



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

Ted Wheeler, Mayor  
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**Date:** December 2, 2019  
**To:** Interested Person  
**From:** Don Kienholz, Land Use Services  
503-823-7771 / [Don.Kienholz@portlandoregon.gov](mailto: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 19-225237 AD**

#### **GENERAL INFORMATION**

**Owner:** Tracy Wiens  
5726 SE Lincoln St  
Portland OR 97215

**Site Address:** 5726 SE LINCOLN ST

**Legal Description:** BLOCK 1 TL 4700, HUTCHINSONS ADD  
**Tax Account No.:** R410900010  
**State ID No.:** 1S2E06DD 04700  
**Quarter Section:** 3236

**Neighborhood:** Mt. Tabor, contact Stephanie Stewart at [contact.MTNA@gmail.com](mailto:contact.MTNA@gmail.com).  
**Business District:** None  
**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010 x313.

**Plan District:** None  
**Zoning:** R5 – Single Dwelling Residential, 5,000.

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

#### **Proposal:**

The applicant is proposing to construct a detached, single-car garage measuring 16-feet by 32-feet in the southwest corner of the subject lot 11-feet from the rear property line and 1-foot from the west side property line. Detached covered accessory structures in the City's single-dwelling zones are permitted in the side setbacks under Portland Zoning Code Section 33.110.250.C.2 provided they are 24x24-feet or less, have walls 10-feet or less in height, and the building height is 15-feet or less. Because the proposed garage measures 32-feet in length and is 1-foot from the west side property line, it is subject to the base zone development standard of a minimum 5-foot side setback and 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 developed with a one and a half story, single-family dwelling built in 1912. A small accessory building is tucked away in the southwest corner where the new garage is proposed to be located. The property has mature landscaping in the front yard, including a large shared tree and shrubs and a line of shrubs planted along the rear property line. The lot is larger than normal (7,500 square feet) and is located approximately 800-feet north of Division Street Franklin High School, about 1,500 feet west of the entrance from the Mt. Tabor entrance, and about a half-mile south east of the SE Hawthorne commercial strip. The area is dominated by early 20<sup>th</sup> century single-family homes with infill homes from midcentury to the present peppered throughout.

**Zoning:** The Residential 5,000 (R5) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 5,000 square feet of site area.

**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 October 2, 2019. The following Bureaus have responded with no issues or concerns:

- Life Safety Section of BDS (Exhibit E.1);
- Bureau of Environmental Services (Exhibit E.2); and
- Site Development, Fire Bureau, and Water Bureau (Exhibit E.3).

The Bureau of Transportation Engineering provided a response (Exhibit E.4) noting that the proposal includes a widening of the driveway apron in the curb cut from approximately 8-feet to 13-feet, which will require a Driveway Design Exception before a building permit can be issued. The proposal has since been revised to narrow the apron to 10-feet but will still require a Driveway Design Exception.

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal. One phone call in support was received.

**ZONING CODE APPROVAL CRITERIA****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 has requested an Adjustment to the 5-foot minimum side building setback for a new, 32-foot long, detached garage located one-foot from the west side property line. The relevant purpose statements are found Portland Zoning Code Section 33.110.220.A:

**“Purpose. The setback regulations for buildings and garage entrances serve several purposes:**

- **They maintain light, air, separation for fire protection, and access for fire fighting;**
- **They reflect the general building scale and placement of houses in the city's neighborhoods;**
- They promote a reasonable physical relationship between residences;
- **They promote options for privacy for neighboring properties;**
- They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;
- **They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and**
- They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.”

**(Emphasis added)**

They maintain light, air, separation for fire protection, and access for fire-fighting;

The proposal is to locate a new, 32-foot long, detached garage 1-foot from the western side property line. The subject site and adjacent site both have their driveways along the common property line. There originally was a small landscaped strip between the driveways that has since been removed and replaced with asphalt for additional parking surface. The subject site has a small accessory building approximately 10x10 within the footprint of the proposed garage while the adjacent property has an approximately 12x20-foot detached garage along the property line. Both accessory structures are allowed by right in the setback under Portland Zoning Code Section 33.110.250.C.2. Together, the two driveways and accessory structures provide separation between the two existing homes and their respective back yards of approximately 30-feet.

The proposed garage will be one foot from the common side property line, approximately 13-feet from the neighboring house, 7-feet from the house on the subject property and 10-feet from the rear setback. This proposed spacing allows easy access and separation from the garage for fire-fighting purposes and protection. The proposed garage will be a single-story building and with the neighbor's garage between the proposed garage and their back yard, it's height will maintain the existing air and light access in the neighboring yard. This purpose statement is met.

They reflect the general building scale and placement of houses in the city's neighborhoods;

Historically, detached accessory buildings have been located in side and rear setbacks and have become a common development pattern – even before zoning requirements were adopted. For this reason, the modern zoning code includes provisions that allow detached covered accessory structures to be in the setbacks if they meet certain provisions including being 24x24 feet or less, no more than 15-feet in height, and being at least 40-feet from the front property line.

The proposed garage will be 47-feet from the front property line. It will also be a single story with a building height less than 15-feet. Its measurements will be 16x32-feet, which is shorter on one length than an allowed building by 8-feet but longer on the other by 8-feet to meet the exception. Bulk wise, the proposed garage will be 512-square feet – less than the 576-square feet of a 24x24 foot building. Along the 32-foot length next to the western property line, the proposed garage will overlap the wall of the adjacent property's garage by 8-feet, revealing only 24-feet of structural length to the neighbor. The 24-feet is the same length of a building that would be allowed by right. Because the neighboring property will only visually see 24-feet of the 32-foot wall length, the wall will resemble the general building pattern and placement of accessory structures in the single-dwelling zones. With the proposed garage set back 47-feet, viewers from the street will be unlikely to see the full depth of the garage and therefore will not have visual queues that the building is more than

24-feet in depth. Considering these facts, the proposed garage will visually reflect the general pattern and placement of detached accessory buildings.

They promote options for privacy for neighboring properties;

The wall of the garage within 1-foot of the common property line on the west side will not have any windows or doors, preventing individuals inside the garage from having visual access to the neighboring property potentially impacted by the proposal. Currently, the subject site shares a driveway and vehicle area with the neighboring property, in part because what was once a landscaping strip between the two sites has been filled with asphalt. As part of the proposal, the applicant has proposed removing a 3-foot wide segment of asphalt for the first approximately 19-feet and then a 1-foot wide segment for the remaining yard to the neighboring garage's front façade. In place of the asphalt, the applicant proposes landscaping. A condition of approval will require installation and maintenance of this landscaping as it provides separation between the two properties, reduces the auto orientation of the combined driveway and promotes privacy. This purpose statement is met.

They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity;

The subject lot is not a regular rectangular shaped property and the house is set back further than generally seen in Portland's older neighborhoods. The house is situated in the middle of the lot with approximately 23-feet to the western property line. The proposed garage sits along the western property line, 47-feet from the front property line and 10-feet from the rear property line. Its location in the property is generally consistent with accessory buildings typically being located behind the primary house or at least 40-feet from the front property line to identify it as an ancillary building. The proposed location utilizes the western neighboring property's detached garage to shield some of the proposed garage's bulk from the adjacent property and keeps more of the back yard free from structures to provide a larger unbroken outdoor area.

*With a condition of approval, this criterion is met.*

**B. If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and**

**Findings:** The subject property is in the R5 zone, a residential zone. The proposed 32-foot long garage only exposes 24-feet of the wall to the neighboring property to the west, replicating a typical accessory building allowed by right in the side setback. The garage is 47-feet deep into the lot, following the general building pattern of the immediate neighborhood. The garage is proposed to be a single-story building, which will not dominate the site and allow the existing house to be the primary feature. Since the proposed garage will resemble the general building scope and placement of the neighborhood; expose only a 24-foot long segment of wall like accessory buildings allowed by right; will not visually dominate the site; and asphalt will be removed between the two driveways and replaced with a landscaping strip, the proposal will not detract from the livability of appearance of the residential 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:** One Adjustment is requested. 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:** No adverse impacts for which mitigation would be required will result from the proposal as discussed in Findings A and B above.

*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 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 reducing the minimum west side building setback from 5-foot down to 1-foot (33.110.220 and Table 110-3) equally meets the purpose of the setback development standard. The reductions will not adversely impact the livability or appearance of the nearby area; will fit in with the general scale and placement of accessory buildings; and will not reduce access for fire-fighting, reduce air or light, or negatively impact privacy. Additionally, the proposed accessory structure will not be sited in a scenic, historic or environmentally significant area. As the application has met the approval criteria, the proposal must be approved.

**ADMINISTRATIVE DECISION**

Approval of an Adjustment to reduce the 5-foot minimum west side setback down to 1-foot for a 32-foot long detached garage per the approved site and elevation plans, Exhibits C.1 through C.3, signed and dated November 25, 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.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File #LU 19-225237 AD. No field changes allowed."
- B. The asphalt running along the western property line from the front property line to the front wall of the neighboring garage shall be removed and replaced with a landscape

strip measuring 3-feet wide for the first 19-feet and 1-foot wide for the remainder to the neighbors' front garage wall (See Exhibit C.1). Landscaping shall consist of vegetated ground cover or shrubs.

**Staff Planner: Don Kienholz**

**Decision rendered by:**  **on November 25, 2019**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: December 2, 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 11, 2019, and was determined to be complete on September 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 September 11, 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 requested that the 120-day review period be extended for a total of 60-days. Unless further extended by the applicant, **the 120 days will expire on: March 24, 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 December 16, 2019** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> 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](http://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 **December 16, 2010** 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.

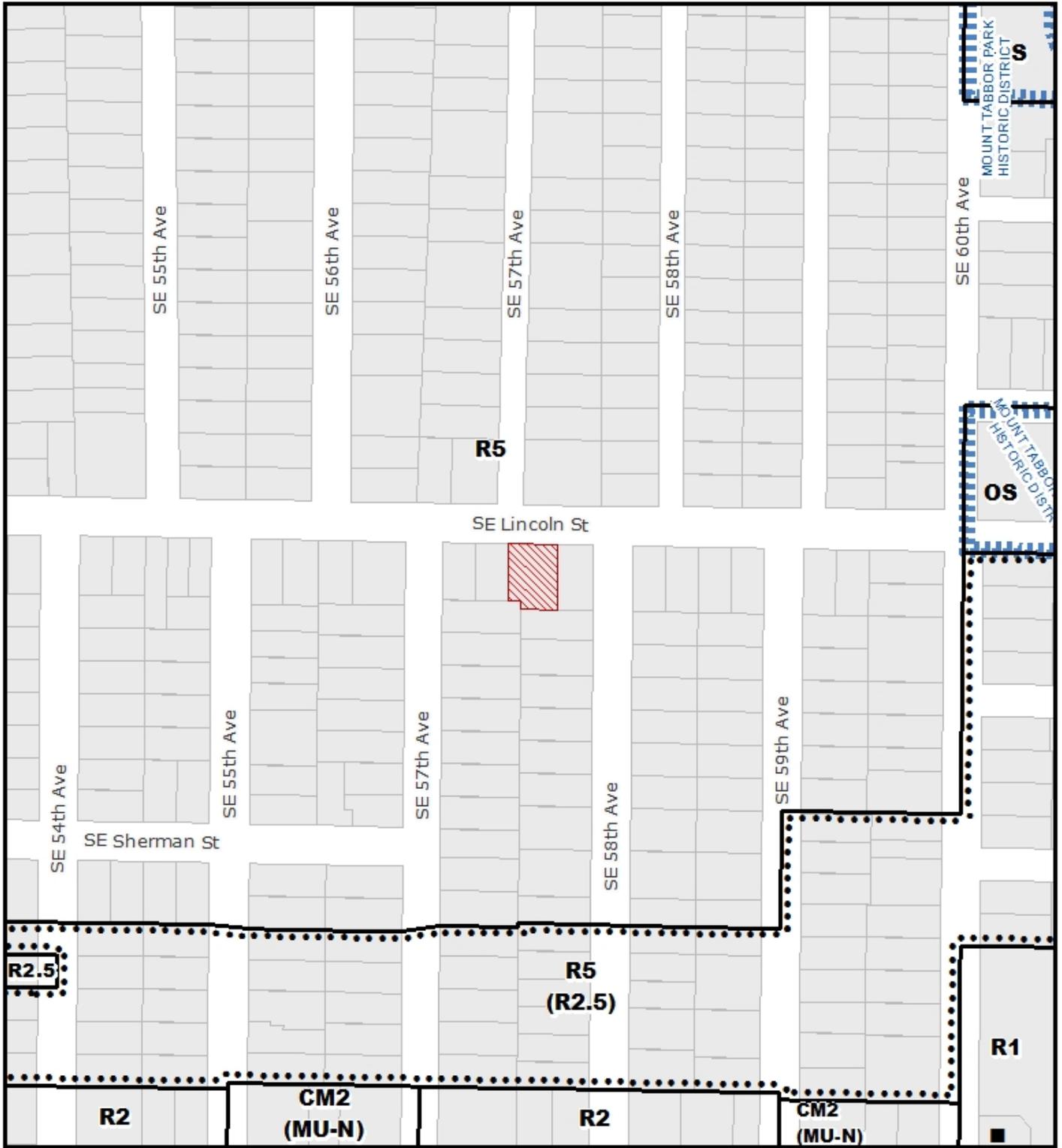
**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

A. Applicant's Materials

1. September 9, 2019 Narrative
  2. September 9, 2019 Site Plan
  3. October 9, 2019 Email with Additional Information
  4. October 25, 2019 Email Discussing Planting Strip and Picture
  5. November 4, 2019 30-Day Extension to Statutory Clock
- B. Zoning Map (Attached)
- C. Plans/Drawings:
1. Site Plan (Attached)
  2. North and South Building Elevations
  3. East and West Elevations
- D. Notification Information:
1. Mailing List
  2. Mailed Notice
- E. Agency Responses:
1. Life Safety
  2. Bureau of Environmental Services
  3. Site Development, Fire Bureau, and Water Bureau
  4. Bureau of Transportation Engineering and Development Review
- F. Correspondence: None
- G. Other:
1. Original LU Application
  2. Receipt of Fee Paid

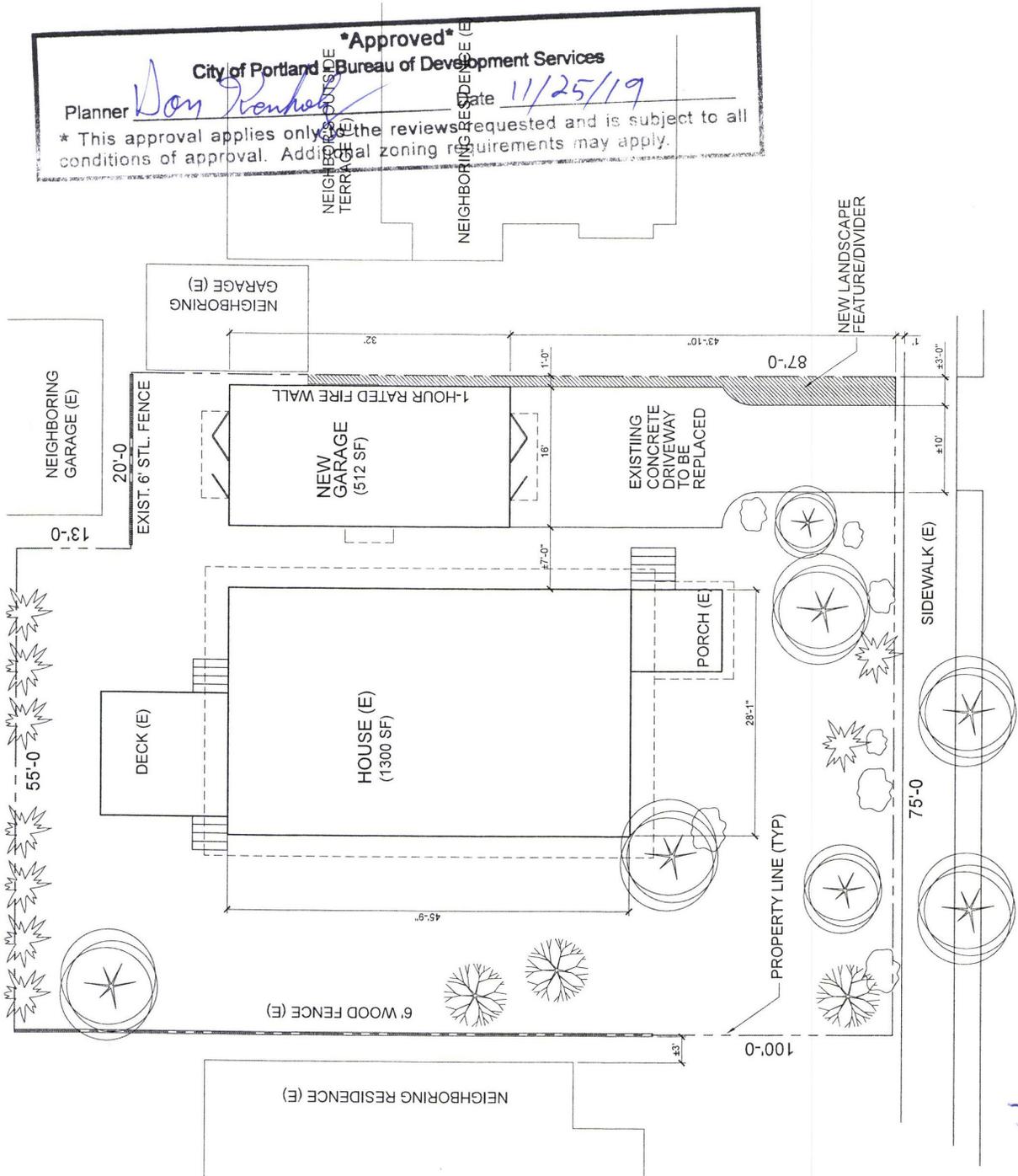
**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



**ZONING**  NORTH

 Site  
 Historic Landmark

File No.	LU 19 - 225237 AD
1/4 Section	3236
Scale	1 inch = 200 feet
State ID	1S2E06DD 4700
Exhibit	B Sep 13, 2019



**\*Approved\***  
 City of Portland Bureau of Development Services  
 Planner Don Kenhart Date 11/25/19  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

**PROJECT**  
 LINCOLN GARAGE

**DESIGNER**

**dialog:**

dialogds.com  
 kenton.dialogds.com  
 503.516.8182

**DWGS.**

DESIGN REVIEW 9.9.19  
 LANDSCAPE DIV. 11.5.19

**SHEET**

**2**

**SITE**

**1 SITE PLAN**

SCALE: 1/16" = 1'-0"



CASE NO. LU 19-225237 AD  
 EXHIBIT C.1