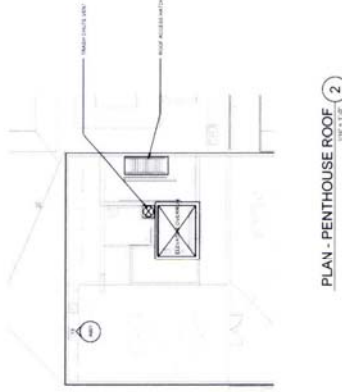
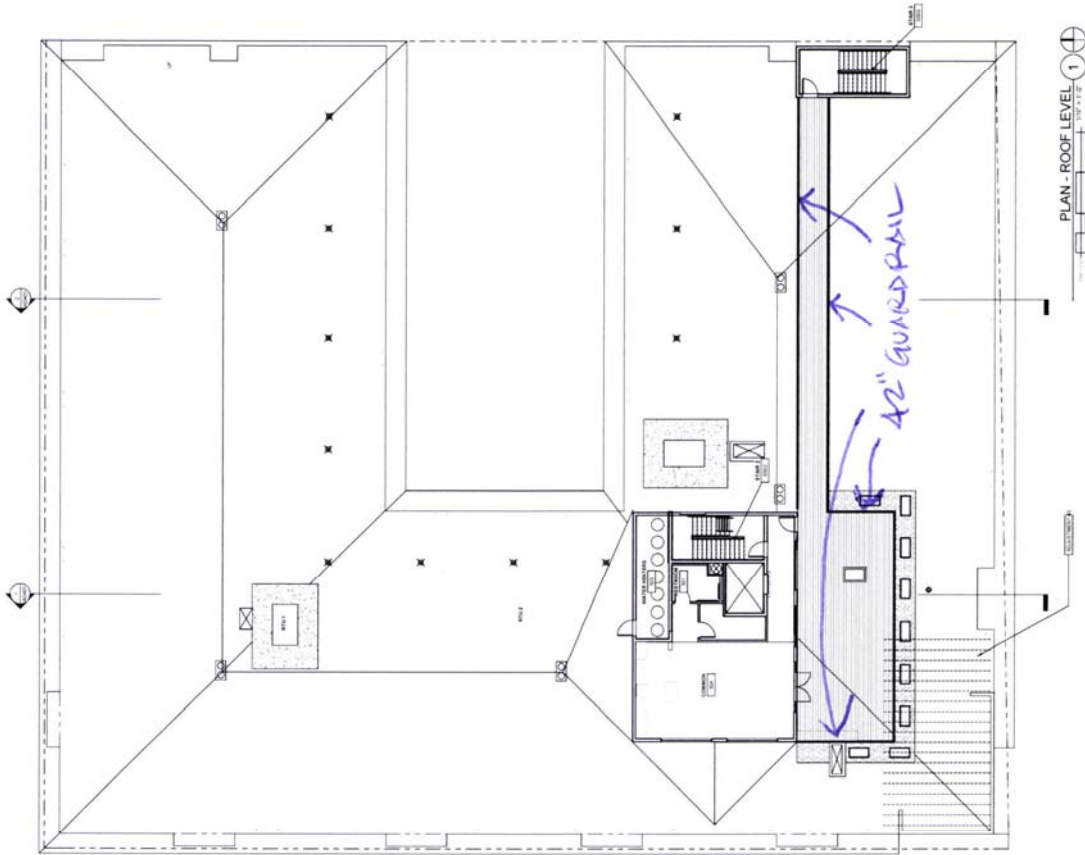
\*Approved  
City of Portland  
Bureau of Development Services  
Planner  
2.14.13

Subject to the  
approval of all  
relevant  
departments.

NE 26TH & BURNSIDE APARTMENTS

NE 26TH & BURNSIDE  
PORTLAND, OREGON 97214  
NEIGHBORHOOD SERVICES, LLC

DESIGN DEVELOPMENT  
AD110  
ROOF PLAN



CASE NO. 13-107906 AD  
EXHIBIT C6