



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

Ted Wheeler, Mayor
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Date: June 5, 2020
To: Interested Person
From: Amanda Rhoads, Land Use Services
503-823-7837 / Amanda.Rhoads@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 20-135332 AD – ADJUSTMENT TO LEGALIZE LOCATION OF ACCESSORY RECREATIONAL VEHICLE

GENERAL INFORMATION

Applicant/Owner: Lavaiina Alapai
4436 NE 56th Ave | Portland, OR 97218-2167
503-806-3328 | lavaalapai@gmail.com

Site Address: 4436 NE 56TH AVE

Legal Description: TL 300 0.11 ACRES, SECTION 19 1N 2E
Tax Account No.: R942194240
State ID No.: 1N2E19DB 00300
Quarter Section: 2636

Neighborhood: Cully, contact David Sweet at 503-493-9434.
Business District: None
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-2778.

Plan District: None
Zoning: R7h – Single-Dwelling Residential 7,000 with “h” Aircraft Landing Overlay Zoning

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

PROPOSAL:

The applicant’s property is a corner lot, with the house front door facing the side street, NE 56th Ave. However, the technical front lot line for the site is along NE Prescott Ave. Zoning Code Section 33.266.150.E states that accessory recreational vehicles “may be parked in other allowed parking areas, except they may not be parked or stored between the front lot line and the building line.” The applicant has placed a tiny house on wheels (THOW), which is classified as an accessory recreational vehicle in the Zoning Code, in the yard area on a gravel pad

between the house and the NE Prescott Ave right-of-way. To legalize the location of this THOW on area that is not vehicle area, and between the front lot line and the building line, the applicant has requested an Adjustment to Zoning Code Section 33.266.150.E.

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 5,000-square-foot site has a one-story house constructed in 1946. The house is at the south end of the site, with the front door facing onto the side street, NE 56th Ave. No parking is provided onsite. NE 56th Ave is a gravel road, with no built sidewalk. Currently, the property has an oversized fence running the length of both NE Prescott St and NE 56th Ave which will be modified to meet Zoning Code regulations. Similarly, a modest shed structure currently located within the front setback near the large tree on the site will be relocated out of the setbacks and the tree's root protection zone.

NE 56th Ave is a Local Service Traffic Street, Local Service Transit Street, Local Service Bikeway, Local Service Walkway, Minor Emergency Response Street, and a Local Service Truck Street. NE Prescott St is a Neighborhood Collector Street, Transit Access Street, City Bikeway, City Walkway, Major Emergency Response Street, and a Local Service Truck Street.

Zoning: The Residential 7,000 (R7) 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 4,200 square feet, with a minimum width and depth dimensions of 40 feet and 55 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 7,000 square feet of site area.

The Aircraft Landing Zone "h" overlay provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. A height contour map is available for review in the Development Services Center. In the residential zones, structures are regulated by the base zone height (in this case the R7 zone height) rather than the height limits of "h".

Land Use History: City records indicate no prior land use reviews for the property.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **May 11, 2020**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1);
- Bureau of Transportation (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5);
- Bureau of Parks – Urban Forestry Division (Exhibit E.6).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 11, 2020. One written response in support of the proposal was received from notified neighbors.

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 purpose for the regulations for vehicles in residential zones is stated in Zoning Code Section 33.266.150.A:

A. Purpose. *The regulations of this section are intended to reinforce community standards and to promote an attractive residential appearance in the City's neighborhoods. The size, number, and location of parked and stored vehicles in residential zones are regulated in order to preserve the appearance of neighborhoods as predominantly residential in character. Since parking lots and outdoor storage are not intended to be primary activities in residential zones, these activities should constitute no more than a minimal intrusion on any residential area.*

The request is to locate a tiny house on wheels (THOW) on a part of the site that is not vehicle area and is located between the front property line and the front building wall of the house. THOWs are considered to be accessory recreational vehicles, which are defined in Zoning Code Section 33.910 as the following:

Accessory recreational vehicle. *Accessory recreational vehicle includes nonmotorized vehicles designed for human occupancy on an intermittent basis such as vacation trailers and fifth-wheel trailers. A camper is considered an accessory recreational vehicle when it is standing alone. Accessory recreational vehicle also includes vehicles designed for off-road use, such as off-road vehicles, dune buggies, and recreational boats.*

In this case, the request is specific to the tiny house on wheels proposed, as shown in Exhibits C.2 and C.3. In this case, the subject site has no off-street parking. Therefore, no other vehicles will be located on the site at the same time as the THOW. Therefore, the number of parked and stored vehicles will be limited to only this THOW. The scale of the THOW is limited, at 8 feet wide, 18 feet long, and 13 feet 4 inches from grade to the top peak of the roof. Further, the THOW is centered in the middle of the yard, outside of the 15-foot front setback, and between 15 feet and 20 feet from the side property lines. The THOW looks like a small Accessory Dwelling Unit, and is clearly smaller than the primary house. The presence of the THOW does not impact or lessen the residential character of the area.

The location of the THOW is technically between the front property line (along NE Prescott St) and the house, but as a corner lot, the house main entrance faces the side street (NE 56th Ave) and the house is pulled back close to the rear lot line. The "front" yard (between the house and NE Prescott St) functions as the backyard or only yard area to the site, excepting a graveled area south of the house that is roughly 16 feet wide, for about one-half the width of the property.

Corner lots where the house faces the side streets are granted certain allowances; for example, as long as fences are lower on the side street where the main entrance of the

house faces, they can be taller along the technical front property line than would otherwise be allowed. The owner is planning to use this provision for the existing fence, such that the current side fence will be cut down to the lower height (not to exceed 3.5 feet) along NE 56th Ave. Enabling the site to host a THOW in the yard between the house and the tall fence along NE Prescott continues this pattern of treating corner lots differently, and allows full use of the most usable part of the yard.

In this case, given the lack of vehicle area on the site, the small size and low height of the THOW, the location in the center of the yard, and that the yard where the THOW is located does not function as a front yard, allowing this THOW in the proposed location would equally preserve the appearance of the residential neighborhood.

For these reasons, 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: As the findings above conclude, the limited size and height of the THOW, its central location in the yard, and its appearance as a wooden residential unit rather than a recreational vehicle ensure that allowing the THOW in its proposed location will not significantly detract from the livability or appearance of the residential area. The lack of vehicle area on the site and the taller fence along most of the NE Prescott frontage will prevent visual clutter. 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: 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

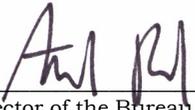
The applicant has demonstrated that allowing the location of the tiny house on wheels (THOW), considered an accessory recreational vehicle per the Zoning Code, to be located between the front property line and the building wall, and not located on vehicle area, equally meets the purpose of the setback development standard. The code waiver will not adversely impact the livability or appearance of the nearby area; and will fit in with the existing and historic development pattern. Additionally, the proposed THOW 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 Zoning Code Section 33.266.150.E to legalize the location of this Tiny House On Wheels on an area that is not vehicle area, and between the front lot line and the building line. Approval is per the approved plans, Exhibits C.1 through C.3, 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 20-135332 AD."

Staff Planner: Amanda Rhoads

Decision rendered by:  on June 2, 2020
By authority of the Director of the Bureau of Development Services

Decision mailed: June 5, 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 April 3, 2020, and was determined to be complete on May 7, 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 April 3, 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: September 4, 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 June 19, 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 \$250 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 **June 19, 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:

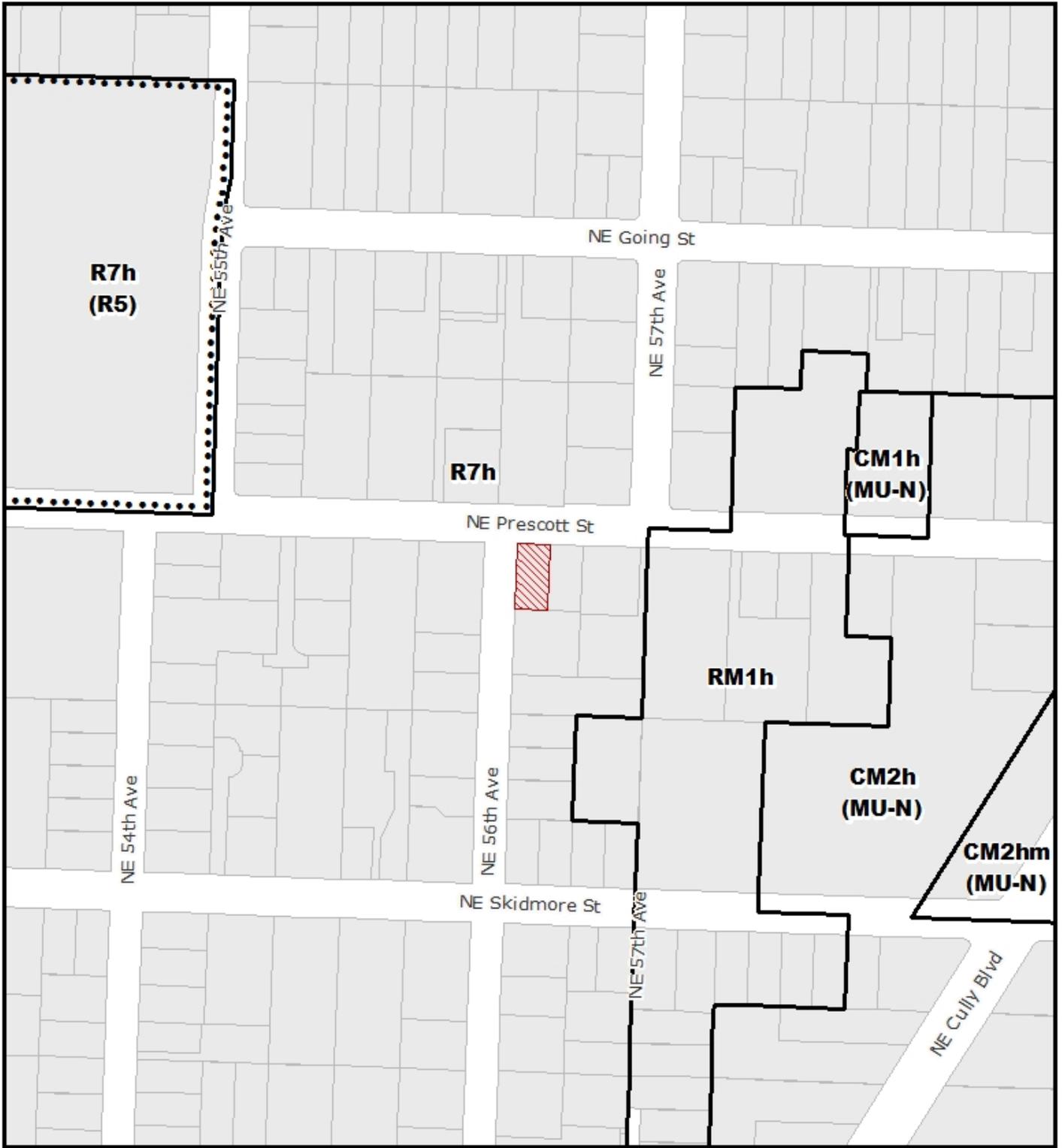
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Applicant Narrative (superseded in part by A.4)
 2. Initial Site Plan (superseded by C.1)
 3. Site Photos
 4. Updated Applicant Narrative, June 2, 2020
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. THOW Front Elevation (attached)
 3. THOW Side Elevation (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Bureau of Transportation
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of BDS
 6. Bureau of Parks, Urban Forestry Division
- F. Correspondence:
 1. Melissa and Matt Kirchoffer-Talbott, May 14, 2020, in support
- G. Other:
 1. Original Land Use Application and Receipt
 2. Incomplete Letter, April 17, 2020

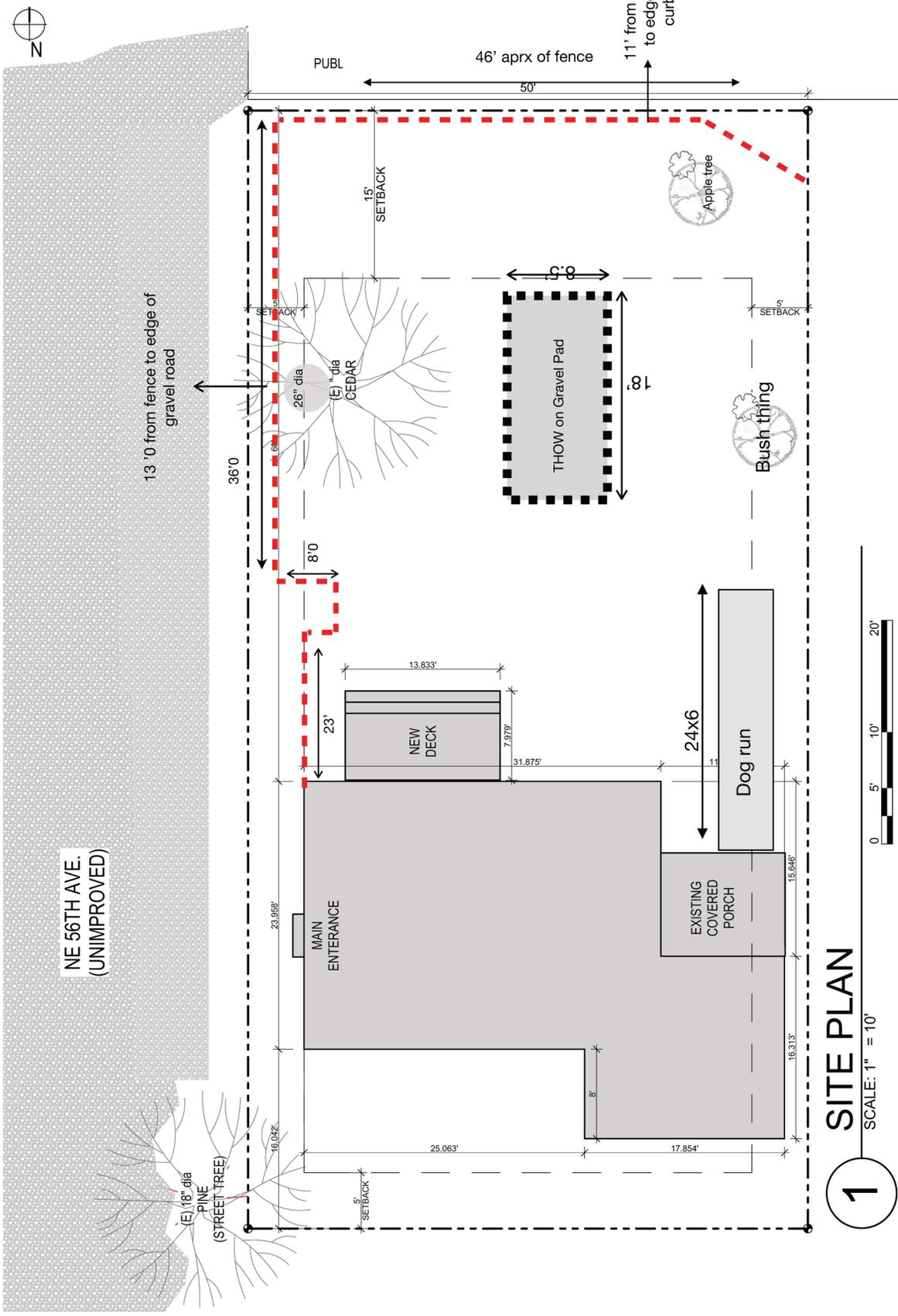
The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING 
NORTH

 Site

File No.	LU 20 - 135332 AD
1/4 Section	2636
Scale	1 inch = 200 feet
State ID	1N2E19DB 300
Exhibit	B Apr 21, 2020



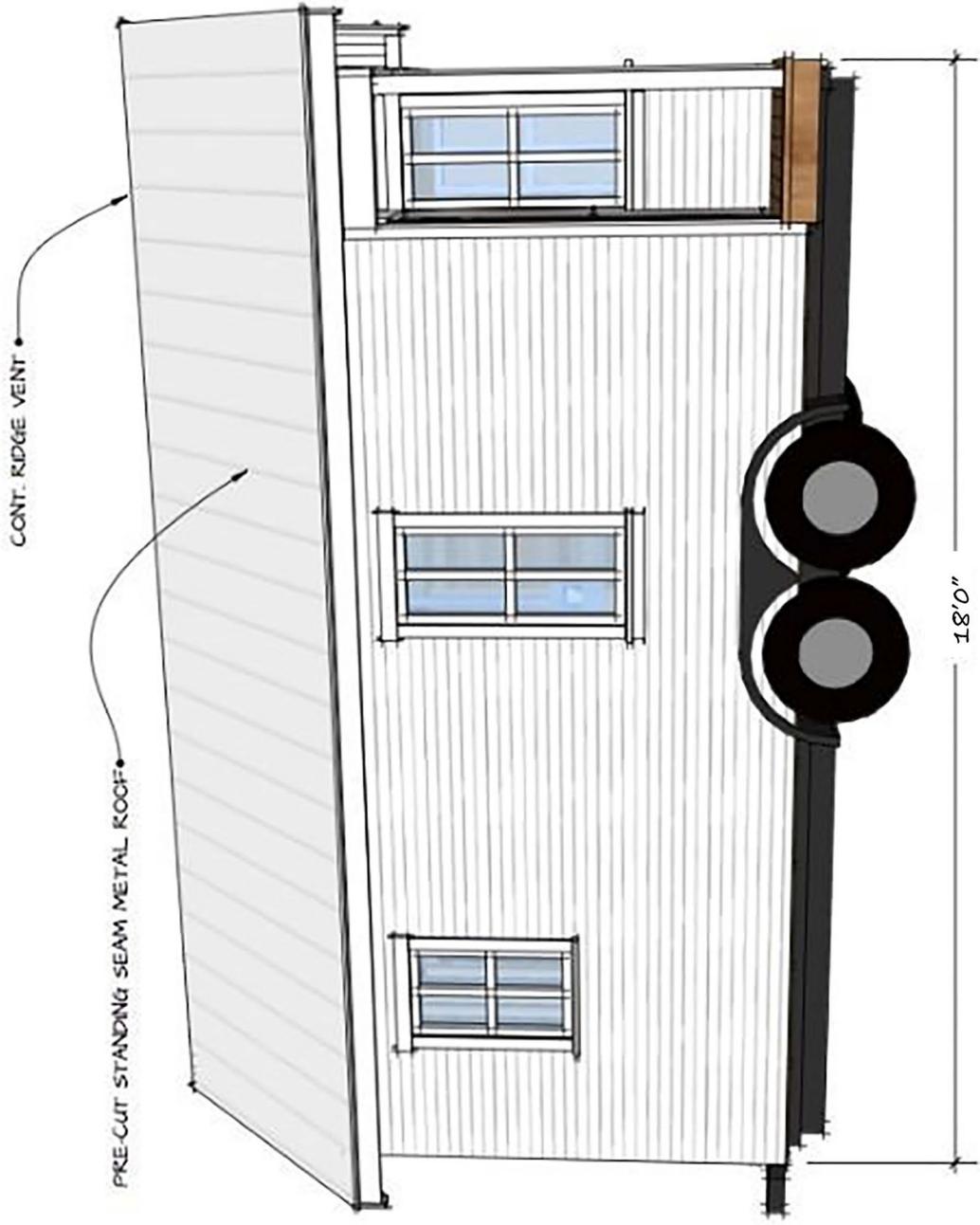
SITE PLAN

SCALE: 1" = 10'

1



1 FRONT ELEVATION
NO SCALE - ISOMETRIC



2 LEFT ELEVATION
NO SCALE - ISOMETRIC