



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

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Date: December 19, 2017
To: Interested Person
From: David Besley, Land Use Services
503-823-7282 / David.Besley@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 16-258407 AD

GENERAL INFORMATION

Applicant: David Masko | David Masko Architect
26071 German Mill Rd
Franklin, MI 48025

Owner: Shanon Barker | SBTB LLC
6415 NE 38th St
Portland, OR 97211

Site Address: 11230 SE DIVISION ST

Legal Description: BLOCK 1 LOT 3 EXC PT IN ST LAND & IMPS SEE R215134
(R550000071) FOR BILLBOARD, MCGREWS TR

Tax Account No.: R550000070

State ID No.: 1S2E10AB 03800

Quarter Section: 3342

Neighborhood: Powellhurst-Gilbert, contact at pgnaboard@gmail.com

Business District: Midway, contact info@midwaybusiness.org

District Coalition: East Portland Neighborhood Office, contact Victor Salinas at 503-823-6694

Plan District: Johnson Creek Basin

Zoning: CN2 (Neighborhood Commercial 2)

Case Type: AD (Adjustment Review)

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

Proposal:

The applicant is proposing to remodel and expand an existing dance studio, which involves deconstructing a single-story house on site and building an addition in its place. When improvements are made to sites, the Portland Zoning Code requires that certain elements of existing nonconforming development be upgraded to meet current standards (Section 33.258.070.D.2). The applicant intends to address the code required nonconforming upgrades on the site, with one exception, due to spatial limitations. The Portland Zoning Code requires a minimum of 5 feet low-screen landscaping (L2 standard) between parking areas and abutting commercially zoned lot lines (Section 33.266.130.G, Table 266-5). Currently there is no landscaping. The applicant is proposing a range of 0 feet to 5 feet of low-screen landscaping between the parking area and the adjacent commercially zoned property to the west. An Adjustment is therefore required to reduce the minimum 5-foot landscaping setback to a range of 0 feet to 5 feet.

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 approximately 15,500 square-foot site is on the southern side of SE Division Street, about 175 feet east of the intersection of SE Division Street and SE 112th Avenue. The relatively flat site is currently developed with an approximately 748 square foot single-story residence near the street and approximately 2,600 square foot single-story dance studio in the southeast corner. The surrounding vicinity is developed with a mix of single-dwelling residences, multi-dwelling residential buildings, and commercial uses.

Zoning: A wide range of uses is allowed in the Commercial zones. The Neighborhood Commercial 2 (CN2) zone is intended for small commercial sites and areas in or near less dense or developing residential neighborhoods. The emphasis of the zone is on uses which will provide services for the nearby residential areas, and on other uses which are small scale and have little impact. Residential uses and development are allowed by right in Commercial zones. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

The Johnson Creek Basin plan district (33.537) provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

Land Use History: City records indicate there are no prior land use reviews for this site since annexation into the City of Portland.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed November 9, 2017. The following Bureaus have responded with the following information:

- The Bureau of Environmental Services responded with no concerns and included stormwater management requirements (Exhibit E-1);
- The Life Safety section of the Bureau of Development Services (BDS) responded with no concerns and provided Building Code information (Exhibit E-2); and
- The Portland Bureau of Transportation responded with no concerns and noted that there are no Transportation-related approval criteria associated with the proposed land use request (Exhibit E-3).

The following Bureaus have responded with no concerns (Exhibit E-4):

- The Site Development Section of BDS; and

- The Water Bureau.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 9, 2017. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.040 Adjustment 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 proposing to remodel and expand an existing dance studio, which involves deconstructing a single-story house on site and building an addition in its place, which – because of the location of the parking area – requires an Adjustment to reduce the required minimum 5-foot landscaping setback to a range of 0 feet to 5 feet. The relevant purpose statements and associated findings are found below:

33.266.130 Development Standards for All Other Uses

Purpose: *The development standards promote vehicle areas which are safe and attractive for motorists and pedestrians. Vehicle area locations are restricted in some zones to promote the desired character of those zones. Together with the transit street building setback standards in the base zone chapters, the vehicle area restrictions for sites on transit streets and in Pedestrian Districts:*

- *Provide a pedestrian access that is protected from auto traffic; and*
- *Create an environment that is inviting to pedestrians and transit users.*
- *The parking area layout standards are intended to promote safe circulation within the parking area, provide for the effective management of stormwater runoff from vehicle areas, and provide for convenient entry and exit of vehicles. The setback and landscaping standards:*
 - *Improve and soften the appearance of parking areas;*
 - *Reduce the visual impact of parking areas from sidewalks, streets, and especially from adjacent residential zones;*
 - *Provide flexibility to reduce the visual impacts of small residential parking lots;*
 - *Direct traffic in parking areas;*
 - *Shade and cool parking areas;*
 - *Reduce the amount and rate of stormwater runoff from vehicle areas;*
 - *Reduce pollution and temperature of stormwater runoff from vehicle areas; and*
 - *Decrease airborne and waterborne pollution*

The applicant is proposing 5 feet of low-screen landscaping along the west side of the driveway¹ (at the northernmost portion of the site, where cars access the site via SE Division Street) for approximately 35 feet in length, before it tapers down to 0 feet along the next 35 feet. The remainder of the site (approximately 135 feet to the southern property line) is proposed to have 0 feet of landscaping between the parking area and the adjacent commercially zoned property to the west due to the location of the existing dance studio which is proposed to remain, and subsequent spatial limitations on site. The Portland Zoning Code requires a minimum 2-way drive aisle width of 20-feet (Table 266-4), a minimum 16-foot long vehicle parking stall depth, and a minimum width for a

¹ Parking area setbacks and landscaping requirements apply to surface parking areas abutting a lot line and driveways, per Section 33.266.130.G.2.

pedestrian circulation system of 6 feet wide (Section 33.130.240.B.2.a). There is only 42 feet between the west edge of the studio and the western property line, all of which is utilized to meet these standards.

A new pedestrian circulation system is proposed that will connect all entrances on site to each other and to the parking area, and will protect pedestrians from auto traffic. The new pedestrian circulation, combined with the additional landscaping on site, will create an environment that is inviting to pedestrians and transit users.

As noted above, the site, including the existing parking area and driveway, is considered nonconforming development. Currently, the vehicle area (which is in the same location) abuts the west property line and therefore has no landscaping. By granting this Adjustment, the parking area will have increased landscaping over what is existing along the first 20 feet of the property line, which will reduce the visual impact of parking areas from sidewalks and streets and bring the site closer into conformance. From SE Division Street and the surrounding sidewalks, the site will appear to meet the parking area setbacks and landscaping requirements, because the adjusted landscape area is farther to the south, in the rear of the site. A condition will require that a 5-foot-wide area low-screen (L2 Standard) landscaping area be planted along the west side of the driveway in the location indicated in the approved site plan (Exhibit C.1).

In addition to the 5-foot landscaping along the west side of the driveway noted above, the east side of the driveway is proposed to have a 4-foot to 16-foot wide landscape area, which will separate the driveway from the pedestrian access, thereby softening the appearance of the parking area. The landscaped areas proposed on both sides of the driveway will collectively direct traffic in parking areas and shade and cool parking areas. The landscaping improvements will serve to intercept rainfall, reduce temperature and the amount and rate of stormwater runoff and in turn reduce pollution.

PBOT has expressed no concerns with the proposal.

As conditioned, 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 subject property is in a Neighborhood Commercial 2 zone. The Portland Zoning Code defines “desired character” as “the preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.” In this instance, *Desired Character* is defined by the character statement of the CN2 zone, the Johnson Creek Basin Plan District, and the Outer Southeast Community Plan; there are no overlay zones or design guidelines.

The Neighborhood Commercial 2 character statement notes that this zone is intended for small commercial sites and areas in or near less dense or developing residential neighborhoods. The emphasis of the zone is on uses which will provide services for the nearby residential areas, and on other uses which are small scale and have little impact. Uses are limited in intensity to promote their local orientation and to limit adverse impacts on nearby residential areas. Development is expected to be predominantly auto accommodating, except where the site is adjacent to a transit street or in a Pedestrian District. The development standards reflect that the site will generally be surrounded by more spread out residential development.

The proposed structure is a dance studio that will provide services for the nearby residential areas. Retail Sales and Service uses and development are allowed by right in the CN2 zone. While SE Division Street is classified as a Major Transit Priority Street and vehicle parking is not required, auto accommodating uses are predominant in this area. The applicant notes that the dance students are children who rely on their parents to pick them up and drop them off rather than relying on public transportation, which can be challenging or dangerous for children. Additionally, PBOT has indicated no concerns regarding the proposal's consistency with the classification of adjacent streets.

The Johnson Creek Basin plan district (33.537) provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services. At certain locations, the density of development is limited by applying special regulations to new land division proposals. In addition, restrictions are placed on all new land uses and activities to reduce stormwater runoff, provide groundwater recharge, reduce erosion, enhance water quality, and retain and enhance native vegetation throughout the plan district. At other locations, development is encouraged and mechanisms are included that provide relief from environmental restrictions. This plan district is intended to be used in conjunction with environmental zoning placed on significant resources and functional values in the Johnson Creek basin, to protect resources and functional values in conformance with Goal 8 of the Comprehensive Plan and Statewide Planning Goal 5.

The site is located at the northern boundary of the Johnson Creek Basin plan district, along a busy, relatively flat, vehicle-oriented corridor (SE Division Street), and not located in close proximity to any recreational trails or flood risk areas. The proposed development does not include any additional area for the parking area, and includes adequate landscaping to reduce stormwater runoff, reduce erosion, and enhance water quality.

The Outer Southeast Community Plan includes an objective to identify traffic-control options that increase safety, foster opportunity for commercial, low impact industrial and housing development (Policy 1(3).1, page 20). The proposed driveway is curved rather than straight in order to accommodate landscaping on the west side of the driveway, but this curvature will also act as a traffic calming device.

This proposal is therefore consistent with 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: Only one Adjustment is proposed; therefore, this criterion is not applicable.

- D.** City-designated scenic resources and historic resources are preserved;

Findings: City designated scenic resources are identified on the Official Zoning Map with a lower case "s" and historic resources are designated by a large dot or as being within the boundaries of a Historic or Conservation district. 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: As noted above, in addition to the 5-foot landscaping along the west side of the driveway, the east side of the driveway is proposed to have a 4-foot to 16-foot wide landscaped area, which will separate the driveway from the pedestrian access, soften

the appearance of the parking area, and shade and cool the parking area. Impacts resulting from the Adjustment are therefore mitigated to the extent practical.

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 Map with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). No environmental zoning is applied to the site; therefore, 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 is proposing to remodel and expand an existing dance studio, which involves deconstructing a single-story house on site and building an addition in its place. As designed, the proposal requires an Adjustment to reduce the minimum 5-foot landscaping setback to a range of 0 feet to 5 feet. The applicant is proposing 5 feet of low-screen landscaping along the west side of the driveway (at the northernmost portion of the site, where cars access the site via SE Division Street) and it is only in the rear of the site that 0 feet of landscaping is proposed. Currently, the vehicle area (which is in the same location) abuts the west property line and therefore has no landscaping. By granting this Adjustment, the parking area will have increased landscaping over what is existing on both sides of the driveway, which will reduce the visual impact of parking areas from sidewalks and streets and bring the site closer into conformance. From SE Division Street and the surrounding sidewalks, the site will appear to meet the parking area setbacks and landscaping requirements, because the adjusted landscape area is in the rear of the site. A condition will require that a 5-foot-wide area of low-screen (L2 Standard) landscaping be planted along the west side of the driveway in the location indicated in the approved site plan (Exhibit C.1).

In addition to the 5-foot landscaping along the west side of the driveway noted above, the east side of the driveway is proposed to have a 4-foot to 16-foot wide landscape area, which will separate the driveway from the pedestrian access, thereby softening the appearance of the parking area. The landscaped areas proposed on both sides of the driveway will collectively direct traffic in parking areas and shade and cool parking areas. The landscaping improvements will serve to intercept rainfall, reduce temperature and the amount and rate of stormwater runoff and in turn reduce pollution. This proposal is mitigated to the extent practical, consistent with the desired character of the area, and will not impact environmental, scenic, or historical resources.

The proposal meets the applicable approval criteria and must therefore be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum 5-foot landscaping setback (Section 33.266.130.G, Table 266-5) to a range of 0 feet to 5 feet, per the approved site plan, Exhibit C.1, signed and dated December 11, 2017, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 16-258407 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. At the time of building permit submittal, plans must indicate the 5-foot-wide area low-screen (L2 Standard) landscaping along the west side of the driveway in the location indicated in the approved site plan (Exhibit C.1). At the time of final occupancy, the 5-foot-wide area low-screen landscaping must be established.

Staff Planner: David Besley



Decision rendered by: _____ **on December 11, 2017.**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 19, 2017

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 14, 2016, and was determined to be complete on November 9, 2017.

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 14, 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 extended the 120-day review period by 245 days, as stated with Exhibit (Exhibit A.2).

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 January 2, 2018** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

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

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

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

Recording the final decision.

If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **January 2, 2018** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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

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

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

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

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and

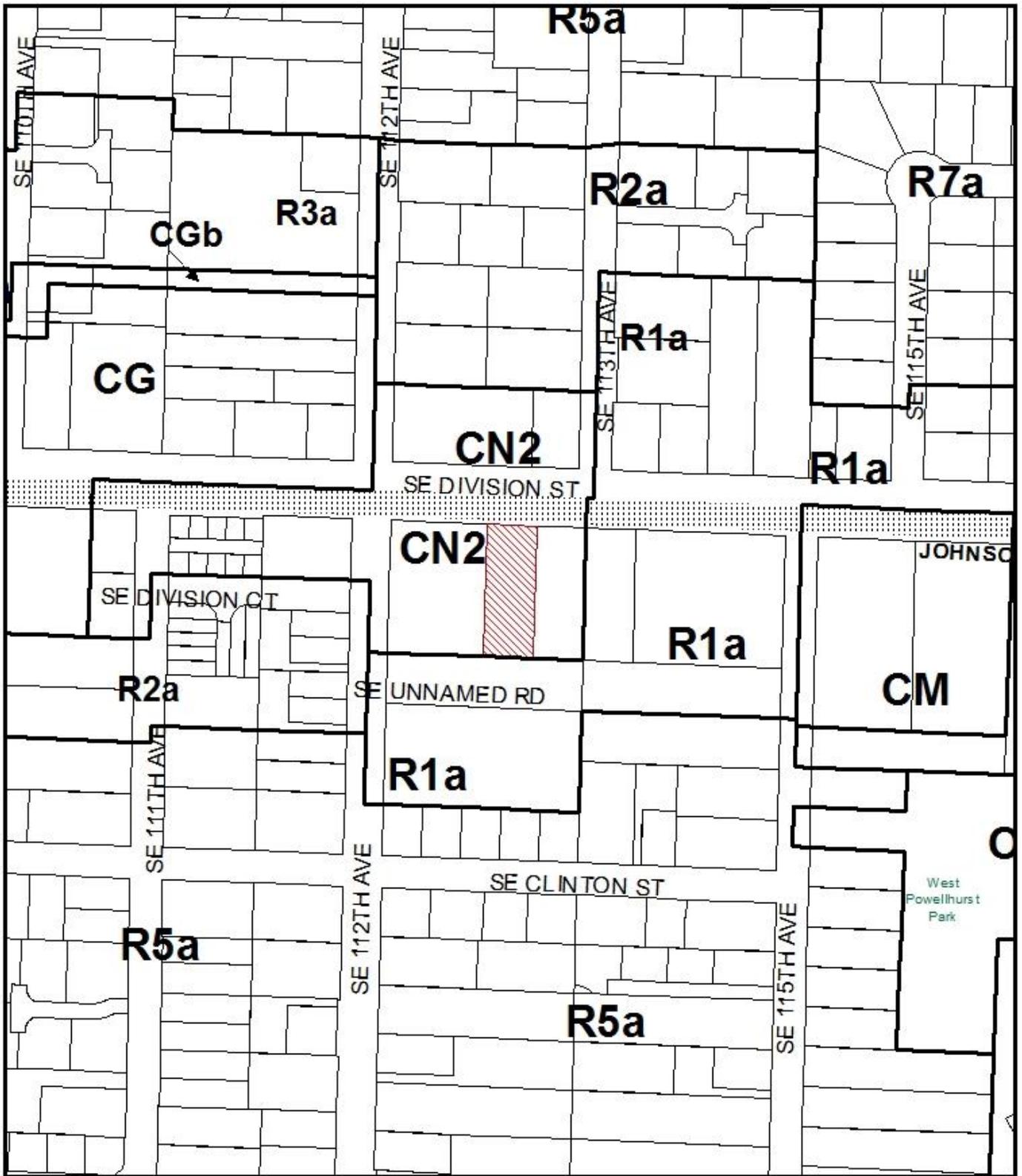
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant Submittals
 - 1. Applicant's Statement
 - 2. Request for Extension of 120-day Review Period Signed by Applicant signed April 22, 2017
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Life Safety Section of BDS
 - 3. Portland Bureau of Transportation
 - 4. Agencies responding with no concerns
- F. Correspondence: None
- G. Other:
 - 1. Original LU Application and Receipt
 - 2. Incomplete letter from staff to applicant dated October 27, 2016

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



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	<u>LU 16-258407 AD</u>
1/4 Section	<u>3342</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E10AB 3800</u>
Exhibit	<u>B (Oct 20, 2016)</u>

Adjustment request to reduce min. 5-foot landscape setback to a range of 0' to 5' for the parking area

DAVID
MASKO
ARCHITECT

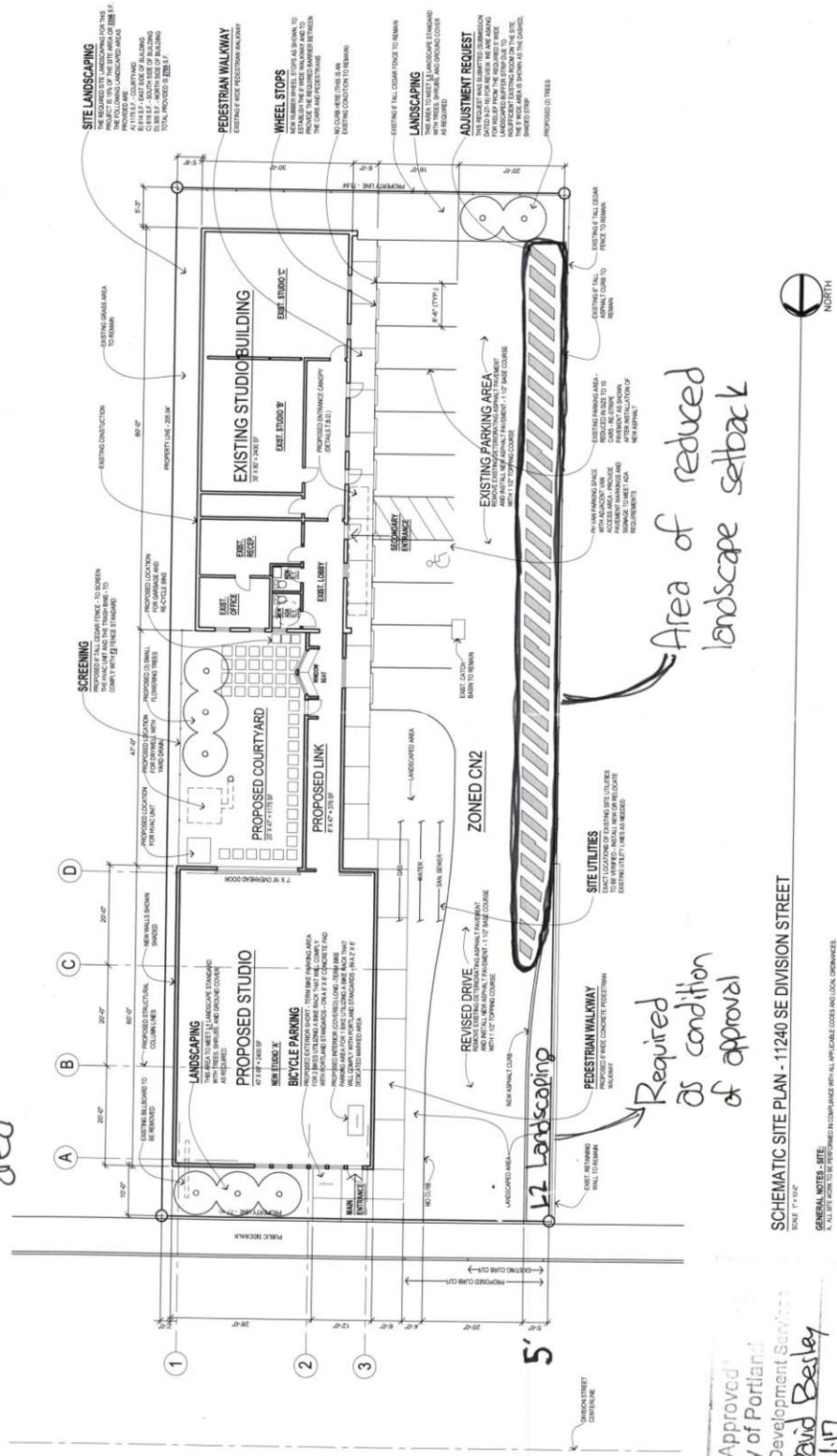
3-26-17 ISSUED FOR ADJUSTMENT REVIEW
4-11-17 REVISED PER DISCUSSIONS
8-15-17 REVISED PER DISCUSSIONS
10-24-17 REVISED PER REQUEST - ADDED NOTE ABOUT SOUTH LANDSCAPED AREA
GENERAL NOTE: THIS DRAWING IS ISSUED TO CONFIRM THE DISCUSSIONS BETWEEN SHANON BARKER AND DAVID BESLEY, REGARDING ADJUSTMENT REVIEW # LU 16-258407

THIS DRAWING IS INTENDED TO UPDATE AND REPLACE THE SCHEMATIC SITE PLAN DRAWING - A-2, THAT WAS ORIGINALLY ISSUED ON 9-27-16, FOR AN ADJUSTMENT REVIEW THAT ADJUSTMENT REQUEST IS EXPLAINED ON THIS DRAWING.

SITES PERFORMING ARTS CENTER

SCHEMATIC SITE PLAN

A-2
REVISED



SCHEMATIC SITE PLAN - 11240 SE DIVISION STREET
SCALE: 1/8"=1'-0"

GENERAL NOTES - SITE:
ALL SETBACKS TO BE PERFORMED IN COMPLIANCE WITH ALL APPLICABLE CODES AND LOCAL ORDINANCES.

* Approved by
City of Portland
Bureau of Development Services
Planner David Besley
Date 12.11.17
* This approval applies only to the reviews requested and is subject to all conditions of approval.
Additional zoning requirements may apply.

LU 16-258407
Exhibit C.1