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

Ted Wheeler, Mayor
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: January 30, 2020

To: Interested Person

From: David Besley, Land Use Services
503-823-7282 / David.Besley@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 19-169672 AD

GENERAL INFORMATION

Applicant: Nolan Bollier
1323 SE 36th Ave
Portland, OR 97214

Site Address: 1323 SE 36TH AVE

Legal Description: BLOCK 52 LOT 15, SUNNYSIDE & PLAT 2 & 3
Tax Account No.: R810412350
State ID No.: 1S1E01AC 11100
Quarter Section: 3134

Neighborhood: Sunnyside, contact at board@sunnysideneighborhood.com
Business District: Hawthorne Blvd. Bus. Assoc., contact at explore@hawthornepdx.com
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010 x313

Zoning: R2.5 (Single-Dwelling Residential 2,500)

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

Proposal:
The applicant is proposing a 930 square foot addition (including a 240 square foot addition on the east side of the main level and a 688 square foot addition on the second floor) to an existing 1,085 square foot 1.5-story residence. The Portland Zoning Code requires a 5-foot minimum side setback in this zone (Section 33.110.220, Table 110-3). The addition is proposed to extend along the established southern wall, which is 3 feet from the south (side) property line. An Adjustment is therefore required to reduce the minimum side setback for the addition from 5 feet to 3 feet.

Additionally, the Portland Zoning Code allows eaves to extend into required building setbacks up to 20 percent of the depth of the setback (in this case, a 1-foot encroachment into side setbacks) and they must be at least three feet from a lot line (Section 33.110.220.C.1; Table 110-3). Portions of the existing 11-inch deep eaves are currently 2 feet – 1 inch from the south (side) property line. As noted above, the proposed addition will not expand the house (including eaves) farther to the south, but the proposed second story is directly above the existing house and new eaves will be constructed as part of this addition. An additional Adjustment is therefore required to allow eaves to be up to 2 feet – 1 inch from the south (side) property line.

Finally, the applicant is proposing to continue use of an existing parking area in front of the house. The Portland Zoning Code states that parking spaces are not allowed within the first 10 feet of a front lot line (Section 33.266.120.C.1.a). Because the proposed addition is in the location of the existing parking area and the parking area will therefore be pushed closer to the front lot line, a second Adjustment is therefore required to reduce the 10-foot parking area setback to 6 feet – 4 inches.

To summarize, the applicant is proposing an addition which requires three (3) Adjustments:
1. To reduce the minimum side (south) setback from 5 feet to 3 feet;
2. To allow eaves to be up to 2 feet – 1 inch from the side (south) property line; and
3. To reduce the 10-foot parking area setback to 6 feet – 4 inches.

Relevant Approval Criteria:
In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The 3,333 square-foot site is located on the west side of SE 36h Avenue, about half way between SE Main Street on the north and SE Madison Street on the south. It is currently developed with a 1,085 square foot house (735 square foot main floor and a 350 square foot finished attic). The surrounding vicinity is developed with primarily one, two, and three-story single-dwelling residences. Two blocks to the south, along SE Hawthorne Boulevard, is a mixed-use/commercial zone and higher density development.

Zoning: The R2.5 zone is a single-dwelling zone that is intended to preserve land for housing, and to provide housing opportunities for individual households. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City's various neighborhoods

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 **December 20, 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 to the Adjustment request, included fire rating requirements, recommended the applicant visit the Development Services Center for additional Building Code information, and noted that a building permit for the addition will be required (Exhibit E.1);
- The Bureau of Environmental Services responded with no concerns and includes stormwater management information (Exhibit E.2);
- The Portland Bureau of Transportation (PBOT) responded with no concerns and provided information on street classification and Title 17 requirements (Exhibit E.3); and
- Site Development Review Section of BDS responded with no concerns and provided information about the septic system and erosion control (Exhibit E.4).

The following Bureaus have responded with no concerns (Exhibit E.5):
- The Fire Bureau; and
- The Water Bureau.

Neighborhood Review: One written response was received from the adjacent neighbor to the north (Exhibit F.1). The neighbor notes concern that the second story addition and expansion to the east will block their sunlight and negatively impact the overall livability and value of their home. The neighbor recommends the applicant build a second story without extending the footprint to the east.

Staff Response: The primary objection expressed in the letter received seems to be the expansion of the house to the east, toward the front lot line. The northern edge of the subject house, including the addition, will be 6 feet – 2 inches from the northern/side property line, which exceeds the 5 foot minimum side setback requirement. Additionally, the addition to the east will be set back 18 feet – 4 inches from the front lot line, thereby substantially exceeding the minimum required 10-foot front setback. The proposed eastern addition is therefore not directly triggering the Adjustment request; the Adjustments requested are to reduce the south setback from 5 feet to 3 feet, allow eaves to be up to 2 feet – 1 inch from the south property line, and to reduce the minimum parking area setback. Relevant concerns are addressed in the Zoning Code Approval Criteria findings below.

ZONING CODE APPROVAL CRITERIA

33.805.040 Adjustment 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

1. **Findings:** The applicant is proposing a 930 square foot addition (240 square foot addition on the east side of the main level and a 688 square foot addition on the second floor) to an existing 1,085 square foot 1.5-story residence, which requires three Adjustments. The first Adjustment is to reduce the minimum side (south) setback from 5 feet to 3 feet and the second Adjustment is to allow eaves to be up to 2 feet – 1 inch from the side (south) property line. The relevant purpose statement and associated findings for the setback standards are found below:

   33.110.220 Setbacks
   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.*

   The addition is proposed to extend one story upward and approximately 9 feet eastward (not including a covered porch, which meets the setback requirements) along the established southern wall, which is 3 feet from the south (side) property line. The addition is not proposed to extend closer to the southern lot line than the first floor of the existing dwelling and the addition will therefore maintain a reasonable physical relationship between these residences.
   Currently there are three windows on the south face of the subject house. As part of the addition/renovation the two easternmost windows will be removed in order to promote privacy for the neighboring property to the south, as the two houses are only 6 feet from one another. The westernmost window on the ground floor will remain and two new

windows will be added on the second floor. Because the neighboring house to the south is only one story, the new second story windows on the subject site will not look into their neighbor's house.

Because the house footprint is not expanding closer to the neighboring house to the south, light and air are preserved and a reasonable physical relationship between residences is maintained. The existing 1,085 square foot house is relatively small, and is in a neighborhood with a mix of one, two, and three-story houses. As such, the house with the remodeled second floor will still reflect the general building scale and placement of houses in the neighborhood.

The existing roof eaves are about 11 inches in depth and the proposed replacement eaves will also be 11 inches deep. This will be consistent with the appearance of houses in the area which range in eave length from 6 inches to 2 feet.

The Fire Bureau has reviewed the request for reduced setbacks and eave allowances and offered no concerns with regards to separation for fire protection, or access for fire-fighting.

The third Adjustment is to reduce the 10-foot parking area setback to 6 feet – 4 inches. The relevant purpose statement and associated findings are found below:

33.266.120 Development Standards for Houses and Duplexes
A. The size and placement of vehicle parking areas are regulated in order to enhance the appearance of neighborhoods.

Of the standard 18-foot parking space length, only about 3 feet – 8 inches will be within the 10-foot side setback. Though a parked car will be closer to the right-of-way than the zoning code allows, the visual impacts will be minimal because the driveway area is not expanding, and this area has previously been used for vehicle parking.

PBOT responded with no concerns regarding the Adjustment request (Exhibit E.3).

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 lot is in the R2.5 zone, a residential zone. As noted above, the existing house is relatively small, and is in a neighborhood with a mix of one, two and three-story houses. An additional story on this house will be consistent with the appearance of homes in the area. Despite the reduced side setback, there is a reasonable physical relationship between residences that will retain privacy (consistent with the purpose of setbacks). Because there are no new windows that align with those on the neighboring house to the south and the addition is not proposed any closer to the property lines than the existing house, the proposal will not significantly detract from the livability or appearance of the residential area

Regarding the parking setback Adjustment, as noted above, the visual impacts will be minimal because the driveway area is not expanding, and this area has previously been used for vehicle parking. As such, the proposal will not detract from the livability or 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: The overall purpose of the R2.5 zone is to preserve land for housing, and to provide housing opportunities for individual households. Development standards in single-dwelling zones work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. As noted above, the existing house is relatively small, and is in a neighborhood with a mix of two and three-story houses. The proposed house size will be about 2,015 square feet. An additional story on this house will be consistent with the appearance of homes in the area. Despite the reduced side setback, there is a reasonable physical relationship between residences that will retain privacy (consistent with the purpose of setbacks). Based on the findings included in response to approval criteria A and B above, the project is consistent with the overall purpose of the zone.

This criterion is met.

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

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: As noted above, the setback distances are the same before and after the remodel and the applicant will be removing two easternmost windows on the ground floor in order to promote privacy for the neighboring property to the south. The Adjustments are therefore mitigated to the extent practical.

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 is proposing a 930 square foot addition (240 square foot addition on the east side of the main level and a 688 square foot addition on the second floor) to an existing 1,085 square foot 1.5-story residence, which requires three Adjustments:

1. To reduce the minimum side (south) setback from 5 feet to 3 feet;
2. To allow eaves to be up to 2 feet – 1 inch from the side (south) property line; and
3. To reduce the 10-foot parking area setback to 6 feet – 4 inches

Because the house footprint is not expanding closer to the neighboring house to the south, light and air are preserved and a reasonable physical relationship between residences is maintained. The existing 1,085 square foot house is relatively small, and is in a neighborhood with a mix of one, two, and three-story houses. As such, the house with the remodeled second floor will still reflect the general building scale and placement of houses in the neighborhood.

As part of the addition/renovation, two new windows will be added on the second floor; however, because the neighboring house to the south is only one story, the new second story windows on the subject site will not look directly into windows on their neighbor's house. Two of the existing ground floor windows will be removed in order to promote privacy for the neighboring property to the south. The proposal is therefore reflective of the general building scale and placement of houses in this neighborhood.

Of the standard 18-foot parking space length, only about 3 feet – 8 inches will be within the 10-foot side setback. Though a parked car will be closer to the right-of-way than the zoning code allows, the visual impacts will be minimal because the driveway area is not expanding, and this area has previously been used for vehicle parking.

The proposal meets the applicable approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of three (3) Adjustments:

1. To reduce the minimum side (south) setback from 5 feet to 3 feet (Section 33.110.220, Table 110-3);
2. To allow eaves to be up to 2 feet – 1 inch from the side (south) property line (Section 33.110.220); and
3. To reduce the 10-foot parking area setback from the front lot line to 6 feet – 4 inches (Section 33.266.120.C.1.a)

for a 930 square foot addition (including a 240 square foot addition on east side of the main level and a 688 square foot addition on the second floor), per the approved site plans, Exhibits C.1 through C.2, signed and dated January 22, 2020, 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 Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 19-169672 AD. No field changes allowed."

Staff Planner: David Besley

Decision rendered by: _____ **on January 22, 2020.**
By authority of the Director of the Bureau of Development Services

Decision mailed: January 30, 2020

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 24, 2019, and was determined to be complete on November 18, 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 24, 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 waived the 120-day review period, as stated with Exhibit G.3**.** The **120 days expire on November 17, 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 February 13, 2020** 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 **February 13, 2020** 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.

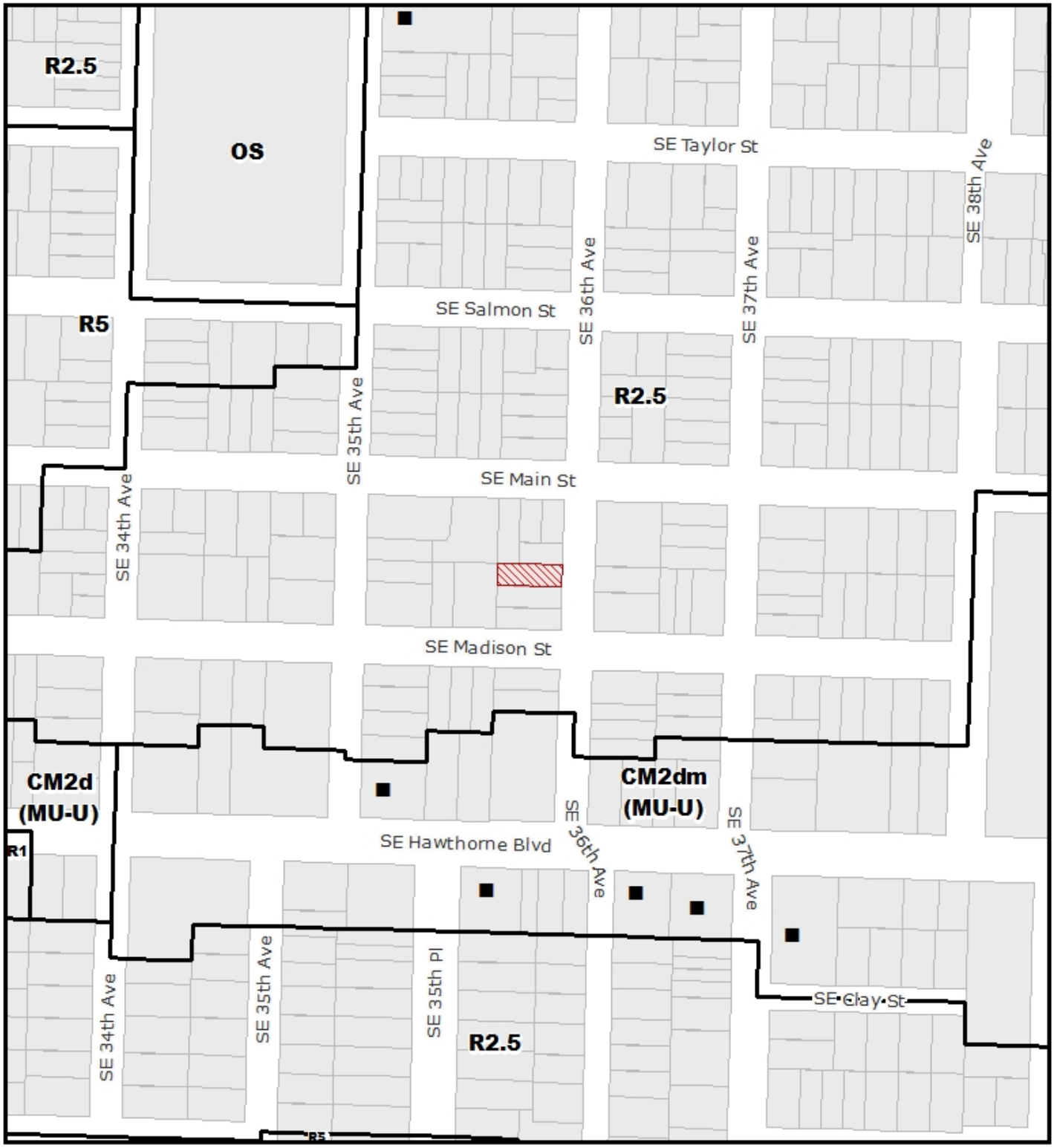
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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 and Side Elevation Drawing (attached)
   2. Neighbor Proximity Plan and Front Elevation Drawing (attached)
D. Notification information:
   1. Mailing list
   2. Mailed notice
E. Agency Responses:
   1. The Life Safety section of BDS
   2. Bureau of Environmental Services
   3. Bureau of Transportation Engineering and Development Review
   4. Site Development Review Section of BDS
   5. Agencies responding with no concerns
F. Correspondence:
   1. Zina Jenny, January 8, 2020, letter of opposition
G. Other:
   1. Original LU Application and Receipt
   2. Incomplete letter from staff to applicant, sent June 6, 2019
   3. Request for Extension of 120-Day Review Period letter dated November 19, 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).



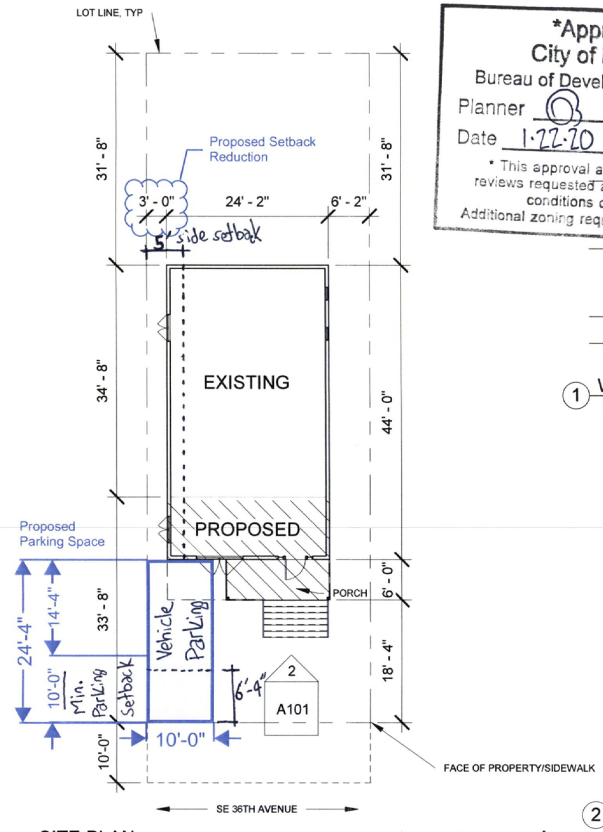
ZONING

NORTH

Site

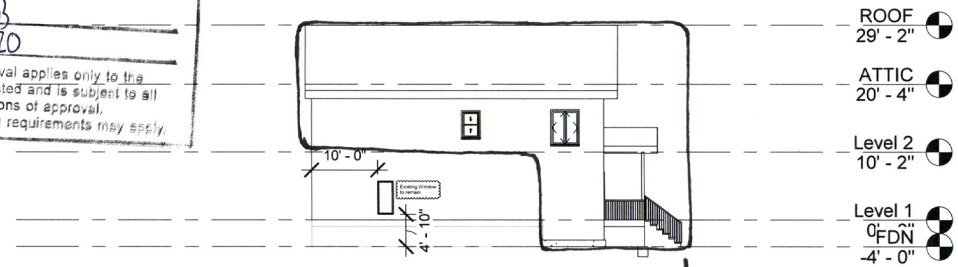
Historic Landmark

File No.	LU 19-169672 AD
1/4 Section	3134
Scale	1 inch = 200 feet
State ID	1S1E01AC 11100
Exhibit	B May 29, 2019



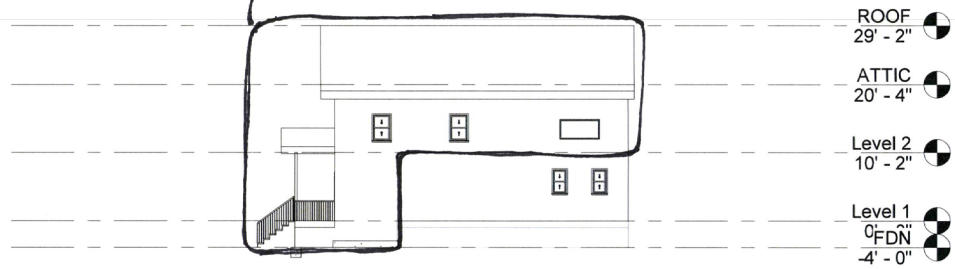
1 SITE PLAN
1/16" = 1'-0"

Approved
City of Portland
Bureau of Development Services
Planner
Date 1·22·20
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



1 West
1/16" = 1'-0"

Addition



2 North
1/16" = 1'-0"

3 Adjustments requested for a 930 sf addition to an existing 1,085 sf house:
1. Reduce min. side (south) setback from 5' to 3';
2. Reduce min. parking area setback from 10' to 6'-4"; and
3. Allow eaves to be 2'-1" from the side (south) property line

LU
CASE NO. 19-169672 AD
EXHIBIT C.1

LU 19-169672 AD

AUTODESK
www.autodesk.com/revit

Nolan Bollier

1323 se 36th Ave

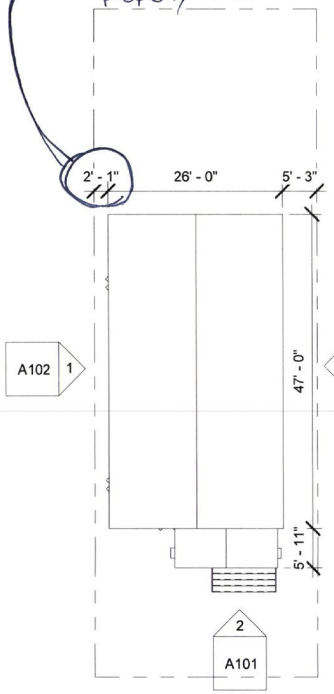
No.	Description	Date

Unnamed

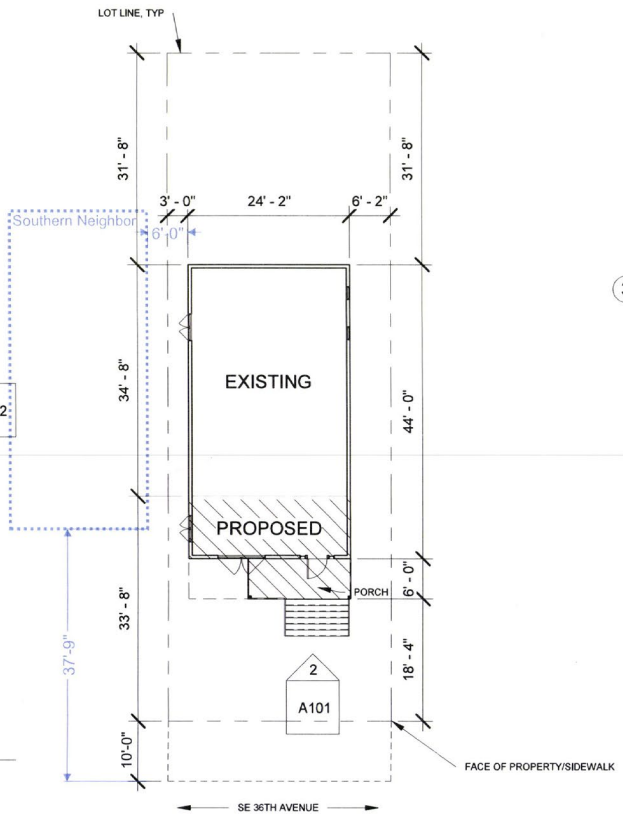
Project number	Project Number	A102
Date	Issue Date	
Drawn by	Author	
Checked by	Checker	Scale 1/16" = 1'-0"

10/31/2019 10:59:58 AM

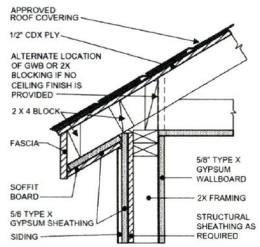
Distance b/w eave and south property line



4 ROOF
1/16" = 1'-0"



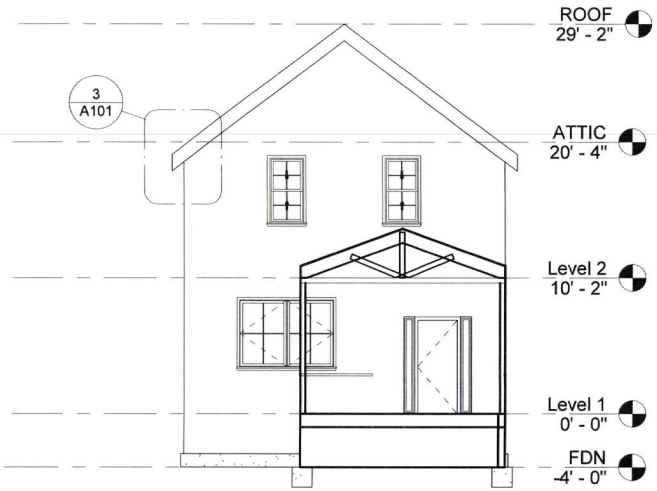
1 SITE PLAN
1/16" = 1'-0"



3 1-HOUR RATED WALL AND PROTECTIVE EAVE OVERHANG
1/4" = 1'-0"

Revised Site Plan
-Added Southern Neighbor to Site Plan
-Revised Street to Face of Property Dim.

Approved
City of Portland
Bureau of Development Services
Planner
Date 1·22·20
* This approval applies only to the reviews requested and is subject to all conditions of approval.
Additional zoning requirements may apply.



2 East
1/8" = 1'-0"

LU
CASE NO. 19-169672 AD
EXHIBIT C.2

AUTODESK
www.autodesk.com/revit

Nolan Bollier

1323 se 36th Ave

No.	Description	Date

Unnamed

Project number	Project Number	A101
Date	Issue Date	
Drawn by	Author	
Checked by	Checker	Scale As indicated

10/31/2019 10:59:57 AM