



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

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**Date:** December 5, 2011  
**To:** Interested Person  
**From:** Mark Bello, Land Use Services  
503-823-7810 / [Mark.Bello@portlandoregon.gov](mailto:Mark.Bello@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 this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

### **CASE FILE NUMBER: LU 11-189249 AD** Exceed Maximum Allowed Height for an ADU/Garage

#### **GENERAL INFORMATION**

**Applicant:** Bob Kessi  
Kessi Construction Inc  
PO Box 83131  
Portland OR 97283

**Site Address:** 6728 N MONTEITH AVE

**Legal Description:** BLOCK 26 SLY 1/2 OF LOT 1-3, PORTSMOUTH  
**Tax Account No.:** R669905560  
**State ID No.:** 1N1E07DC 04300  
**Quarter Section:** 2224

**Neighborhood:** University Park, contact Fletcher Trippe at 503-232-6499.  
**Business District:** North Portland Business Assoc, contact Jim Schaller at 503-517-9915.  
**District Coalition:** North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

**Zoning:** R5 Residential 5,000

**Case Type:** AD Adjustment request to modify or waive Zoning Code development standard(s)

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

**Proposal:** The applicant wishes to construct an accessory structure – garage below, Accessory Dwelling Unit (ADU) above. The accessory structure would be 20'-9 7/8" tall. The zoning code allows by right an ADU 18' in height (measured at the midpoint of the gable roof) so the proposal to build above that height requires an adjustment to build higher than allowed by Portland's zoning code.

## ANALYSIS

**Zoning:** The Residential 5,000 (R5) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the Comprehensive Plan's policies and designations for single-dwelling housing. Minimum lot size is 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 5,000 square feet of site area.

**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 **November 4, 2011**. The following Bureaus have responded with no issues or concerns:

1. Bureau of Environmental Services
2. Bureau of Transportation Engineering and Development Review
3. Water Bureau
4. Fire Bureau
5. Site Development Review Section of BDS
6. Bureau of Parks, Forestry Division
7. Life Safety Plans Examiner, BDS

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on November 4, 2011. No written responses have been received from the Neighborhood Association. One notified property owner has written in support of 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 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
- B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area; and
- 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
- D. City-designated scenic resources and historic resources are preserved; and
- E. Any impacts resulting from the adjustment are mitigated to the extent practical.
- 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 AND CONCLUSIONS

The applicants' proposal meets all of the relevant approval criteria.

The purpose of the Design Standards for accessory dwelling units, per 33.205.030, is to:

- Ensure that ADUs are compatible with the desired character and livability of Portland's residential zones;
- Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;
- Ensure that ADUs are smaller in size than houses; and
- Provide adequate flexibility to site buildings so that they fit the topography of sites.

**Findings:** The 5,500 square foot site is located on N. Montieth Street between N. Harvard Street, a local neighborhood street, and N. Willamette Boulevard, a wide scenic and recreation boulevard in North Portland. The level property is developed with a 2,256 square foot, two-story new house. The house fronts N. Montieth Avenue. Parking is located in the back yard and accessed from the alley off N. Montieth. Across the north property line, there is another new house, two-stories with a one story attached garage. The attached garage is closest to the subject ADU/garage. Across the east property line is the backyard of a single story house that fronts also on N. Harvard.

Most lots in the vicinity are developed with one story houses with accessory structures in the backyard. There is relatively little new construction in the vicinity and older homes are generally one-story. Across N. Willamette Boulevard, the University of Portland contains residential structures of greater height and massing.

The desired character of this area is generally a house and possible ADU and/or garage on each lot. At the desired residential density, lots are generally 5,000 sq. ft. in the R5 zone, although new lots may be as small as 3,000 sq. ft. in area. About 45% of such a lot can be developed with structures and on-site parking may be required, depending on transit availability. Setbacks ensure that buildings are set back from each other to some degree. Houses may be two-stories, 30 ft. in height; accessory structures should be smaller.

The property will be designed with the home fronting N. Montieth and the ADU/garage in the backyard. There is also space for on-site parking and a private yard.

The ADU is proposed to be built in the backyard, 19 ft. from the house, 8 ft. from the north property line, and 5 ft. from the east property line. Along the north property line, the accessory structure would be sited 3 ft. farther away than is the minimum setback in the R5 zone, that is, 8 ft. rather than 5 ft. The proposed accessory structure will be about 23 ft. from the neighboring house to the north. To the east, the accessory structure will be located adjacent to a neighboring backyard.

By locating the accessory structure at 8 ft. from the north property line and 5 ft. from the east property line, the site now provides more privacy to neighbors while preserving a yard and parking on the applicant's site. The parking and yard can be shared by residents of the house and ADU. This small change to the site plan ensures neighborhood livability and also allows sharing of common space by the site's residents.

After construction, this property will contain the larger house and the smaller ADU. The house will contain about 1,340 sq. ft. of area and the ADU will contain 768 sq. ft. of area. The house is 26'-3 1/8" to the ridgeline (and measures 22'-2 3/8" to the midpoint of the roof where building height is measured). The ADU/garage will measure 20'-9 7/8" high. Given the location, area, and height of the two structures, the ADU is smaller and is accessory to the house, the primary structure on the site.

As the site is level, there are no topographical considerations.

The proposal will not have any negative impacts on the appearance or the livability of the residential area because the structure will be compatible with the architectural style of the existing residence and will not introduce any activities or structural relationships that alter the character of this residential street.

No cumulative impacts are expected to occur from approval of the proposal. There are no scenic or historic resources on this site; and no impacts have been identified for the abutting property or the surrounding residential area. The site is not located in an environmental zone, so the criteria related to these issues do not apply.

Therefore, all of the relevant approval criteria are met and the proposal can be approved, in substantial compliance with the proposed site plan and elevation drawings.

## 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.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to zoning code standards 33.205.030.D.2, to increase the height of the ADU from the allowed 18'-0" to 20'-9 7/8" per the approved site plans, Exhibits C-1 through C.2, signed and dated 12/1/2011, 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.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 11-147030 AD."

**Staff Planner: Mark Bello**

**Decision rendered by:**  **on December 1, 2011**

**Decision mailed: December 5, 2011**

**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 October 27, 2011, and was determined to be complete on **November 2, 2011**.

*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 October 27, 2011.

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: March 2, 2012.**

**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 December 19, 2011** 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 **December 20, 2011.**
- 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.

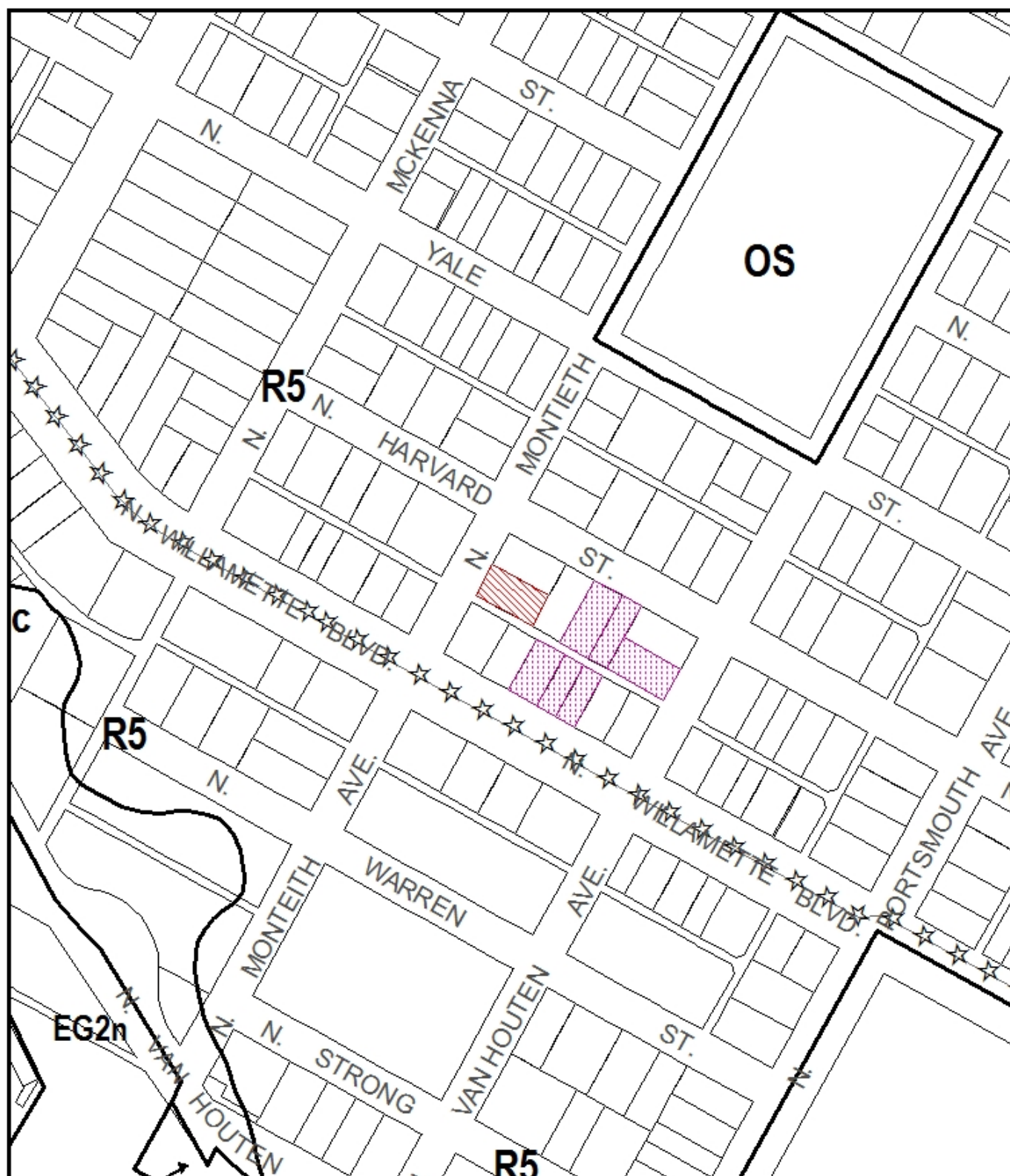
**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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
- B. Zoning Map (attached)
- C. Plans/Drawings: (attached)
  - 1. Site Plan
  - 2. Elevations, ADU/Garage
  - 3. Elevations, Existing House
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Plans Examiner, BDS
- F. Correspondence:
  - 1. Josephine and Edward McFarlane, received Nov.18, 2011, support adjustment request
- G. Other:
  - 1. Original LU Application



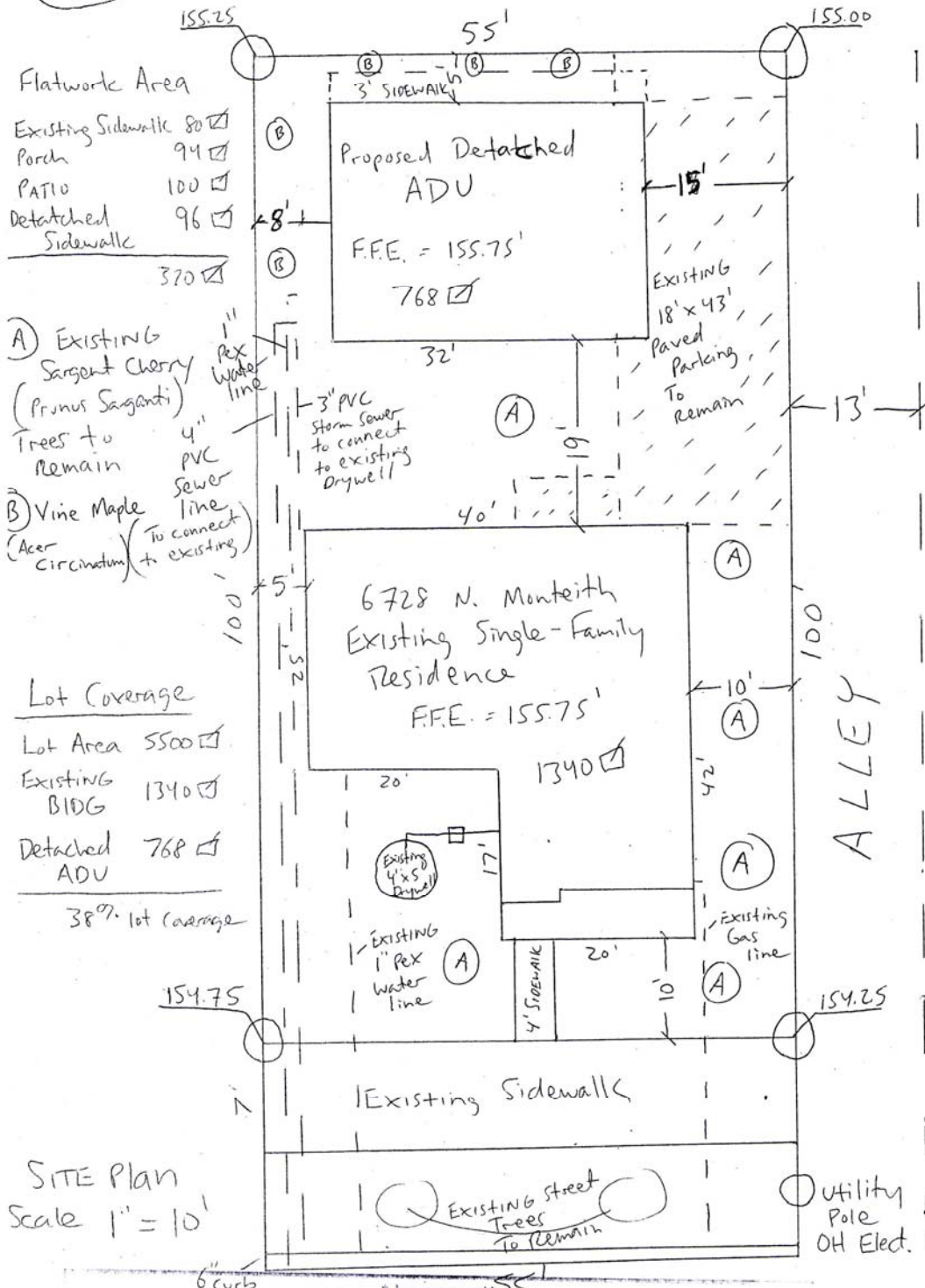
# ZONING

- Site
- Also Owned



File No.	<u>LU 11-189249 AD</u>
1/4 Section	<u>2224</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N1E07DC 4300</u>
Exhibit	<u>B</u> (Nov 01,2011)





SITE Plan  
Scale 1" = 10'

City of Portland - Bureau of Development Services

Date 12/11/11

Project Legal:

Portsmouth; SLY K2  
of lot 1-3 Block 26

CASE NO.

11-189249

EXHIBIT

C1

N. Monteith Ave



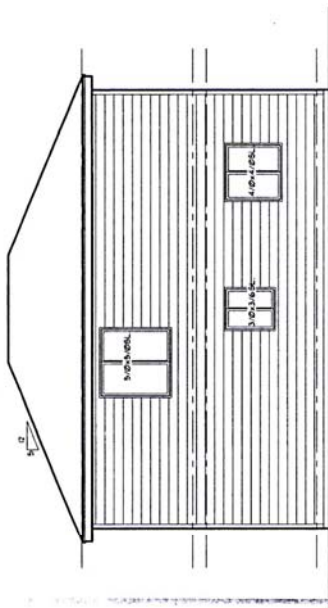
(Proposed ADU)

City of Portland - Bureau of Development Services

UPB Date 12/1/11

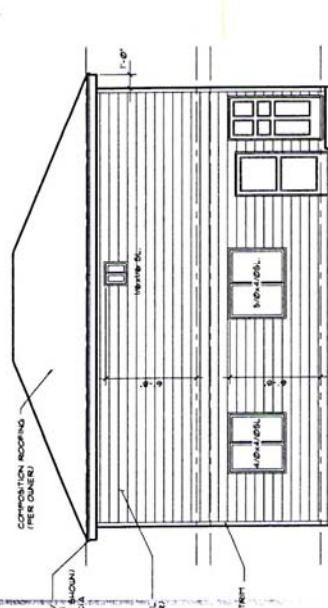
only to the reviews requested on this form. Additional zoning requirements may apply.

CASE NO. 11-189249  
EXHIBIT C2



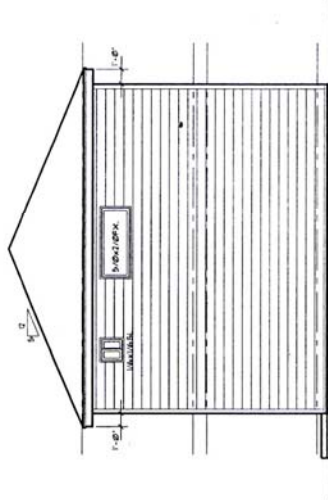
ELEVATION

SCALE 1/4"=1'-0"



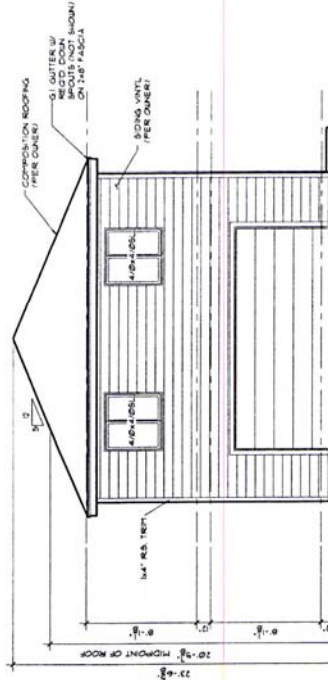
ELEVATION

SCALE 1/4"=1'-0"



ELEVATION

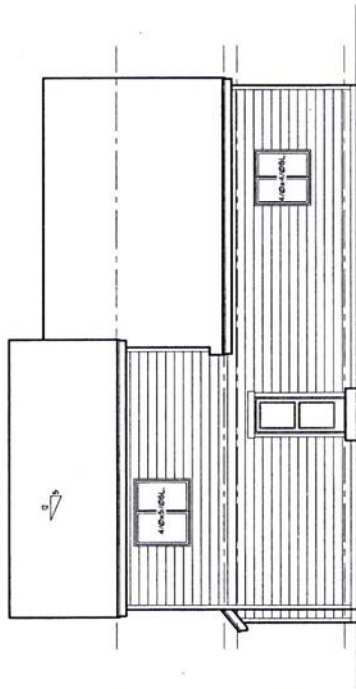
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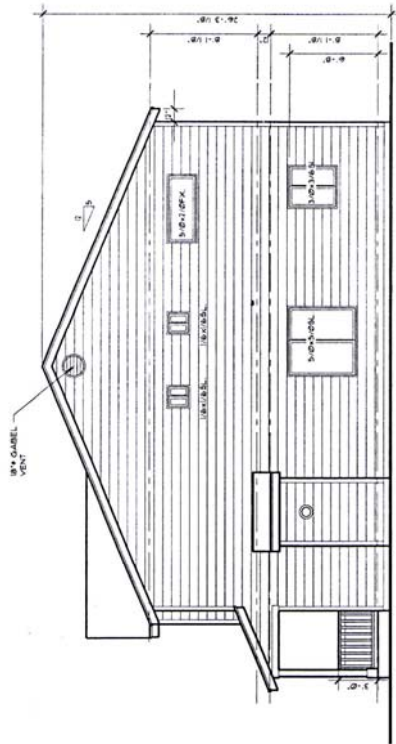
ELEVATION

SCALE 1/4"=1'-0"

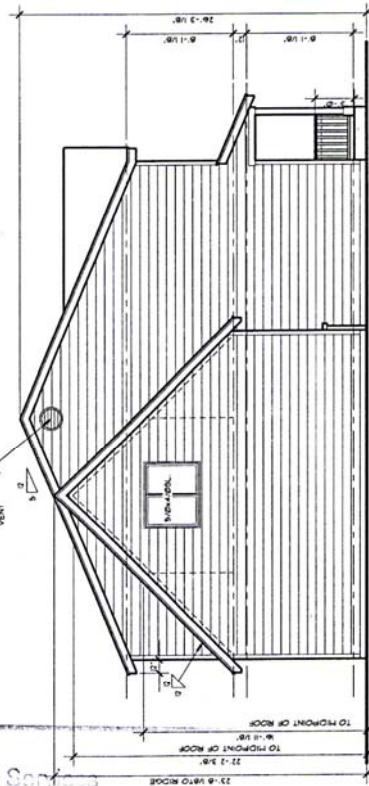
(Existing Home: 6728 N. Monteth Ave)



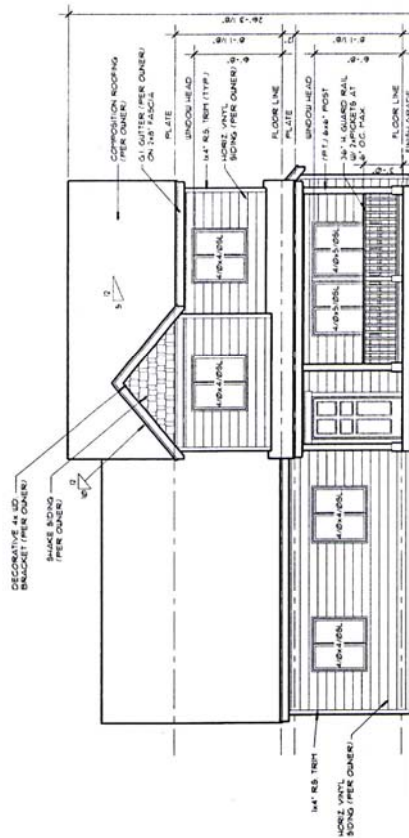
REAR ELEVATION  
SCALE: 1/4"=1'-0"



RIGHT ELEVATION  
SCALE: 1/4"=1'-0"



LEFT ELEVATION  
SCALE: 1/4"=1'-0"



FRONT ELEVATION  
SCALE: 1/4"=1'-0"

SQUARE FOOTAGE BREAKDOWN  
TOTAL FLOOR AREA: 1246  
TOTAL GARAGE: 280  
TOTAL LIVABLE: 966

CASE NO. 11-189247  
EXHIBIT C3

\*Approved\*  
City of Portland - Bureau of Development Services

Date 12/1/11

11/23/2011 3:02:52 PM