



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

Ted Wheeler, Mayor
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Date: August 30, 2019
To: Interested Person
From: Andrew Gulizia, Land Use Services
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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 19-185800 AD

GENERAL INFORMATION

Applicant/Owner: Brenda Gunderson
PO Box 820008
Portland, OR 97282

Site Address: 8030 SE 11th Ave.

Legal Description: BLOCK 51 LOT 11 TL 9001, SELLWOOD
Tax Account No.: R752706044
State ID No.: 1S1E23CA 09001
Quarter Section: 3831
Neighborhood: Sellwood-Moreland, contact chair.landuse.smile@gmail.com
Business District: Sellwood-Westmoreland, contact at 503 232-3330
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010
Zoning: R2.5ad – Single-Dwelling Residential 2,500 base zone with Alternative Design Density (“a”) and Design (“d”) overlay zones

Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The applicant plans to construct a detached, single-dwelling house on this property. For detached houses in the R2.5 zone, Zoning Code Section 33.110.235.B requires at least 250 square feet of outdoor area outside the 10-foot front building setback, with some part of that outdoor area at least 12 feet wide and 12 feet deep. The applicant requests an Adjustment to modify the outdoor area requirement. While more total outdoor area outside the front building setback is provided than required, the largest contiguous outdoor area outside the front building setback (in the rear yard) will be only 10 feet deep rather than 12 feet deep.

Note: The applicant increased the depth of the proposed outdoor area in the rear yard from the 6-foot depth illustrated in the July 25, 2019 “Notice of Proposal” to the 10-foot depth illustrated in Exhibit 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 subject site is an 1,890-square-foot vacant lot on the east side of SE 11th Avenue, between SE Nehalem Street and SE Spokane Street. The subject site is flat and contains trees which the applicant plans to remove for construction of the new home on the lot. Surrounding properties are developed with a mix of one-story and two-story houses. Institutional and commercial uses are just south and east of the site along SE Tacoma Street and SE 13th Avenue.

Zoning: R2.5 is a single-dwelling residential zone which is intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The “a” (Alternative Design Density) overlay zone is intended to focus development on vacant sites, preserve existing housing, and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. None of the “a” overlay zone regulations are relevant to the Adjustment Review proposal.

The “d” (Design) overlay zone is intended to promote the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural values. None of the “d” overlay zone regulations are relevant to the Adjustment Review proposal, but the new house on the site will be subject to the Community Design Standards in Zoning Code Chapter 33.218.

Land Use Review History: There was one prior land use review that included this site. In 2017, an Adjustment Review (file # LU 17-122513 AD) was approved to waive the off-street parking requirement for the existing house at 1103 SE Spokane Street. At the time of the 2017 Adjustment Review, the current subject property was part of the 1103 SE Spokane Street site. In 2018, the current subject property was separated from the 1103 SE Spokane Street site with the recording of a property line adjustment (file # PR 16-262609 PLA LC).

Agency Review: An initial “Notice of Proposal” (Exhibit D-1) was sent July 19, 2019, illustrating a 7-foot-deep outdoor area in the rear yard. A revised “Notice of Proposal” (Exhibit D-3) was sent July 25, 2019, illustrating a 6-foot-deep outdoor area. The following Bureaus responded with no concerns about the Adjustment Review:

- 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: Four written responses to the mailed “Notice of Proposal” were received. Three were from notified neighbors (Exhibits F-1 through F-3) and one was from the Sellwood Moreland Improvement League (Exhibit F-4). These responses raised the following concerns about the proposal:

- The proposed house would take up almost the entire lot.
- Homes in this family-friendly neighborhood need outdoor living area.
- The front yard does not mitigate for the lack of outdoor living area in the back and making the front yard a private area with a screen would detract from the street environment.

- A 6-foot-deep outdoor area in the back yard is not very usable and does not equally meet the purpose of the outdoor area requirement.

Staff response: Except for the outdoor area requirement, all Zoning Code standards for the new home, including maximum building coverage, will be met outright.

After reviewing the comments received, staff asked the applicant to provide a deeper outdoor area in the rear yard. The applicant revised the site plan to provide a 10-foot-deep outdoor area in the rear yard (Exhibit C-1). As detailed below under “Zoning Code Approval Criteria,” staff finds the revised proposal equally meets the purpose of the outdoor area requirement.

The applicant’s site plan (Exhibit C-1) illustrates a landscaped privacy screen along parts of the front lot line. Since the revised proposal for the rear yard is found to meet the approval criteria for the Adjustment, staff does not find a sufficient nexus with the Adjustment Review proposal to prohibit a planted screen along the front lot line. There are no zoning regulations that would prohibit such a planting screen in the front yard. However, such a screen is not required by this approval, and the applicant is encouraged to provide a more open front yard.

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 purpose of the outdoor area requirement in the R2.5 zone is stated in Zoning Code Section 33.110.235.A:

The required outdoor areas standards assure opportunities in the single-dwelling zones for outdoor relaxation or recreation. The standards work with the maximum building coverage standards to ensure that some of the land not covered by buildings is of an adequate size and shape to be usable for outdoor recreation or relaxation. The location requirements provide options for private or semiprivate areas. The requirement of a required outdoor area serves in lieu of a large rear setback requirement and is an important aspect in addressing the livability of a residential structure.

In the R2.5 zone, the Zoning Code requires at least 250 square feet of outdoor area outside the 10-foot front building setback, with some part of that outdoor area at least 12 feet wide and 12 feet deep. In the final revised site plan (Exhibit C-1), nearly 600 square feet of contiguous outdoor area outside the front setback is provided, excluding the area in the southeastern part of the site behind the adjacent neighbor’s fence. The largest contiguous outdoor area is in the rear yard and will be 10 feet deep and 25’-8” wide. While the depth is 2 feet less than would be required without the Adjustment Review, the contiguous outdoor area is more than twice as wide as required and will be large enough to be usable for outdoor recreation or relaxation. The dimensions of the outdoor area in the rear yard will not preclude uses such as outdoor seating, gardening, or play space for children. Existing fencing along the neighboring lot lines will provide privacy, and even if the existing fencing is removed in the future, residents of the new home can landscape the rear yard however they like and fence the area for privacy if they choose.

For these reasons, staff finds the proposal equally meets the purpose of the outdoor area requirement. 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, 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 in a residential zone, the proposed Adjustment must not significantly detract from the livability or appearance of the residential area. As mentioned above, the outdoor area in the rear yard will be large enough to be used for outdoor recreation or relaxation, as intended by the standard. The depth of the outdoor area in the rear yard will be 24 inches less than would be required without the Adjustment Review, but this area will be more than twice as wide as required. All other Zoning Code standards for the site, including maximum building height, maximum building coverage, and minimum building setbacks, will be met outright.

For these reasons, staff finds nothing about the proposed Adjustment that would significantly detract from the livability or appearance of the residential 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: Since 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 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 proposal equally meets the purpose of the outdoor area requirement, and as discussed in the findings for approval criterion B, the proposal does not adversely impact the livability or appearance of the area. Staff finds there are no adverse impacts for which mitigation would be needed. Therefore, 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 revised Adjustment request equally meets the intent of the outdoor area requirement and will not adversely impact the livability and appearance of the neighborhood. Though the largest outdoor area in the rear yard will be 10 feet deep rather than 12 feet deep, the total outdoor

area is greater than required, and the rear yard will be usable for outdoor relaxation or recreation, as intended by the standard. Staff finds the Adjustment Review approval criteria are met. Therefore, the Adjustment must be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the required depth of the largest, contiguous outdoor area in the rear yard from 12 feet to 10 feet (Zoning Code Section 33.110.235.B) per the approved site plan, Exhibit C-1, signed and dated August 27, 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 Exhibit C-1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 19-185800 AD."

Staff Planner: Andrew Gulizia



Decision rendered by: _____ **on August 27, 2019.**

By authority of the Director of the Bureau of Development Services

Decision mailed: August 30, 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 June 28, 2019 and was determined to be complete on July 16, 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 June 28, 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 November 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 September 13, 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 **September 13, 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 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.

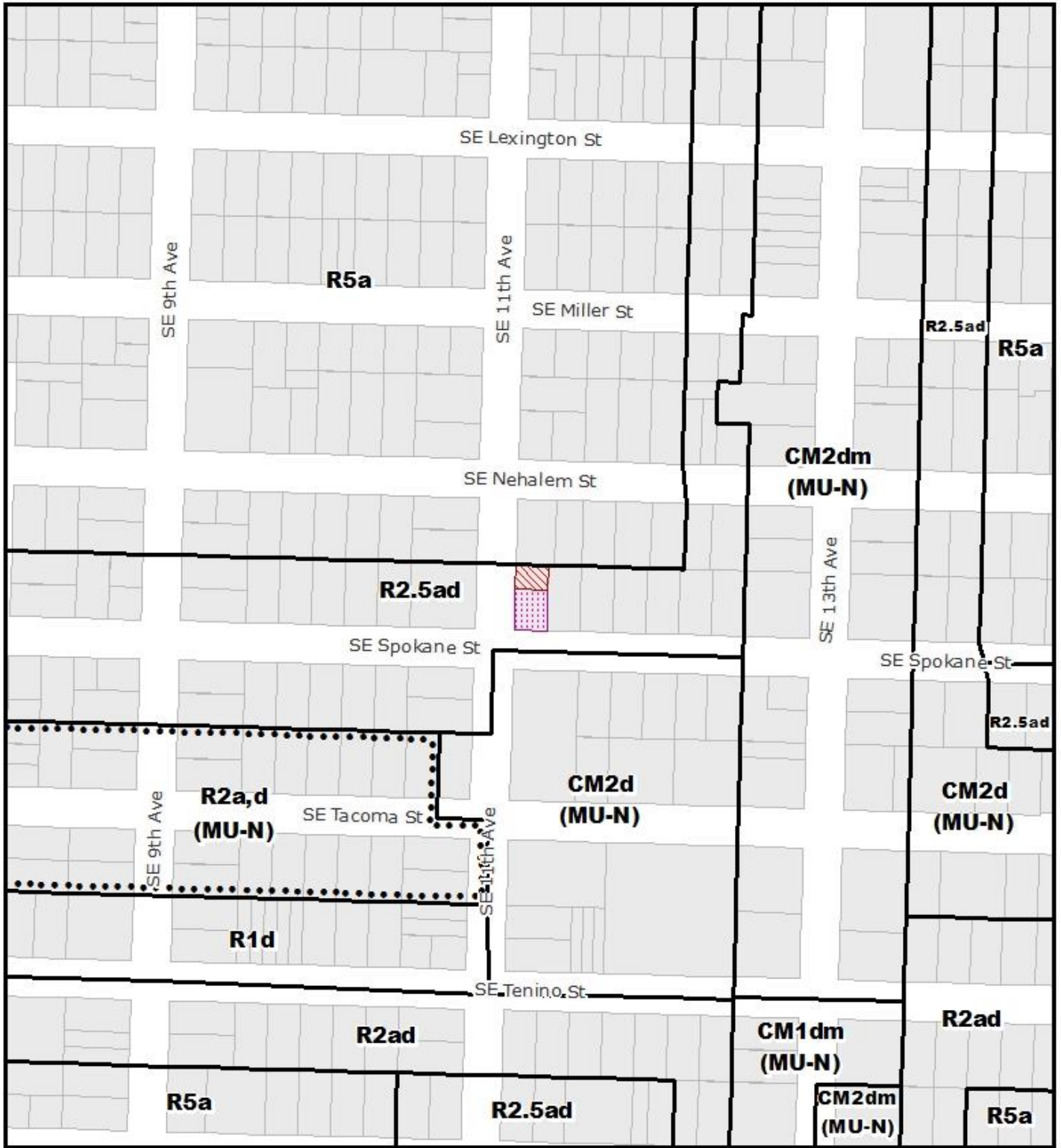
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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. Approval criteria responses
 - 2. Photographs
 - 3. Letter from applicant, dated July 16, 2019
 - 4. Letter from applicant, dated July 22, 2019
 - 5. Original plans, prior to revision (superseded by Exhibits C-1 and C-2)
 - 6. Letter from applicant, dated August 15, 2019
 - 7. Revised plans, prior to final revision (superseded by Exhibits C-1 and C-2)
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Final revised site plan (attached)
 - 2. Final revised building elevations
- D. Notification Information:
 - 1. Mailing list for July 19, 2019 Notice of Proposal
 - 2. Mailed copy of July 19, 2019 Notice of Proposal
 - 3. Mailing list for July 25, 2019 Revised Notice of Proposed
 - 4. Mailed copy of July 25, 2019 Revised Notice of Proposed
- 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:
 - 1. Letter from Michael Gilbertson and Leslie Gilbertson, received August 12, 2019
 - 2. E-mail from Miroslav Kukla and Jindra Kukla, received August 12, 2019
 - 3. Letter from Matt Hainley, received August 13, 2019
 - 4. Letter from Sellwood Moreland Improvement League, received August 14, 2019
- G. Other:
 - 1. Land use application form and receipt
 - 2. Incompleteness determination letter, dated July 11, 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

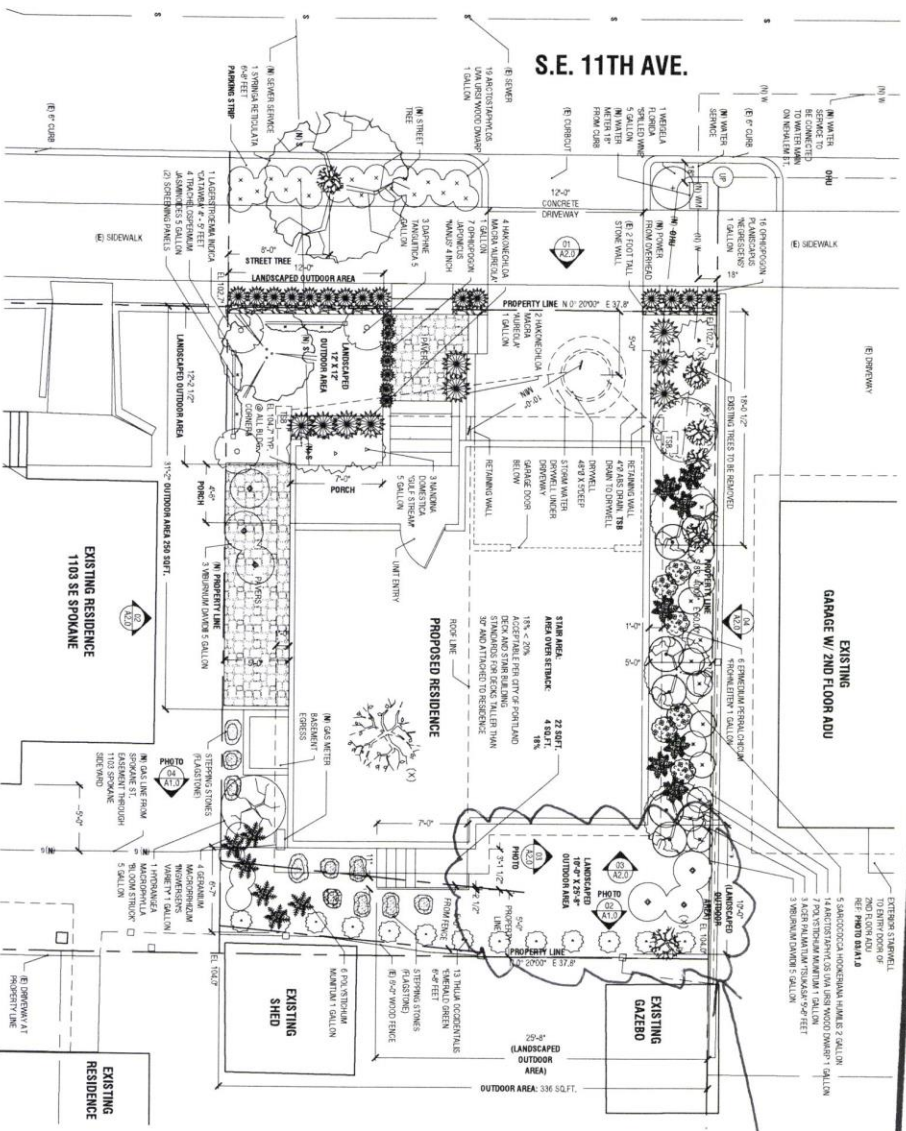
 Site
 Also Owned Parcels

File No.	LU 19-185800 AD
1/4 Section	3831
Scale	1 inch = 200 feet
State ID	1S1E23CA 9001
Exhibit	B Jul 01, 2019

Approved
City of Portland - Bureau of Development Services

Planner *A. Gutzira*
 Date *8/22/19*

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



Note: Shrubs shown on this plan are not required by this approval.

LU 19-185800 AD Exhibit C-1

UTILITIES LEGEND	
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02 SITE PHOTO



03 SITE PHOTO



04 SITE PHOTO

01 SITE UTILITY/LANDSCAPE PLAN

PROPOSED ADJUSTMENT REVIEW 8030 SE 11TH PORTLAND, OR 97202