



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

Ted Wheeler, Mayor
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Date: November 1, 2019
To: Interested Person
From: Andrew Gulizia, Land Use Services
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 19-223387 AD

GENERAL INFORMATION

Applicant: Dave Spitzer | DMS Architects
2325 NE 19th Ave. | Portland, OR 97212

Property Owner: YT Properties LLC
1665 SE Tenino St. | Portland, OR 97202

Site Address: **1400 NE 37th Ave.**

Legal Description: BLOCK 31 LOT 1&2&22 TL 500, LAURELHURST
Tax Account No.: R479105740
State ID No.: 1N1E36AA 00500
Quarter Section: 2934
Neighborhood: Laurelhurst, contact Peter Meijer at info@pmapdx.com
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010
Plan District: Laurelhurst
Other Designations: Laurelhurst historic district
Zoning: CM1d – Commercial/Mixed-Use 1 with Design (“d”) overlay
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The applicant proposes a single-story addition on the west side of the existing, single-story commercial building on this site. The Laurelhurst plan district requires a minimum 15-foot building setback from the west lot line, which abuts NE 37th Ave. (Zoning Code Section 33.540.030). The applicant requests an Adjustment to reduce the minimum building setback from the west lot line from 15 feet to 8 feet.

Relevant Approval Criteria: To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The site is 5,425 square feet in area and is located on the northeast corner of NE 37th Ave. and NE Senate St. The I-84 freeway abuts the site to the north. The site is developed with a single-story commercial building that was constructed in 1947 and a surface parking lot north of the building. Neighboring lots in the immediate vicinity of the subject site are developed with houses from the 1910s and 1920s. A commercial corridor along NE Sandy Blvd. is about a half-block northwest of the site.

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

The Design (“d”) overlay zone is intended to promote the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural values. The proposed addition will comply with the “d” overlay zone requirements by meeting the Community Design Standards in Zoning Code Section 33.218.140.

The Laurelhurst plan district applies setback requirements to maintain Laurelhurst’s established character. Larger than normal building setbacks are required from the street, and a proposed Adjustment to this building setback requirement is the subject of this review.

The site is also within the Laurelhurst historic district. A historic district is a nationally designated area with structures that have historic or cultural significance. Contributing structures in the Laurelhurst historic district cannot be demolished without prior approval of a Demolition Review. (The building on this site is not a contributing structure, but demolition is not proposed.)

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

Agency Review: A “Notice of Proposal” was sent October 7, 2019. The following Bureaus responded with no concerns about the proposed Adjustment:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4);
- Site Development Section of BDS (Exhibit E-5); and
- Life Safety Review Section of BDS (Exhibit E-6).

Neighborhood Review: No written responses to the mailed “Notice of Proposal” were received from either the Neighborhood Association or notified neighbors.

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

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

Findings: The Adjustment request is to reduce the minimum building setback from the NE 37th Ave. street lot line from 15 feet to 8 feet for a new addition. The purpose of the building

setback requirements in the Laurelhurst plan district is stated in Zoning Code Section 33.540.010:

The regulations of the Laurelhurst/Eastmoreland plan district enforce the special setback requirements of Ordinances 70343 and 70341. This plan district maintains the established character of the Laurelhurst and Eastmoreland areas, characterized by homes with larger than normal building setbacks from the street.

Since the purpose statement above is specific to the building setbacks for “homes,” the existing commercial building on this site is already outside the “established character” referenced above. The subject site also occupies a unique position at the edge of the Laurelhurst neighborhood, with the I-84 freeway abutting the site to the north and a commercial corridor along NE Sandy Blvd. just northwest of the site at the end of the block. However, staff finds the proposal supports the purpose of the minimum building setback requirement in the following ways:

- While the abutting section of NE 37th Ave. is a transition between Laurelhurst and the neighboring commercial area, the abutting section of NE Senate St. is a more typical residential street. The proposed addition will be set back 33 feet from the NE Senate St. lot line, exceeding the 20-foot minimum building setback requirement from NE Senate St. by more than 50%.
- The proposed 8-foot building setback from the NE 37th Ave. lot line approximately mirrors the building setback for the house across NE 37th Ave. from the site, so the depth of the yard on the subject site will not appear out of character. The home across NE 37th Ave. from the site is set back approximately 6.5 feet from its street lot line on NE 37th Ave.
- The applicant’s landscaping plan (Exhibit C-1) includes 3 new dogwood trees, 18 new shrubs, and ground cover plants around the new addition. This landscaping will soften the view of the addition from both of the abutting streets and help the building to integrate better with the residential area.

With a condition of approval to require the new landscaping, staff finds the Adjustment equally meets the purpose of the requirement. With the condition of approval, approval criterion A 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: Since the site is zoned CM1, the Adjustment Review proposal must be consistent with the classifications of the adjacent streets and the desired character of the area.

Street classifications

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

	Traffic	Transit	Bikeway	Pedestrianway	Freight
NE 37 th Ave.	Local Service	Local Service	City Bikeway	Local Service	Local Service
NE Senate St.	Local Service	Local Service	Local Service	Local Service	Local Service

(The I-84 freeway is not defined as a “street” in Zoning Code Chapter 33.910.)

The Adjustment will enable a small addition (about 112 square feet) to the existing, approximately 2,000-square-foot commercial building on this site. The proposal does not include a change of use or a substantial increase in the intensity of the existing use. The

Portland Bureau of Transportation (PBOT) reviewed the proposal and expressed support for the Adjustment (Exhibit E-2). With the building permit under review for this project, PBOT will require a 1-foot street dedication on NE 37th Ave., which the applicant has illustrated on the site plan (Exhibit C-1). (The 8-foot building setback is measured from the property line after the dedication.) For these reasons, staff finds the proposal is consistent with the classifications of the adjacent streets.

Desired character of area

“Desired character” is defined in Zoning Code Chapter 33.910. Pursuant to this definition, the desired character of this site is determined by the character statement of the CM1 base zone, the purpose statement for the Design (“d”) overlay zone, the purpose statement for the Laurelhurst plan district, and relevant statements from the Hollywood and Sandy Plan.

CM1 zone

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

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

The Adjustment will enable only a small addition (about 112 square feet) to the existing, approximately 2,000-square-foot commercial building on this site. The building will remain a single story, and the addition will be about 75 feet from the neighboring home across NE 37th Ave. and about 110 feet from the neighboring home across NE Senate St. With the modest building scale and the distances from neighboring homes, impacts on the surrounding residential area will be limited. A paved pedestrian walkway to the entrance and large, street-facing windows will promote a pedestrian-friendly appearance for the addition (Exhibits C-1 and C-2). For these reasons, staff finds the proposal is consistent with the character statement for the CM1 zone.

Design (“d”) overlay zone

The purpose statement for the “d” overlay zone is in Zoning Code Section 33.420.010:

The Design Overlay Zone 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 building addition will meet each of the applicable Community Design Standards in Zoning Code Section 33.218.140. Meeting these Community Design Standards will fully satisfy the requirements of the “d” overlay zone for this site (Zoning Code Section 33.420.055) and will promote a quality appearance for the development. No Adjustments are requested for any of these design standards, and no Adjustments to these standards would be allowed (Zoning Code Section 33.218.015.B). Since the Community Design Standards support the purpose of the “d” overlay zone (Zoning Code Section

33.218.010), and since these design standards will be met, staff finds the proposal is consistent with the purpose of the “d” overlay.

Laurelhurst plan district

The purpose statement for the Laurelhurst plan district is stated in Zoning Code Section 33.540.010:

The regulations of the Laurelhurst/Eastmoreland plan district enforce the special setback requirements of Ordinances 70343 and 70341. This plan district maintains the established character of the Laurelhurst and Eastmoreland areas, characterized by homes with larger than normal building setbacks from the street.

Conformance with this purpose statement was considered above in the findings for approval criterion A. As discussed in those findings, the proposal is consistent with the purpose of the plan district with a condition of approval to require the new landscaping illustrated in Exhibit C-1.

Hollywood and Sandy Plan

Although the site is not within the Hollywood plan district in Zoning Code Chapter 33.536 or the Sandy Boulevard plan district in Zoning Code Chapter 33.575, the site was included in the Hollywood and Sandy Plan that was adopted in 2000. Staff finds the following statements from the Hollywood and Sandy Plan to be relevant to this proposal:

Policy 1 – Land Use, Urban Design and Historic Preservation; Objective 7: Ensure that new commercial and mixed-use development along Sandy Boulevard and Broadway, and along the edges of the Hollywood District, step down and relate to the scale and character of the adjacent established residential areas.

Policy 3 – Economic Development; Objective 2: Enhance commercial diversity and activity by encouraging a business mix that provides goods and services to satisfy neighborhood needs and draw people from the greater region.

Policy 5 – Recreation and Open Space; Objective 3: Make the existing and new open spaces attractive and useful for people of all ages.

Policy 5 – Recreation and Open Space; Objective 4: Encourage street tree plantings in Hollywood, along the main streets and as a transitional element between commercial and residential uses.

The proposal improves an existing commercial building on a commercially-zoned property, supporting the commercial base of the adjacent commercial area. As discussed above, the commercial building will remain a single story, and will not be out of scale with the adjacent residential neighborhood. The new trees, shrubs, and ground cover plants illustrated in Exhibit C-1 will improve the aesthetics of the property and serve as a transitional element toward the residential neighborhood.

For these reasons, and with a condition of approval to require the new landscaping, staff finds the proposal is consistent with the Hollywood and Sandy Plan.

Summary

With the condition of approval mentioned above, staff finds the proposed Adjustment is consistent with the classifications of the adjacent streets and the desired character of the area. With the condition of approval, 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: The site is located within the Laurelhurst historic district, which is a City-designated historic resource. However, the building on the site is classified as “non-contributing” to the historic resource designation. It was built in 1947, at least 20 years later than most of the houses in the Laurelhurst historic district. The building has a simpler, more functional design than the neighboring houses. By creating a more complex building form, and by adding large, street-facing windows (Exhibit C-2), the proposed addition will improve the existing building and enhance the property’s aesthetic contribution to the neighborhood. Therefore, this criterion is met.

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

Findings: As discussed above, the new trees, shrubs, and ground cover plants illustrated in Exhibit C-1 will soften the view of the addition from both of the abutting streets and help the building to integrate better with the residential area. With a condition of approval to require this new landscaping, staff finds any impact from the reduced building setback from NE 37th Ave. will be sufficiently mitigated. With the condition of approval, 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). As there are no environmental overlay zones mapped on 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 proposal equally meets the purpose of the minimum building setback requirement and will be consistent with the street classifications and the desired character of the area. A condition of approval will require new landscaping to soften the view of the building from the abutting streets and improve the property’s aesthetic contribution to the neighborhood. With this condition of approval, the applicable approval criteria are met.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.540.030 to reduce the minimum building setback requirement from the west lot line from 15 feet to 8 feet for a new addition, per the approved plans, Exhibits C-1 and C-2, signed and dated October 29, 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 Exhibits C-1 and C-2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 19-223387 AD."

- B. The landscaping illustrated in Exhibit C-1 is required. Different plant varieties than shown in Exhibit C-1 may be used, but at least 3 new trees and 18 new shrubs are required in the approximate locations shown in Exhibit C-1. Ground cover plants are also required in the locations illustrated in Exhibit C-1. The 18 new shrubs must reach a height of at least 3 feet at maturity.

Staff Planner: Andrew Gulizia



Decision rendered by: _____ **on October 29, 2019.**
By authority of the Director of the Bureau of Development Services

Decision mailed: November 1, 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 6, 2019 and was determined to be complete on October 1, 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 September 6, 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 January 29, 2020.**

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 November 15, 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 **November 15, 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:

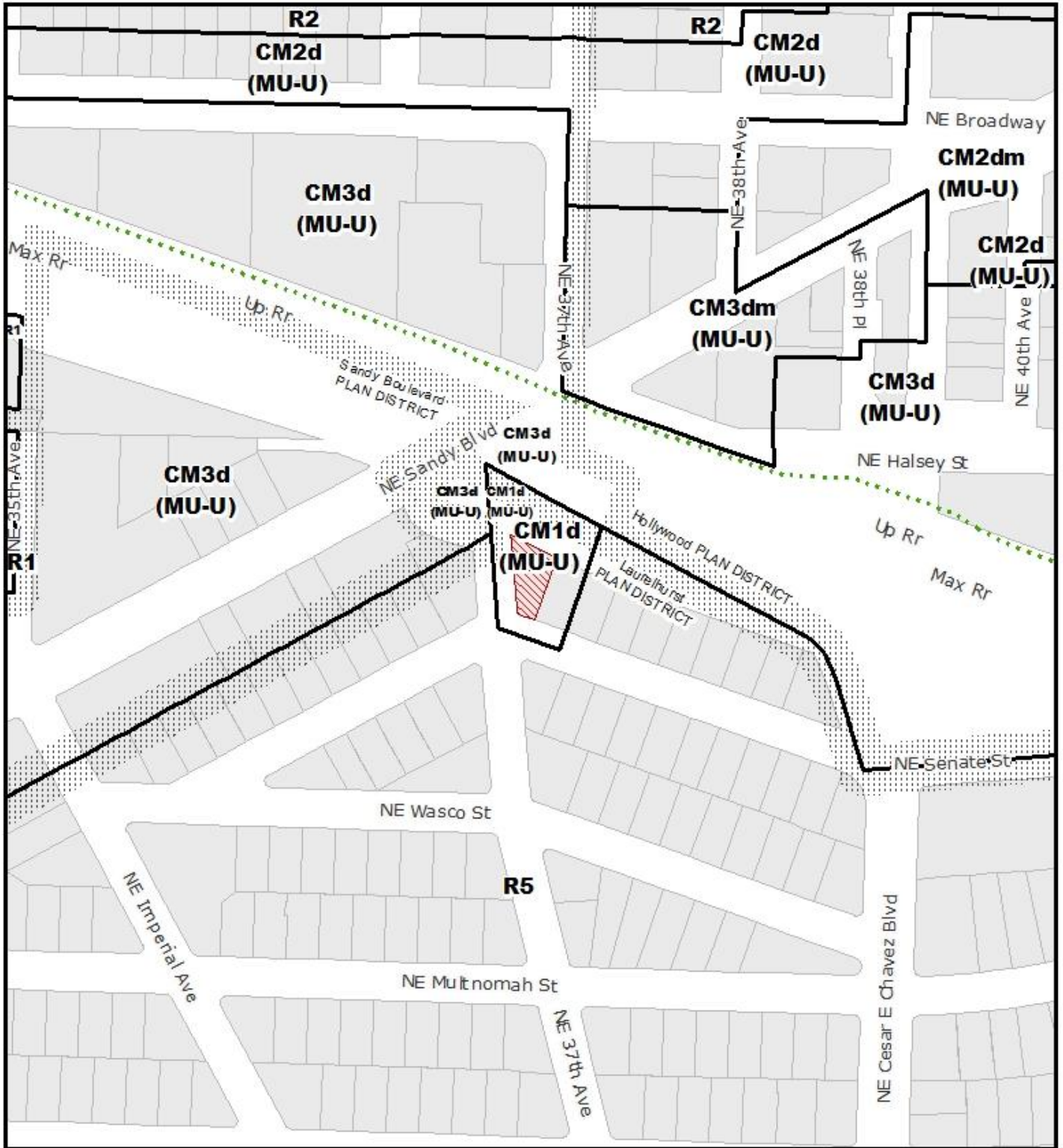
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Original narrative
 - 2. Revised narrative received October 1, 2019
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan/landscaping plan (attached)
 - 2. Building elevations (attached)
 - 3. Floor plan
- D. Notification Information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Review Section of BDS
- F. Correspondence – none received
- G. Other:
 - 1. Land use application form and receipt
 - 2. Incompleteness determination letter dated September 27, 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).

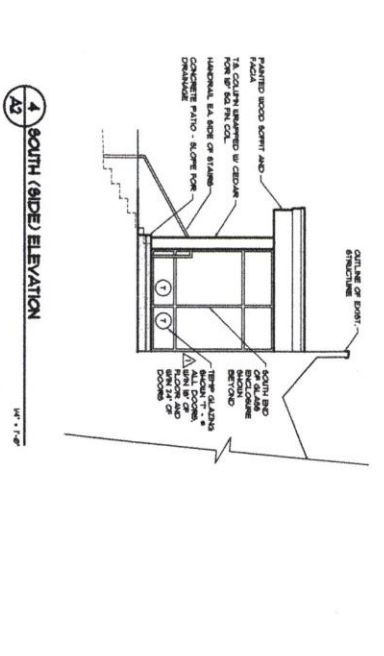
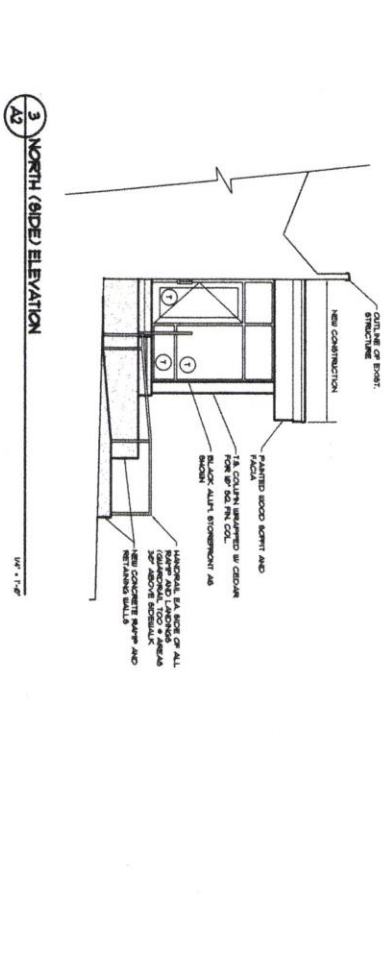
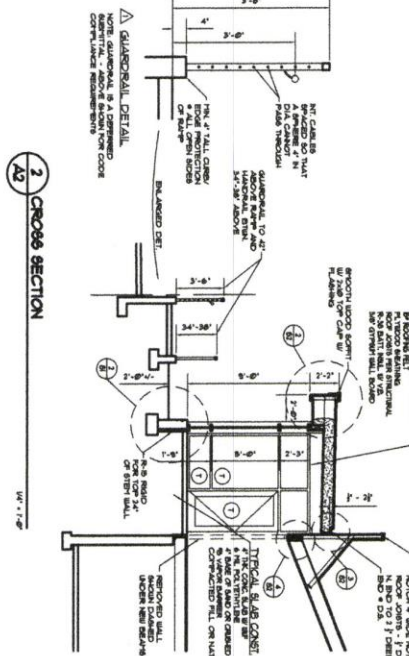
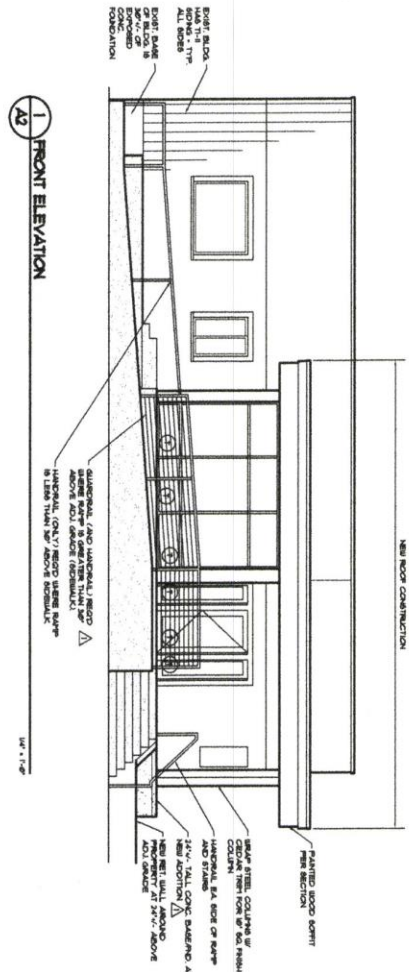


ZONING 
 NORTH
 LAURELHURST PLAN DISTRICT
 LAURELHURST HISTORIC DISTRICT

 Site
 Recreational Trails

File No.	LU 19 - 223387 AD
1/4 Section	2934
Scale	1 inch = 200 feet
State ID	1N1E36AA 500
Exhibit	B Sep 11, 2019

Approved
 City of Portland - Bureau of Development Services
 Date 10/29/19
 A-Sub 212



L119-223387 AD Exhibit C-2

SHEET CONTENT EXTERIOR ELEVATIONS CROSS SECTION		MYOPTIC 1400 NE 37TH AVENUE PORTLAND, OREGON 97211		REGISTERED ARCHITECT DMS DATED 7-14-19		SHEET A2 of 3	
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