



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

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**FINAL FINDINGS, CONCLUSIONS AND DECISION OF THE
CITY OF PORTLAND ADJUSTMENT COMMITTEE**
ON AN
APPEALED ADMINISTRATIVE DECISION
(TYPE II PROCEDURE)

Case File Number: LU 19-131533 AD (3757 SE CLAY ST)

The Administrative Decision for this case was appealed by Stephen Anderson to the City of Portland Adjustment Committee. The Adjustment Committee denied the appeal and upheld the Administrative Decision that approved the requested Adjustment.

This document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, 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.

GENERAL INFORMATION

Applicant: Nathan Arnold
Faster Permits
2000 SW 1st Ave. #420
Portland, OR 97207

Appellant: Stephen Anderson
3754 SE Clay Street
Portland, OR 97214

Property Owner: Vlad Rudnitsky
Structure Redevelopment
PO Box 3026
Clackamas, OR 97015

Site Address: 3757 SE CLAY ST

Legal Description: BLOCK 1 LOT 7, ELSMERE
Tax Account No.: R251000100
State ID No.: 1S1E01DA 12700
Quarter Section: 3234

Neighborhood: Richmond, contact Matt Otis at richmond.pdx.lutc@gmail.com
Business District: Hawthorne Blvd. Bus. Assoc., contact at explore@hawthornepdx.com
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010

Zoning: CM2dm – Mixed-Use Commercial 2 base zone with Design (“d”) and Centers Main Street (“m”) overlay zones

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

Proposal

The applicant proposes to construct a 3-story 16-unit apartment building on this site. In the Centers Main Street (“m”) overlay zone, at least 25% of ground floor area within 100 feet of a transit street must be in active uses such as retail or office (Zoning Code Section 33.415.200). This site does not front on a transit street, but the back of the proposed apartment building would be within 100 feet of a transit street (SE Hawthorne Blvd.). Since only residential use is proposed for the building, the applicant requests an Adjustment to reduce the amount of active ground floor use required within 100 feet of a transit street from 25% to zero.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805 of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The 4,500 square foot site is located on the north side of SE Clay Street, at the end of this dead-end street, about 275 feet east of the intersection of SE 37th Avenue and SE Clay Street. The site is developed with a 947 square foot residence, which is proposed to be removed. The surrounding area is developed with a mix of higher density residential and commercial buildings along SE Hawthorne Boulevard, which is a busy commercial corridor. Lower density single dwelling residential zones are located to the north and south of SE Hawthorne Boulevard.

Zoning: The Commercial/Mixed Use 2 (CM2) zone is a medium-scale zone intended for sites in a variety of centers, along corridors, and in other mixed use areas that have frequent transit service. The zone allows a wide range and mix of commercial and residential uses, as well as employment uses that have limited off-site impacts. Buildings in this zone will generally be up to four stories tall unless height and floor area bonuses are used, or plan district provisions specify other height limits. Development is intended to be pedestrian-oriented, provide a strong relationship between buildings and sidewalks, and complement the scale of surrounding residentially zoned areas. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City’s various neighborhoods. The “d” zone overlay (Design Overlay Zone) is not impacted by the Adjustment proposal because the design of the building will be meeting all requirements of the Community Design Standards.

The Centers Main Street Overlay Zone encourages a mix of commercial, residential and employment uses on the key main streets within town centers and neighborhood centers identified in the Comprehensive Plan. The regulations are intended to encourage a continuous area of shops and services, create a safe and pleasant pedestrian environment, minimize conflicts between vehicles and pedestrians, support hubs of community activity, and foster a dense, urban environment with development intensities that are supportive of transit.

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

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **May 29, 2019**. The following Bureaus have responded with the following information:

- The Life Safety Section of the Bureau of Development Services (BDS) responded with no concerns and provided Building Code information (Exhibit E-1);
- The Bureau of Transportation (PBOT) responded with no concerns and noted that certain right-of-way improvements and property dedications would be required (Exhibit E-2); and
- The Bureau of Environmental Services (BES) responded with no concerns and included stormwater management information (Exhibit E-3).

The following Bureau has responded with no concerns (Exhibit 4):

- The Water Bureau;
- The Fire Bureau; and
- The Site Development Section of BDS.

Neighborhood Review: Five written response (Exhibits F.1 - F.5) were received from property owners in response to the proposal, primarily expressing concerns about the lack of on-site parking and impacts to the already limited on-street parking in the neighborhood, particularly given the dead-end configuration of SE Clay Street. Other concerns include the proposed 16 units being too high of density for this area, the “boxy” design, and impacts to property values. Exhibit F.3 is a petition signed by 27 residents in opposition to the proposal.

Appellant Statement: A summary of the appeal submitted by Stephen Anderson follows:

1. Information provided by the applicant in the Adjustment Narrative was misleading; and
2. Adjustment Approval Criteria A, B, and E (Section 33.805.040) are not met.

Public Hearing:

On August 20, 2019, the Adjustment Committee held a public hearing to consider an appeal of the Administrative Decision on this case. The appeal was limited to the Administrative approval of an Adjustment to reduce the amount of active ground floor use required within 100 feet of a transit street from 25% to zero (Zoning Code Section 33.415.200) to construct a 16-unit apartment building on this site.

David Besley, the case planner and representative of the Bureau of Development Services (BDS)/Land Use Services Division, made a PowerPoint presentation (Exhibit H.5) that included a brief summary of the proposal, slides of the subject site and surrounding neighborhood, a summary of BDS’ findings related to the Adjustment approval criteria, and a summary of key issues raised in the appellant’s statement.

Following BDS’ presentation, the appellant, Stephen Anderson, testified. Following the appellant testimony, the applicant provided testimony. After the applicant testified, the appellant was allowed an opportunity to rebut any testimony. The Adjustment Committee then closed the record, and deliberated on the evidence and testimony that was submitted into the record. After deliberation, the Committee voted 5-1 to deny the appeal, uphold the Administrative Decision of approval, and directed staff to prepare findings supporting its decision for consideration.

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 and 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

Adjustment requests will be approved if the review body finds that the applicant has shown 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 proposing to construct a 16-unit apartment building on this site and requests an Adjustment to reduce the amount of active ground floor use (required for buildings within 100 feet of a transit street) from 25% to zero. The purpose for the design regulations is as follows:

33.415.010 – Centers Main Street Overlay Zone

The Centers Main Street overlay zone encourages a mix of commercial, residential and employment uses on the key main streets within town centers and neighborhood centers identified in the Comprehensive Plan. The regulations are intended to encourage a continuous area of shops and services, create a safe and pleasant pedestrian environment, minimize conflicts between vehicles and pedestrians, support hubs of community activity, and foster a dense, urban environment with development intensities that are supportive of transit.

While SE Hawthorne Boulevard is the transit street and Civic Corridor that requires active ground floor use, the subject site is not accessible from SE Hawthorne and does not have the same characteristics. It is located one block to the south, at the terminus of SE Clay Street, which is a dead-end street with primarily residential uses; not the busy commercial and pedestrian corridor that is SE Hawthorne Boulevard. The dead-end configuration of the street, combined with the single-dwelling residential zoning and development on the south side of SE Clay Street, results in this area not having a continuous area of shops and services. The Centers Main Street Overlay Zone (“m”) in this area is intended for sites that have frontage along, or from side streets directly adjacent to, SE Hawthorne Boulevard. This is therefore an atypical site compared to other sites in the “m” overlay zone.

As noted above, no parking is required due to transit availability and, because no parking is proposed, conflicts between vehicles and pedestrians will be minimized and the development will be supportive of transit. The exclusively household living use proposed will foster a denser urban environment than the current development, identified by the Assessor as 2-4 unit multi-family housing.

This criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The subject site is in a Commercial zone. At this location, the City’s Transportation System Plan classifies SE Clay Street as a Local Service streets for all modes. PBOT has indicated no concerns regarding the proposal’s consistency with the classification of adjacent streets.

The Portland Zoning Code defines “desired character” as “the preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.” In this instance, *Desired Character* is defined by the character statement of the CM2 zone, the Main Street Corridor Overlay Zone, the Design Overlay Zone, and the Richmond Neighborhood Plan.

The characteristics of the CM2 zone, “m,” and “d” overlay zones state:

The Commercial/Mixed Use 2 (CM2) zone is a medium-scale zone intended for sites in a variety of centers, along corridors, and in other mixed use areas that have frequent transit service. The zone allows a wide range and mix of

commercial and residential uses, as well as employment uses that have limited off-site impacts. Buildings in this zone will generally be up to four stories tall unless height and floor area bonuses are used, or plan district provisions specify other height limits. Development is intended to be pedestrian-oriented, provide a strong relationship between buildings and sidewalks, and complement the scale of surrounding residentially zoned areas.

The Main Street Corridor Overlay (“m”) zone encourages higher density residential uses by allowing greater building heights, reducing required building coverage for residential development; and allowing more flexibility in site design. The intent of the zone is to provide transit-supportive levels of residential and mixed-use development along identified main streets.

The Design Overlay Zone (“d”) promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The Design Overlay Zone also promotes quality high-density development adjacent to transit facilities. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review or compliance with the Community Design Standards. In addition, design review or compliance with the Community Design Standards ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

The proposed 3-story residential building will be consistent with the CM2 zone’s intentions of providing residential uses in an area with frequent transit service. As noted above, no parking is required due to transit availability and, because no parking is proposed, conflicts between vehicles and pedestrians will be minimized. The pedestrian-oriented development will be supportive of transit.

Allowing a reduction in the amount of active ground floor area will be consistent with the classifications of the adjacent as it is surrounded by residential development to the south and commercial/mixed use development to the west, north, and east. The exclusively residential building will help act in a transitional capacity on a dead-end street south of – and not directly accessible from – the commercial corridor (SE Hawthorne Blvd) driving the “m” overlay. As noted above, the “d” zone overlay is not impacted by the Adjustment proposal; the design of the building must meet all requirements of the Community Design Standards.

The Richmond Neighborhood Plan identifies issues that are important to the neighborhood and establishes priorities for actions to accomplish the neighborhood’s goals. One of the housing objectives is to protect residential areas from commercial encroachment (the Richmond Neighborhood Plan, Policy 4.5, page 18).” This proposed residential development with no commercial uses proposed will be more consistent with this objective.

This proposal is therefore consistent with 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: Only one Adjustment is proposed; therefore, this criterion is not applicable.

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

Findings: City designated scenic resources are identified on the Official Zoning Map with a lower case “s” and historic resources are designated by a large dot or as being within the boundaries of a Historic or Conservation district. There are no such resources present on the site; therefore, this criterion is not applicable.

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

Findings: There are no discernible impacts that would result from granting the requested adjustment.

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 Map with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). No environmental zoning is applied to the site; therefore, this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to demonstrate conformance with all development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant is proposing a 16-unit apartment building for which an Adjustment is requested to reduce the amount of active ground floor use required within 100 feet of a transit street from 25% to zero. While SE Hawthorne Boulevard is the transit street and designated Civic Corridor that requires active ground floor use, the subject site is not accessible from SE Hawthorne and does not have the same characteristics. It is located one block to the south, at the terminus of SE Clay Street, which is a dead-end local service street with primarily residential uses. The dead-end configuration of the street, combined with the single-dwelling residential zoning and development on the south side of SE Clay Street, results in this area not having a continuous area of shops and services. The Centers Main Street Overlay Zone (“m”) in this area is intended for sites that have frontage along, or from side streets directly adjacent to, SE Hawthorne Boulevard. This is therefore an atypical site compared to other sites in the “m” overlay zone.

The proposed 3-story residential building will be consistent with the CM2 zone’s intentions of providing residential uses in an area with frequent transit service. As noted above, no parking is required due to transit availability and, because no parking is proposed, conflicts between vehicles and pedestrians will be minimized. This proposal is consistent with the desired character of the area. The proposal meets the applicable approval criteria and should therefore be approved.

ADJUSTMENT COMMITTEE DECISION

Deny the appeal, and uphold the Administrative Decision, thereby approving an Adjustment to reduce the amount of active ground floor use required within 100 feet of a transit street from 25% to zero (Zoning Code Section 33.415.200) to construct a 16-unit apartment building on this

site, per the approved site plan, Exhibit C-1, signed and dated July 2, 2019, subject to the following condition:

- 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 Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 19-131533 AD. No field changes allowed."

By: 

Leslie Hamilton, Chair, Chair

These findings, conclusion and decision were adopted by the City of Portland Adjustment Committee on August 20, 2019.

Date Mailed: October 17, 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 March 12, 2019, and was determined to be complete on May 22, 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 March 12, 2019.

ORS 227.178(1) 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.

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 is final and becomes effective the day the notice of decision is mailed (noted above). This decision may not be appealed to City Council; however, it may be challenged by filing a “Notice of Intent to Appeal” with the State Land Use Board of Appeals (LUBA) within 21 days of the date the decision is mailed, pursuant to ORS 197.620 and 197.830. A fee is required, and the issue being appealed must have been raised by the close of the record and with sufficient specificity to afford the review body an opportunity to respond to the issue. For further information, contact LUBA at the 775 Summer Street NE, Suite 330, Salem, OR 97301 [Telephone: (503) 373-1265].

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 17, 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:

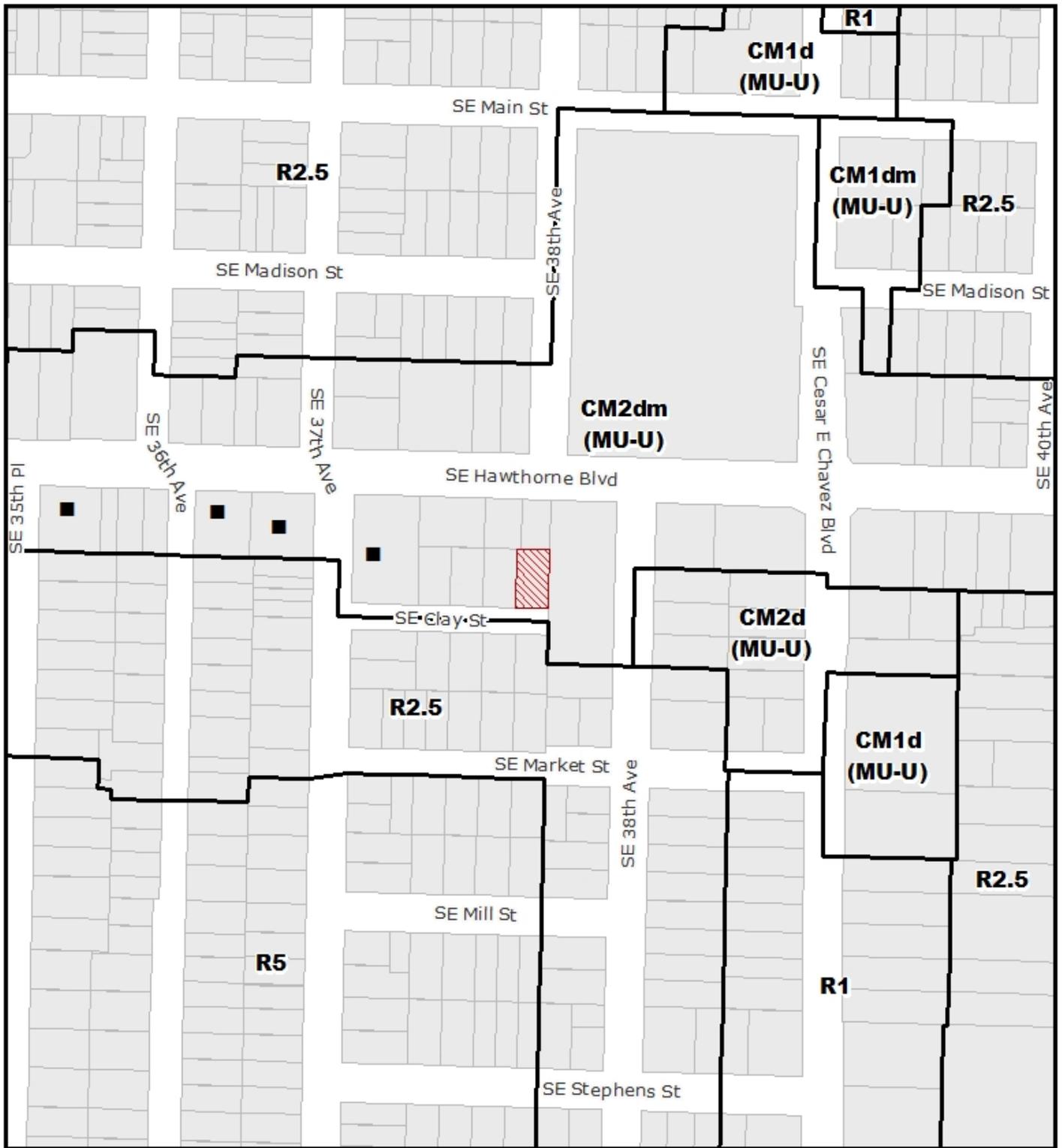
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. South Building Elevation
 - 3. West Building Elevation
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Life Safety Section of BDS
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Bureau of Environmental Services
 - 4. Agencies responding with no concerns
- F. Correspondence:
 - 1. Nicholas Sky, June 12, 2019, Letter of opposition
 - 2. John Crenshaw and Yoshi Yager, June 14, 2019, Letter of opposition
 - 3. Laurel Kirby, June 18, 2019, Petition to proposal including 27 signatures
 - 4. Stephen Anderson and Tracy Rattelman, June 12, 2019, Letter of opposition
 - 5. Laurel Kirby and Tara Anderson, June 12, 2019, Letter of vigorous opposition
- G. Other:
 - 1. Original LU Application and Receipt
 - 2. Incomplete letter from staff to applicant, sent March 26, 2019
- H. Appeal Hearing Exhibits
 - 1. Administrative Decision from July 9, 2019
 - 2. Appeal form submitted by Stephen Anderson from July 23, 2019
 - 3. Notice of Appeal Mailing List from July 30, 2019
 - 4. Notice of Appeal Mailed Notice from July 30, 2019
 - 5. PowerPoint Presentation from Appeal Hearing on August 20, 2019

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



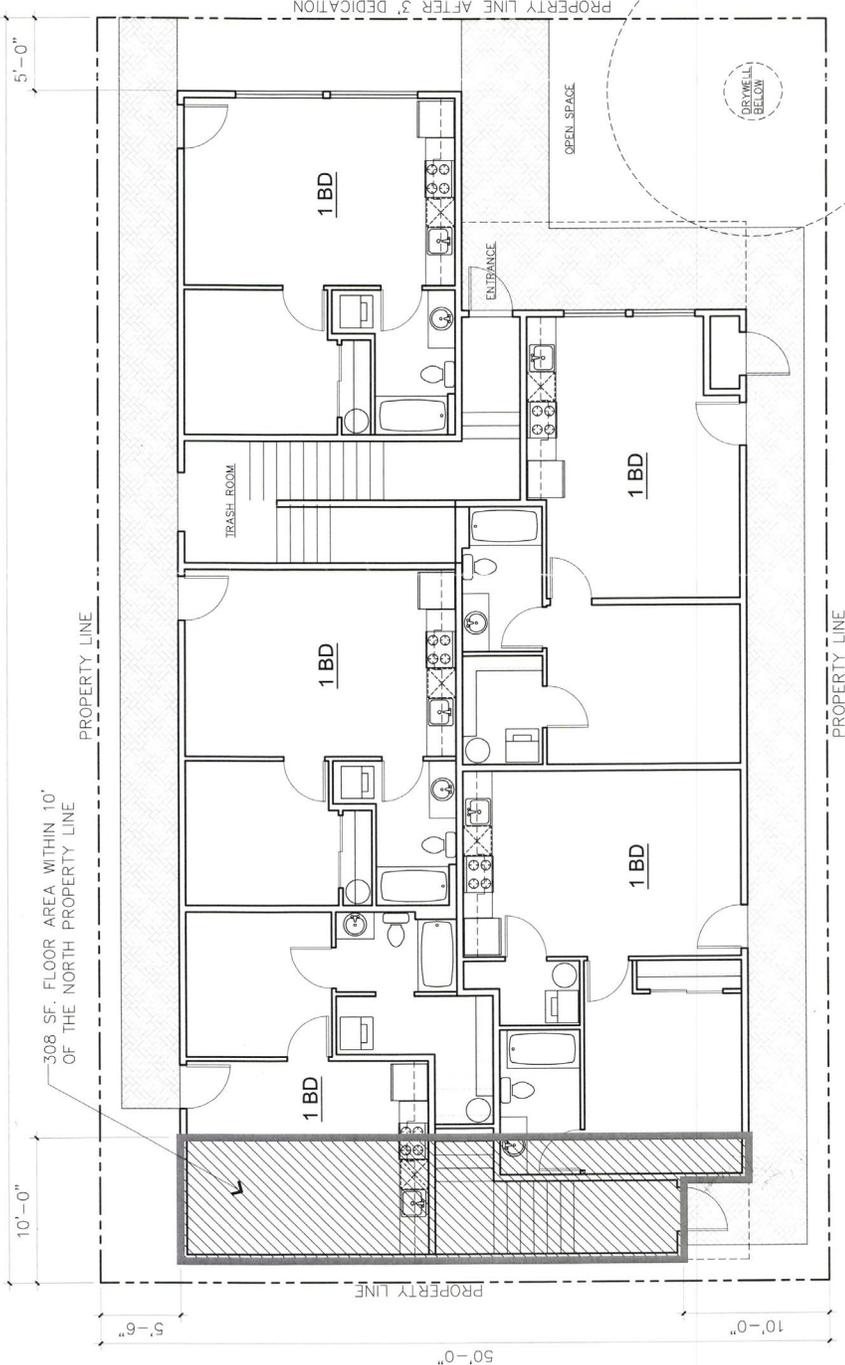
ZONING 
NORTH

-  Site
-  Historic Landmark

File No.	LU 19-131533 AD
1/4 Section	3234
Scale	1 inch = 200 feet
State ID	1S1E01DA 12700
Exhibit	B Mar 15, 2019

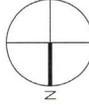
Approved
City of Portland
Bureau of Development Services
 Planner David Bailey
 Date 7.2.19

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



CLAY ST.

LV 19-1553 AD
CASE NO.
EXHIBIT C.1



SINAN GUMUSOGLU
 ARCHITECTURE, LLC
 5/22/2019

SITE/FIRST FLOOR PLAN - SE CLAY ST. APARTMENTS

1/8" = 1'-0"