



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

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Date: February 6, 2020
To: Interested Person
From: Mark Moffett, City Planner
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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 19-255933 AD

GENERAL INFORMATION

Applicant/Owner: Viliami Kalamafoni
824 SE 174th Ave
Portland, OR 97233

Site Address: 824 SE 174TH AVE

Legal Description: TL 7600 0.83 ACRES, SECTION 06 1S 3E
Tax Account No.: R993062140
State ID No.: 1S3E06AB 07600
Quarter Section: 3148

Neighborhood: Centennial, contact at <http://www.eastportland.org/centennial>.
Business District: None.
District Coalition: East Portland Community Office, contact at 503-823-4550.

Zoning: **R7ah** (Residential 7,000 base zone with “a” or Alternative Design Density and “h” or Aircraft Landing overlay zones)

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

Proposal: The applicant is currently under code enforcement by the City of Portland for constructing an over-height fence in the front setback of an R7 residential zone (case file 19-122922 CC). This violation also cited parking of trucks, parking on grassy areas and operating a home business in violation of the home occupation rules, although these activities appear to have been discontinued at the time of a staff site visit on November 9th, 2019.

The fence that was recently constructed on the site is made of several masonry piers, a large L-shaped masonry planter with white signage/lettering facing south and west towards the street, and both decorative and chain-link metal fencing and gates in front of the home at 824 SE

174th Avenue. Two driveway gates are included in the fence with a chain link gate on the north end and a decorative metal gate on the south end, as well as a swinging pedestrian gate just north of the large L-shaped masonry planter. Masonry elements on the fence range from approximately 5'-3" to 5'-10" tall, and the metal gates and posts are predominantly about 5'-0" tall, with taller vertical elements near the main southern driveway gate at approximately 6'-6" in height. The applicant has provided a site plan, a survey purporting to show that the fence is contained entirely on the private property, and a partial elevation of the fencing (see attached).

Regulations in the R7 zone limit the maximum height of fencing in the minimum 15'-0" front building setback to 3'-6" in height (33.110.255.C.1). Therefore, in order to legalize the fence as constructed in the front setback at 824 SE 174th Avenue, the applicant has requested an Adjustment to increase the maximum fence height in the front setback from 3'-6" to a range of from 5'-3" to 5'-10" for the masonry elements, and from 3'-6" to a range of from 5'-0" to 6'-6" for the chain link and decorative metal elements.

RELEVANT APPROVAL CRITERIA: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found at **33.805.040.A-F, Adjustment Approval Criteria**.

ANALYSIS

Site and Vicinity: The site is a single residential parcel of 0.83 acres, rectangular in shape, and is developed with an existing split-level ranch house and attached accessory structures. The site has approximately 150 lineal feet of frontage on the east side of SE 174th Avenue, a two-lane, two-way roadway with no paved sidewalks or curbing and limited shoulder parking where not precluded by utility poles or existing vegetation. The surrounding area is almost exclusively residential, with detached single-family homes predominating in the area. The neighborhood also includes limited institutional uses such as churches, adult assisted living facilities and a City of Portland Fire Station within a few blocks of the site.

The existing fence in question for this application is located primarily right behind the front or street lot line, which itself is located approximately 18 or 19 feet back from the edge of the public roadway paving. The masonry and metal elements of the gate and fencing visually dominate the streetscape adjacent to the site, including the highly visible white signage lettering on two faces of the raised planter portion of the fencing immediately north of the southern driveway entrance to the site. A separate pedestrian entrance gate is located along the streetscape near the main southern driveway entry and raised planter element, with a second gated gravel driveway provided along the northernmost edge of the fence along SE 174th Avenue.

Zoning: The Residential 7,000 (R7) base zone is intended to provide housing opportunities for individual households, and to preserve and enhance the livability and character of single-dwelling neighborhoods. Fence height regulations in the R7 zone are the subject of this application, and seek to promote the positive benefits of fences, while mitigating for their potentially negative impacts, as well.

The Alternative Design Density (a) overlay zone provides opportunities for additional density in some situations, provided supplemental design and compatibility requirements are met. There is nothing in the current proposal that relates to or relies upon the regulations of the "a" overlay zone. The Aircraft Landing (h) overlay zone is intended to provide safer operating conditions for aircraft in the vicinity of airplane approach paths for the Portland International Airport. Provided the overall height limit of 30 feet is met for structures, the "h" overlay regulations do not impact development at the site.

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

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **December 12, 2019**. The following agencies have responded:

The *Development Review Section of Portland Transportation* (PBOT) has reviewed the proposal and responded with comments. After a discussion of the approval criteria and traffic safety concerns regarding visibility for vehicles entering the roadway, PBOT staff are recommending a condition of approval that the property owner maintain plantings in the masonry planter at a height of no more than 3.5 feet (42 inches) above the grade of the adjacent roadway. Detailed findings from this response that are relevant to this application are included in the approval criteria section, later in this report, and exhibit E.1 contains staff contact and additional information.

The *Fire Bureau* has reviewed the proposal and responded without comment or concern (Exhibit E.2).

The *Site Development Section of the Bureau of Development Services* has reviewed the proposal and responded without comment or concern (Exhibit E.3).

Neighborhood Review: A total of 6 written responses have been received from notified property owners in response to the proposal. All six responses were in support of the proposal for increased fence height (Exhibits F.1 through F.6).

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of Adjustments

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 providing 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 purpose statement for fence height regulations in the R7 and other single-dwelling zones, as stated at 33.110.255.A, is as follows:

“Purpose. The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.”

The purpose statement for fences seek to promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety.

With regards to the positive benefits of fencing noted in the statements above (*in parentheses at the beginning of each bullet's discussion*), the proposal achieves the following:

- (*Sense of privacy*) The fencing creates a sense of privacy for those on the subject site or inside the home at 824 SE 174th Avenue. A clear line of demarcation between the public realm in SE 174th and the private space on the site are created by the fence, which physically funnels pedestrians and vehicles to specific entry points;
- (*Protect children and pets*) The fencing creates a physical barrier that contains activity by children and pets on the subject site, preventing them from easily running into the roadway towards traffic;
- (*Provide separation from busy streets*) The fencing creates a sense of separation from SE 174th Avenue, marking the property line between the public right-of-way and the private property; and
- (*Enhance appearance of property by providing attractive landscape materials*) The fencing itself is created of masonry piers and vertical metal wrought iron elements. There is a raised planter incorporated into the L-shaped masonry feature on the north side of the driveway which could theoretically contain plants or other landscaping materials. However, at the time of the staff visit the area was decorated with miniature artificial Christmas trees and lighting, including stand-alone solar path lights and what appeared to be hard-wired spotlights to illuminate the white lettering and signage.

The masonry piers and the large L-shaped masonry feature at the north end of the driveway visually dominate the site with a scale and appearance that is more in keeping with a suburban industrial office park. The size of the masonry elements are significantly larger than any other fencing in the neighborhood nearby, including the examples of other tall fencing along SE 174th Avenue provided by the applicant (Exhibit A.1). Bright white lettering decorates the upper portion of both the east- and south-facing walls of the L-shaped masonry feature, visually dominating the fence/gate structure when approaching the site from the south on foot or in a car, as well as when standing directly in front of the site. In addition to the large white letter signage on the masonry feature, a smaller sign attached to the pedestrian entry gate identifying a religious affiliation for the owners appears to meet the maximum one-square-foot size limit for signs. Signage is defined as materials or lighting that (1) convey an image or message and (2) are used to inform or attract the attention of the public (32.22.020.YY). Signage for household living uses in the R7 zone limit the maximum sign area to a single sign no larger than one square foot in size (32.32.010.A/Table 1).

The northernmost bay of fencing on the property is of a chain link material that does not match the remainder of the fence, and which is configured as a gate providing access to an unpermitted gravel driveway. Concrete block post supports for the chain link gate are visible from the right-of-way, giving this section of fencing a temporary, lower-quality look than the rest of the fencing. Replacing this area of chain link material with decorative wrought iron metal fencing will create a unified, attractive appearance to the property. Therefore, a condition of approval will ensure that the northernmost section of fencing along the street lot line between the northernmost two masonry piers must remove the chain link gate and support posts, replacing the chain link material with ornamental iron fencing matching the height and design of metal fencing immediately to the south.

Landscape materials in the planter area of the L-shaped masonry feature on the north side of the driveway offers an excellent potential way to visually reduce the scale and prominence of this feature, but PBOT staff have concerns about visibility. The sign features as-built already encroach into the desired

vision clearance area on the first 15'-0" of the property east of the street lot line, where PBOT guidelines seek to limit the height of all structures and vegetation to no more than 3'-6" or 42 inches in height (Exhibit E.1). Because the height of the planter itself is just 31 inches from grade, this leaves only 11 inches above this point for any vegetation or other object in the planters themselves without creating potential vehicle safety conflicts.

Climbing or trailing plantings that maintain themselves at a low height, such as Creeping Phlox (*Phlox subulata*), Creeping Rosemary (*Rosmarinus officinalis* 'Prostratus') or Dichondra could enhance the appearance of the property and mitigate for the uncharacteristic size, scale and materials of the large L-shaped masonry sign and raised planter at the north end of the driveway. Softening the uncharacteristically large L-shaped masonry element with some landscaping, and eliminating the white-lettered signage on the L-shaped masonry feature would help to both enhance the appearance of the property and add attractive landscaping materials where none are now proposed.

In order to encourage the applicant to provide attractive landscape materials while still addressing the sight visibility concerns of PBOT, an advisory condition of approval will encourage the applicant to plant low-growing trailing plants in the raised planter, such as Creeping Phlox (*Phlox subulata*), Creeping Rosemary (*Rosmarinus officinalis* 'Prostratus'), Dichondra or other similar plant material that will stay low in the planter and not conflict with sight visibility concerns.

With regards to the negative effects of fencing noted in the purpose statement (*and in parentheses at the beginning of each bullet's discussion, below*), the proposal achieves the following:

- (*Creation of street walls that inhibit police and community surveillance*) The design of the fence includes a series of solid masonry piers contrasted with open wrought iron metal and chain link materials. While the masonry piers and large L-shaped feature are totally sight-obscuring to passersby, the open metal sections allow good visual permeability and opportunities for police and community surveillance. In order to ensure that the fence is not modified in the future in such a way that visibility is not reduced, a condition of approval will ensure that the open metalwork of the fencing not be modified over time to increase their solidity or sight-obscuring properties, allowing views through the fence to remain over time.
- (*Decrease the sense of community*) The fence is a physical object, allowing views into and out of the site. There are no impacts in terms of any sense of community, which is difficult to define or measure and may be different depending upon which members of any one community are asked the question;
- (*Hinder emergency access*) Emergency access is available to the site through the vehicle and pedestrian entry gates. There is an area of paved driveway in front of the fence for emergency vehicles to exit the roadway even if the front entry gates are closed;
- (*Hinder the safe movement of pedestrians and vehicles*) In order to address vision clearance issues for vehicles entering and exiting the site, PBOT regulations impose a maximum 42-inch height limit for structures in the first 15'-0" of a property when abutting a roadway. As constructed the fencing violates this requirement, but PBOT staff have indicated they can approve the proposal with a condition of approval (Exhibit E.1). This condition of approval would limit the height of vegetation and other visual obstructions in the raised planter portion of the large L-shaped masonry feature on the north side of the main driveway to

no more than 42 inches in height, or no more than 11 inches above the 31-inch height of the raised planter surface. With this noted condition of approval, the safe movement of pedestrians and vehicles can be assured; and

- (*Create an unattractive appearance*) The fencing itself features dark gray fieldstone, light colored grout, red brick, and bright white metal fencing details. Bright white sign lettering and lighting is provided in the large L-shaped masonry feature at the north end of the driveway, giving the entry to this residential site the appearance of a suburban industrial or commercial operation. Signage dominates the visual character of the fencing and gates at the site, and no more than one square foot of signage is allowed by the Portland Sign Code. Lighter colors tend to visually come to the foreground of a composition, whereas darker colors tend to recede, resulting in the appearance of commercial signage or sign clutter at this site.

In order to mitigate for the dominant visual impact of the illegal signage, and to improve the appearance of the fencing consistent with residential developments nearby, a condition of approval will require all the white lettering and sign elements on the fence to be painted a dark gray-black color to match the flagstone background of the fence and visually disappear. In order to ensure that this fencing and signage remain discrete going forward, this condition of approval will also prohibit lighting on or directed to the fence structure.

The fencing itself is generally of a consistent, orderly design and appearance with only three exceptions. The height and rhythm of the fencing is generally consistent, with taller masonry piers and lower infill metal fence segments. In two locations on either side of the entry driveway, however, two areas of metal fencing project over 5'-11" and stand up above the rest of the fence in an awkward manner, to a height as tall as 6'-6". Lowering these two divergent, taller segments of metal fencing to match the height of adjacent fencing at no more than 5'-11" will help give the fencing a finished, attractive, professional appearance. Therefore, a condition of approval will require the two over-height sections of fence on either side of the main driveway to be lowered to no more than 5'-11", consistent with the design and height of metal fencing used elsewhere on the fence. Another condition of approval requiring that chain link material on the north edge of the fence be replaced with matching wrought iron panels addresses the third exception.

In order to ensure that the site enjoys the positive benefits of fencing while addressing potential negative impacts and public or vehicle safety, several conditions of approval are necessary. With conditions as noted above to keep the fencing visually open over time, eliminate illegal signage and visual impediments to vehicle safety, and finally to modify two awkward extra-tall sections on both sides of the driveway and one area of incompatible chain link material, this criterion can be 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: With conditions of approval as noted above under findings for criterion A, the proposal will not significantly 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: Only one adjustment is requested. This criterion is not applicable.

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

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. 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: With the conditions of approval noted under findings for criterion A, 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 Maps with either a lowercase "p" (Environmental Protection overlay zone) or a "c" (Environmental Conservation overlay zone). As the site is not within an environmental zone, 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 constructed a large, masonry and metal fence without benefit of a building permit. With conditions of approval ensuring adequate sight distance for vehicles, as well as other concerns raised in the approval criteria with regards to signage, lighting and appearance, the request is able to meet the relevant criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to increase the maximum fence height in the front setback from 3'-6" to a range of from 5'-3" to 5'-10" for the masonry elements, and from 3'-6" to a range of from 5'-0" to 5'-11" for the decorative metal elements (33.110.255.C.1).

This approval is granted based on the approved site plan and elevation details with staff notes, Exhibits C.1 and C.2, both signed and dated February 3, 2020, and subject to the following conditions A through G:

- 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 19-255933 AD."
- B. The open metalwork sections of the fence may not be modified over time to increase their solidity or sight-obscuring properties, thereby allowing views through the fence to remain in place over time.

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 20, 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 on or after **February 21, 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:

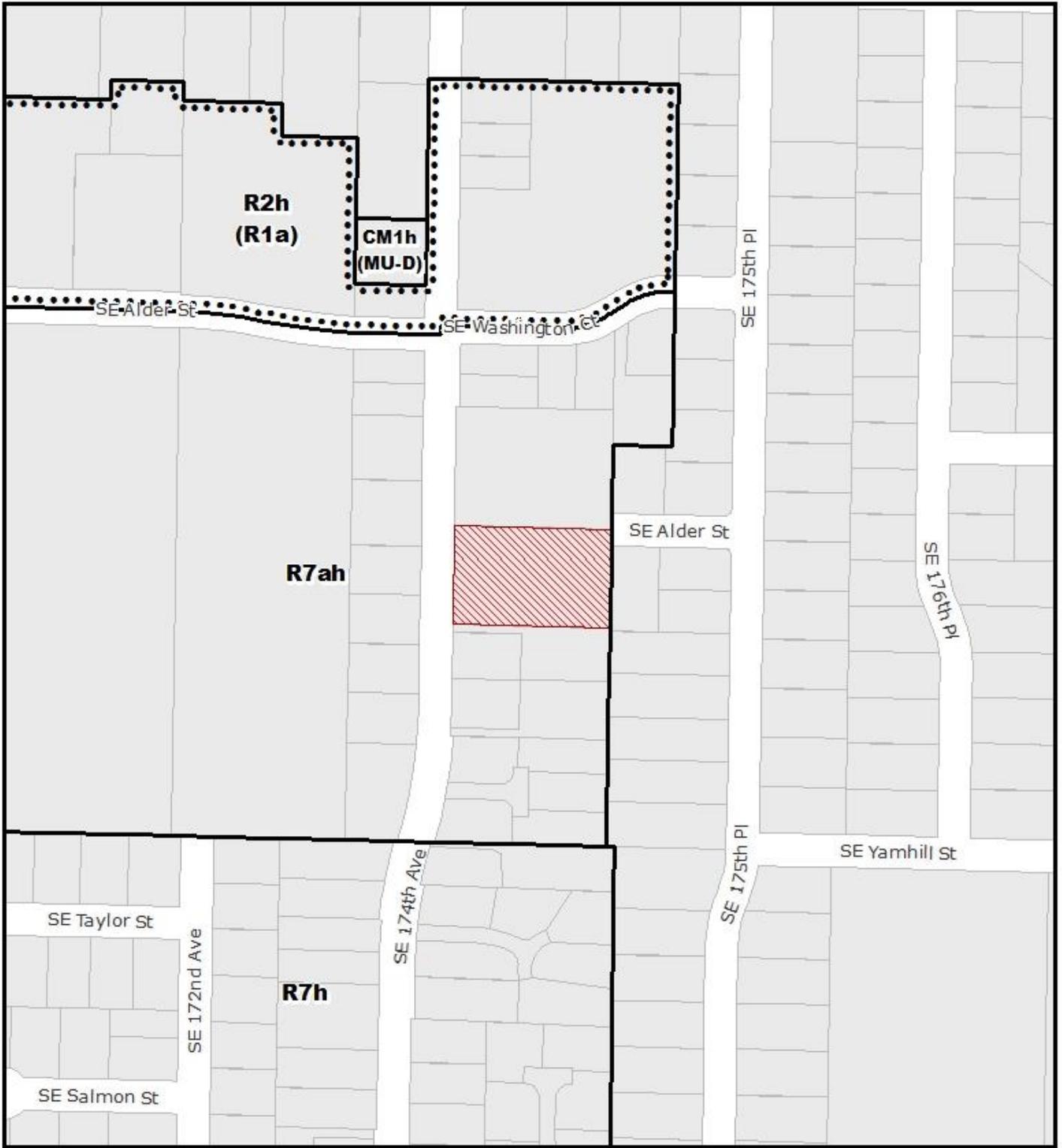
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statements
 1. Original narrative and attachments
 2. Supplemental narrative addressing approval criteria, rec'd. 12/2/19
 3. Full copy original plan set with measurements and staff notes
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Fence Elevations (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Development Review Section of Portland Transportation
 2. Fire Bureau
 3. Site Development Section of the Bureau of Development Services
- F. Correspondence:
 1. E-mail in support from Pham Hoang, rec'd. 12/13/19
 2. E-mail in support from Anthony Olson, rec'd. 12/19/19
 3. E-mail in support from Deran Schneider, rec'd. 12/19/19
 4. E-mail in support from Charnelle Thompson, rec'd. 12/27/19
 5. E-mail in support from Gloria Wilcox, rec'd. 12/29/19
 6. E-mail in support from Alex Meisner, rec'd. 1/2/20
- G. Other:
 1. Original LU application form, tax account information and receipt
 2. April 8, 2019 status letter for Code Compliance case 19-122922 CC

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

File No.	LU 19 - 255933 AD
1/4 Section	3148
Scale	1 inch = 200 feet
State ID	1S3E06AB 7600
Exhibit	B Nov 26, 2019

IMPERVIOUS AREA

DRIVEWAY 2,325 SQFT

PATIO 195 SQFT

WALK 506 SQFT

ROOF AREA (INCL. OVERHANG) 5,154 SQFT

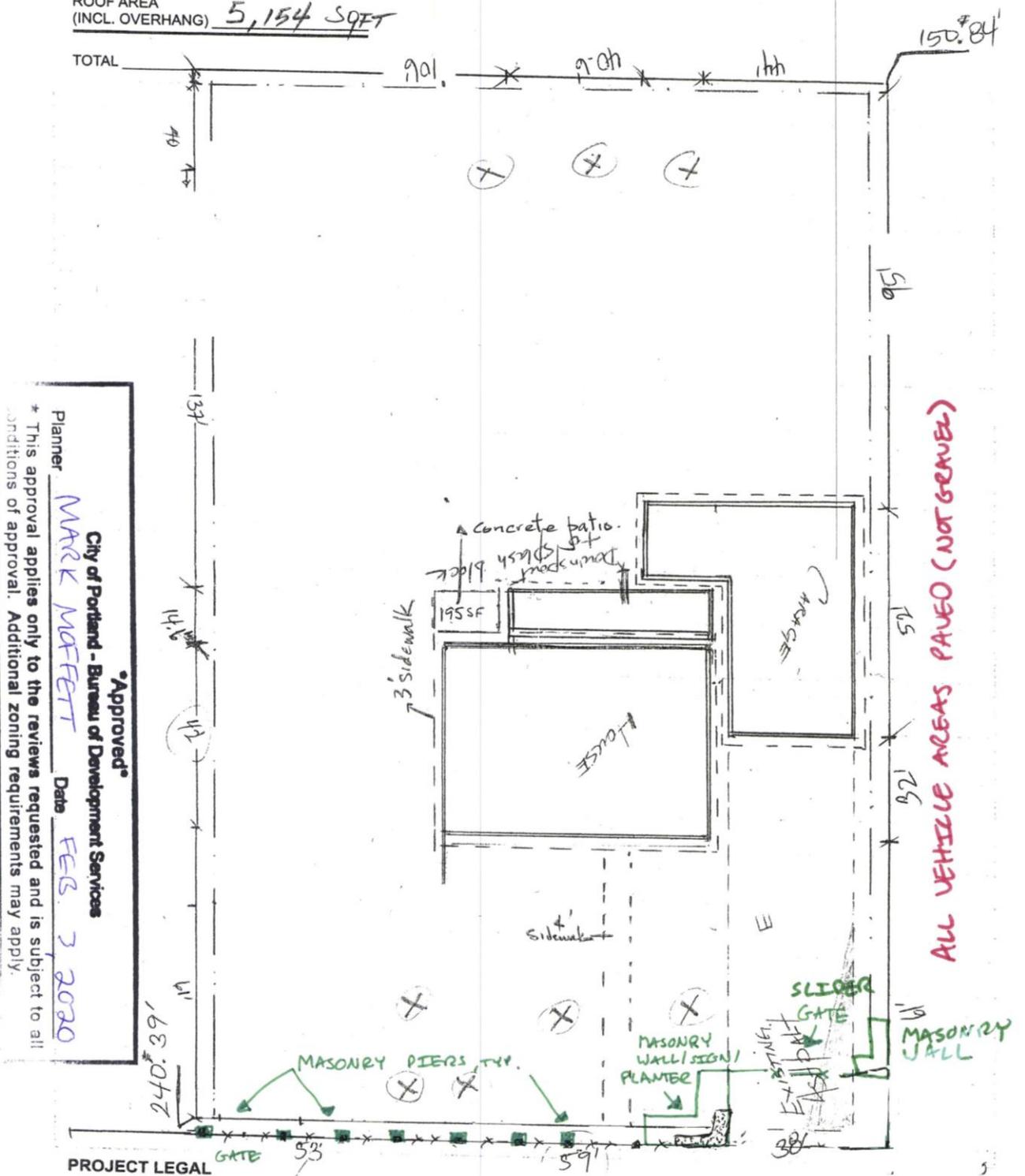
BUILDING COVERAGE

BUILDING FOOTPRINT

LOT AREA



TOTAL



ALL VEHICLE AREAS PAVED (NOT GRAVEL)

Planner MARK WATFERT Date FEB 3 2020
City of Portland - Bureau of Development Services
Approved
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

PROJECT LEGAL

SE 174TH AVE.

LU 19-255933 AD Exhibit C.1

