

To:

City of Portland, Oregon **Bureau of Development Services**

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Ted Wheeler, Mayor Rebecca Esau, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

Date: May 14, 2019

Andrew Gulizia, Land Use Services From:

Interested Person

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 18-233099 AD

GENERAL INFORMATION

Bob Schatz | Allusa Architecture Applicant:

2118 SE Division St | Portland, OR 97202

Samson Cheung | AAV One LLC Owner/Owner's

Representative: 8733 SE Division St #201 | Portland, OR 97266

7700 SE MITCHELL ST **Site Address:**

Legal Description: BLOCK 4 LOT 4-6 TL 900, CHICAGO CENTRE

Tax Account No.: R155700630 State ID No.: 1S2E17AC 00900

Quarter Section: 3538

Neighborhood: Foster-Powell, contact Shawn Morgan at 503-622-3933. Foster Area, contact Venture Portland at 503-477-9648. **Business District: District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010.

Plan District: None

Zoning: CE – Commercial Employment Case Type: AD – Adjustment Review

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

Committee.

Proposal:

In separate reviews, the applicant intends to adjust the property lines between the lots that make up this site. As illustrated in the attached site plan, one of the proposed tracts will contain the existing single-dwelling house and the other will be a flag lot-type tract behind the house. The applicant proposes to construct a 12-unit, 3-story apartment building on the lot behind the existing house.

Per Zoning Code Section 33.130.215.C.1, at least 50% of the length of the ground-level streetfacing façade of the apartment building must be set back no more than 10 feet from the SE Mitchell Street lot line. Also, per Zoning Code Section 33.130.228.B.2.b.(1), when common,

shared areas are provided to meet the outdoor area requirement, the area must be designed so that a 20-foot by 20-foot square will fit entirely within it. Because the proposed development will not meet these standards, the applicant requests the following Adjustments:

- Increase the maximum building setback from SE Mitchell Street from 10 feet to 68 feet for the apartment building; and
- Allow the shared outdoor area to be 15 feet by 30 feet instead of the required 20 feet by 20 feet.

A public notice for a slightly different version of this proposal (with two flag lot-like parcels instead of one) was mailed in October 25, 2018. The applicant revised the proposal with the current site plan and a new public notice was mailed April 17, 2019. The total number of apartment units proposed (12) did not change.

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 subject site is a 7,500 square foot property located on SE Mitchell Street between SE 76th Avenue and SE 78th Avenue. The site is currently developed with a one-story single-dwelling residence with a one-story, one-car detached garage. The property contains several sizeable trees.

Properties abutting the subject site to the west and south are developed with warehouse buildings and exterior storage areas. The property abutting the site to the east is developed with a one-story, four-unit multi-dwelling building with a surface parking area. Other neighboring properties are developed with single-dwelling residences and low-scale multi-dwelling developments.

SE Foster Road runs along the south side of the subject block and is developed with low-scale and auto-oriented commercial and light industrial uses in one-story buildings. Larger-scale commercial uses and development is located several blocks to the east along SE 82nd Avenue. Tri-Met's Bus Line Number 14 runs along SE Foster Road.

Zoning: The CE designation is one of the City's commercial/mixed use zones, which are intended to promote uses and development that support healthy complete neighborhoods. The development standards are designed to allow development flexibility, within parameters, that supports the intended characteristics of the specific zone.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: The original "Notice of Proposal" was mailed October 25, 2018, and a second "Notice of Proposal" with the revised site plan was mailed April 17, 2019. The following Bureaus have responded:

- Bureau of Environmental Services responded with no objections to approval of the requested Adjustments and provided information about stormwater requirements at the time of permit (Exhibit E-1);
- Bureau of Transportation Development Review (PBOT) responded with no concerns with the proposed adjustments (Exhibit E-2);
- Water Bureau responded with no concerns (Exhibit E-3);
- Fire Bureau responded with no concerns (Exhibit E-4);
- Site Development Section of BDS responded with no concerns (E-5); and

• Life Safety Review Section of BDS responded with no objections to approval and provided information about building code requirements at the time of permit (Exhibit E-6).

Neighborhood Review: Two written responses have been received from notified neighbors in response to the Notice of Proposal. The first respondent expressed opposition because there are other apartments already being built in the area, because the existing residence would lose its open yard, and because no on-site parking is proposed (Exhibit F-1). The second respondent expressed opposition because no on-site parking is provided and on-street parking is not allowed along this portion of SE Mitchell Street (Exhibit F-2).

The subject site is zoned CE so it can be developed with a multi-dwelling apartment building by right. Because fewer than 31 dwelling units are proposed and the site is in close proximity to the Number 14 bus line along SE Foster Road, no on-site parking is required (Zoning Code Section 33.266.110.B.1.a). The existing house's yard would still meet the outdoor area requirement for the lot.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

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 is requesting two Adjustments:

- Increase the maximum building setback from SE Mitchell Street from 10 feet to 68 feet for the apartment building; and
- Allow the shared outdoor area to be 15 feet by 30 feet instead of the required 20 feet by 20 feet

The purpose of the building setback requirements in the CE zone is stated in Zoning Code Section 33.130.215.A:

Purpose. The required building setbacks promote streetscapes that are consistent with the desired character of the different commercial/mixed use zones. The setbacks promote buildings close to the sidewalk to reinforce a pedestrian orientation and built-up streetscape. The setback requirements for areas that abut residential zones promote commercial/mixed use development that will maintain light, air, and the potential for privacy for adjacent residential zone.

The front setback requirements for Civic Corridors in Eastern and Western pattern areas provide opportunities for additional pedestrian space and separation from the vehicle traffic along these major streets to create an environment for building users and pedestrians that is less impacted by close proximity to traffic, and provide opportunities

for front landscaping reflective of the vegetated characteristics of these neighborhood pattern areas.

The minimum building setbacks along local service streets adjacent to residential zones work together with requirements for step downs in building height (33.130.210.B.2.b) to ensure that there is a transition in street frontage characteristics to lower scale residential zones. In these situations, the building setback regulations promote street frontages with landscaping and residential uses to provide a transition and a cohesive street environment with similar street frontage characteristics on both sides of the street, and limit exterior display and storage to minimize impacts to nearby residentially-zoned areas.

The site does not abut a Civic Corridor or a residential zone, and the minimum building setback requirement will be met. The Adjustment is only for the maximum building setback requirement from the street lot line. Therefore, the part of the above purpose statement that is relevant to the Adjustment request is to reinforce a pedestrian orientation and built-up streetscape that is consistent with the desired character of the CE zone.

The desired character of the CE zone is stated in Zoning Code Section 33.130.030.E:

Commercial Employment Zone. The Commercial Employment (CE) zone is a medium-scale zone intended for sites along corridors with a Neighborhood Collector or higher traffic classification, especially along civic corridors that are also Major Truck Streets or Priority Truck Streets. This zone is generally not appropriate in designated centers, except on a site that is currently developed in an auto-oriented manner and where more urban development is not yet economically feasible. The zone allows a mix of commercial uses, including auto-accommodating development and drive-through facilities, as well as some light manufacturing and distribution uses, but residential uses are also allowed. Buildings in this zone will generally be up to four stories tall. This zone is intended to allow for development with auto-accommodating configurations, while also including pedestrian-oriented design features that support transit and pedestrian access.

Staff finds the proposal equally supports a pedestrian orientation, a built-up streetscape, and the desired character of the CE zone for the following reasons:

- The flag lot-like parcel where the new apartment building will be constructed will be only 15 feet wide within the first 58 feet from the street lot line. Since the street frontage of the lot is so narrow, placing the apartment building further from the street (behind an existing house) will not create a significant gap in the built-up streetscape along SE Mitchell Street. There are existing residential buildings on both sides of the 15-foot-wide area, and these buildings are only about 30 feet apart. Both of these existing buildings are oriented toward the street and contribute to a built-up streetscape.
- A lighted, 6-foot-wide walkway will create a strong connection between the apartment building and the street (Exhibit C-1). The paving will be decorative, stamped concrete to promote an attractive space.
- New shade trees and other landscaping between the apartment building and the street will contribute to a pleasant pedestrian environment.

The purpose of the outdoor area requirement is stated in Zoning Code Section 33.130.228.A:

Purpose. The required outdoor areas standards ensure opportunities for residents to have on-site access to outdoor space for recreation, relaxation, natural area, or growing food. Required outdoor areas are an important aspect for addressing livability of a property with residential units by providing residents with opportunities for outdoor activities, some

options for outdoor privacy, and a healthy environment. These standards also allow for outdoor area requirements to be met by indoor community facilities that provide opportunities for recreation or gathering.

Staff finds the proposal is equally consistent with the purpose of the outdoor area standard for the following reasons:

- The required quantity of outdoor area for the apartment building will be provided. The Adjustment is only to allow the shared outdoor area to be 15 feet by 30 feet instead of 20 feet by 20 feet.
- Though only 15 feet wide rather than 20 feet wide, the shared outdoor area will have adequate space and amenities for recreation, relaxation, and outdoor activities. The 6-foot-wide concrete pathway can be used for recreation, and an outdoor seating area will be provided for residents. Lighting fixtures will make the outdoor area usable in the evening.
- The garbage and recycling collection area will be set back 30 feet from the front lot line in order to maximize the continuous, usable outdoor area while still allowing for pedestrian access to the apartment building. As required by Zoning Code Sections 33.130.235.B and 33.248.020.G, the garbage and recycling collection area will be fully screened by solid wood fencing.
- New shade trees and other landscaping will add an attractive natural element to the shared outdoor area.

Since each Adjustment request is found to be equally consistent with the purpose of the regulation to be modified, 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: Because the subject site in a commercial zone, the applicant must demonstrate that the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area. Zoning Code Section 33.910 defines "desired character" as the character envisioned in the character statement of the zoning district and in any adopted area plans.

<u>Street classifications</u>: The Portland Transportation System Plan classifies SE Mitchell Street as a local service street for all modes. Adjusting the requirements for the maximum street setback and the outdoor area dimensions will not affect the intensity of the residential use on the site, 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 objections (Exhibit E-2). Therefore, staff finds the proposed Adjustments are consistent with the adjacent street classifications.

<u>CE zone character statement</u>: Consistency with the desired character of the CE zone is reviewed in the findings for approval criterion A, above. As explained in the findings for approval criterion A, the proposal will be consistent with the desired character of the CE zone.

<u>Foster Powell Neighborhood Plan</u>: The site is located within the boundaries of the 1996 "Foster Powell Neighborhood Plan." None of the 7 policies directly relates to this Adjustment Review proposal.

<u>Outer Southeast Community Plan</u>: The site is also located within the boundaries of the 1996 "Outer Southeast Community Plan." None of the 6 community-wide policies or the 8 subarea policies directly relate to this Adjustment Review proposal.

For these reasons, the proposal will be consistent with the classifications of the adjacent streets and 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: Two Adjustments have been requested. The overall purpose of the CE zone is to allow a mix of commercial activities, housing, and employment uses. The regulations promote uses and development that support healthy complete neighborhoods, which are places where people of all ages and abilities have safe and convenient access to the goods and services they need in their daily life and where people have the opportunity to live active lifestyles. The development standards are designed to allow development flexibility that supports the intended characteristics of the CE zone. (Zoning Code Section 33.130.010)

The proposal to increase the maximum building setback and allow the shared outdoor area to deviate from the prescribed 20-foot by 20-foot shape will not limit the potential uses of the site. The shared outdoor area will provide residents with space for recreation and outdoor activities. As stated in the findings for approval criterion A, above, the proposal is consistent with the desired character of the CE zone. Based on these reasons, the requested Adjustments maintain consistency with the purpose of the CE 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. Because 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: As discussed in the findings for approval criterion A, the Adjustments will equally meet the purposes of the regulations and will be consistent with the desired character of the CE zone. While the new apartment building will be set back from the street, the narrowness of the lot along the street (15 feet wide) will prevent the greater setback from creating a significant gap in the streetscape. While the shared outdoor area will be 15 feet wide rather than 20 feet wide, the outdoor area will be improved with attractive paving and landscaping and an outdoor seating area for residents. For these reasons, staff finds any impacts resulting from the Adjustments will be 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 Maps with either a lowercase "p" (Environmental Protection overlay zone) or a "c" (Environmental Conservation overlay zone). Because no environmental overlay zone is mapped on the subject 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 will equally meet the intent of the regulations and will be consistent with the purpose and desired character of the CE zone. The front portion of the apartment building parcel will be only 15 feet wide, but this area will be improved as an attractive outdoor area for the residents. 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 an Adjustment to increase the maximum building setback from SE Mitchell Street from 10 feet to 68 feet for the apartment building (Zoning Code Section 33.130.215.C.1).

Approval of an Adjustment to allow the shared outdoor area to be 15 feet by 30 feet instead of the required 20 feet by 20 feet (Zoning Code Section 33.130.228.B.2.b.(1)).

The above Adjustments are granted per the approved site plan, Exhibit C-1, signed and dated May 9, 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 Exhibit C-1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 18-233099 AD."
- B. No field changes are allowed in the portion of the site labeled "no field changes allowed" on Exhibit C-1.

Staff Planner: Andrew Gulizia

Decision rendered by: ______ on May 9, 2019.

By authority of the Director of the Bureau of Development Services

Decision mailed: May 14, 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 September 5, 2018, and was determined to be complete on October 18, 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 September 5, 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 requested to

extend the 120-day period by a total of 210 days (Exhibits A-3 and A-4). Unless further extended by the applicant, **the 120 days will expire on: September 13, 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 May 28, 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 **May 28, 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:

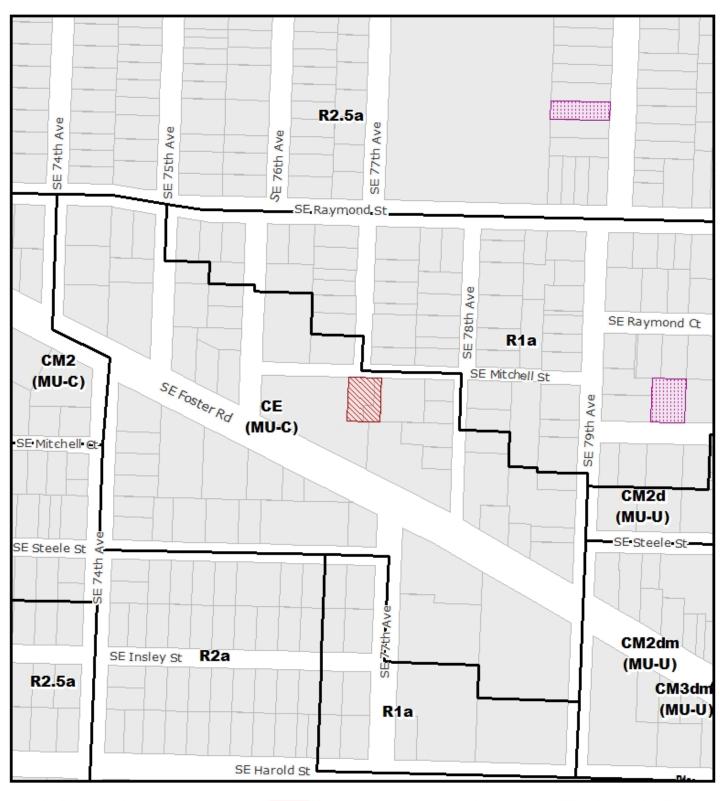
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review:
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Narrative, Site Plan, and Elevation Drawings submitted 9/5/18
 - 2. Revised Narrative. Revised Site Plan, Floor Plans, Revised Elevation Drawings, Trash Enclosure Detail, Fence Detail, Lighting Specifications, and Fence Specifications received 10/16/18
 - 3. Request to extend 120-day review period, received 2/13/19
 - 4. Request to further extend 120-day review period, received 3/15/19
 - 5. Revised Narrative, Revised Site Plan, Floor Plans, Revised Elevation Drawings, Trash Enclosure Detail, Fence Detail, Lighting Specifications, and Fence Specifications received 4/11/19
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Building elevations
- D. Notification Information:
 - 1. Mailing list for October 25, 2018 Notice of Proposal
 - 2. Mailed Notice of Proposal dated October 25, 2018
 - 3. Mailing list for April 17, 2019 Notice of Proposal
 - 4. Mailed Notice of Proposal dated April 17, 2019
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Section of BDS
- F. Correspondence:
 - 1. Jaime Takikawa, received 11/1/18, email in opposition
 - 2. Jennifer Taylor, received 11/9/18, email in opposition
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter mailed 9/19/18

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 AND NORTH

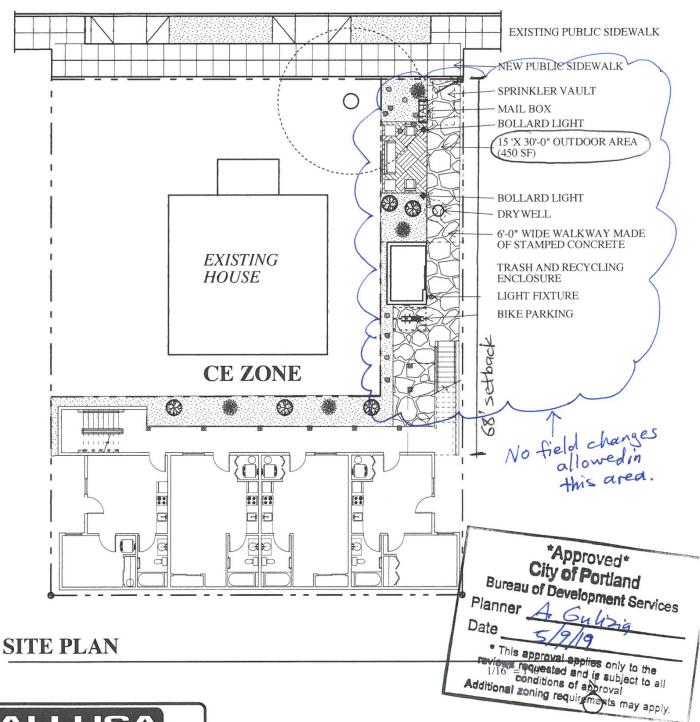


Site Also Owned Parcels

File No. _LU 18-233099 AD 3538 1/4 Section 1 inch = 200 feet Scale State ID 1S2E17AC 900 Sep 11, 2018 Exhibit

R1-A ZONE ACROSS STREET

← SE MITCHELL STREET →



ALLUSA

2118 SE Division street Portland, OR 97202 Phone (503) 235-8585 Fax (503) 235-0835

MITCHELL APARTMENTS

7700 SE MITCHELL STREET PORTLAND, OR

CASENO 18-233079 AD
EXHIBIT C-1