



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

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Date: April 13, 2020
To: Interested Person
From: Rodney Jennings, Land Use Services
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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 20-118923 AD

GENERAL INFORMATION

Applicant: Dave Spitzer, DMS Architects
2325 NE 19th Ave.
Portland, OR 97212
(503) 335-9040, dave@dmsarchitects.com

Property Owner: Matthew Kimber
5228 SE 70th Ave
Portland, OR 97206

Site Address: 5228 SE 70TH AVE

Legal Description: BLOCK 18 S 1/2 OF LOT 10 W 10' OF S 1/2 OF LOT 11, FIRLAND
Tax Account No.: R282503410
State ID No.: 1S2E17BD 04000
Quarter Section: 3537

Neighborhood: Mt. Scott-Arleta, contact Jacob Brostoff at msanalandusechair@gmail.com.

Business District: None
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010 x313.

Zoning: **R2.5a** (Single-Dwelling Residential 2,500 base zone with 'a' or Alternative Design Density overlay zone)

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

PROPOSAL: In 1993 a pole barn was constructed behind the house at 5228 SE 70th Avenue, with the intention of providing boat storage space. Since that time an interior upper floor was added to the building, originally as an unheated storage loft that was later converted to living

space. The building was converted to a garage and living space in 1997, but without a legal kitchen the structure was not considered a dwelling unit separate from the house. In 2009, a building permit and an Adjustment to the parking space location were requested to legalize the conversion of the former garage into a shallow storage space with the remainder of the interior converted into an Accessory Dwelling Unit (ADU). The size limitation for the ADU was not met so the applicant removed the kitchen from the building permit drawings and proposal. Although the prior Adjustment (LU 09-103100 AD) granted conversion of the garage into a shallow storage space subject to conditions of approval, the kitchen element was removed from the 2009 building permit and so no ADU was ever permitted.

Today the applicant seeks to legalize a kitchen inside the detached structure behind the house, thereby converting the existing detached “living area” into a legal ADU. Size regulations limit the maximum size of the ADU to 75% of the living area of the house or 800 square feet, whichever is less (33.250.040.C.3). Because the existing house has only 998 square feet of living area, the maximum size limit is 748.5 square feet ($998 \times 0.75 = 748.5$). As proposed, excluding the shallow storage space accessible only from the outside of the structure through the former garage door, the ADU includes 939.5 square feet of living space. Therefore, in order to install a legal kitchen inside the detached structure behind the house at 5228 SE 70th Avenue and convert it from living area to an ADU, the applicant has requested an Adjustment to increase the maximum size of an ADU from 748.5 to 939.5 square feet.

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**. The Adjustments chapter (33.805) includes the full text of the approval criteria and can be found at www.portlandoregon.gov/zoningcode, or please contact the planner directly.

ANALYSIS

Site and Vicinity: The subject site is a corner lot of 3,750 square feet located in the Mt. Scott-Arleta neighborhood. The original main house and front lot line are oriented to the west along the SE 70th Avenue frontage. The side of the main house and the front of the detached accessory structure both face the longer street lot line along SE Mitchell Court, south of the property.

The original house is 1.5 stories in height and the detached accessory structure is 2 stories tall. Because of the similar scale and massing of the two structures, and with different paint colors on the respective buildings, the buildings look like two distinct houses. The west side wall of the detached accessory structure comes within only a few feet of the rear wall of the original main house, such that neither structure has the typical rear yard space found on most other home sites in the neighborhood.

The surrounding area includes predominantly single-dwelling homes from the streetcar era. Commercial, mixed-use and multi-dwelling uses are found within a few blocks of the site to the east along SE 72nd Avenue and to the north along SE Foster Road.

All abutting streets are improved with paving and curbed roadways with on-street parking and concrete public sidewalks. Both SE 70th Avenue and SE Mitchell Court are designated as Local Service Streets for all modes in the City of Portland Transportation System Plan.

Zoning: The site is mapped with the Single-Dwelling Residential 2,500 (R2.5) base zone, and the Alternative Design Density ‘a’ overlay zone. The R2.5 zone is intended to provide land for single-dwelling housing, with regulations that seek to preserve and enhance the overall residential character of the area. The ‘a’ overlay zone provides additional density for some projects in exchange for meeting additional design requirements, but is not relevant to the current proposal.

Land Use History: City records indicate one prior land use reviews was approved on the subject site. In 2009, an Adjustment was approved with conditions to allow the required 18 foot deep on-site parking space to encroach within the side setback along SE Mitchell Court (LU 09-103100 AD). A condition of approval (Condition B) required the applicant to obtain a Zoning Permit that documented removal of the chain link fence and its replacement with a wooden gate that rolls sideways (east to west) rather than swinging out onto the street or into the proposed parking space. The wooden gate was required to be of materials that visually match the existing fence along the east property line. Condition C required that a total of three, one gallon shrubs be planted to the east of the proposed parking space and a total of three, one gallon shrubs be planted in the landscaped area to the west of the driveway entrance. These shrubs were required to grow to at least three feet in height.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **March 4, 2020**. The following Bureaus have responded with no issues or concerns:

Portland Bureau of Transportation (PBOT) has reviewed the proposal and provided detailed comments and findings, but no objections, concerns or requested conditions of approval regarding the requested Adjustment. No right-of-way improvements or street dedications will be required. Exhibit E.2 contains PBOT staff contact and additional information.

The following agencies have responded either with no concerns, or with standard advisory language about their regulations that will apply at the time of building permit review:

- Bureau of Environmental Services (Exhibit E.1);
- Life Safety Section of the Bureau of Development Services (BDS) (Exhibit E.3);
- Fire Bureau (Exhibit E4); and
- Site Development Section of BDS (Exhibit E.5).

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (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 applicant has requested an Adjustment to increase the maximum allowed size of an ADU from 748.5 square feet to 939.5 square feet. This Adjustment is necessary to legalize a kitchen in the existing detached accessory structure behind the main house, which given the limited size of the main house would result in an ADU with a living area more than 75% greater than the main house.

The purpose of the ADU maximum size limitations, stated in Zoning Code Section 33.205.040.A, is as follows:

Purpose standards for creating accessory dwelling units address the following purposes:

- Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential areas;
- Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;
- Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and
- Provide adequate flexibility to site buildings so that they fit the topography of sites.

The detached accessory structure in question is already in place on the site, having been originally permitted in 1993 as a pole barn. Since that time, an interior mezzanine or loft was added to the building, and in 1997 a permit was obtained to create legal living area and a garage in the structure. The appearance, scale and placement of the structure, therefore, already have been an established part of the site's appearance and character for over 20 years.

Portland's residential zones seek to preserve the overall desired residential character of R2.5-zoned neighborhoods. Livability is addressed with development standards and use regulations that ensure a primary focus of providing housing. Since the only changes to the site and neighborhood with this proposal involve adding a kitchen to the interior of the existing accessory structure, and because a new dwelling unit is being created, the increased ADU size should not impact livability or desired character of the area.

However, with regards to the appearance and therefore the livability and character of the area, BDS staff is concerned that prior conditions of approval from the last Adjustment on this site in 2009 may not be met. Specifically, conditions from the prior approved Adjustment (LU 09-103100 AD) required modifications to the fencing and gate on the site (Condition B), as well as the planting of six new shrubs on either side of the driveway (Condition C). It does not appear that the required six shrubs were installed. It is also unclear if the fencing and gate on the property were ever modified as required as these elements are not shown on the submitted site plan (Exhibit C.1), and no fence or gate elevations have been provided. Therefore, in order to ensure that the livability and desired character concerns previously addressed on this site with conditions of approval are implemented while legalizing the interior kitchen and ADU, a condition of approval will require the applicant to document conformance with conditions B and C of LU 09-103100 AD as part of the building permit review for the requested ADU. These prior conditions of approval referenced the need for a *zoning* permit to demonstrate compliance. However, because the establishment of an ADU within the accessory structure requires a *building* permit, not a *zoning* permit, the new condition of approval will require a *building* permit to demonstrate conformance with the prior Conditions B and C.

There are no changes to the building scale or placement of structures in this proposal. The detached accessory structure which is the subject of this review was originally constructed in 1993, and no exterior changes are proposed. Both units on the property share the single driveway and yard area surrounding the two buildings.

The proposed ADU, even though it exceeds the maximum size limitation, is still smaller in size (939.5 square feet) than the main house (998 square feet). The site is flat and without topographical challenges.

Therefore, with a condition of approval ensuring that prior conditions of approval regarding the fencing, gates and shrubbery on the site are met during the building permit review process for the ADU, the relevant purpose is met and 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:

For the reasons noted above under findings for Criterion A, and with the noted condition of approval, 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: As discussed above in response to Criterion A, with the exception of the required condition to ensure prior conditions of approval have been met, 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 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 proposes to legalize an interior kitchen inside an existing detached accessory structure located behind the main house at 5228 SE 70th Avenue. Because a new ADU is proposed, and given the limited size of the original main house, an Adjustment to the ADU maximum size standard is required. With no exterior changes proposed, and with the fencing and landscaping issues from a prior Adjustment on the site being addressed through a required condition, the relevant criteria can be met and the request must be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to increase the maximum allowed living area for a detached ADU behind the home at 5228 SE 70th Avenue from 748.5 square feet to 939.5 square feet (Zoning Coe Section 33.205.040.C.3).

This approval is granted based on the approved site plan and floor plans (Exhibits C.1 and C.2), and subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B) must be noted on each of the four required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 20-118923 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. As part of the building permit review process to legalize the ADU, the applicant must document that the gate, fence and shrub requirements from conditions B and C of LU 09-103100 AD are or will be met on the site prior to final inspection of the required ADU building permit. With a building permit already required for the ADU, no separate zoning permit is required to demonstrate conformance with these two prior conditions.

Staff Planner: Mark Moffett

Decision rendered by: M. MOFFETT **on April 8, 2020.**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 13, 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 February 14, 2020, and was determined to be complete on March 2, 2020.

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 February 14, 2020.

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 June 30, 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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received by 4:30 PM on April 27, 2020. **Towards promoting social distancing during the COVID-19 pandemic, the completed appeal application form must be e-mailed to BDSLUSTeamTech@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. An appeal fee of April 28, 2020 will be charged. Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations for the appeal of Type II and IIX decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in the file, please contact the planner listed on the front of this decision. The planner can provide some information over the phone. Please note that due to COVID-19 and limited accessibility to files, only digital copies of material in the file are available for viewing. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <https://www.portlandoregon.gov/citycode/28197>.

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 April 28, 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:

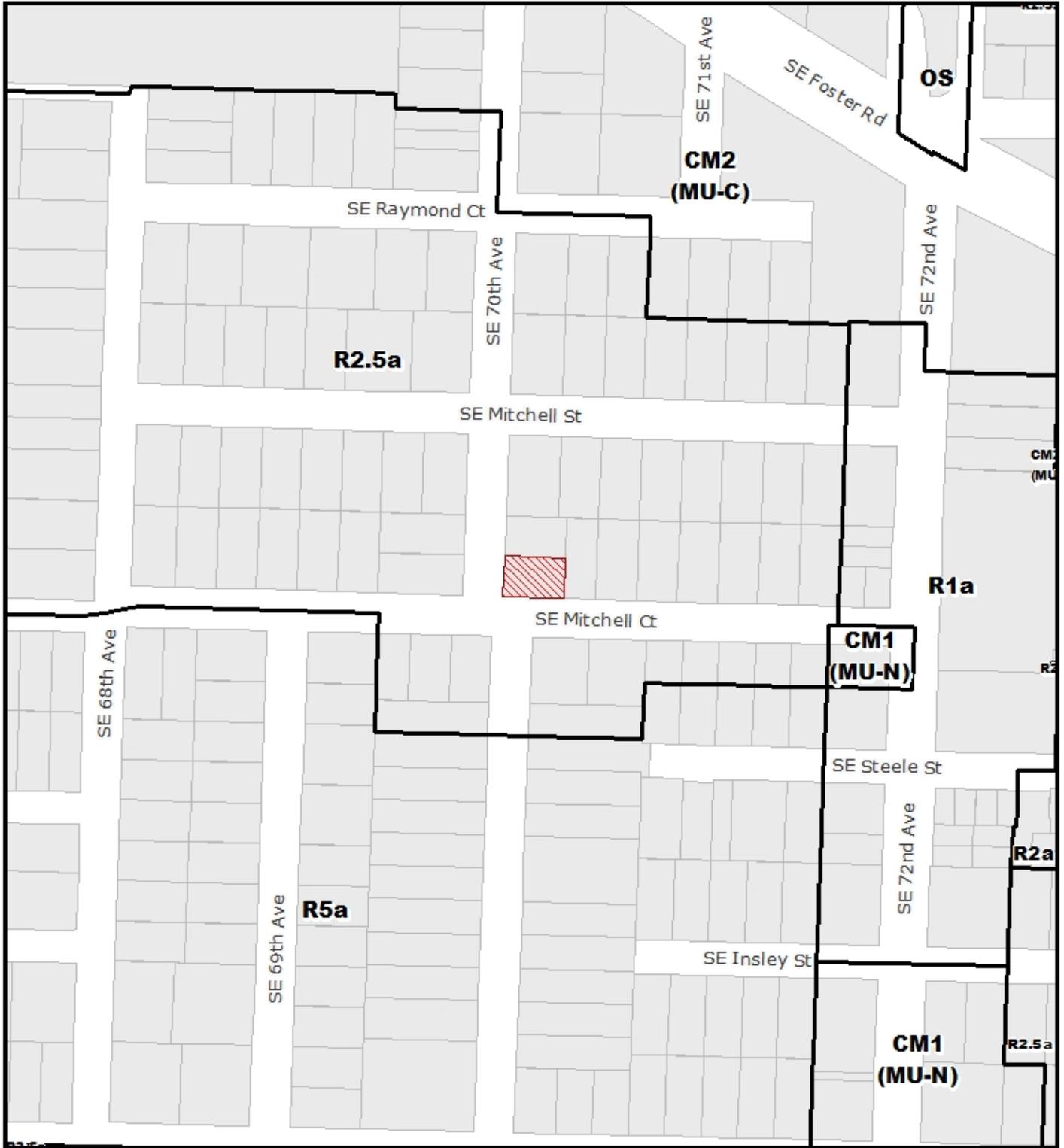
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statements
 - 1. Original narrative
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Ground and Second Floor Plans (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Development Review Section, Portland Transportation
 - 3. Life Safety Section of BDS
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
- F. Correspondence (none received at time of decision mailing)
- G. Other:
 - 1. Original Land Use Review application form and receipt
 - 2. Decision language from LU 103100 AD

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 20 - 118923 AD
1/4 Section	3537
Scale	1 inch = 163 feet
State ID	1S2E17BD 4000
Exhibit	B Feb 20, 2020

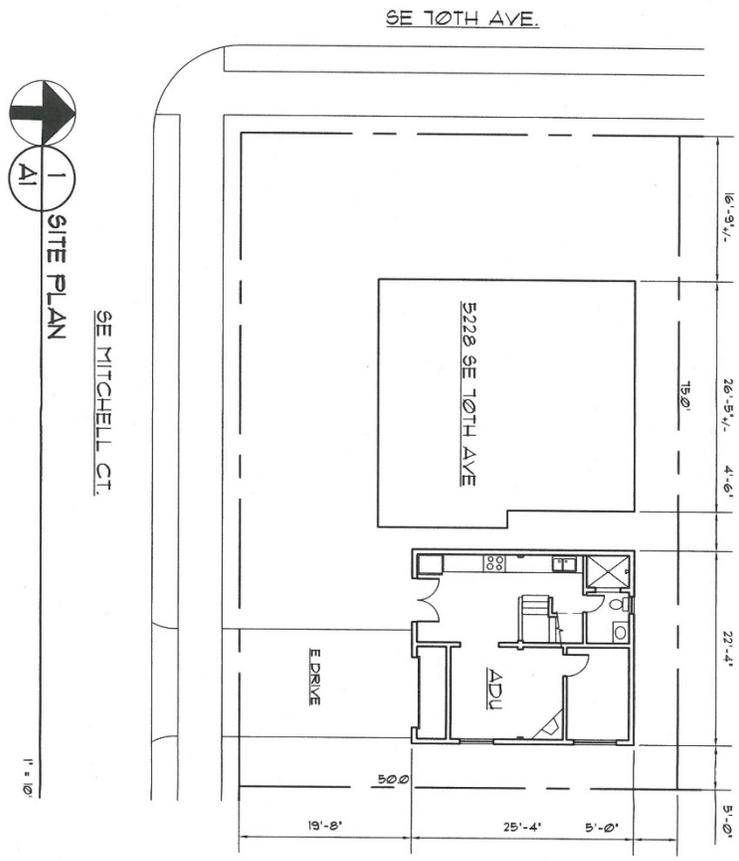


Exhibit C.1
 LA 20 - 118923 AD

