



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

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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** August 26, 2020  
**To:** Interested Person  
**From:** David Besley, Land Use Services  
503-823-7282 / [David.Besley@portlandoregon.gov](mailto:David.Besley@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 20-152880 AD**

#### **GENERAL INFORMATION**

**Applicant:** Ken Dyreson  
Dyreson Design Studio  
3239 NE 66th Ave  
Portland, OR 97213

**Owners:** Tiffany Reinke and Robert Myers  
3718 NE 42nd Ave  
Portland, OR 97213

**Site Address:** 3718 NE 42ND AVE

**Legal Description:** BLOCK 1 LOT 1&2, ROSLYN  
**Tax Account No.:** R728300010  
**State ID No.:** 1N2E19CC 22600  
**Quarter Section:** 2635

**Neighborhood:** Beaumont-Wilshire, contact Jack Bookwalter at 503-539-2707.  
**Business District:** None  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-2778.

**Zoning:** R5h (Single-Dwelling Residential 5,000 with Aircraft Landing overlay zone)

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

#### **Proposal:**

The applicant proposes to construct a new 2-story detached structure with a carport on the ground level and an Accessory Dwelling Unit (ADU) above the carport with access via an interior entrance on the ground floor. The Portland Zoning Code requires that garage (and

carport) entrances be set back a minimum of 18 feet from street lot lines (Section 33.110.220; Table 110-3). The carport is proposed to be located 5 feet from the north side lot line (fronting NE Beech Street). An Adjustment is therefore required to reduce the garage entrance setback from 18 feet to 5 feet.

**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 subject 4,900 square foot site is located at the southeast corner of NE 42<sup>nd</sup> Avenue and NE Beech Street. The relatively flat site is developed with a 1,604 square foot 2-story house on the west side of the lot. The surrounding vicinity is developed with primarily single-dwelling, 1-to-2.5-story residences; however, there is a small retail market just north of the subject site and a commercial area along NE Fremont Street one block to the south.

**Zoning:** The R5 zone is a single-dwelling zone that is intended to preserve land for housing, and to provide housing opportunities for individual households. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. Regulations of the "h" zone overlay (Aircraft Landing Zone) are not applicable to the Adjustment proposal.

**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 **July 16, 2020**. The following Bureaus have responded with the following information:

- The Life Safety section of the Bureau of Development Services (BDS) responded with no concerns regarding the requested Adjustment and included Building Permit information (Exhibit E.1);
- The Bureau of Environmental Services responded with no concerns regarding the requested Adjustment and included stormwater information (Exhibit E.2);
- The Portland Bureau of Transportation (PBOT) responded with no concerns regarding the requested Adjustment and included information regarding driveways and curb cuts (Exhibit E.3); and
- The Site Development Review Section of BDS responded with no concerns regarding the requested Adjustment and noted that it appears the building was served by an onsite septic system. At the time of building permit, the septic system will need to be located to verify the offsets from foundations. The onsite septic system would need to be decommissioned if it is located within 10 feet of proposed foundations (Exhibit E.4).

The following Bureaus have responded with no concerns (Exhibit E.5):

- The Water Bureau; and
- The Fire Bureau.

**Neighborhood Review:** One written response was received from a neighbor (Exhibit F.1) who opposes the proposal on the basis that dealing with construction noise and parking is inconsiderate when people are working from home or unemployed due to COVID-19.

**Staff Response:** Staff must review the requested proposal solely against the Adjustment approval criteria in 33.805.040.A-F, and there is nothing in these approval criteria that is relevant to temporary impacts related to noise and parking during construction.

## ZONING CODE APPROVAL CRITERIA

### 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 Adjustments to reduce the garage entrance setback from 18 feet to 5 feet for a new 2-story carport/ADU. The relevant purpose statements and associated findings are found below:

#### 33.110.220 Setbacks

*The setback regulations for buildings and garage entrances serve several purposes:*

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the city's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *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*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

The proposed development involves constructing a new 2-story detached accessory structure (including an approximately 370 square foot covered parking area, a 680 square foot ADU, and an 85 square foot primary residence storage area). The parking area will be accessed from NE Beech Street to the north. On a corner lot, the front lot line is the shortest of the lot lines that abut a street; therefore the west lot line (facing NE 42<sup>nd</sup> Avenue) is considered the front lot line and the north lot line (facing NE Beech Street) is considered the side lot line. The new structure is proposed to be 5 feet from the north and east (side and rear, respectively) lot lines, which meets the minimum 5-foot side and rear building setback requirements in this zone. A reasonable physical relationship between residences is therefore promoted.

The 18-foot setback is specifically for garages (and carports) and, if this accessory structure was proposed without a vehicle parking area, it would not require an Adjustment to reduce the setback. The carport itself will be open to the west, north, and east, and will therefore maintain a degree of light and air beyond that of an enclosed structure.

Garage entrances setback encroachments – including the adjacent neighbor to the west which is developed with a 2-car garage approximately one foot from the property line – are common in this area and the proposal will therefore be compatible with the neighborhood.

As PBOT notes in their review (Exhibit E.3) enclosed garages tend to become storage spaces in which there is no room to store a vehicle. People very regularly park a vehicle in front of a fully enclosed garage. In this particular frontage, there is a very deep sidewalk corridor with 16-feet of room as measured from face of curb to the property line. This 16-feet coupled with the proposed 5-ft setback would allow adequate depth to park a vehicle without overhanging the street, even though the sidewalk would be blocked. This is behavior that PBOT would anticipate in front of a fully enclosed

garage. The subject proposal, however, is for an open air carport. Open air style carports are much less likely to be used for general storage as they are open to the elements and unsecured. As such, carports are more likely to be used for parking vehicles. Since the proposal is for a structure which is open air on the ground floor, PBOT does not object to the requested adjustment. Additionally, as an open air carport, driver visibility when backing out into the street will be maintained.

The Fire Bureau has reviewed the request for reduced setbacks, and offered no concerns with regards to separation for fire protection, or access for fire fighting.

*This criterion is met.*

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** As noted above, surrounding properties in the area, including the adjacent property to the west, have detached accessory structures that have been built within required garage entrance setbacks. This development is therefore compatible with development patterns in this neighborhood. The applicant is proposing an open carport rather than an enclosed garage with a garage door. This will help reduce visual prominence of the garage. Furthermore, the structure which includes the carport will not be located closer to the lot line along NE Beech Street than the existing house on the subject site, and will be set back farther from this same lot line than the garage on the adjacent lot to the east. This juxtaposition minimizes its appearance as viewed from NE Beech Street. The proposal will not significantly detract from the livability or appearance of the residential area.

*This criterion is met.*

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

**Findings:** The overall purpose and use regulations of the R5 zone are to preserve land for housing, and to provide housing opportunities for individual households. Garages are allowed in residential zones and the proposed garage will support the residential use. Development standards in single-dwelling zones work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. Based on the findings included in response to approval criteria A and B above, the project is consistent with the overall purpose of the development standards of the zone.

*This criterion is met.*

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

**Findings:** City designated scenic resources are identified on the Official Zoning Map with a lower case "s" and historic resources are designated by a large dot or as being within the boundaries of a Historic or Conservation district. 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 noted above, the applicant has proposed a carport that is open on three sides rather than an enclosed garage and is set back from the street lot line at least as far as the adjacent structures, resulting in a structure that de-emphasizes automobile orientation. Impacts resulting from the Adjustments are therefore mitigated to the

extent practical. Furthermore, the garage placement is consistent with the development pattern in the neighborhood.

*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 Map with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). No environmental zoning is applied to the site; therefore, 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 requests an Adjustment to reduce the garage entrance setback from 18 feet to 5 feet for a new 2-story detached structure with a carport on the ground level and an ADU above. The carport will be open to the west, north, and east, and will therefore maintain a degree of light and air beyond that of an enclosed structure. Since the proposal is for a structure which is open and more likely to be used for parking vehicles than for storage, thus reducing the likeliness of parked cars overhanging into the right-of-way, PBOT supports the requested adjustment. Garage entrances setback encroachments are common in this area and the proposal will therefore be compatible with the neighborhood. The project is consistent with the overall purpose of the zone as the garage will support the residential use. The proposal meets the applicable approval criteria and should therefore be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the garage entrance setback from 18 feet to 5 feet for a new 2-story detached carport/ADU (Section 33.110.220; Table 110-3), per the approved site plans, Exhibits C-1 and C-2, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 20-152880 AD. No field changes allowed."

**Staff Planner: David Besley**



**Decision rendered by:** \_\_\_\_\_ **on August 21, 2020.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: August 26, 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 June 8, 2020, and was determined to be complete on July 10, 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 June 8, 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: November 7, 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 September 9, 2020. Towards promoting social distancing during the COVID-19 pandemic, the completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto:LandUseIntake@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 **September 9, 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.** A building permit must be issued by January 1, 2024 or it will expire.

**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**

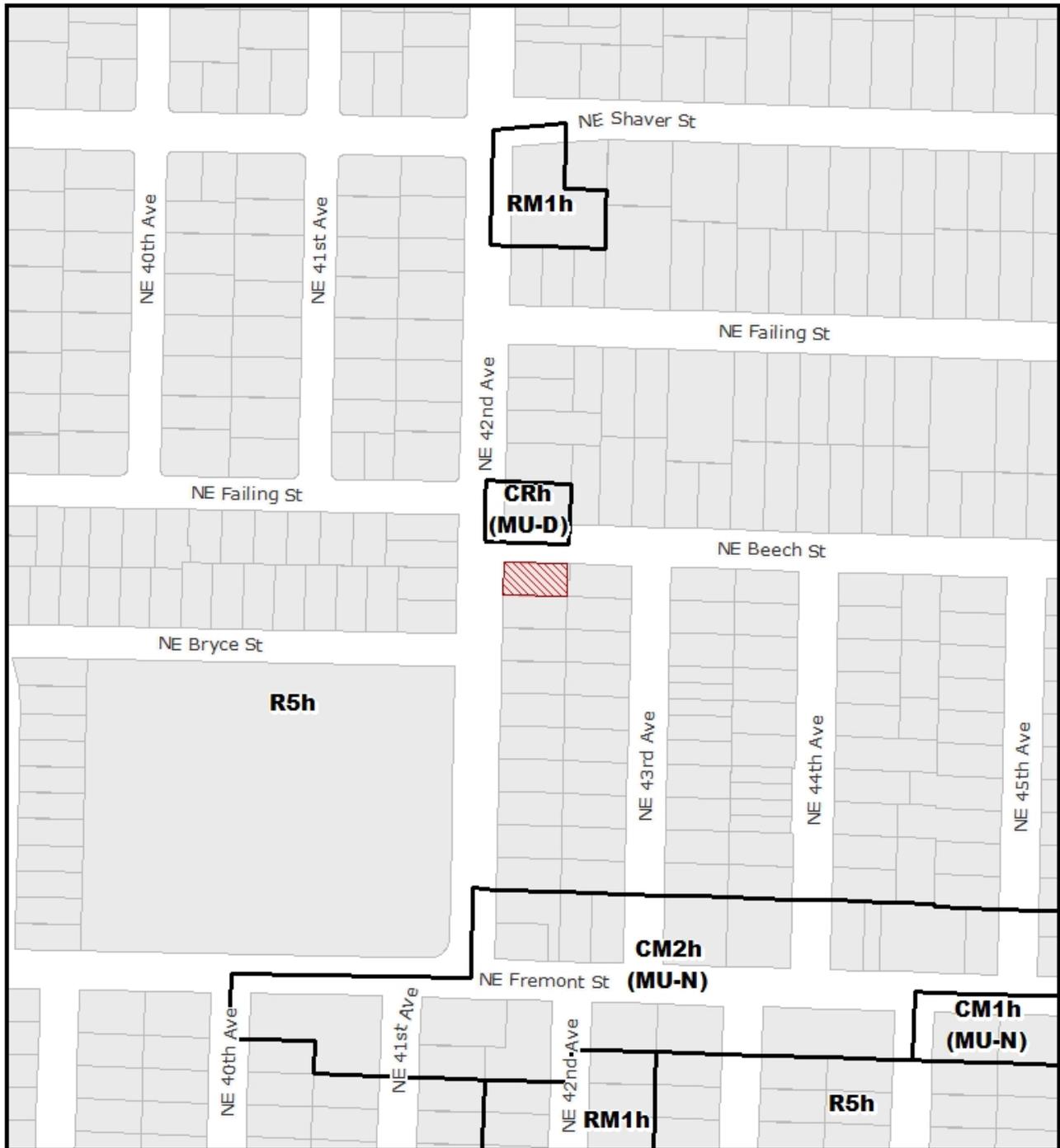
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation Drawings (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. The Life Safety section of BDS
  - 2. Bureau of Environmental Services
  - 3. Bureau of Transportation Engineering and Development Review
  - 4. Site Development Section of BDS
  - 5. Agencies responding with "no concerns"
- F. Correspondence:
  - 1. Anonymous, July 20, 2020, letter of opposition

G. Other:

1. Original LU Application and Receipt
2. Incomplete letter from staff to applicant, sent June 22, 2020

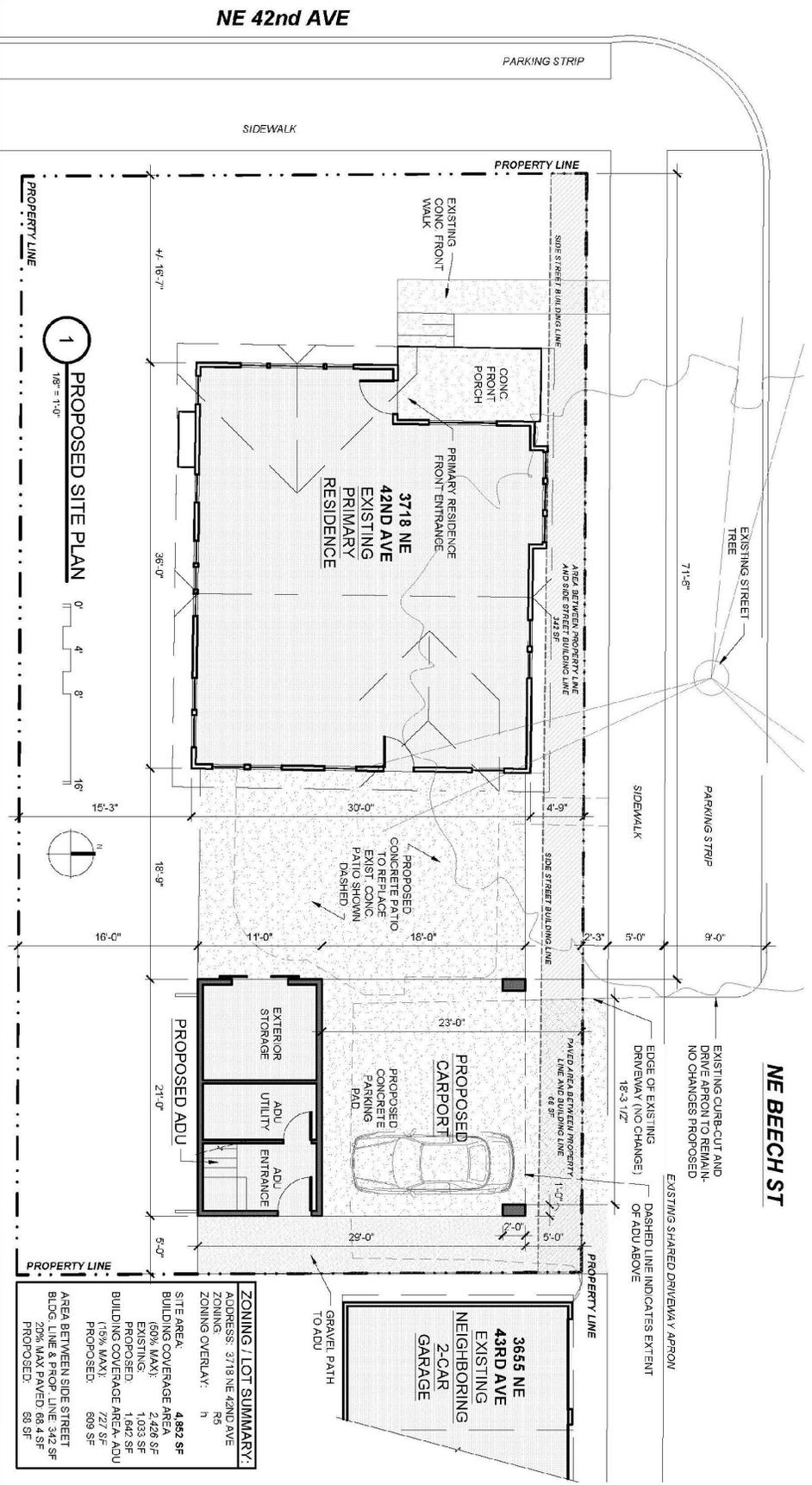
**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



**ZONING** ↑  
NORTH

 Site

File No.	LU 20 - 152880 AD
1/4 Section	2635
Scale	1 inch = 200 feet
State ID	1N2E19CC 22600
Exhibit	B Jun 12, 2020



**ZONING / LOT SUMMARY:**

ADDRESS: 3718 NE 42ND AVE  
 ZONING: R5  
 ZONING OVERLAY: N

**SITE AREA:** 4,852 SF  
**BUILDING COVERAGE AREA:** 2,426 SF (50% MAX)  
**EXISTING:** 1,033 SF  
**PROPOSED:** 1,662 SF  
**BUILDING COVERAGE AREA, ADU (15% MAX):** 727 SF  
**PROPOSED:** 609 SF

**AREA BETWEEN SIDE STREET BLDG. LINE & PROP. LINE:** 342 SF  
**20% MAX PAVED:** 68.4 SF  
**PROPOSED:** 68 SF

**Myers-Reinke ADU**

3718 NE 42nd Ave  
 Portland, Oregon

**D21S**

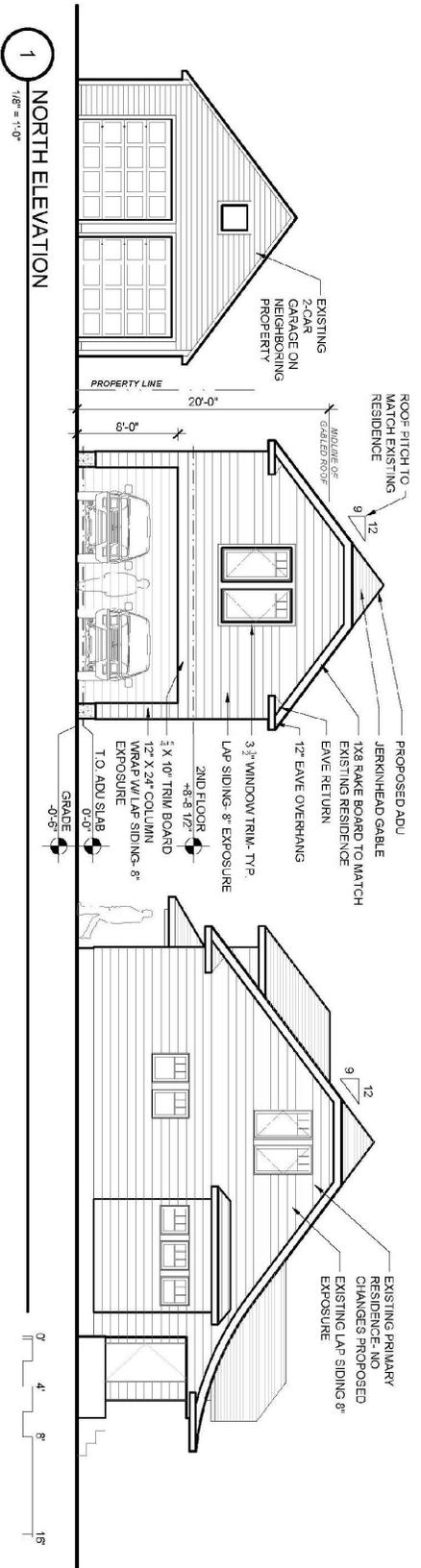
Dyreson Design Studio  
 3239 ne 66th ave.  
 portland, oregon

**PROPOSED SITE PLAN**

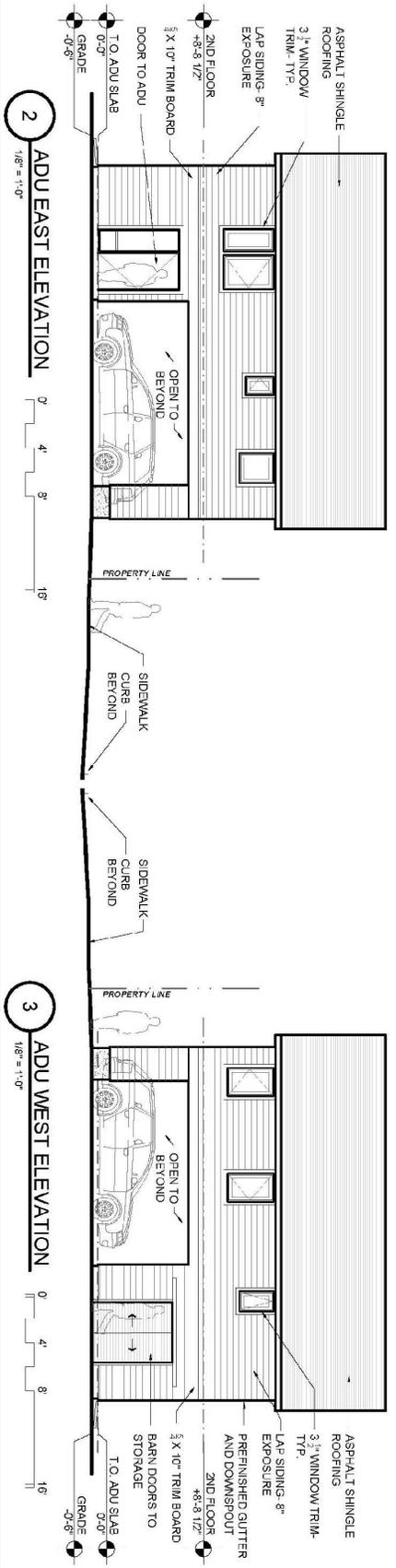
**A1**

Exhibit C.1  
 LV 20-152880 AD

REVISED:  
 07.02.20



1 NORTH ELEVATION  
1/8" = 1'-0"



2 ADU EAST ELEVATION  
1/8" = 1'-0"

3 ADU WEST ELEVATION  
1/8" = 1'-0"

**Myers-Reinke ADU**  
3718 NE 42nd Ave  
Portland, Oregon

**D21 S**  
Dyerson Design Studio  
3239 ne 66th ave.  
portland, oregon

REVISED  
07.02.20

Exhibit C.2  
LU 20-152880 AD

**A2**  
ELEVATIONS