



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

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Date: March 13, 2019
To: Interested Person
From: Andrew Gulizia, Land Use Services
503-823-7010 / Andrew.Gulizia@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 19-106698 AD

GENERAL INFORMATION

Applicant: Collin Janke
Janke Architecture
1927 NW Kearney St.
Portland, OR 97209

Property Owner: Maggie Samuelson and Martin Samuelson
3008 NW Greenbriar Ter.
Portland, OR 97210

Site Address: 1525 NW 24th Ave.

Legal Description: BLOCK 9 LOT 2&3 TL 15801, GOLDSMITHS ADD
Tax Account No.: R331301370
State ID No.: 1N1E28CC 15801
Quarter Section: 2827, 2927
Neighborhood: Northwest District, contact John Bradley at 503-313-7574
Business District: Nob Hill, contact Nob Hill at nobhillportland@gmail.com
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212
Zoning: R2 – Multi-Dwelling Residential 2,000
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The applicant proposes to construct a house with an attached garage and an attached accessory dwelling unit (ADU) on this property. The applicant requests approval of the following Adjustments to Zoning Code requirements for the new house:

- To reduce the minimum south side building setback from 6 feet to 5 feet for the south-facing wall (Exhibit C-2) (Zoning Code Section 33.120.220.B.1);

- To reduce the minimum south side building setback for building projections from 4'-10" to 3 feet for a canopy over the kitchen window and from 4'-10" to zero for in-ground planters up to 4 feet in height (Exhibit C-2) (Zoning Code Section 33.120.220.D.1);
- To reduce the minimum north side building setback from 6 feet to 5 feet for the north-facing wall (Exhibit C-2) (Zoning Code Section 33.120.220.B.1); and
- To increase the maximum height of a fence and gate within the front building setback from 3.5 feet to between 5'-7" and 6'-4" (Exhibit C-2) (Zoning Code Section 33.120.285.C.1).

Relevant Approval Criteria: To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The site is a vacant lot on the west side of NW 24th Avenue between NW Quimby and NW Raleigh Streets. The property is 4,778 square feet in area and the current lot dimensions were created in property line adjustments completed in 2018. (See "Land Use Review History" discussion below.) A new house is under construction on the abutting lot to the south (building permit 18-233396 RS). The property abutting the site to the north is developed with a one-story commercial building. The property east of the site, on the other side of NW 24th Avenue, is developed with a row of 3-story townhouses which occupies the entire block between NW Quimby and NW Raleigh Streets. Neighboring properties to the west are developed with single-dwelling houses and small multi-dwelling residential buildings. Wallace Park is one block west of the site and the retail corridor along NW 23rd Avenue is one block to the east.

Zoning: The R2 zoning designation is one of the City's multi-dwelling zones, which are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing. The development standards work together to create desirable residential areas by promoting aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

Land Use Review History: City records indicate one prior land use review for this site. In 2017, land use review LU 17-234113 AD approved Adjustments to the building height, building setback, and pedestrian connection standards for a proposed 6-unit condominium building. The condominium building was not constructed. Instead, the property owner completed a lot confirmation and two property line adjustments (PR 18-158720 PLA LC and PR 18-194724 PLA) in order to construct two new houses on the property where the condominium building had been planned. The property was already composed of two lots, so a land division was not necessary. The current land use review is for the northern portion of the site area reviewed in LU 17-234113 AD.

Agency Review: A "Notice of Proposal" was sent February 11, 2019. The following Bureaus responded with no concerns about the proposed Adjustments:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4);
- Site Development Section of BDS (Exhibit E-5); and
- Life Safety Review Section of BDS (Exhibit E-6).

Neighborhood Review: No written responses to the mailed "Notice of Proposal" were received from either the Neighborhood Association or notified neighbors.

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated 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: Adjustments are requested to the minimum side building setback requirements and to the maximum height requirement for a fence and gate in the front yard.

Minimum side building setback requirements:

The following Adjustments to the minimum side building setback requirements are requested:

- To reduce the minimum south side building setback from 6 feet to 5 feet for the south-facing wall (Zoning Code Section 33.120.220.B.1);
- To reduce the minimum south side building setback for building projections from 4'-10" to 3 feet for a canopy over the kitchen window and from 4'-10" to zero for in-ground planters up to 4 feet in height (Zoning Code Section 33.120.220.D.1); and
- To reduce the minimum north side building setback from 6 feet to 5 feet for the north-facing wall (Zoning Code Section 33.120.220.B.1).

The purposes of the minimum building setback requirements in the R2 zone are stated in Zoning Code Section 33.120.220.A:

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 multi-dwelling development in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *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;*
- *Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users; 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.*

Staff finds the proposed Adjustments equally meet the purposes of the minimum building setback requirements for the following reasons:

- With the proposed Adjustments, the side walls of the new house will be 5 feet from both of the side lot lines. Five-foot building setbacks from side lot lines leave sufficient access for fire fighters and are a typical building pattern for houses in residential neighborhoods. The Fire Bureau and Life Safety Review Section of BDS both responded with no concerns about the Adjustment Review (Exhibits E-4 and E-6, respectively).
- The house under construction on the lot to the south is also set back 5 feet from the side lot line shared with the subject site. Approval of this Adjustment Review maintains a 10-foot separation between the new homes, which is a typical physical relationship between houses in residential neighborhoods.

- The abutting lot to the north is developed with a nonconforming commercial building rather than a residential building.
- The setback Adjustments for the side walls are necessary because the walls measure slightly more than 1,000 square feet in area, triggering a 6-foot rather than a 5-foot building setback requirement. (The north wall measures about 1,140 square feet and the south wall measures about 1,218 square feet. These measurements include the air space under cantilevered portions of the walls, as required by Zoning Code Section 33.930.080.) If the upper story walls were set back one foot further from the side lot lines than the main level walls below, all of the walls would meet the minimum building setback requirements outright. Both of the buildings to the north and south of the new house will be a full story lower in height. With this height difference, setting back the upper story walls to 6 feet rather than 5 feet would not substantially increase the light, air, and privacy available on neighboring lots.
- The proposed house includes an upper-level rear deck with its outer wall set back 5 feet from the south side lot line. However, the deck wall will be 1 foot thick (Exhibit A-5), so the usable area of the deck will be 6 feet from the south side lot line. Therefore, any privacy impact from the deck on the neighboring lot's yard will be no greater than would be allowed without the setback Adjustment. To ensure the 1-foot-thick wall on the south side of the deck is included in the final building permit plans, a condition of approval will require this feature.
- While the Adjustments will allow reduced side setbacks for wall planes larger than 1,000 square feet, overall the new house will not have a larger building scale than anticipated by the zoning requirements. The proposed building height is 26'-4", which is only two-thirds as tall as the 40-foot maximum building height allowed in the R2 zone. The proposed building coverage is about 31% of the lot area, which is significantly less than the 50% maximum building coverage allowed in the R2 zone.
- The 2-foot-deep canopy over the kitchen window is only 10'-8" wide and will add visual interest to the new house. The shadow it casts on the front and side building walls will enhance compatibility with the surrounding neighborhood, which has many homes with deep overhangs. At the same time, the canopy will not be deep enough to appear out of scale with the house or to disrupt a reasonable physical relationship with the neighboring home.
- The in-ground planters will fit the topography of the site, which slopes upward from the street, and increase the amount of flat outdoor area. The planters will appear more like retaining walls than extensions of the new house. None of the planter walls will be more than 4 feet above the adjacent grade, and these structures would be exempt from the building setback requirements if they were not attached to the foundation of the house. (Freestanding retaining walls are not subject to any minimum setback requirements in the R2 zone.)
- The subject site is not adjacent to a transit street.
- Since the Adjustments are only for the side building setback requirements, the proposal will not prevent a car from parking in front of the garage door or affect visibility for drivers backing out onto the street. The garage will meet all development standards of the Zoning Code, including the minimum setback requirement from the front lot line.

Fence height requirement:

An Adjustment is also requested to increase the maximum height of a fence and gate within the front building setback from 3.5 feet to between 5'-7" and 6'-4" (Zoning Code Section

33.120.285.C.1). The purpose of the fence requirements in the R2 zone is stated in Zoning Code Section 33.120.285.A:

The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, lessen solar access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.

Staff finds the proposed Adjustment equally meets the purpose of the fence height requirement for the following reasons:

- The opaque portions of the fence will be no more than 3.5 feet in height. The taller part of the fence which will benefit from this Adjustment will have an open, transparent design. Therefore, the fence will provide separation from the street but will not block light or surveillance to a greater degree than intended by the Zoning Code.
- The lower, opaque portions of the fence will be concrete with a stucco finish, and the taller, more open portions of the fence will be steel bars arranged in an artistic design. The solid materials and quality design will contribute to an attractive appearance for the site.
- The fence will be set back 1.5 feet from the front lot line and 3 feet from the edge of the public sidewalk. With this distance from the sidewalk and a mostly open, transparent design, the fence will not create the appearance of a street wall along the sidewalk or hinder pedestrian movement.
- The Fire Bureau and the Life Safety Review Section of BDS both reviewed the proposal and raised no concerns about emergency access (Exhibits E-4 and E-6, respectively).

Summary:

For the reasons discussed above, and with the condition of approval for the 1-foot-thick deck wall, staff finds the proposed Adjustments are equally consistent with the purposes of the requirements to be modified. Approval criterion A is therefore 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: Since the site is in a residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area.

The side building setbacks will appear typical for a house in the neighborhood, and the canopy over the kitchen window will add visual interest without appearing out of scale with the house. The in-ground planters will fit the sloping topography of the site and will appear more like low retaining walls than extensions of the house. The new house will be significantly lower in height and smaller in building coverage than allowed in the R2 zone. The Adjustments will not cause the new house to appear incompatible with the residential neighborhood.

The proposed fence and gate will be set back 3 feet from the edge of the public sidewalk and will have an attractive design. The parts that are taller than the outright-permitted fence height will be mostly open and will not block light or views.

For these reasons, staff finds the proposed Adjustments will not detract from the livability or appearance of the surrounding 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: More than one Adjustment is requested, and the site is designated with the R2 multi-dwelling residential zone. The use regulations in multi-dwelling residential zones are “intended to create and maintain higher density residential neighborhoods” (Zoning Code Section 33.120.010.A). The development standards in multi-dwelling residential zones are intended to “work together to create desirable residential areas by promoting aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities” and “generally assure that new development will be compatible with the City’s character” (Zoning Code Section 33.120.010.B).

The proposal creates two new dwelling units on a vacant lot (including the attached ADU), helping to create the higher density residential neighborhood envisioned in the purpose statement cited above. As discussed in the findings for approval criterion A, the Adjustments do not prevent the development from maintaining the aesthetic quality, safety, and privacy intended for development in the R2 zone. The Adjustments will not reduce opportunities for energy conservation or recreation on the site.

For these reasons, staff finds the cumulative effect of the Adjustments is still consistent with the overall purpose of the R2 zone. This criterion is met.

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

Findings: City-designated scenic resources are identified on the official zoning maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

- E.** Any impacts resulting from the Adjustment are mitigated to the extent practical; and

Findings: Five-foot side building setbacks are typical for houses in residential neighborhoods, and as discussed in the findings for approval criterion A, the Adjustments will maintain safety, light, air, and privacy for neighboring lots. A condition of approval will require the south wall of the upper-story deck to have a one-foot-thick wall, so the usable area of the deck will be 6 feet from the south lot line as intended by the setback standard. Furthermore, the in-ground planters will appear more like low retaining walls than extensions of the house.

Staff finds potential impacts from the increased height of the front fence are effectively mitigated by the attractive, open design which will not block light or views.

For these reasons, and with the condition of approval mentioned above, staff finds approval criterion E is met.

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

Findings: Environmental overlay zones are designated on the official zoning maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental

Conservation overlay zone). As there are no environmental overlay zones mapped on the site, this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all 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 proposed Adjustments equally meet the intent of the regulations and will not have significant adverse impacts on the livability and appearance of the neighborhood. The development will be consistent with the purpose of the R2 zone. The new house will be lower in height and building coverage than allowed in the R2 zone, and the front fence will have a mostly open design that will not block light or views. The applicant has demonstrated that the applicable approval criteria are met. Since the approval criteria are found to be met, the Adjustment Review must be approved.

ADMINISTRATIVE DECISION

Approval of the following Adjustments:

- To reduce the minimum south side building setback from 6 feet to 5 feet for the south-facing wall (Zoning Code Section 33.120.220.B.1);
- To reduce the minimum south side building setback for building projections from 4'-10" to 3 feet for a canopy over the kitchen window and from 4'-10" to zero for in-ground planters up to 4 feet in height (Zoning Code Section 33.120.220.D.1);
- To reduce the minimum north side building setback from 6 feet to 5 feet for the north-facing wall (Zoning Code Section 33.120.220.B.1); and
- To increase the maximum height of a fence and gate within the front building setback from 3.5 feet to between 5'-7" and 6'-4" (Zoning Code Section 33.120.285.C.1)

per the approved plans, Exhibits C-1 through C-5, signed and dated March 7, 2019, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 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 through C-5. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 19-106698 AD."
- B. The south wall of the upper-story deck at the rear of the house must be at least 1 foot thick. With the 1-foot-thick south wall, the usable area of the deck must be at least 6 feet from the south lot line.

Staff Planner: Andrew Gulizia

Decision rendered by:  **on March 7, 2019.**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 13, 2019

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

Procedural Information. The application for this land use review was submitted on January 15, 2019 and was determined to be complete on February 5, 2019.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal or complete within 180 days. Therefore, this application was reviewed against the Zoning Code in effect on January 15, 2019.

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 extended by the applicant, **the 120 days will expire on June 5, 2019.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 pm on March 27, 2019** 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 **March 27, 2019** 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.

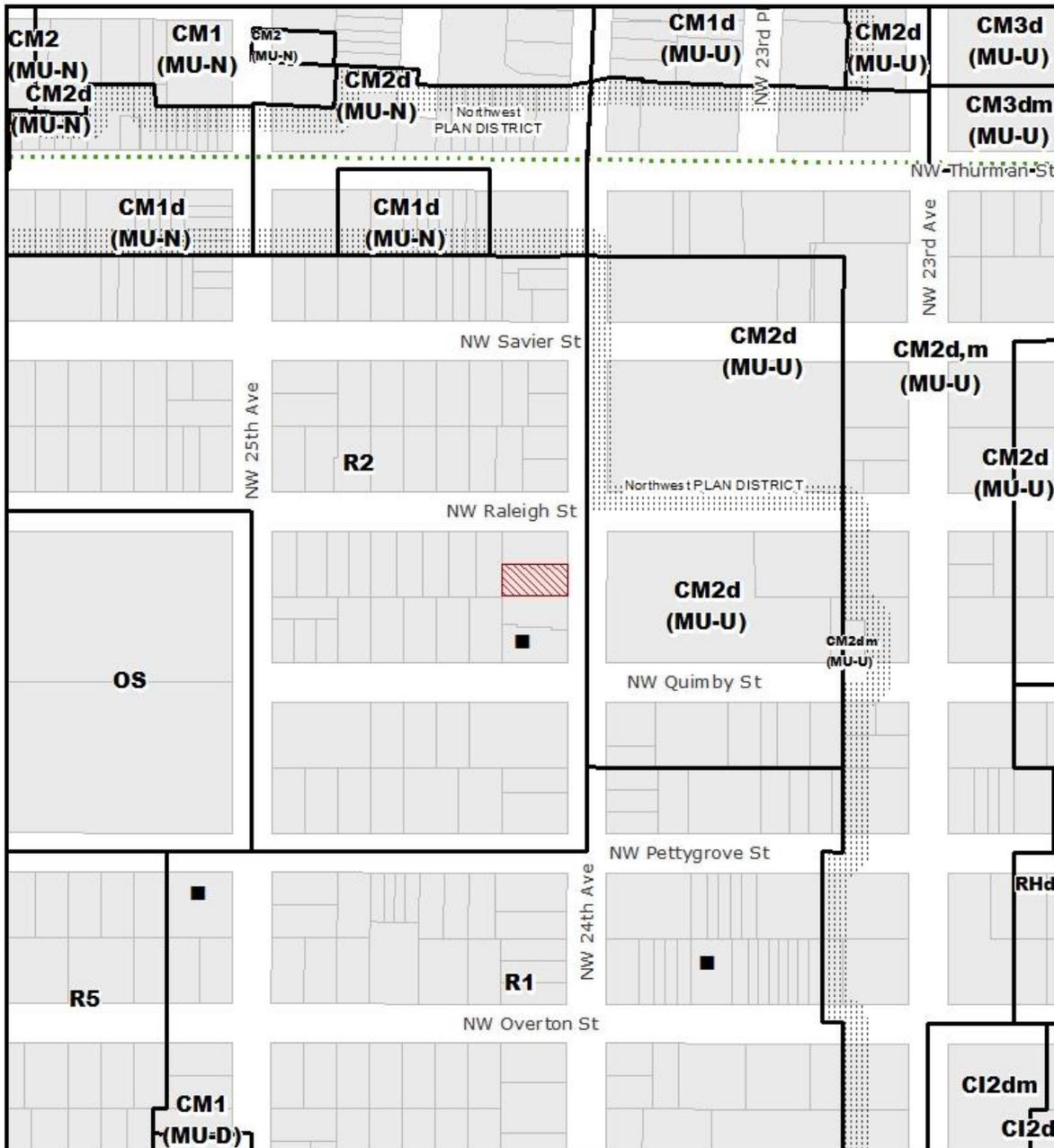
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Applicant's narrative
 - 2. Applicant's revised narrative, received February 5, 2019
 - 3. Originally submitted plans, prior to revisions (superseded by Exhibits A-4, A-5, and C-1 through C-5)
 - 4. Section drawing
 - 5. Second floor plan
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan/first floor plan (attached)
 - 2. East building elevation (attached)
 - 3. South building elevation (attached)
 - 4. North building elevation (attached)
 - 5. West building elevation (attached)
- D. Notification Information:
 - 1. Mailing list

2. Mailed notice
- E. Agency Responses:
1. Bureau of Environmental Services
 2. Portland Bureau of Transportation
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of BDS
 6. Life Safety Review Section of BDS
- F. Correspondence – none received
- G. Other:
1. Land use application form and receipt
 2. Incompleteness determination letter, dated January 24, 2019

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
-  Historic Landmark
-  Recreational Trails

File No.	LU 19-106698 AD
1/4 Section	2827,2927
Scale	1 inch = 200 feet
State ID	1N1E28CC 15801
Exhibit	B Jan 17, 2019

