



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

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**Date:** March 18, 2019  
**To:** Interested Person  
**From:** Andrew Gulizia, Land Use Services  
503-823-7010 / [Andrew.Gulizia@portlandoregon.gov](mailto: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 19-101538 AD**

#### **GENERAL INFORMATION**

**Owner:** CDP Developers LLC, Attn: Eric Paine  
3416 Via Oporto #301  
Newport Beach, CA 92663

**Applicant:** Julia Mollner, Carleton Hart Architecture  
830 SW 10th Avenue #200  
Portland, OR 97205

**Owners/Agents' Representative:** Eric Paine, Holman 42 Limited Partnership  
126 NE Alberta St #202 Portland OR 97211

**Site Address:** 6370 NE 42<sup>nd</sup> Ave.

**Legal Description:** TL 9000 0.72 ACRES, SECTION 18 1N 2E  
**Tax Account No.:** R942182060  
**State ID No.:** 1N2 E18CB 09000  
**Quarter Section:** 2435  
**Neighborhood:** Cully, contact David Sweet at 503-493-9434.  
**Business District:** Our Avenue, contact [michael@42ave.org](mailto:michael@42ave.org).  
**District Coalition:** Central Northeast Neighbors, contact Sandra Lefrancois at 503- 823-2780.

**Zoning:** Commercial Mixed Use 1 (CM1)  
Aircraft Landing overlay zone (h)

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

**Proposal:** Zoning Code Section 33.130.230.B.2 & 3 requires 25% of the ground floor area on the north side of the building to contain windows with views into working areas, lobbies, residential units, residential common areas, pedestrian entrances, or have display windows that are set at least 24 inches deep into the wall. The applicant requests an Adjustment to

reduce the minimum area of qualifying ground floor windows from 25% to 0% for the north side staircase (Exhibits C-1 and C-2).

**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 21,200 square feet and is located on the northeast corner of NE 42<sup>nd</sup> Avenue and NE Holman Street. The site is one block south of NE Lombard Street. A 3-story, 59-unit apartment building is under construction on the site. (The Adjustment Review proposal is to modify the previously-approved, ground-level façade at a stairwell.) Most properties in the surrounding neighborhood are developed with single-dwelling houses, though the neighboring property to the north is developed with a duplex and the property to the south is developed with a fourplex.

**Zoning:** The CM1 zone is a small-scale zone intended for sites in dispersed mixed-use nodes within lower density residential areas, as well as on neighborhood corridors and at the edges of neighborhood centers, town centers and regional centers. This zone allows a mix of commercial and residential uses. The size of commercial uses is limited to minimize impacts on surrounding residential areas. Development is intended to be pedestrian-oriented and compatible with the scale and characteristics of adjacent residentially zoned areas or low-rise commercial areas.

The Aircraft Landing (“h”) overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The associated regulations do not apply in the CM1 zone.

**Land Use Review History:** City records indicate two prior land use reviews for this site:

- MCF 14-54 I: 1954 Multnomah County approval to enlarge a tavern building.
- VZ 063-75: 1975 Variance application to further enlarge the tavern building. This application was denied.

**Agency Review:** A “Notice of Proposal” was sent February 6, 2019. The following Bureaus responded with no concerns about the proposed Adjustment:

- 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:** The applicant requests an Adjustment to the ground floor windows requirement for a wall adjacent to a stairwell. The purposes of the window requirements in the CM1 zone are stated in Zoning Code Section 33.130.230.B.1:

*Purpose. In the commercial/mixed use zones, blank walls on the ground level of buildings are limited in order to:*

- *Provide a pleasant, rich, and diverse pedestrian experience by connecting activities occurring within a structure to adjacent sidewalk areas, or allowing public art at the ground level;*
- *Encourage continuity of retail and service uses;*
- *Encourage surveillance opportunities by restricting fortress-like facades at street level; and*
- *Avoid a monotonous pedestrian environment.*

The proposed Adjustment equally meets the purposes of the regulation based on the following findings:

- The Adjustment affects only a small portion (about 4%) of the north façade's ground floor (Exhibits C-1 and C-2).
- The Adjustment only affects the ground floor wall adjacent to a stairwell. Window requirements for the residential units on the site will be fully met, so the Adjustment will not inhibit surveillance opportunities or disconnect the activities within the building from the street. Windows will be provided along 45% of the length of the north façade's ground floor.
- No retail or services uses are required for the new building, and none are proposed.
- The façade affected by the Adjustment request will have many windows and will not present a blank or monotonous appearance (Exhibit C-2).

Therefore, approval criterion A 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, or 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:** Since the site is zoned CM1, the applicant must demonstrate that the proposal is consistent with the classifications of the adjacent streets and the desired character of the area.

Street classifications

The classifications of the adjacent streets in the Transportation Element of the Comprehensive Plan are as follows:

	Traffic	Transit	Bikeway	Pedestrianway	Freight
NE 42 <sup>nd</sup> Ave.	Neighborhood Collector	Major Transit Priority Street	City Bikeway	City Walkway	Local Service
NE Holman St.	Local Service	Local Service	Local Service	Local Service	Local Service

Adjusting the requirement for ground floor windows does not affect the intensity of the use on the site, the types of uses allowed, or the transit-oriented characteristics of the development, so the Adjustment will not affect traffic levels or demand for transit, bike, pedestrian, or freight facilities. The Portland Bureau of Transportation reviewed the proposal and responded with no concerns (Exhibit E-2). For these reasons, staff finds the proposed Adjustment is consistent with the adjacent street classifications.

Desired character of area

Zoning Code Chapter 33.910 defines “desired character” as the character envisioned in the character statement of the zoning district and in any adopted area plans. The site is designated with the CM1 (Commercial/Mixed Use 1) base zone and the Aircraft Landing (“h”) overlay zone. The site is also within the boundaries of the Cully Neighborhood Plan.

CM1 zone

The character statement for the CM1 zone is in Zoning Code Section 33.130.030.B:

*The Commercial/Mixed Use 1 (CM1) zone is a small-scale zone intended for sites in dispersed mixed use nodes within lower density residential areas, as well as on neighborhood corridors and at the edges of neighborhood centers, town centers and regional centers. The zone is also appropriate in core commercial areas of centers in locations where older commercial storefront buildings of 1 to 2 stories are predominant. This zone allows a mix of commercial and residential uses. The size of commercial uses is limited to minimize impacts on surrounding residential areas. Buildings in this zone will generally be up to three stories tall. Development is intended to be pedestrian-oriented and compatible with the scale and characteristics of adjacent residentially zoned areas or low-rise commercial areas.*

Staff finds the proposed Adjustment is consistent with the desired character expressed in Zoning Code Section 33.130.030.B, based on the following findings:

- The Adjustment affects only a small portion (about 4%) of the north façade’s ground floor (Exhibits C-1 and C-2).
- The Adjustment has no effect on the type of use proposed for the site or on the size of the new building.
- Since the façade affected by the Adjustment will still have many windows on both the ground floor and on the entire street-facing façade (Exhibit C-2), the Adjustment will not make the building less pedestrian-oriented or less compatible with neighboring development.

Aircraft Landing (“h”) overlay zone

The purpose of the Aircraft Landing (“h”) overlay zone is stated in Zoning Code Section 33.400.010:

*The Aircraft Landing Overlay Zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures, vegetation, and construction equipment.*

The proposed Adjustment has no impact on the desired character for the “h” overlay zone because the Adjustment does not affect the height of any structure, vegetation, or construction equipment. The development will fully comply with applicable height limitations.

Cully Neighborhood Plan

Staff finds the following statement from the Cully Neighborhood Plan to be relevant to this Adjustment proposal:

*Policy 2B (Urban Character and Historic Preservation), Objective 2B-4:  
Support the careful planning and design of new development and of redevelopment to enhance neighborhood livability.*

As stated above, the proposed Adjustment affects only a small portion of the north façade adjacent to a stairwell (Exhibits C-1 and C-2). The façade affected by the Adjustment request will still have many windows, so the Adjustment will not cause the façade to present a blank or unattractive appearance to the street (Exhibit C-2). For these reasons,

staff finds the proposed Adjustment is consistent with the relevant objective from the Cully Neighborhood Plan.

#### Summary

Staff finds the proposed Adjustment to be consistent with the classifications of the adjacent streets and the desired character of the area. Approval criterion B 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:** As only one Adjustment is requested, this criterion is not applicable.

- 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 resources or historic resources 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:** The Adjustment affects only a small area of the ground floor façade adjacent to a stairwell. Staff finds the Adjustment will have no negative impacts which require mitigation. This criterion is not applicable.

- 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**

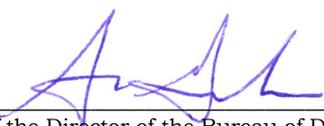
The proposed Adjustment is consistent with the purpose of the ground floor windows requirement, with the adjacent street classifications, and with the desired character of the area. The proposed Adjustment will not impose negative impacts on the neighborhood. Since the applicable approval criteria are found to be met, the proposed Adjustment must be approved.

## **ADMINISTRATIVE DECISION**

Approval of an Adjustment to Zoning Code Section 33.130.230.B.2 & 3 to reduce the minimum area of qualifying ground floor windows from 25% to 0% for the north side staircase per the approved plans, Exhibits C-1 and C-2, signed and dated March 11, 2019, subject to the following condition:

- 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 and C-2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 19-101538 AD."

**Staff Planner: Andrew Gulizia**

**Decision rendered by:**  **on March 11, 2019.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: March 18, 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 4, 2019 and was determined to be complete on January 31, 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 4, 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 further extended by the applicant, **the 120 days will expire on May 31, 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 April 1, 2019** 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 after **April 1, 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.

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

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

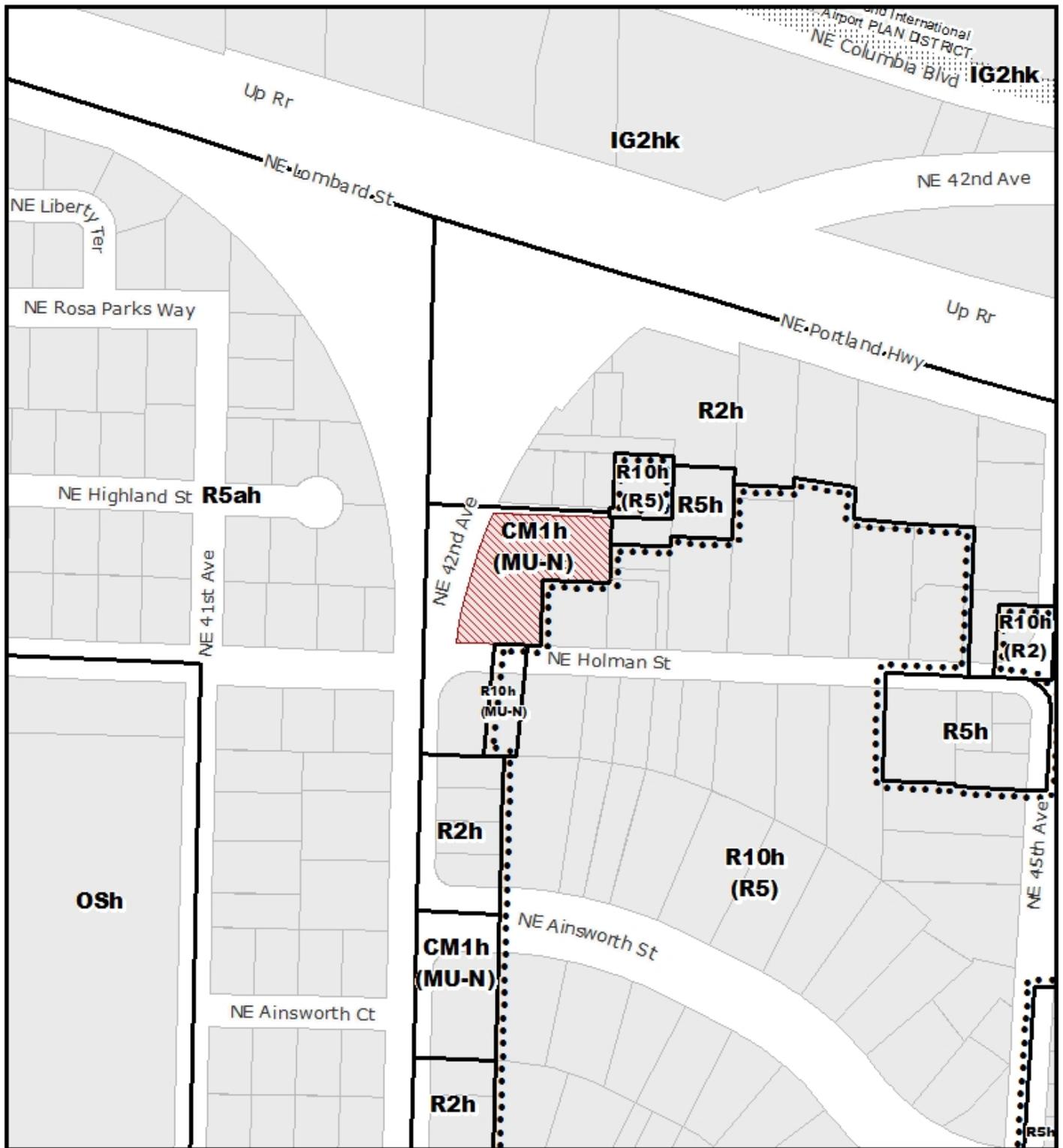
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
  - 1. Approval criteria responses
  - 2. Neighborhood contact documentation
  - 3. Previously-approved north building elevation
  - 4. Response to incompleteness determination letter, received January 30, 2019
  - 5. Misc. building plans
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site plan (attached)
  - 2. Proposed north 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 23, 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

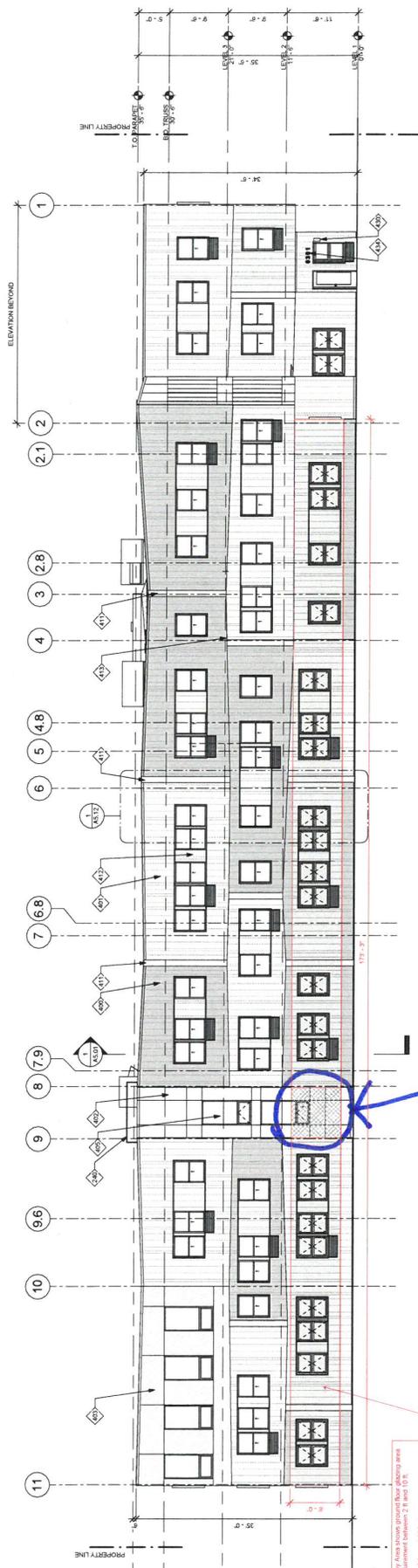
File No.	LU 19-101538 AD
1/4 Section	2435
Scale	1 inch = 200 feet
State ID	1N2E18CB 9000
Exhibit	B Jan 08, 2019



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

Planner A. Galizia Date 3/11/19

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



Proposed Adjustment Location.

Notes:  
 1. Total Area: 1,388 sq ft (includes both dwelling and non-dwelling space)  
 2. Total Glazing Area: 29%  
 3. Window Size (including trim): 3'-6" x 5'-0"

NORTH ELEVATION  
 SCALE: 1/8" = 1'-0"



LU 19-101538 AD  
 Exhibit C-2

Proposed North Elevation

Case No: 19-101538