



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: June 29, 2020
To: Interested Person
From: Marguerite Feuersanger, Land Use Services
503-823-7619 / Marguerite.Feuersanger@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 20-119711 AD

GENERAL INFORMATION

Applicant: Mildred White
BAMA Architecture & Design LLC
7350 SE Milwaukie Ave
Portland, OR 97202
mildred@bamadesign.com

Owner: Maria C B Salmon
P O Box 19496
Portland, OR 97280

Site Address: 2707 SE 85th Avenue

Legal Description: BLOCK 4 E 10' OF LOT 2 LOT 3&4, TABOR VIEW
Tax Account No.: R819200540
State ID No.: 1S2E09BB 06900
Quarter Section: 3339

Neighborhood: Powellhurst-Gilbert, contact at pgnaboard@gmail.com
Business District: Eighty-Second Ave of Roses Business Association, contact at info@82ndave.org
District Coalition: East Portland Community Office, contact at 503-823-4550.

Zoning: R2a: Multi-Dwelling Residential 2,000 Zone (R2) and within the Alternative Design Density Overlay Zone (a)

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

Proposal: The applicant requests an Adjustment to reduce the front building setback for an existing duplex, from 10 feet to 7 feet (Section 33.120.220). This Adjustment request results

from the applicant's initial request to separate the existing 6,000 square-foot lot into two properties (Lot Consolidation and Property Line Adjustment #19-214545 PR).

The subject site is a corner lot, having a front lot line along SE Clinton Street and a side lot line along SE 85th Avenue; the duplex location currently meets the minimum 10-foot front setback along SE Clinton and the minimum 5-foot side setback along SE 85th Avenue. The proposed separation, however, results in the front lot line for the subject site now being along SE 85th Avenue for the duplex. Because the existing duplex is located only 7 feet from the property line along SE 85th Avenue, an Adjustment is requested to reduce the minimum front building setback from 10 feet to 7 feet. A survey drawing is attached showing the proposed separation: Tract 2 is duplex property with frontage on SE 85th Avenue; and Tract 1 is a vacant property with frontage on both SE Clinton Street and SE 85th Avenue.

The applicant is proposing two rows of evergreen shrubs within the front setback from SE 85th Avenue, shown on the attached site plan. Lawn is proposed within the remaining front setback area on the property and within the adjacent unimproved SE 85th Avenue right-of-way. The existing driveway along SE 85th Avenue will remain, and no changes are proposed to the exterior of the duplex structure. Existing shrubs and trees on the proposed Tract 2 will remain.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are found in Section 33.805.040, Adjustments.

ANALYSIS

Site and Vicinity: The subject site is 6,000 square feet in area and is located at the southwest corner of SE Clinton Street and SE 85th Avenue. Southeast 85th Avenue is improved with a curb and sidewalk along the site's frontage, but SE Clinton Street is a gravel road without curbs or sidewalks. A duplex is located at the south portion of the site while the north portion of the site is vacant. Vehicle access to the duplex's two garages is from SE 85th Avenue. Tall evergreen shrubs line the north and south walls of the duplex. Three fir trees are located at the south property line.

The surrounding area is a mix of single dwelling houses, rowhouses, duplexes and apartments. The site is near two commercial main streets: SE Division Street is roughly 500 feet north of the site and SE 82nd Avenue is roughly 800 feet west of the site.

Zoning: The R2 zone is a low-density multi-dwelling zone. It allows approximately 21.8 dwelling units per acre. Density may be as high as 32 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one to three story buildings, but at a slightly larger amount of building coverage than the R3 zone. The major types of new development will be duplexes, townhouses, rowhouses and garden apartments. These housing types are intended to be compatible with adjacent houses. Generally, R2 zoning will be applied near Major City Traffic Streets, Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.

The Alternative Design Density Overlay Zone (a) purpose is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements.

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 **May 27, 2020**. The following Bureaus have responded with no issues or concerns:

- Water Bureau (Exhibit E-3)
- Fire Bureau (Exhibit E-4)
- Site Development Section of BDS (Exhibit E-5)
- Life Safety Plans Examiner of BDS (Exhibit E-6)

The Bureau of Environmental Services (BES) responded with the following comment: BES does not object to the requested adjustment review. No development is proposed as part of the adjustment, therefore the requirements of the Stormwater Management Manual (SWMM) are not triggered. Furthermore, it does not appear that the adjustment will impact the location of the existing stormwater facility or sanitary system for the existing duplex to remain on Tract 2, nor will the adjustment preclude the construction of adequately sized stormwater management facilities for Tract 1 (Exhibit E-1).

The Bureau of Transportation (PBOT) provided information about street designations and conditions adjacent to the site and has no objection to the proposed Adjustment (Exhibit E-2).

Neighborhood Review: No written responses regarding the Notice of Proposal were received from either the Neighborhood Association or notified property owners.

ZONING CODE APPROVAL CRITERIA

Adjustments

Section 33.805.010 Purpose 33.805.010 Purpose 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. They also allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

Section 33.805.040 Approval Criteria

The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: There are several purposes for the setback regulations of the R2 Zone. They are listed separately below, followed by findings addressing how they are equally or better met by the proposal.

Purpose: *The building setback regulations serve several purposes:*

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

The Water Bureau, Fire Bureau and Life Safety Section of BDS have no objection to approval of the Adjustments (Exhibits E-3, E-4 and E-6). PBOT responded with no concerns with the requested Adjustments (Exhibit E.2).

The proposal provides adequate separation that meets zoning code requirements at the side and rear setbacks. The proposed reduction is limited to the front setback along SE 85th Avenue and this condition results in adequate light and air reaching the property. Because the reduction is limited to the front setback, there are no impacts related to light and air on adjacent properties. This part of the criterion is met.

- *They reflect the general building scale and placement of multi-dwelling development in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*

The surrounding residential neighborhood is characterized by a mix of single dwelling houses, duplexes and rowhouses located on lots as small as 2,000 square feet and as large as 20,000 square feet in area. Residential buildings along SE 85th Avenue are set back between 10 and 19 feet from their respective front lot lines. Although the existing duplex is set back only 7 feet, this reduced setback applies to only a portion of the street-facing facades, with the attached garages being set back 18 feet; the portion of the building wall set back 18 feet accounts for 50 percent of the length of the duplex wall facing the street. The effect of this minor intrusion into the front setback is minimal, given that the side and rear setbacks of the duplex meet or exceed the minimum setbacks thereby maintaining a reasonable physical relationship between other residences. Further, the duplex is an established building in the neighborhood. Because of these reasons, the proposal continues to meet these purpose statements. This part of the criterion is met.

- *They promote options for privacy for neighboring properties;*

The side and rear setbacks of the duplex meet or exceed the minimum setbacks, which will promote privacy for existing and future adjacent residences. The proposal would reduce the front setback at SE 85th Avenue for only half of the length of the duplex while the remaining portion of the existing duplex is set back 18 feet. In addition, the proposal affects only the street setback. These conditions do not impact privacy for neighboring properties. As such, this part of the criterion is met.

- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*

For the existing duplex, the west rear setback is nearly 10 feet and the existing south side setback is 5 feet. These existing setbacks meet current requirements and are not proposed to change. As part of the proposed Property Line Adjustment to separate the site into two properties, the new north side setback is proposed at 15 feet and the new east front setback is proposed at 7 feet for one-half of the length of the duplex and 18 feet for the remaining half of the length of the duplex. The new north side setback exceeds the current 5-foot side setback requirement.

At issue is the new front setback. The minimum front setback requirement for the R2 zone is 10 feet. The proposed front setback is 7 feet for one-half of the length of the duplex. This reduced setback is minimized because the other half of the duplex length is set back 18 feet. In addition, there is approximately 4 feet of unimproved right-of-way adjacent to the front property line along SE 85th Avenue. This right of way will be planted with grass giving the appearance of a larger front setback. Because of these reasons, the proposal continues to meet this purpose statement. This part of the criterion is met.

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

The Adjustment request is for an existing residential duplex which currently has its front lot line along SE Clinton Street and a side street lot line along SE 85th Avenue. The duplex corner lot is relative flat; the applicant plans to separate the north portion which will result in a front lot line for the subject site on which the existing duplex is located now being located along SE 85th Avenue. After the separation, the duplex will

no longer have frontage along SE Clinton Street. Thus, flexibility of site design, topography and architectural diversity do not apply to the proposal.

The duplex is set back 7 feet from the street lot line of SE 85th Avenue. The new side (north) setback will be nearly 15 feet (while 5 feet is a required minimum setback) and will provide adequate area for required outdoor area. Because of these reasons, the proposal continues to meet this purpose statement. This part of the criterion is met.

Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users.

Neither SE Clinton Street nor SE 85th Avenue is classified as a transit street in the City's Transportation System Plan. This purpose does not apply to the site.

- 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 site is in the R2 residential zone. As discussed in the findings for Criterion A, above, the proposal continues to meet the purposes of setback requirements, most of which directly relate to neighborhood livability and appearance. The duplex is an established residential building in the neighborhood, and no changes are proposed to the structure.

The applicant proposes to maintain all existing trees and shrubs that are located on the new duplex lot (refer to the Site Plan, Exhibit C-1). In addition, the applicant will plant 16 dwarf spruce trees or evergreen shrubs within the reduced front setback areas. The new landscaping will improve the appearance of the existing duplex and contribute to the livability of the residential area. With a condition that the applicant receive final approval of a zoning permit to install this landscaping, 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 does not apply.

- 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 does not apply.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: This request results from the applicant's proposal to create a vacant property north of the existing duplex. No changes are proposed to duplex building, and the applicant proposes to plant evergreen shrubs in the new front setback area, which will improve the appearance of the duplex lot as seen from SE 85th Avenue. As proposed, no impacts are expected. With the condition to plant 16 spruce trees within the front setback area as shown on the Site Plan, Exhibit C-1, 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 requested Adjustment to reduce the front building setback for an existing duplex, from 10 feet to 7 feet (Section 33.120.220) is reasonable, given that the existing R2 zoning allows additional development on the north portion of the site. This Adjustment request results from the applicant's initial request to separate the existing 6,000 square-foot lot into two properties (Lot Consolidation and Property Line Adjustment #19-214545 PR). The former side setback for the duplex will convert to a front setback as a result of the new lot design for the separation of the site.

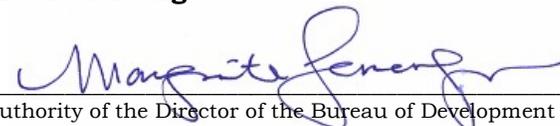
The existing driveway along SE 85th Avenue will remain, and no changes are proposed to the exterior of the duplex structure. The applicant is proposing two rows of evergreen dwarf spruce trees or evergreen shrubs within the front setback from SE 85th Avenue. To fully meet the Adjustment criteria, a condition is needed that requires implementation of this front setback landscape plan. Lawn is proposed within the remaining front setback area on the property and within the adjacent unimproved SE 85th Avenue right-of-way. Existing shrubs and trees on the proposed Tract 2 will remain.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the front building setback for an existing duplex, from 10 feet to 7 feet (Section 33.120.220), per the approved site plan, Exhibits C-1, signed and dated June 25, 2020, subject to the following conditions:

- A. As part of the zoning permit application submittal, the following development-related condition B must be noted on each of the 4 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 20-119711 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Prior to approval of the Lot Consolidation and Property Line Adjustment (#19-214545 PR), the applicant must receive final approval of a Zoning Permit to install 16 small evergreen trees or evergreen shrubs within the reduced front setback area as shown in Exhibit C-1.

Staff Planner: Marguerite Feuersanger

Decision rendered by:  **on June 25, 2020**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 29, 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 18, 2020 and was determined to be complete on May 21, 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 18, 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 18, 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 **July 13, 2020. Towards promoting social distancing during the COVID-19 pandemic, the completed appeal application form must be emailed 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 paper 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 **July 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.

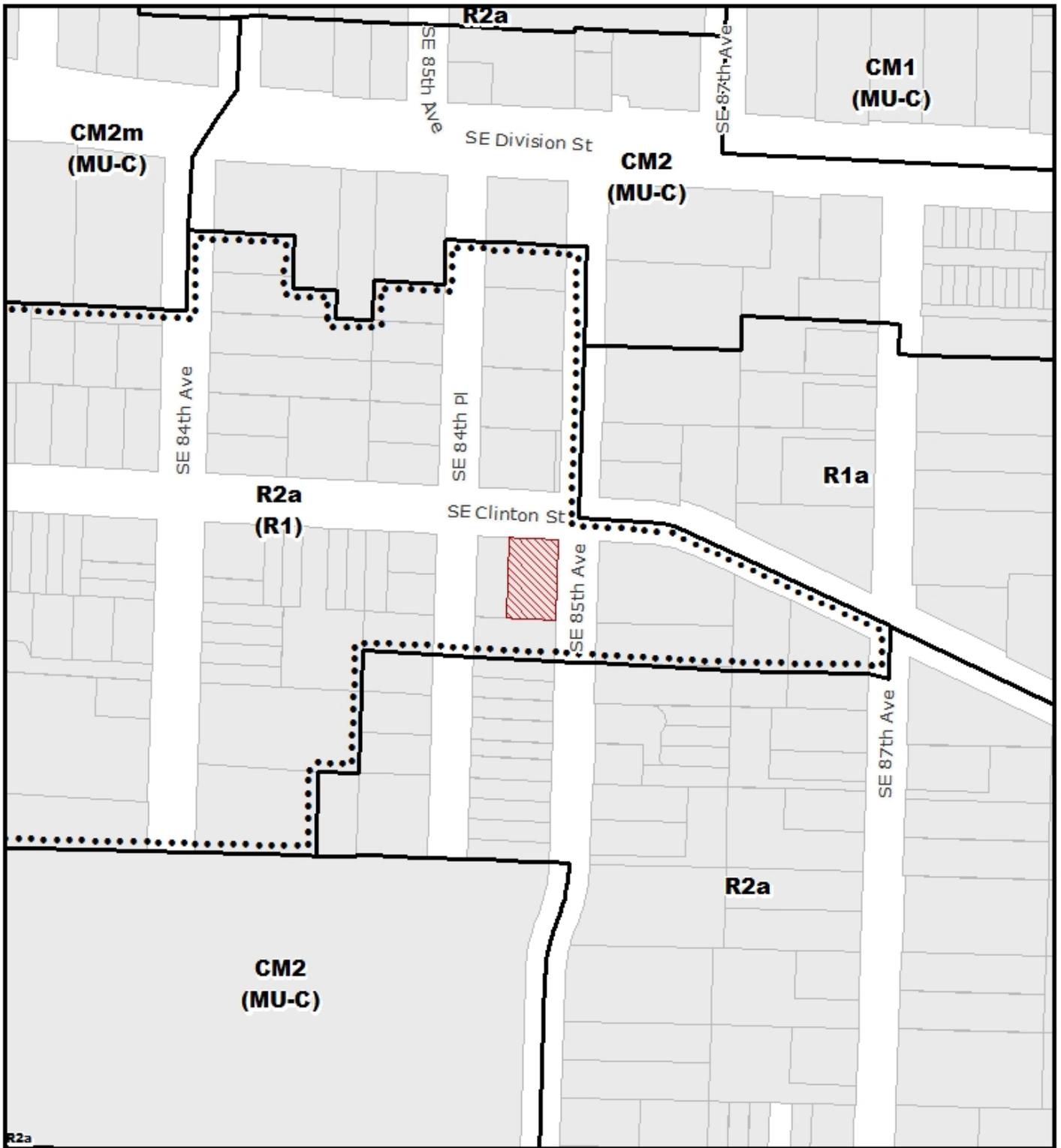
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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 (attached)
 - 2. Existing Conditions Survey
 - 3. Existing Duplex Elevations
- 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. Life Safety Plans Examiner of BDS
- F. Correspondence:
 - None
- G. Other:
 - 1. Original LU Application
 - 2. BDS Letter to Applicant indicating information needed to complete the Land Use Application

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 - 119711 AD
1/4 Section	3339
Scale	1 inch = 163 feet
State ID	1S2E09BB 6900
Exhibit	B Feb 20, 2020

