



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

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
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www.portlandoregon.gov/bds

Date: June 10, 2016
To: Interested Person
From: Marguerite Feuersanger, Land Use Services
503-823-7619 / Marguerite.Feuersanger@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 16-134028 AD

GENERAL INFORMATION

Applicant: Dennis Myers
Dennis Myers Designer Builder
10622 SW 4th Avenue
Portland OR 97219

Owner: Tristan J Wagner
3828 N Haight Ave
Portland, OR 97227

Site Address: 3828 N Haight Avenue

Legal Description: BLOCK 26 N 30' OF W 95' OF LOT 15 S 10' OF W 95' OF LOT 16,
CENTRAL ALBINA

Tax Account No.: R146804510

State ID No.: 1N1E22DC 08400

Quarter Section: 2630

Neighborhood: Boise, contact boiselanduse@gmail.com.

Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-841-5032.

District Coalition: Northeast Coalition of Neighborhoods, contact Zena Rockowltz at 503-388-5070.

Zoning: R2.5a, Single-Dwelling 2,500 Zone, and within the Alternative Design Density Overlay Zone (a).

Case Type: AD, Adjustment

Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal: The applicant proposes a new detached accessory dwelling unit (ADU) on the 3,800 square-foot site. The proposed ADU, accessory to the existing house, is two stories in height

and contains 784 square feet of living area. There is no vehicle parking existing or proposed on the site. A private access drive is located just east of the site, which serves an existing church.

For new development, the R2.5 residential zone requires a minimum 5-foot rear setback, measured from property lines to exterior building walls. The east wall of the ADU is proposed at 2 feet from the rear property line. Therefore, the applicant is requesting an Adjustment to reduce the rear setback from 5 feet to 2 feet, with a one-foot eave (Section 33.110.220).

Relevant Approval Criteria:

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

ANALYSIS

Site and Vicinity: The site is 3,800 square feet in area and developed with a two-story house. There is no vehicle parking on the site. The block containing the site is bounded by N Haight Avenue at the west, N Gantenbein Avenue at the east, N Failing Street at the north and N Beech Street at the south. Development on the block is primarily detached houses, with the exception of an apartment development and church, both located south of the site. A driveway access from N Failing Street to the church's parking area is located just east of the site. Northwest of the site is a school and community service organization, adjacent to Unthank Park. North Haight Avenue is designated as a Local Service Street.

Zoning: The R2.5 zone (Single Dwelling Residential 2,500 Zone) is a high density single-dwelling zone. The R2.5 zone allows attached and detached single-dwelling structures and duplexes. The Alternative Design Density Overlay Zone (a) is intended to allow increased density for development that meets additional design compatibility requirements. The "a" Overlay Zone does not apply to this proposal for an ADU.

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 August 20, 2010. The following Bureaus have responded with no issues or concerns, or else noted possible requirements at time of building permit review:

- Bureau of Environmental Services (Exhibit C-1)
- Bureau of Transportation (Exhibit C-2)
- Water Bureau (Exhibit C-3)
- Fire Bureau (Exhibit C-4)
- Site Development Section of BDS (Exhibit C-5)
- Life Safety Plan Examiner of BDS (Exhibit C-6)

Subsequent to the date of the Life Safety Plans Examiner's comments, a building code appeal was approved for the proposed ADU, to allow the building eave to be located one-foot from the rear property line.

Neighborhood Review: No written responses have been 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 setback regulations is found at 33.110.220 A, which states:

Purpose: The building setback regulations serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire-fighting;*
- *They reflect the general building scale and placement of houses in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

The proposed ADU is approximately 20 feet, or two stories, in height. It is set back two feet from rear property line; a one-foot eave extends into the rear setback area. Similar accessory structures over 15 feet in height that are proposed close to rear or side property lines can have a significant impact on adjacent properties, and do not maintain adequate light, air or privacy for adjacent residences. For this site, however, the abutting property at the rear property line is not developed with a house or associated residential structures. It is developed and used as a driveway to serve a church, located southeast of the subject site. Further, the driveway provides a significant degree of openness, as it measures approximately 25 feet in width. Because the ADU is located close to this established driveway, it is therefore located farther away from existing houses to the north and south of the site. With this greater separation, privacy of surrounding homes is maintained.

Given that the required side setbacks of the ADU will be met and the abutting property to the east is a wide, paved vehicle driveway that functions as an alleyway, sufficient light, air, access and separation for fire protection is provided.

No changes are proposed to front yard area of the site or house. The ADU location in the rear yard is compatible with existing neighborhood development. Usable outdoor area on the subject site is preserved.

For all the above reasons, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be

consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The site is in a residential zone and contains a detached house. ADUs are allowed as an accessory use to a house. The proposed ADU is well-designed and meets building coverage limits and design compatibility requirements for exterior materials, trim, roof pitch and eaves. The ADU will enhance the livability of the subject site with additional living space. In consideration of these features, the proposed ADU will not significantly detract from the appearance of the 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: There are no discernible impacts that would result from granting the requested adjustment. This criterion is met.

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

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

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. 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 proposes to construct an Accessory Dwelling Unit [ADU] in the rear yard of the existing house site. Minimum side setbacks and building coverage limits for the ADU will be met. The request to reduce the minimum rear setback, from 5 feet to 2 feet with a one-foot eave, is reasonable, given the presence of a driveway that provides access to a nearby church parking area. Although it is a private driveway serving an existing church, it appears and functions like an alley. It's important to note that there is no minimum rear setback for similar sites in Residential zones that are adjacent to a public alley. Residences to the north and south will not be negatively impacted by the reduced rear setback. The proposal satisfies the applicable approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the rear building setback for a detached ADU, from 5 feet to 2 feet, with 1-foot eave, per the approved site plans, Exhibits C-1 through C-3, signed and dated June 8, 2016, subject to the following condition:

- 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.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-134028 AD. No field changes allowed."

Staff Planner: Marguerite Feuersanger

Decision rendered by:  **on (June 8, 2016)**
By authority of the Director of the Bureau of Development Services

Decision mailed: June 10, 2016

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

Procedural Information. The application for this land use review was submitted on March 11, 2016, and was determined to be complete on April 14, 2016.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on March 11, 2016.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. The 120-day review period ends on August 12, 2016.

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 June 24, 2016**, at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

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

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

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

Recording the final decision.

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

- *Unless appealed*, The final decision may be recorded on or after **June 27, 2016 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

For further information on recording, please call the County Recorder at 503-988-3034. For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

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

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

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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 Statement and Site Plans, March 11, 2016
 - 2. Updated Statement, March 17, 2016
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Proposed ADU Elevations (attached)
 - 3. Proposed ADU Floor Plans (attached)
- 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 Plans Examiner of BDS
- F. Correspondence:
 - None
- G. Other:
 - 1. Original LU Application

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING



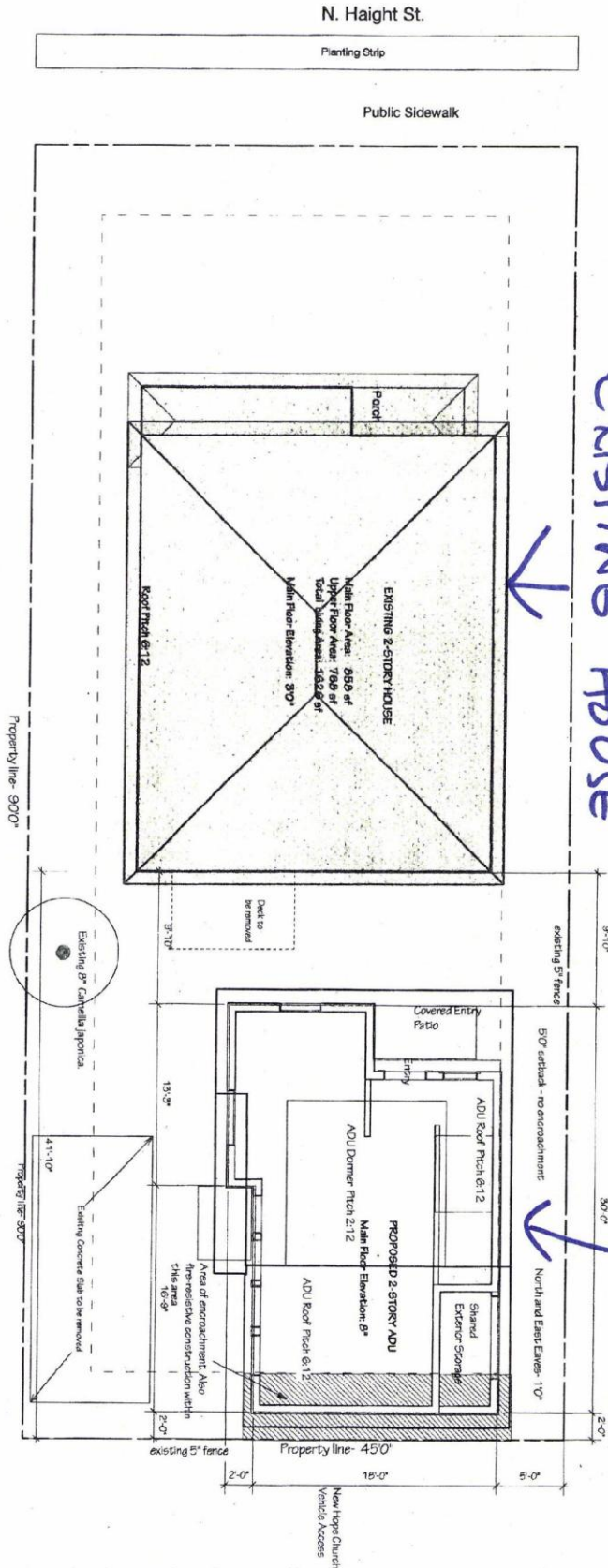
Site

File No. LU 16-134028 AD
 1/4 Section 2630
 Scale 1 inch = 200 feet
 State_Id 1N1E22DC 8400
 Exhibit B (Mar 14, 2016)

City of Portland
Bureau of
Development Services
By WGA Date 6/8/16
Approved by _____
Planning & Zoning Review

City of Portland
Bureau of
Development Services
By WES Date 6/8/16
Approved by _____
Planning & Zoning Review

Proposed ADU



Address:

Address: Trislan Wagner
3828 N. Haight St.
Portland, OR 97227

Property ID: R131204

Legal Description: CENTRAL ALBINA, BLOCK 26, N
30' OF W 95' OF LOT 15, S 10' OF
W 95' OF LOT 16
1N1E22DC 8400
15, 16

State ID:

Lot #:

LOT AREA: 3800 sq ft
EXISTING (FOOTPRINTS)

House	856 sf
Porch	24 sf
Total (Footprint)	882 sf
NEW ADU COVERAGE	
Main Floor Coverage	476 sf
Covered entry	24 sf
Attached Strorage	41 sf
Total (Footprint)	541 sf
NEW COVERAGE TOTAL	1427 SF
NEW COVERAGE PERCENTAGE	37.5 %

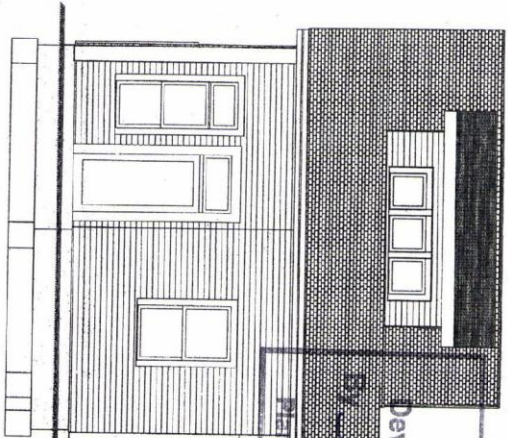
Scale: $3/16'' = 1'0''$

ADU Living Area Summary

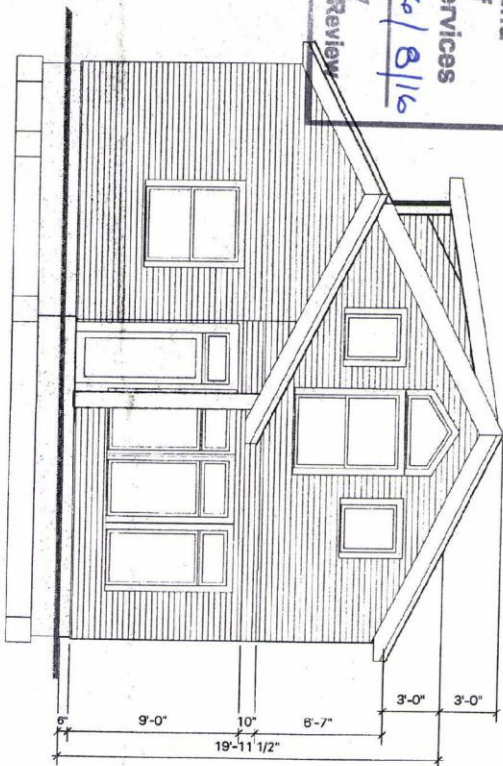
ADU Main Floor Living area: 409 sq ft
ADU Upper Floor Living area: 375 sq ft
Total ADU Living Area = 784 sq ft.

PROPOSED ADU ELEVATIONS.

City of Portland
Bureau of
Development Services
By 4/8/16 Date 8/16
Approved by
Planning & Zoning Review

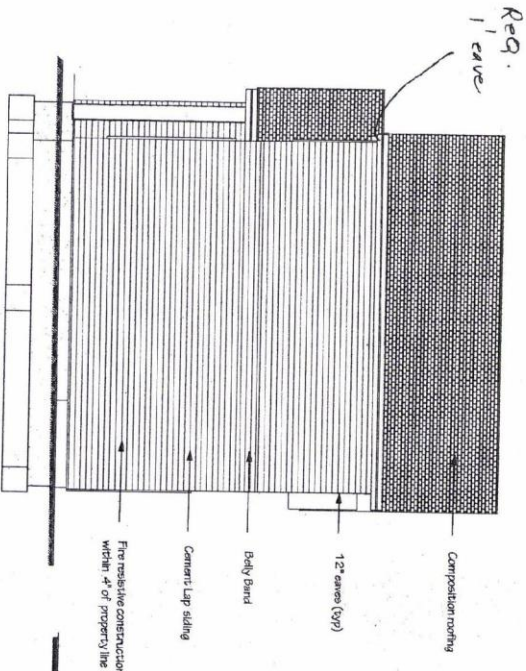


West Elevation
1/4" = 1'-0"

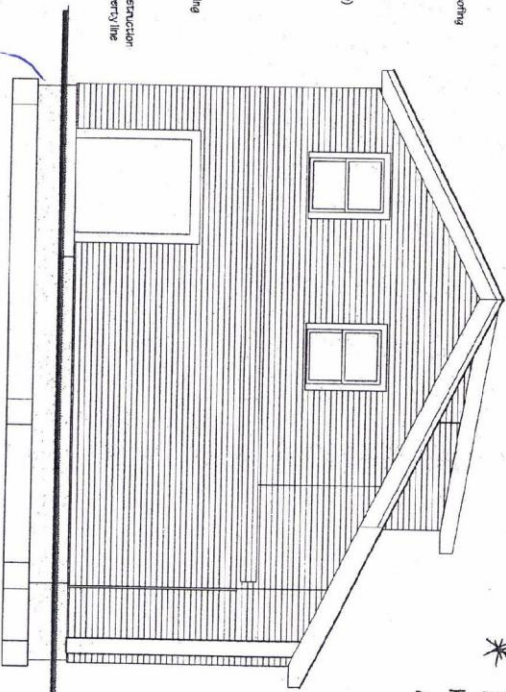


South Elevation
1/4" = 1'-0"

* 1' eaves
required at
all elevations.



East Elevation
1/4" = 1'-0"



North Elevation
1/4" = 1'-0"

rec. 3/11/16

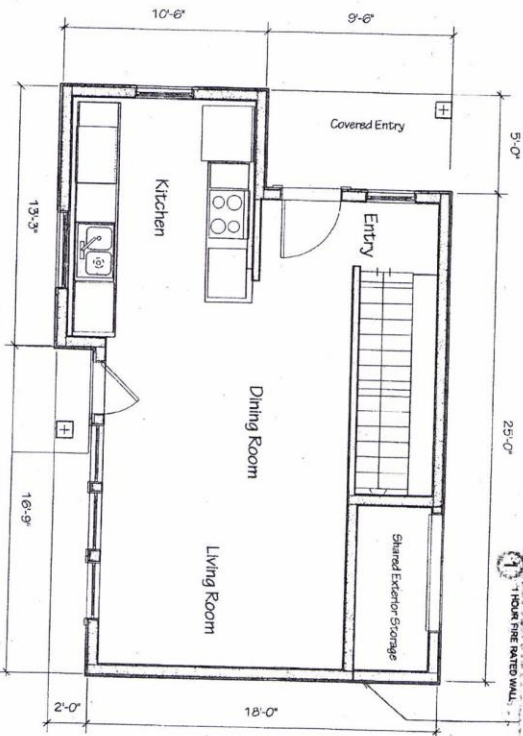
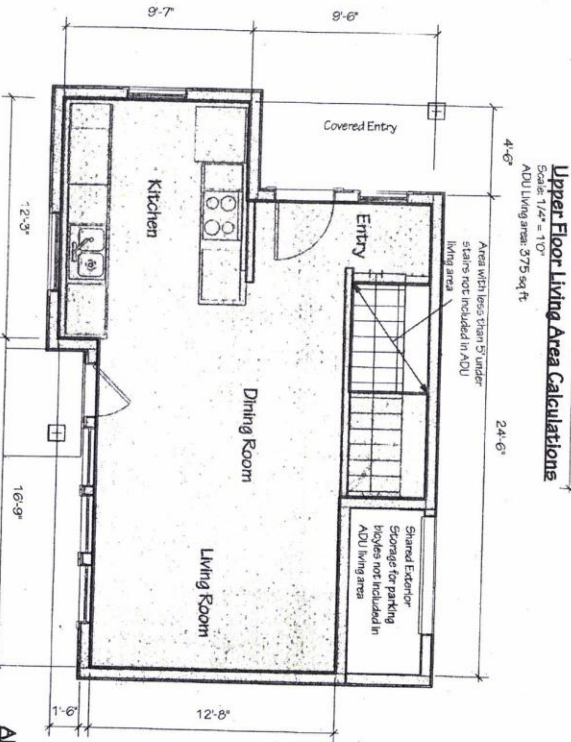
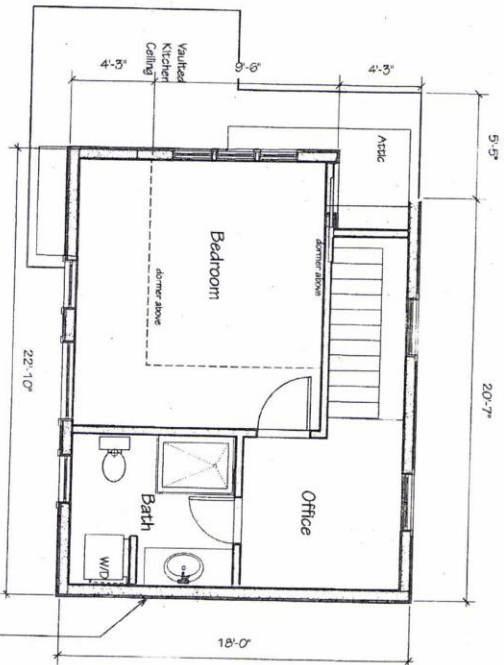
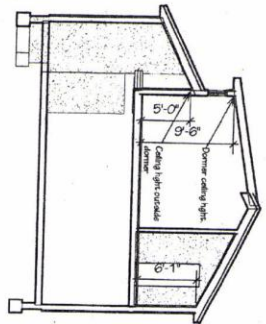
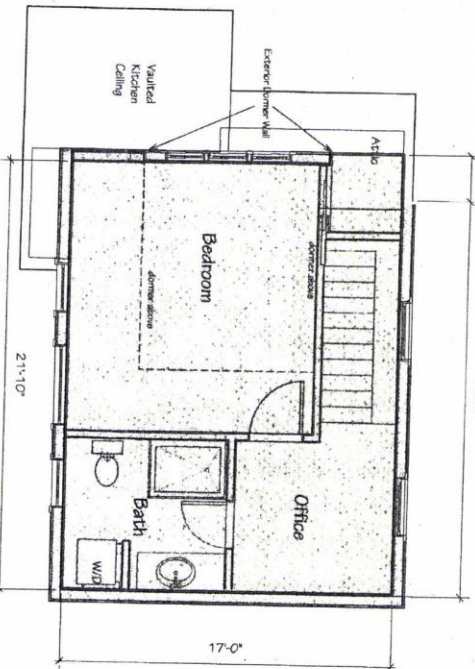
EXHIBIT C.2

16-134028 AD

PAGE 3 of 3	DRAWN BY DENNIS MYERS DATE: 3/7/16	ELEVATIONS	PROPOSED ADU- 3828 N. Haight St. ADJUSTMENT TO REAR SETBACK	Dennis Myers Designer-Builders 10622 SW 4th Ave, Portland, OR 97219 503-2463036, dmyersdesign@comcast.net
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PROPOSED ADU FLOOR PLANS

City of Portland
Bureau of
Development Services
By *W. J. Date 6/8/16*
Approved by
Planning & Zoning Review



ADU Living Area Summary

ADU Main Floor Living Area: 409 sq. ft.
ADU Upper Floor Living Area: 375 sq. ft.
Total ADU Living Area: 784 sq. ft.

Main Floor Plan

Scale 1/4" = 1'-0"
ADU Living Area: 409 sq. ft.

EXHIBIT C-3

Rec. 4/14/16

16-134028 AD