



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

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Date: June 30, 2020
To: Interested Person
From: Andrew Gulizia, 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 20-140305 AD

GENERAL INFORMATION

Owner/Applicant: Michael Maloney
4390 Sunset Dr.
Lake Oswego, OR 97035

Site Address: SE 52nd Ave. (vacant lot adjacent to 5246 SE Flavel St.)

Legal Description: BLOCK 1 LOT 8, DARLINGTON
Tax Account No.: R197900044
State ID No.: 1S2E19DB 17402
Quarter Section: 3836
Neighborhood: Brentwood-Darlington, contact bdlanduse@gmail.com
Business District: Woodstock Community Business Association, contact at <http://www.woodstockbiz.com/>.
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010x313
Zoning: CM1 – Commercial/Mixed-Use 1
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The applicant proposes to construct a detached, single-dwelling house on each of two vacant lots (Lot 7 and Lot 8). In the CM1 zone, buildings taller than 15 feet must be set back at least 10 feet from lot lines which abut residential zones, and the 10-foot setback must be landscaped with trees and a continuous row of 6-foot-high evergreen shrubs meeting the L3 landscaping standard (Zoning Code Section 33.130.215.B.2.b). Since the east lot line of Lot 8 abuts a residential zone, and the applicant proposes to set the new house back 5 feet from the east lot line, the applicant requests an Adjustment to reduce the minimum building setback requirement from the east lot line from 10 feet to 5 feet and to waive the L3 landscaping required for the setback.

Relevant Approval Criteria: To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The subject site for the proposed Adjustment is Lot 8, a 2,500-square-foot, vacant lot on the south side of SE Flavel Street between SE 52nd and SE 54th Avenues. The adjacent lot to the west (Lot 7) is under the same ownership and is also currently vacant. The property west of Lot 7 is developed with a single-story commercial building and surface parking. Most other properties surrounding the subject site are developed with one-story and two-story houses with varied sizes and building styles.

Zoning: The CM1 zone is a small-scale zone intended for sites in dispersed mixed-use nodes within lower density residential areas, as well as on neighborhood corridors and at the edges of neighborhood centers, town centers and regional centers. This zone allows a mix of commercial and residential uses. The size of commercial uses is limited to minimize impacts on surrounding residential areas. Development is intended to be pedestrian-oriented and compatible with the scale and characteristics of adjacent residentially zoned areas or low-rise commercial areas.

Land Use Review History: There are no prior land use reviews for this site.

Agency Review: A “Notice of Proposal” was sent June 2, 2020. The following Bureaus responded with no concerns about the proposal:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4);
- Site Development Section of BDS (Exhibit E-5); and
- Life Safety Review Section of BDS (Exhibit E-6).

Neighborhood Review: In response to the mailed “Notice of Proposal,” one neighbor submitted an e-mail in support of the application (Exhibit F-1). The neighbor stated the new development would alleviate nuisances associated with the vacant lots.

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated 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 Adjustment request is to reduce the minimum building setback requirement from the east lot line from 10 feet to 5 feet and to waive the L3 landscaping required for the setback. The purpose of the requirement is stated in Zoning Code Section 33.130.215.A:

The required building setbacks promote streetscapes that are consistent with the desired character of the different commercial/mixed use zones. The setbacks promote buildings close to the sidewalk to reinforce a pedestrian orientation and built-up streetscape. The setback requirements for areas that abut residential zones promote commercial/mixed use development that will maintain light, air, and the potential for privacy for adjacent residential zones.

Staff finds the proposed Adjustment equally meets the purpose of the requirement for the following reasons:

- A single-dwelling house is proposed for Lot 8, which is allowed outright in the CM1 zone. Since the abutting properties to the east and south are also developed with single-dwelling houses, the proposal will make Lot 8 appear and function as part of the adjacent residential neighborhood rather than the commercial area. Five-foot-deep side setbacks are typical in single-dwelling residential neighborhoods.
- The house on the abutting lot to the east is set back approximately 6 feet from its west lot line, so the resulting 11 feet of separation between the two homes will preserve access to light and air and allow options for privacy.
- The CM1 zone’s requirement for a 10-foot-deep setback with trees and shrubs is intended to buffer residential property from incompatible nonresidential uses, but the proposal to develop Lot 8 with a house will promote compatibility with the adjacent residential property.

Since staff finds the proposed Adjustment equally meets the purpose of the requirement, approval criterion A 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: Since the site is zoned CM1, the Adjustment Review proposal must be consistent with the classifications of the adjacent streets and the desired character of the area.

Street classifications

The classifications of the adjacent street (SE Flavel Street) in the Transportation Element of the Comprehensive Plan are as follows:

Traffic	Transit	Bikeway	Pedestrianway	Freight
Neighborhood Collector	Transit Access Street	City Bikeway	City Walkway	Local Service

Residential use is allowed outright in the CM1 zone. The proposed Adjustment to the setback requirement will not increase the number of dwelling units and will therefore have no effect on vehicle traffic or the demand for transit, bike, pedestrian, or freight infrastructure. The Portland Bureau of Transportation (PBOT) reviewed the proposal and raised no objections to approval (Exhibit E-2). For these reasons, staff finds the proposal is consistent with the adjacent street classifications.

Desired character of area

“Desired character” is defined in Zoning Code Chapter 33.910. Pursuant to this definition, the desired character of this site is determined by the character statement of the CM1 zone and relevant statements from the area plans which include the site.

CM1 zone

The character statement for the CM1 zone is in Zoning Code Section 33.130.030.B:

The Commercial/ Mixed Use 1 (CM1) zone is a small-scale zone intended for sites in dispersed mixed use nodes within lower density residential areas, as well as on neighborhood corridors and at the edges of neighborhood centers, town centers and regional centers. The zone is also appropriate in core commercial areas of centers in locations where older commercial storefront buildings of 1 to 2 stories are predominant. This zone allows a mix of commercial and residential uses. The size of commercial uses is limited to minimize impacts on surrounding residential areas. Buildings in this zone will generally be up to three stories tall. Development is

intended to be pedestrian-oriented and compatible with the scale and characteristics of adjacent residentially zoned areas or low-rise commercial areas.

The construction of a two-story, single-dwelling house on Lot 8 will promote compatibility with the adjacent residential area and will prevent possible impacts on nearby homes from a less compatible commercial use. As discussed above, the proposed 5-foot setback from the east lot line will be typical for the residential area and will be adequate to maintain the neighboring lot's access to light, air, and privacy. For these reasons, staff finds the proposal is consistent with the character statement above.

Area plans

Two area plans adopted by the City Council include this site: the Brentwood-Darlington Neighborhood Plan and the Outer Southeast Community Plan. Staff finds the following statements from the Brentwood-Darlington Neighborhood Plan to be relevant to this proposal:

Policy 2 (Livability and Safety), Objective 2: Improve the physical environment of the neighborhood.

Policy 4 (Housing), Objective 2: Promote new housing development on vacant properties.

Policy 5 (Land Use), Objective 1: Preserve the predominantly single-family areas of the neighborhood while allowing multifamily, commercial, and industrial zoning at appropriate locations.

Policy 6 (Business and Industry), Objective 2: Attract businesses that enhance the neighborhood and provide needed goods and services to local residents.

Site Review Criterion B.1: Protect adjacent properties from undesirable impacts on the site from noise, glare, odors, dust and vibrations.

Site Review Criterion D.1.c: Limit the amount of paved surface to the minimum amount needed for parking and circulation.

Site Review Criterion D.1.d: Preserve on-street parking opportunities.

Staff finds the following statements from the Outer Southeast Community Plan to be relevant to this proposal:

Economic Development Policy, Objective 3: Create up to 6,000 new jobs in the outer southeast area by encouraging development of commercial and industrial areas.

Housing Policy, Objective 1: Construct 14,000 new housing units in the Outer Southeast Community Plan area by 2015.

Housing Policy, Objective 2: Stimulate construction of new housing units by both private and nonprofit housing producers to accommodate expected population growth.

Housing Policy, Objective 3: Increase opportunity for building more single-family housing in outer southeast neighborhoods.

Subarea Policy I (Traditional Urban Neighborhoods), Objective 4: Encourage compatible infill at densities which support transit on vacant lots in established residential areas.

The subject site is a vacant lot that could be developed with a commercial use, and a new commercial use could increase the availability of jobs and services in the neighborhood. However, the applicant's proposal does not include any commercial development.

Instead, the new single-dwelling house (a use that is allowed outright in the CM1 zone) will increase the neighborhood's housing stock and maintain compatibility with the adjacent, low-density residential area. The proposed 5-foot setback from the east lot line will be typical for a single-dwelling house and will provide enough separation between homes to mitigate potential nuisance impacts on the adjacent neighbor. A single, shared driveway is proposed for Lots 7 and 8, which will maximize on-street parking area and minimize the on-site paving area. The shared driveway and the detached garages in the back yard will give the development a more attractive, pedestrian-friendly appearance.

For these reasons, staff finds that on balance, the proposal is consistent with the Brentwood-Darlington Neighborhood Plan and the Outer Southeast Community Plan.

Summary

Since the proposed Adjustment is found to be consistent with the classifications of the adjacent street and the desired character of the area, approval criterion B 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: As only one Adjustment is requested, this criterion is not applicable.

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

Findings: City-designated scenic resources are identified on the official zoning maps with a lower case "s," and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. There are no scenic resources or historic resources mapped on the subject site, so this criterion is not applicable.

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

Findings: Staff has not identified any negative impacts specifically resulting from the Adjustment request that would require mitigation. Therefore, this criterion is not applicable.

- 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 there are no environmental overlay zones mapped on the site, 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 proposal equally meets the purpose of the minimum building setback requirement and will be consistent with the street classifications and the desired character of the area. No significant negative impacts from the Adjustment request are anticipated. The applicable approval criteria are found to be met. Since the approval criteria are met, the Adjustment must be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.130.215.B.2.b to reduce the minimum building setback requirement for a single-dwelling house from the east lot line from 10 feet to 5 feet and to waive the L3 landscaping required for the setback, per the approved site plan, Exhibit C-1, subject to the following condition:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit C-1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 20-140305 AD."

Staff Planner: Andrew Gulizia

Decision rendered by:  **on June 24, 2020**
By authority of the Director of the Bureau of Development Services

Decision mailed: June 30, 2020

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on April 24, 2020 and was determined to be complete on May 27, 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 24, 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 extended by the applicant, **the 120 days will expire on September 24, 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 14, 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 **July 14, 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 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 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;

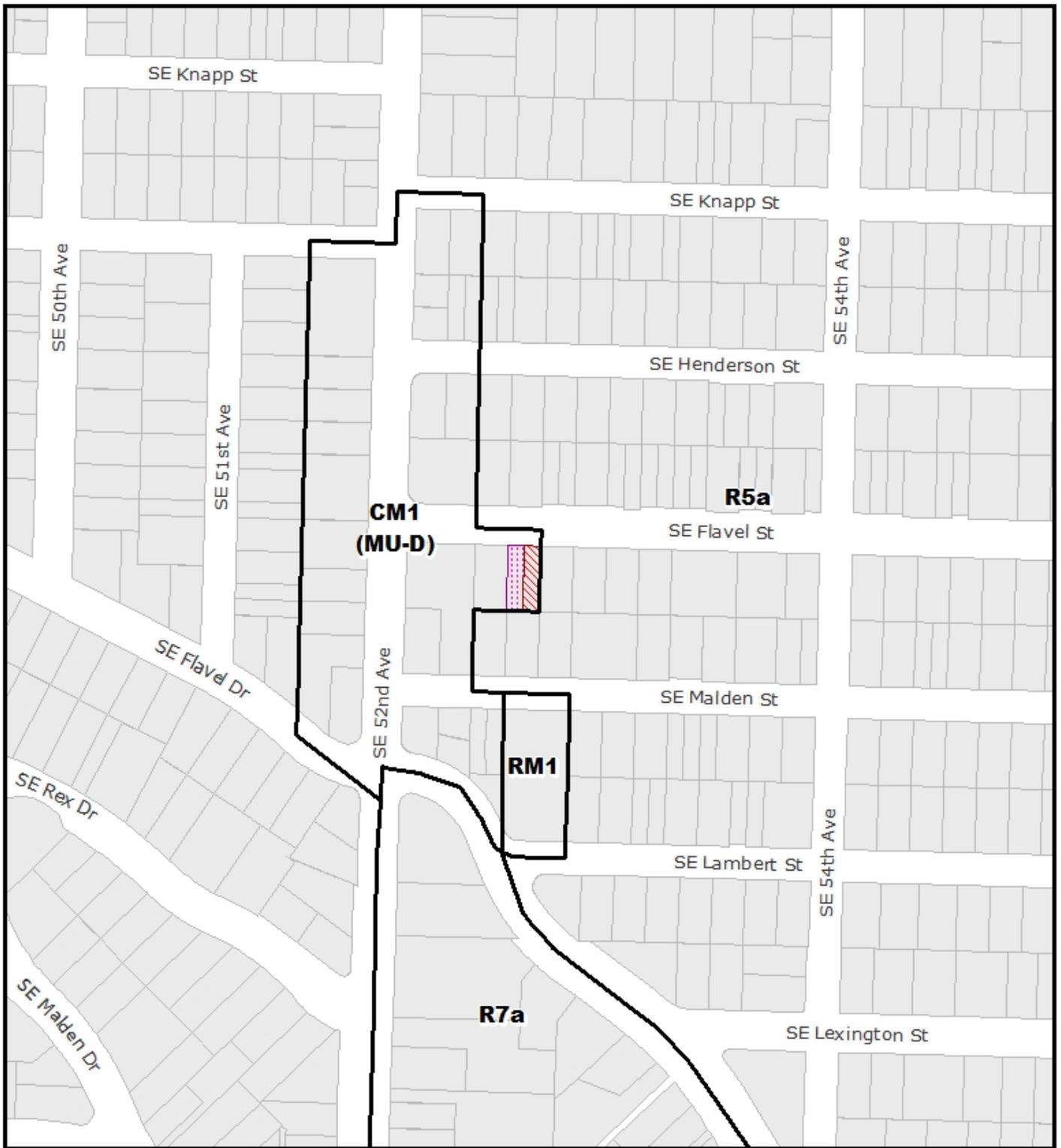
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan (attached)
 - 2. Front and rear building elevations
 - 3. Side building elevations
 - 4. Detached garage plans
- D. Notification Information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Review Section of BDS
- F. Correspondence:
 - 1. E-mail from Jim MacCallum, dated June 5, 2020
- G. Other:
 - 1. Land use application form and receipt
 - 2. Incompleteness determination letter, dated April 30, 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).

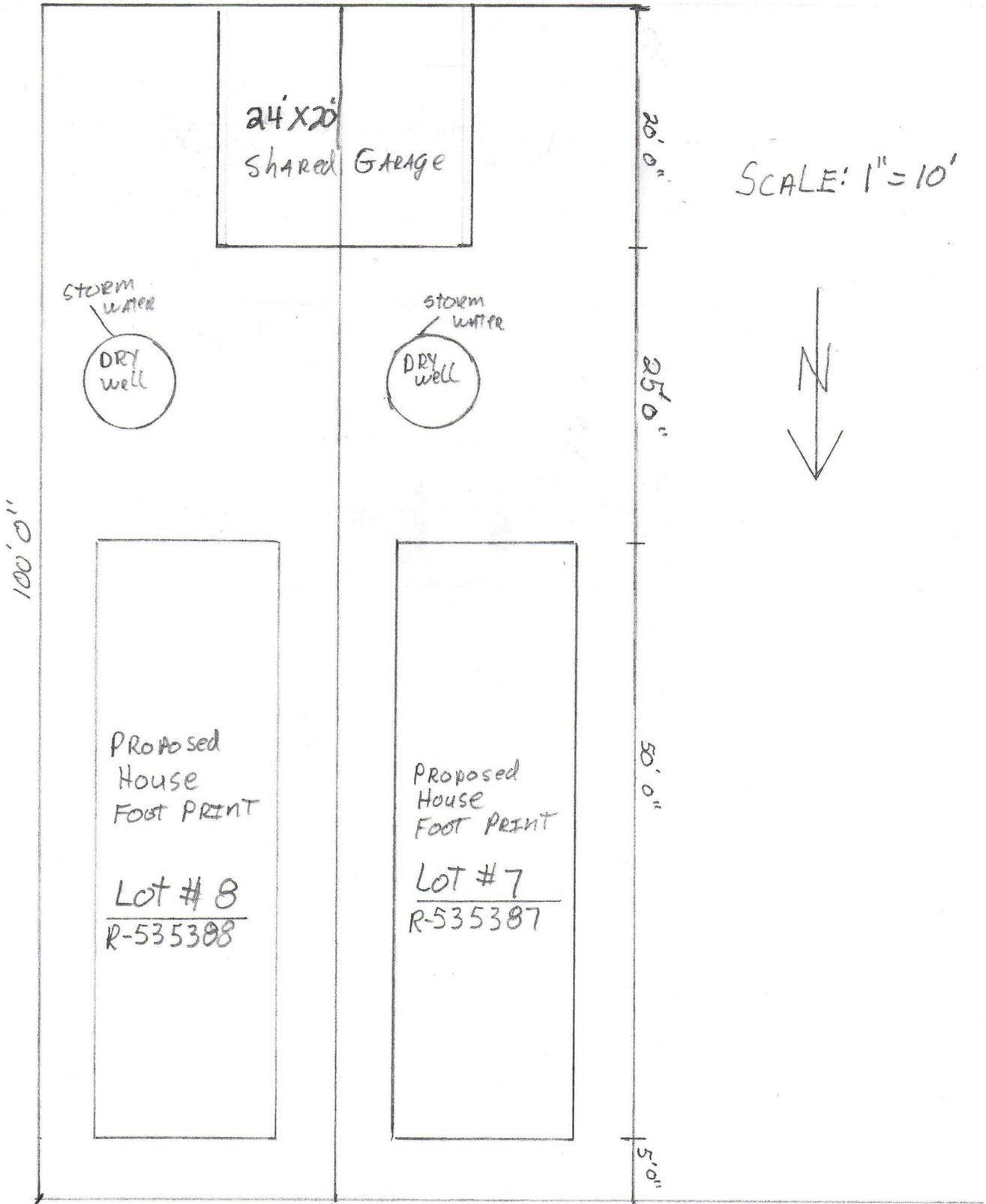


ZONING



-  Site
-  Also Owned Parcels

File No.	LU 20 - 140305 AD
1/4 Section	3836
Scale	1 inch = 200 feet
State ID	1S2E19DB 17402
Exhibit	B Apr 29, 2020



S.E. Flavel ST