



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

Ted Wheeler, Mayor
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Date: October 11, 20199
To: Interested Person
From: Don Kienholz, Land Use Services
503-823-7771 / Don.Kienholz@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 19-172387 AD

GENERAL INFORMATION

Applicant: Danelle Isenhardt
Emerio Design
6445 SW Fallbrook Pl #100
Beaverton OR 97008

Owner 1: Daniel and Kalli Silvey
DBS Group, LLC
PO Box 96
Tualatin OR 97062

Owner 2: Lance Lacey
5311 NE 28th Ave
Portland OR 97211

Site Address: 3950 SE BERKELEY WAY

Legal Description: LOT 2 INC UND INT TRACT A, CHLOE'S MEADOW
Tax Account No.: R156500100
State ID No.: 1S1E24DD 01702
Quarter Section: 3834

Neighborhood: Ardenwald-Johnson Creek, contact Lisa Gunion-Rinker at astrantialgr@gmail.com, Woodstock, contact at sage.wna@gmail.com

Business District: Woodstock Community Business Association, contact at <http://www.woodstockbiz.com/>

District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010.

Plan District: Johnson Creek Basin
Zoning: R10c – Single-Dwellign Residential, 10,000 with a Conservaton (‘c’) Environmental Overlay zone.

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

Proposal:

The proposal is to construct a new, detached single-family dwelling on a 3,931 square foot lot in the R10 zone. The lot was part of a five-lot land division in 2011 that created four building sites with one large conservation tract to protect the identified environmental resource. As part of the land division approval, modifications to the R10 development standards were approved due to the small lot size and steep terrain south of the building sites, including front building setbacks and side setbacks. The current proposal calls for a three-story dwelling with a double-car garage on the main floor. The first floor of the house measures a total of 35-feet wide and the street facing garage wall measures 24-feet of that 35-feet. Portland Zoning Code Section 33.110.253.D limits the length of the street facing garage wall to a maximum of 50% of the length. Because the garage makes up 69% of the street-facing façade, an Adjustment is required.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are found in Portland Zoning Code Section 33.805.040 Adjustment Approval Criteria.

ANALYSIS

Site and Vicinity: The subject site is one of three lots fronting SE Berkeley Way at the terminus of SE Cesar E. Chavez Blvd on the bluff just north of Johnson Creek and the Springwater Corridor at the southern edge of the City. The site is zoned R10 with a ‘c’ environmental overlay district due to its slopes, proximity to Johnson Creek and the surrounding natural areas. The 3,931 square foot lot site is one of four substandard lots created as part of a land division in 2011. The site is vacant, rectangular and cleared of all vegetation. The site was previously approved for Adjustments to reduce the width of the lot to 45-feet, reduce the front building setback to as low as 0-feet, and reduce the side and rear building setbacks to 5-feet.

Zoning: The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The development standards preserve the character of neighborhoods by providing six different zones with different densities and development standards. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

The Environmental Conservation zone conserves important resources and functional values in areas where the resources and functional values can be protected while allowing environmentally sensitive urban development.

The Johnson Creek Basin plan district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

Land Use History: City records indicate there are prior land use reviews for this site. They are:

- LU 11-153362 LDS ENM – Approval of a Type 3 land division and environmental review with modifications to setbacks, height, lot width and minimum lot size to create four building sites and one open space tract. Lots 1 through 3 are accessed off of an improved SE Berkeley Way while the fourth lot fronts SE Tenino Street.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **August 30, 2019**. The following Bureaus have responded with no issues or concerns:

1. Bureau of Environmental Services (Exhibit E.1);
2. Bureau of Transportation Engineering and Development Review (Exhibit E.2);
3. Life Safety Section (Exhibit E.3); and
4. Site Development, Fire Bureau and Water Bureau (Exhibit E.4).

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified residents in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose

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. They also allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met.

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Finding: The proposed Adjustment is to increase the maximum length allowed of the street-facing garage wall from 50% of the length of the street facing façade to 69%. The purpose of the 50% standard is under the Additional Standards for Garages in 33.110.253.A:

Purpose. These standards:

- *Together with the window and main entrance standards, ensure that there is a physical and visual connection between the living area of the residence and the street;*
- *Ensure that the location and amount of the living area of the residence, as seen from the street, is more prominent than the garage;*
- *Prevent garages from obscuring the main entrance from the street and ensure that the main entrance for pedestrians, rather than automobiles, is the prominent entrance;*
- *Provide for a more pleasant pedestrian environment by preventing garages and vehicle areas from dominating the views of the neighborhood from the sidewalk; and*
- *Enhance public safety by preventing garages from blocking views of the street from inside the residence.*

The proposed house is a three-story, single-family, dwelling with a double car garage on the ground floor adjacent to the main entrance. On top of the garage and main entrance are

two full stories of living area with a second story deck and large picture windows. The garage serves as the pedestal for the majority of the home.

Together with the window and main entrance standards, ensure that there is a physical and visual connection between the living area of the residence and the street

The street-facing façade of the proposed house measures 35-feet wide. The main entrance of the house measures 11-feet wide and includes a covered porch, door and regular sized window. Every room on the second and third floor includes large windows that face the street and allow a visual connection between the living space and street. In addition, there is a second story deck above the entrance for additional outdoor living area that helps connect the house to the street. The proposal to include two stories of living area above the garage and a second story deck visually and physically connect the living area of the house to the street. This purpose statement is met.

Ensure that the location and amount of the living area of the residence, as seen from the street, is more prominent than the garage;

The street facing façade of the proposed home has a total of 105-linear feet on three floors. The garage makes up 24-linear feet of that total length, or, approximately 23% of the house's street-facing facade. With the garage making up less than 25% of the total façade, the living area is clearly more prominent than the garage, even when considering the 11-foot length of the main entrance, which is not active living space. By having two upper two floors, the ground floor and garage appear take a much less prominent role in the design of the house. The second floor includes two bedrooms, an office and a weight room looking out the front façade to the street, ensuring an active connection between living space and street. This purpose statement is met.

Prevent garages from obscuring the main entrance from the street and ensure that the main entrance for pedestrians, rather than automobiles, is the prominent entrance;

The main entrance sits 4-feet back from the garage façade but is made the prominent feature of the ground floor by the covered porch, second story balcony and support columns that extend 18-inches beyond the garage façade. As designed, the main entrance and its support columns are the dominating feature and pedestrians will clearly identify the entrance to the home. This purpose statement is met.

Provide for a more pleasant pedestrian environment by preventing garages and vehicle areas from dominating the views of the neighborhood from the sidewalk; and

The site is on a dead-end street consisting of three lots and without a sidewalk, reducing the accessibility of the area to essentially those that live on the street and the local neighbors on SE Cesar E. Chavez. The garage as proposed will make up 23% of the front building façade, allowing the rest of the home to dominate the structure's façade as seen from the 'sidewalk', or in this case the street as there is no sidewalk along this portion of SE Berkeley because due to its narrowness. With the garage making up such a small portion of the front façade and no on-street parking allowed, the design supports a more pleasant pedestrian environment. This purpose statement is met.

Enhance public safety by preventing garages from blocking views of the street from inside the residence.

The garage makes up only 23% of the street-facing façade. The remaining street-facing façade other than the main entrance vestibule consists of active living area in the form of bedrooms, an office and an exercise room. As such, there is significant active area inside the house with direct views to the street for safety purposes. This purpose statement is met.

Criterion 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**

Finding: The subject property is zoned R10, a residential zone. A key aspect of livability is safety. As noted in A above, the three stories of the house all have windows on the street facing façade and have active living spaces such as bedrooms, an office and an exercise room that have a visual and physical connection to the street, helping to improve safety of the area. While the garage makes up 69% of the ground floor façade, it only makes up 23% of the entire street-facing façade, so it does not dominate the front of the house and impact the appearance of the residential area.

Criterion 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

Finding: Since only one Adjustment is requested, this criterion is not applicable.

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

Finding: City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” while historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. The subject property is not within a City-designated ‘s’ overlay zone nor within proximity to an Historic Resource. Considering the lack of proximity to city-designated scenic and historic resources, staff finds development will not adversely impact scenic or historic resources and they will be preserved.

Criterion met.

E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Finding: As found in staff responses to criteria A and B, the requested adjustment to increase the length garage façade from 50% to 69% of the length of the house equally meets the purposes of the maximum length of the street-facing garage wall standard and will not significantly detract from the livability or appearance of the residential area. As such, no mitigation is necessary

Criterion 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;

Finding: The subject property is entirely within the Environmental Conservation (‘c’) overlay. Approval of the 2011 land division included an environmental review and modifications to development standards to site the new dwellings. The proposed dwelling is within the approved building area of the site and therefore will have no detrimental impact on the resource the ‘c’ overlay protects.

Criterion met

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 applicant has demonstrated that adjusting the maximum allowed garage facade length from 50% (33.110.253.D) of the building façade to 69% for the proposed house and its design equally meets the purpose of the standard to ensure there is a physical and visual connection between the living area and the street; ensure the amount of living area in the residence is more prominent than the garage; does not obscure the main entrance from the street; provides a pleasant pedestrian environment as seen from the sidewalk; and enhances public safety by not blocking views of the street from inside the residence. Additionally, the proposal will not detract from the appearance or livability of the nearby residential area and will not impact cultural, environmental or historic resources. As the applicant has met the approval criteria, the Adjustment must be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to increase the street-facing garage façade length from 50% of the house length (17.5-feet) to 69% (24-feet), per the approved site plan and building elevations, Exhibits C.1 through C.2, signed and dated October 9, 2019, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 19-172387 AD. No field changes allowed."

Staff Planner: Don Kienholz

Decision rendered by:  on October 9, 2019
By authority of the Director of the Bureau of Development Services

Decision mailed: October 11, 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 May 31, 2019, and was determined to be complete on August 26, 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 May 31, 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: December 24, 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 October 25, 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 **October 25, 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:

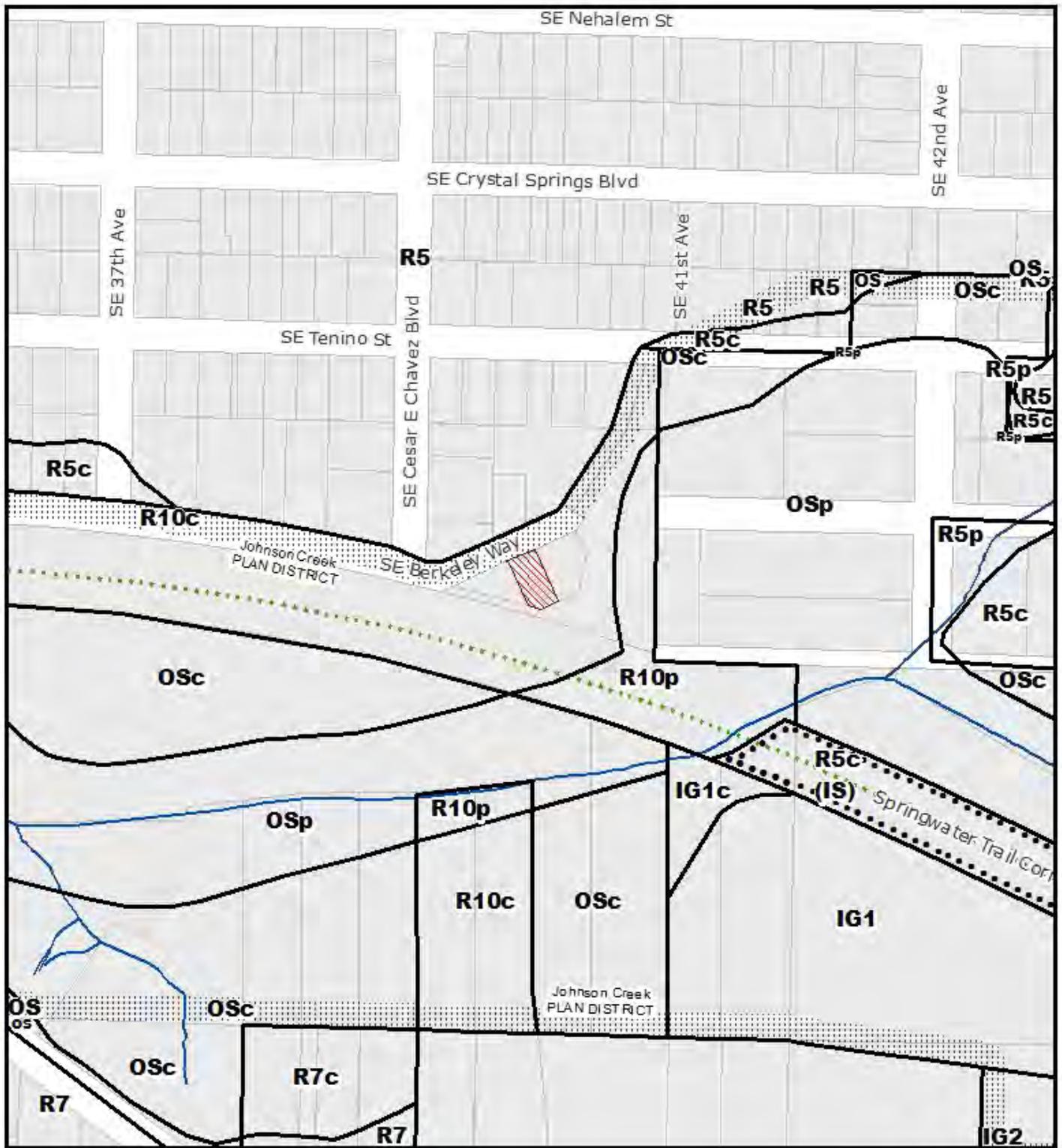
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Materials
 1. May 30, 2019 Narrative
 2. May 30, 2019 First Floor Plan
 3. May 30, 2019 Site Plan
 4. August 8, 2019 Summary of New Information
 5. August 8, 2019 Narrative
 6. July 10, 2019 Front Elevation
 7. July 10, 2019 1st and 2nd 8.5x11 Floor Plans
 8. July 10, 2019 3rd 8.5x11 Floor Plan
 9. July 16, 2019 Front Elevation
 10. Full Sized 1st and 2nd Floor Plans
 11. Full Sized 3rd Floor Plan
- B. Zoning Map (Attached)
- C. Plans/Drawings:
 1. Site Plan (Attached)
 2. Elevation Drawings (Attached)
- D. Notification Information:
 1. Mailing List
 2. Mailed Notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Bureau of Transportation Engineering and Development Review
 3. Life Safety Section
 4. Site Development, Fire Bureau and Water Bureau
- F. Correspondence: None
- G. Other:
 1. Original LU Application
 2. Copy of Receipt for Fee Payment
 3. June 13, 2019 Incomplete Letter
 4. July 19, 2019 Incomplete Letter

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

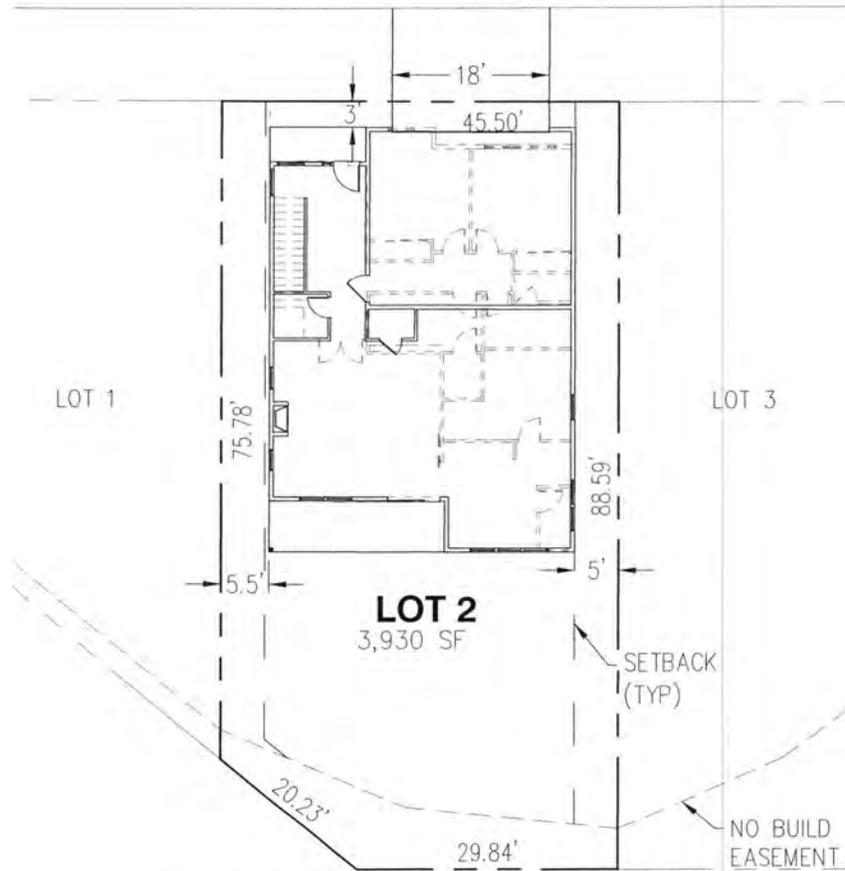


ZONING 
 NORTH
 THIS SITE LIES WITHIN THE:
 JOHNSON CREEK PLAN DISTRICT

-  Site
-  Stream
-  Recreational Trails

File No.	LU 19-172387 AD
1/4 Section	3834
Scale	1 inch = 200 feet
State ID	1S1E24DD 1702
Exhibit	B Jun 04, 2019

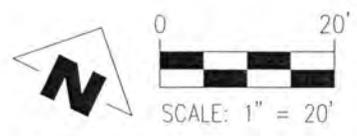
SE BERKELEY WAY



Approved
 City of Portland - Bureau of Development Services
 Planner Don Kenhof Date 10/9/19
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

<u>ZONE</u>	<u>SETBACKS</u>
R10c	FRONT: 20' GARAGE: 18' SIDE: 10' REAR: 10'

CASE NO. 19-172387 AD
 EXHIBIT C.1



PROJECT NO. 0606-001
 ORIG. DATE: 5/22/2019
 DRAWN BY: KMH
 SHEET No. 1 of 1

DESIGN EXCEPTION
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 FOR: DANIEL SILVEY
 PORTLAND, OREGON

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