



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

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

**Date:** October 3, 2018  
**To:** Interested Person  
**From:** Rodney Jennings, Land Use Services  
503-823-5088 / [Rodney.Jennings@portlandoregon.gov](mailto:Rodney.Jennings@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 18-206069 AD**

#### **GENERAL INFORMATION**

**Applicant:** Brough Davis  
3410 SE 71st Ave. | Portland, OR 97206

**Owner:** Brough G. Davis & Treven K. Ho  
312 S Glenwood Pl #A | Burbank, CA 91506

**Site Address:** 3410 SE 71ST AVE

**Legal Description:** TL 6700 0.17 ACRES, SECTION 08 1S 2E  
**Tax Account No.:** R992082270  
**State ID No.:** 1S2E08BD 06700  
**Quarter Section:** 3337

**Neighborhood:** South Tabor, contact John Carr at [jcarrpdx@gmail.com](mailto:jcarrpdx@gmail.com).  
**Business District:** None  
**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010.

**Plan District:** None

**Zoning:** R2a – Multi-dwelling Residential 2,000 with Alternative Design Density Overlay

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

#### **Proposal:**

Permits were recently issued to convert part of the basement of the house at 3410 SE 71<sup>st</sup> Ave into an accessory dwelling unit (ADU). Per Zoning Code Section 33.205.040, the maximum size of an ADU is 75% of the living area of the primary dwelling on the site or 800 square feet, whichever is less. The ADU at this site was approved with a living area of 800 square feet. The

applicant requests an adjustment to the maximum ADU size standard to increase the size of the ADU from 800 square feet to 860 square feet. The additional 60 square feet would allow for a washer and dryer nook within the ADU.

**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 a flat, 7,550 square foot lot. It is developed with a single-story ranch style house with garage and ADU that is attached by a covered breezeway. The property south of the site is zoned CM2 and is developed with a single-story convenience store. The property east of the site is zoned R1, and is developed with an apartment complex and associated parking. The properties north and west across SE 71<sup>st</sup> Ave share the same R2 zoning as the site and are developed with houses. The house to the north is two-stories with a gable roof. The two houses opposite the site across SE 71<sup>st</sup> are single-story ranches that are similar in appearance to the subject house.

**Zoning:** R2a - The R2 zone allows multi-dwelling residential development up to a maximum density of one unit per 2,000 square feet of site area, or up to one unit per 1,600 square feet with an inclusionary housing bonus, and requires a minimum density of one unit per 2,500 square feet of site area. Newly created lots in the R2 zone must be at least 4,000 square feet in area for multi-dwelling development, 1,600 square feet for development with attached or detached houses, and 2,000 square feet for development with duplexes. Minimum lot width and depth standards may apply.

The “a” overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. The provisions of the “a” overlay are not being used in this request.

**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 **September 4, 2018**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1)
- Bureau of Transportation Engineering (Exhibit E.2)
- Fire Bureau (Exhibit E.4)
- Site Development Section of BDS (Exhibit E.5)
- Life/Safety Section of BDS (Exhibit E.6)

The Water Bureau commented that a completed residential water service application payment must be received prior to building permit approval for resizing the meter (Exhibit E.3)

**Neighborhood Review:** No written responses have been received from notified property owners in response to the proposal. This site is located within the South Tabor Neighborhood. The Notice of Proposal was sent to the Mount Tabor Neighborhood in error. The South Tabor Neighborhood Association was notified of this error and indicated that additional time would not be needed to respond to the notification (Exhibit F.1). No additional written comments were received from the South Tabor Neighborhood Association.

## ZONING CODE APPROVAL CRITERIA

### 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:** Zoning Code Section 33.205.040.C.3 limits the maximum size of ADUs to no more than 75% of the living area of the primary dwelling or 800 square feet, whichever is less. As the living area of the primary dwelling at this site is 1,312 square feet, the maximum size limit for an ADU at this site is 800 square feet. The applicant requests an Adjustment to increase the maximum size allowed for an ADU to 860 square feet. The purposes of the regulation limiting the size of ADUs are in Zoning Code Section 33.205.040.A. These purposes are listed below, followed by findings demonstrating how the proposal equally or better meets each purpose.

- *Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;*

Desired character at this site is the preferred and envisioned character of the area based on the purpose statement or character statement of the R2 base zone and the South Tabor Neighborhood Plan. The character statement of the R2 base zone is:

*The R2 zone is a low density multi-dwelling zone. It allows approximately 21.8 dwelling units per acre. Density may be as high as 32 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one to three story buildings, but at a slightly larger amount of building coverage than the R3 zone. The major types of new development will be duplexes, townhouses, rowhouses and garden apartments. These housing types are intended to be compatible with adjacent houses. Generally, R2 zoning will be applied near Major City Traffic Streets, Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.*

The existing ADU brings the density of dwelling units on the site to about 11.53, which closer to the desired density of 21.8 units than the density achieved by the house alone. The expansion of the ADU also makes the house similar to a duplex, which is one of the housing types characteristic of the R2 zone.

This Adjustment is supported by the following policy from the South Tabor Neighborhood Plan:

*Policy 1; Housing – Preserve and improve existing housing while providing new housing attractive to long-term, responsible residents.*

The ADU is located in a converted area of the basement level of the house. Multnomah County Tax Assessor records indicate that his house was built in 1952 and the 800 square foot ADU was permitted earlier this year of 2018. The addition of the ADU into the existing house helped to preserve and improve the house while also providing new housing. The addition of 60 square feet to the ADU living area allows for additional area in the ADU for a washer and dryer, which are amenities that will increase the attractiveness of the housing to long-term responsible residents.

The ADU is an allowed use at the site. The 60 square foot addition of living area to the ADU will not be visible or discernable from outside the existing house, and will, therefore have no impacts on the livability of adjacent residential areas.

The proposal is consistent with the desired character of the area as reflected by the R2 zone character statement and the South Tabor Neighborhood Plan. This purpose is equally met.

- *Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;*

The ADU is located in a converted area of the basement level of the house. Multnomah County Tax Assessor records indicate that his house was built in 1952 and the 800 square foot ADU was permitted earlier this year of 2018. The house includes an attached garage separated by a breezeway that is accessed by a driveway from SE 71<sup>st</sup> Ave. The lot on which the house is located includes front and rear yards that are approximately 35' deep, and side yards that are approximately 12' deep along the south lot line and 5' feet deep along the north lot line. As it is located in the basement of the existing house, construction of the 800 square foot ADU in the basement resulted in no change in the placement of structures on the lot or in the ability to share the existing driveways, yard and other common shared spaces. The additional 60 square feet of ADU living area is also proposed in the existing basement and will also result in no change to the placement of structures on the lot or the ability to share the existing driveways, yards, or other common shared spaces. This purpose is equally met.

- *Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and*

The primary dwelling unit is located on the main floor of the existing house, and also includes a storage area that is located at the northwest corner of the basement level. The ADU is located in the remaining portion of the basement level. The living area of the primary dwelling is 1,312 square feet, including the areas on the main level and in the basement, which is significantly more than the 860 square feet proposed for the ADU. Even with the additional 60 square feet, the ADU will be smaller than the primary dwelling unit the house. This purpose is equally met.

- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

The ADU is located on the basement level of the existing house. The additional 60 feet of living area proposed to be added to the ADU also will be located in the existing basement level. This purpose is equally met, as the existing house structure, in which both the primary dwelling unit and ADU are located is already successfully located on the site in a manner that fits the flat topography of the site.

As detailed in the findings above, all purposes of the regulation limiting the size of the ADU at this site to 800 square feet are equally met with an ADU that is 860 square feet in area. This criterion is met.

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

**Findings:** The ADU is located in a converted area of the basement level of the house. Multnomah County Tax Assessor records indicate that his house was built in 1952 and the 800 square foot ADU was permitted earlier this year of 2018. The ADU is an allowed use at the site. It is located on the basement level of the house and the entrance to the ADU is from a door at the bottom of a staircase that is accessed from a door on the ground level at the rear of the house. The addition of 60 square feet of living area to the ADU will not be visible or discernable from outside the existing house

and will, therefore, have no impacts on the livability or appearance of adjacent residential areas. 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:** Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As the site is not within an environmental zone, this criterion is not applicable.

## DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all requirements of Title 11 can be met, and 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 existing ADU is located in the basement of the house. The addition of 60 square feet of living area to the 800 square foot ADU will not change the exterior appearance of the house. The existing house includes a driveway and yards, and the addition of 60 square feet to the ADU living area will have no impact on the ability to share the use of these common spaces. At 860 square feet, the living area of the ADU will remain significantly smaller than the living area of the primary dwelling unit. As the ADU is located in the basement of the house, the addition of 60 square feet to the living area of the ADU will not be visible from the exterior of the house and will have no discernable impacts on the livability or appearance of the surrounding residential area.

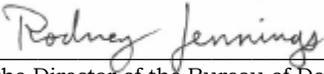
## ADMINISTRATIVE DECISION

Approval of an Adjustment to increase the maximum allowed living area (33.205.040.C.3) of the ADU from 800 square feet to 860 square feet, per the approved site plans, Exhibits C.1 through C.3, signed and dated October 1, 2018, 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 18-206069 AD. No field changes allowed."

**Staff Planner: Rodney Jennings**

**Decision rendered by:**  **on October 1, 2018.**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: October 3, 2018**

**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 July 20, 2018, and was determined to be complete on August 27, 2018.

*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 July 20, 2018.

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: December 26, 2018.**

**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 October 17, 2018** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

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

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

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

**Recording the final decision.**

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

- *Unless appealed*, the final decision will be recorded on or after **October 18, 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:

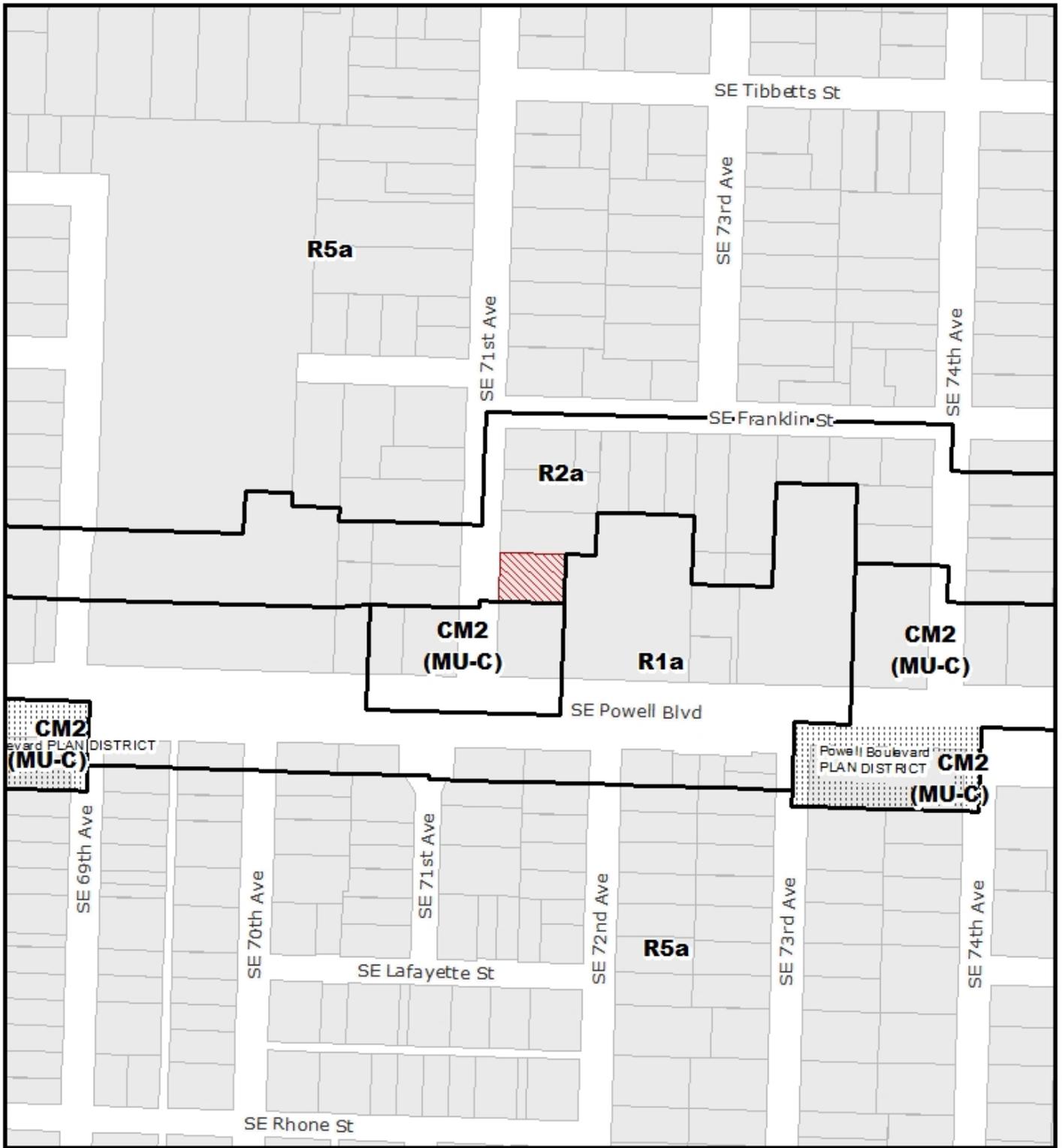
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statements
  - 1. Applicant's original submittal, received July 20, 2018
  - 2. Applicant's statement, received August 12, 2018
  - 3. Applicant's living area calculation, received August 16, 2018
  - 4. Applicant's revised verification of living area calculations, received August 26, 2018.
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Basement ADU Plan
  - 3. 1<sup>st</sup> Floor Plan
- 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 Section of BDS
- F. Correspondence:
  - 1. Marcelle Thurston. South Tabor Neighborhood Association, September 13, 2018, confirmation of receipt of notice and no need for additional time to comment
- G. Other:
  - 1. Original LU Application and Receipt
  - 2. Incomplete Letter

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



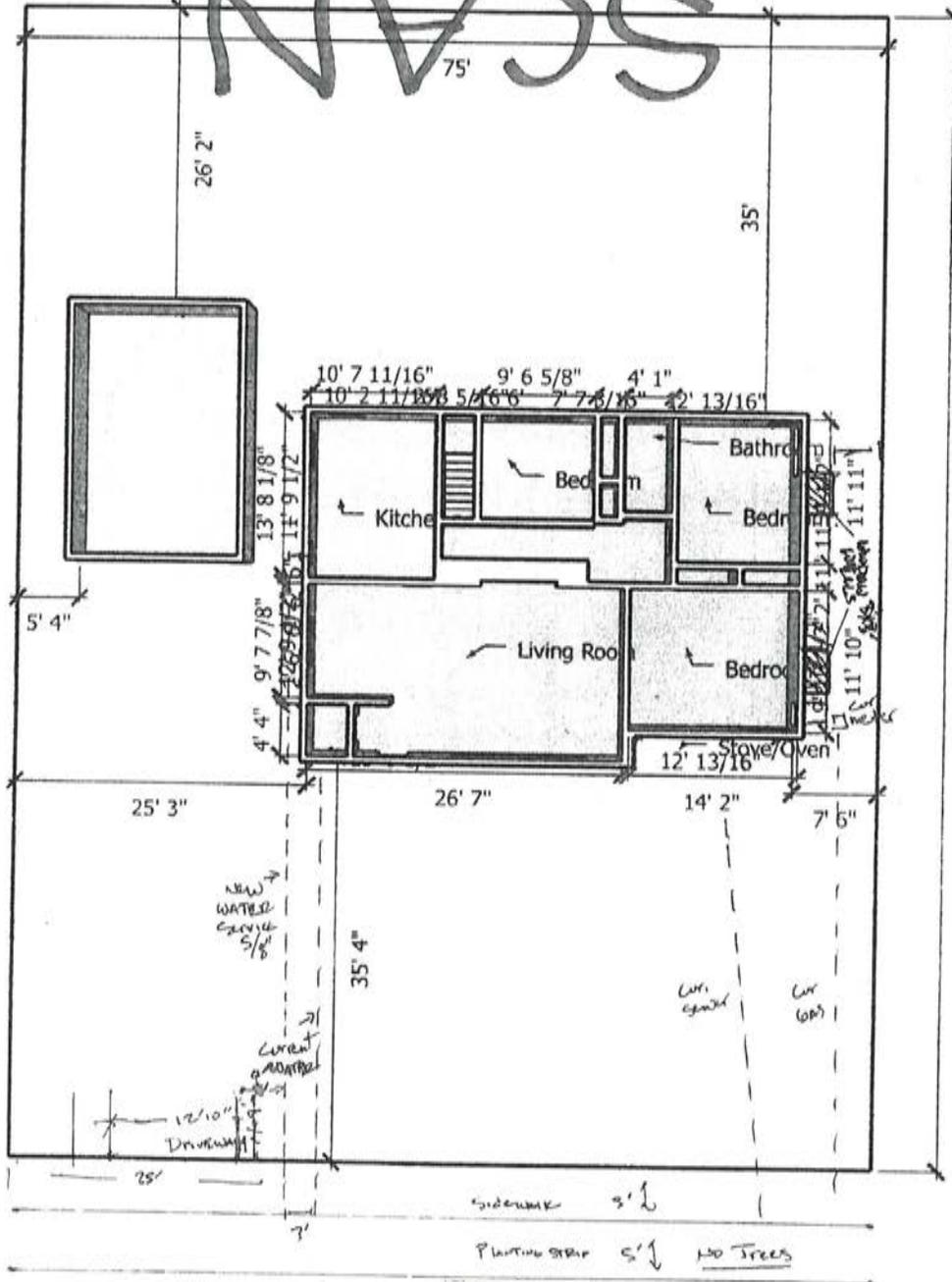
**ZONING**   
NORTH

 Site

File No.	LU 18-206069 AD
1/4 Section	3337
Scale	1 inch = 200 feet
State ID	1S2E08BD 6700
Exhibit	B Jul 24, 2018

2

SCAN 75'



General Notes: Supplemental information  
 The attached 8 1/2 x 11 sheets are  
 part of this plan set. Plans  
 are considered null and void without  
 this information attached to the  
 approved set of plans.

City of Portland  
 REVIEWED FOR CODE  
 COMPLIANCE  
 FEB 27 2017  
 16-10-754-C-175  
 Permit Number

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

Planner *Rachael Jensen* Date 10/01/18

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

SE 71ST AVE

PERMIT TO WORK IN  
 PUBLIC RIGHT - OF - WAY IS  
 NOT APPROVED AS PART OF  
 THIS BUILDING PERMIT

SITE PLAN

CASE NO. 18-206069 AD  
 EXHIBIT C.1

LU 18-206069 AD