



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

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**Date:** October 5, 2021  
**To:** Interested Person  
**From:** Benjamin Nielsen, 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 21-059169 AD – ADJUSTMENTS TO GROUND FLOOR WINDOWS AND REQUIRED PARKING**

**GENERAL INFORMATION**

**Applicant:** Michael Perso, William Kaven Architecture  
4075 N Williams Ave #440, Portland, OR 97227  
(503) 841-5239, [mike@williamkaven.com](mailto:mike@williamkaven.com)

**Owner/Developer:** Brad Hosmar, Sandy 51 Apartments LLC  
3330 NW Yeon Ave #100, Portland, OR 97210

**Site Address:** 2351 NE 51ST AVE

**Legal Description:** BLOCK 33 LOT 1 EXC PT IN ST LOT 2&3, ROSE CITY PK  
**Tax Account No.:** R723102090  
**State ID No.:** 1N2E30CA 10000  
**Quarter Section:** 2835

**Neighborhood:** Rose City Park, contact Tamara DeRidder at 503-249-6977.  
**Business District:** Hollywood Boosters, contact [hollywoodboosters@gmail.com](mailto:hollywoodboosters@gmail.com).  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-2778.

**Plan District:** Sandy Boulevard  
**Zoning:** CM3 (MU-C)d – Commercial Mixed-Use 3 (Mixed-Use Corridor Comprehensive Plan designation) with Design Overlay

**Case Type:** AD – Adjustment Review  
**Procedure:** Type II – an administrative decision with appeal to the Design Commission

**Proposal:**  
The applicant proposes to place six (6) dwelling units in the ground level space that was originally proposed and approved to be retail space at the existing building at 2351 NE 51<sup>st</sup> Ave. (This existing building already contains 85 dwelling units.) Five of these new dwelling

units will have frontage along either NE Sandy Blvd and/or NE 51<sup>st</sup> Ave. No exterior alterations to the building are proposed. To enable this conversion, the applicant requests approval of the following two Adjustments to zoning code development standards:

1. 33.130.230.B.4.a – Ground floor window and frontage standards for dwelling units, Flexible ground floor design. As part of this standard, each dwelling unit that has ground floor wall area on street-facing facades must have a front entrance that is located at the level of finished grade. Two of the five dwelling units that are located on street-facing facades will not have these front entrances. (This proposal has been revised from the initial proposal to include doors into two additional units.)
2. 33.266.110.B – Minimum number of required parking spaces. The standard requires 0.33 spaces per dwelling unit for sites with more than 51 dwelling units that are within 500 feet of a transit street with 20-minute peak hour service. Exceptions to the minimum number of parking spaces may also be made, as allowed through zoning code section 33.266.110.D. After exceptions, the building will require a minimum of 17 parking spaces. This Adjustment request is to allow 16 parking spaces instead of the required 17.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are the Adjustments Approval Criteria in zoning code section 33.805.040.A-F. (The criteria may be found online here:

<https://www.portland.gov/sites/default/files/code/33.805-adjustments.pdf>).

## ANALYSIS

**Site and Vicinity:** The site is located on NE Sandy Boulevard, just a few blocks northeast of the Hollywood Town Center. The site has within recent years been redeveloped as a six-story, mixed-use building with retail spaces on the ground floor and 85-dwelling units on the upper floors. The site is bordered by NE Sandy Boulevard to the north, NE 51<sup>st</sup> Avenue to the east, NE Thompson Street to the south, and a one-story Firestone tire facility on the lot to the west.

The Rose City Park neighborhood was primarily developed from 1907-1915, along its former streetcar line, and is known for its four local parks. Early advertisements marketed it as a healthy, “country” suburb full of green spaces and beautiful views. At the time, Sandy Boulevard was lined with roses. Unlike some surrounding neighborhoods, Rose City Park was designed to include diverse housing for residents from a wide range of incomes and backgrounds.

The site is adjacent to the Hollywood District, which serves as a commercial core for the area. The Hollywood District is a neighborhood known for its architecturally diverse buildings, most notably the Hollywood Theatre. The Hollywood commercial core has numerous small- to mid-scale retail, civic and commercial buildings.

NE Sandy Blvd is designated as a Major City Traffic Street, a Major Transit Priority Street, a Major City Bikeway, a Major City Walkway, a Major Truck Street, a Major Emergency Response Street and a Civic Main Street. NE 51<sup>st</sup> Ave and NE Thompson St have local service classifications for all transportation modes.

**Zoning:** The Commercial/Mixed Use 3 (CM3) zone is a large-scale zone intended for sites in high-capacity transit station areas, in town centers, along streetcar alignments, along civic corridors, and in locations close to the Central City. It is intended to be an intensely urban zone and is not appropriate for sites where adjacent properties have single-dwelling residential zoning. The zone allows a wide range and mix of commercial and residential uses, as well as employment uses that have limited off-site impacts. Buildings in this zone will generally be up to six stories tall unless height and floor area bonuses are used, or plan district provisions specify other height limits. Development is intended to be pedestrian-oriented, with buildings

that contribute to an urban environment with a strong street edge of buildings. The scale of development is intended to be larger than what is allowed in lower intensity commercial/mixed use and residential zones. Design review is typically required in this zone.

The “d” overlay promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development and exterior modifications to existing development are subject to design review. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review. In addition, design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

The Sandy Boulevard Plan District implements the Sandy Boulevard elements of the Hollywood and Sandy Plan through special height transitions and unique setback treatments.

**Land Use History:** City records indicate that prior land use reviews include the following:

- LU 16-256298 DZM – Design Review with Modifications approval, upon appeal to the Design Commission, of a 64' tall, 85-unit mixed use building. One approved Modification request allowed for four stacked parking stalls without an attendant.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **August 13, 2021**.

The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS

The Bureau of Transportation Engineering (PBOT) responded with no objections to the requested Adjustments and findings that the proposed Adjustment requests are unlikely to have a significant effect in parking demand in the overall neighborhood. Please see Exhibit E.1 for additional details.

The Life Safety Review Section of BDS responded with general life safety comments. Please see Exhibit E.2 for additional details.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on August 13, 2021. A total of three written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

1. Laurie Skokan, 2236 NE 51<sup>st</sup> Ave, 09/02/2021. Letter in opposition citing on-street parking problems (and related photos), noting cars block curb cuts to driveways, curb ramps at sidewalks, and fire hydrants in the vicinity of the existing building. The testifier also notes that the ground floor retail space was the primary benefit for those already living in the neighborhood. See Exhibit F.1
2. Tamara DeRidder, Chairwoman, Rose City Park Neighborhood Association (RCPNA), 1707 NE 52<sup>nd</sup> Ave, Portland, OR 97213, 09/03/2021. Letter in opposition citing how placing residential dwelling units on the ground floor contravenes the purpose of the ground floor windows standard and how the loss of the retail space at the ground floor contravenes the desired character for the site and its street classifications. See Exhibit F.2.
3. Tamara DeRidder, 09/09/2021. Letter affirming position of the RCPNA board and adding concerns about the loss of on-site parking and citing complaints about bumper-to bumper parking in the site’s vicinity and storage of cars along NE Tillamook St. See Exhibit F.3.

*Staff response: Findings for Criteria A, B, and E below address the issues raised by these responses in detail.*

## 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
- 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
- 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
- D. City-designated scenic resources and historic resources are preserved;
- E. Any impacts resulting from the adjustment are mitigated to the extent practical; and
- F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.

### NOTICE of DECISION

#### **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.

#### **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:**

Primary Uses allowed in the CM3 zone are listed in Zoning Code Section 33.130.100 and Table 130-1. Household Living is listed as an allowed use. Zoning Code Chapter 33.130 does not restrict the placement of Household Living uses on the site, though it does place standards on its exterior design, particularly when located at the ground floor of a building.

The purpose statement for zoning code standard 33.130.230.B.4.a – Ground floor window and frontage standards for dwelling units, Flexible ground floor design, reads as follows:

33.130.230.B, Ground floor windows.

1. Purpose. In the commercial/mixed use zones, blank walls on the ground level of buildings are limited in order to:

- Provide a pleasant, rich, and diverse pedestrian experience by connecting activities occurring within a structure to adjacent sidewalk areas, or allowing public art at the ground level;
- Encourage continuity of retail and service uses;
- Encourage surveillance opportunities by restricting fortress-like facades at the street level; and
- Avoid a monotonous pedestrian environment.

The standard itself reads as follows:

33.130.230.B.4.a, Flexible ground floor design. The ground floor window standard of Subparagraph B.2.a(1) must be met, and the ground level of the building must be designed and constructed as follows:

- (1). The distance from the finished floor to the bottom of the ceiling structure above must be at least 12 feet. The bottom of the structure above includes supporting beams;
- (2). The area meeting this standard must be at least 25 feet deep, measured from the street-facing facade; and
- (3). Each unit must include a front entrance that is located at the level of the finished grade and can be accessed without steps.

The proposal continues to meet Subparagraphs B.4.a.(1), since the building's structure is not changing, and B.4.a.(2), since proposed demising and partition walls are non-structural and may be removed to convert the space to other uses in the future.

The proposal limits blank walls on the ground level of the building and avoids a monotonous pedestrian environment, as large existing storefront windows are retained or swapped out with transparent storefront doors, both of continue to allow for views from the sidewalk into the private spaces of the proposed dwelling units.

The revised proposal, with doors from the street into three dwelling units and the ground floor amenity space, continues to provide for a diverse pedestrian experience with connections between adjacent sidewalk areas and areas within dwelling units. Proposed doors will be part of the storefront system and will have glazing, further allowing for views to help to visually activate the streetscape and provide additional opportunities for surveillance of the sidewalk.

For these reasons, staff finds that the requested Adjustment to the ground floor windows standard meets this criterion.

The purpose statement for zoning code standard 33.266.100.B.1, Minimum number of required parking spaces, Minimum for sites located close to transit, reads as follows:

*33.266.110, Minimum Required Parking Spaces.*

*A. Purpose. The purpose of required parking spaces is to provide enough on-site parking to accommodate the majority of traffic generated by the range of uses which might locate at the site over time. Sites that are located in close proximity to transit, have good street connectivity, and good pedestrian facilities may need little or no off-street parking. Parking requirements should be balanced with an active pedestrian network to minimize pedestrian, bicycle and vehicle conflicts as much as possible. Transit-supportive plazas and bicycle parking may be substituted for some required parking on a site to encourage transit use and bicycling by employees and visitors to the site. The required parking numbers correspond to broad use categories, not specific uses, in*

*response to this long term emphasis. Provision of carpool parking, and locating it close to the building entrance, will encourage carpool use.*

The Portland Bureau of Transportation Development Review Section provided the following findings relating to the request for an Adjustment to zoning code standard 33.266.110.B.1, Minimum number of required parking spaces, Minimum for sites located close to transit:

The subject site is within a neighborhood with a complete street grid at spacing intervals which are closely aligned with the City's spacing goals. The vast majority of streets in the area are paved with curbs and sidewalks. Multiple Neighborhood Greenways exist in close proximity to the site include NE 53rd Ave and NE Hancock St. Neighborhood greenways are low-traffic and low-speed streets where the City gives priority to people walking, bicycling, and rolling. The site has frontage on Sandy Blvd. on which Tri-Met bus route 12 provide frequent service transit. The closest stop is within the block face containing the subject site. Frequent service bus lines operate at intervals of 20-minutes or less all day, every day. Route 12 specifically operates 20-hours a day, every day. The combination of a complete network of improved streets, lower stress cycling/walking routes, and convenient access to frequent service transit all make transport to and from the subject site likely to engage in modes other than just private vehicles.

In addition to the context, the conversion of the retail spaces to 6 residential units is anticipated to result in no increase in demand for the on-street parking supply. Retail uses typically have peak parking demand during the daytime, while residential uses have the peak parking demand at night and in the early morning. Even considering the time differences in peak demand, there should be no increase in overall impact to the neighborhood. Based on records from the building permit for the structure (17-169659-CO), there was 4,602 sq. ft. of retail space built. The proposal is to convert that space to 6 dwelling units. Since no specific uses were ever permitted for the general retail space, staff has presented a variety of different parking generation data based on the entire 4,600 sq. ft. being in a single use category. Based on the Institute of Transportation Engineers Parking Generation Manual 5th Edition, the existing retail space would be expected to generate the following parking demand based on different types of uses which would be allowed:

ITE 936 Coffee shop (no drive through): 8.28  
 ITE 930 Fast Casual Restaurant: 14.26  
 ITE 712 Small Office Building: 11.5  
 ITE 876 Apparel Store: 5.2

ITE Code 221- Multifamily Housing Mid-Rise anticipates a parking demand of .75 spaces per units, which results in a demand of 4.5 parking spaces for 6 units.

While the demand for residential parking spaces usually happens at different times of day from the demand for non-residential parking, it is reasonable to assume there will be no more impact to the overall parking supply from the residential use than there would have been should commercial uses ever have occupied the tenant spaces. Reducing the potential off street parking supply by one space is unlikely to have a significant demand on the overall neighborhood.

For these reasons, staff finds that the requested Adjustment to reduce the minimum required parking by 1 space equally meets the standard's purpose statement and, therefore, meets Criterion A.

*Therefore, both requested Adjustments meet this criterion.*

- 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:** Zoning Code Chapter 33.910 defines desired character as the “preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district” and “it also includes the preferred and envisioned character based on any adopted plans or design guidelines for an area.”

CM3 zone character statement: The proposed building is located entirely within the CM3 zone. The character statement of the CM3 zone is stated in Zoning Code Section 33.130.030.D:

The Commercial/Mixed Use 3 (CM3) zone is a large-scale zone intended for sites in high-capacity transit station areas, in town centers, along streetcar alignments, along civic corridors, and in locations close to the Central City. It is intended to be an intensely urban zone and is not appropriate for sites where adjacent properties have single-dwelling residential zoning. The zone allows a wide range and mix of commercial and residential uses, as well as employment uses that have limited off-site impacts. Buildings in this zone will generally be up to six stories tall unless height and floor area bonuses are used, or plan district provisions specify other height limits. Development is intended to be pedestrian-oriented, with buildings that contribute to an urban environment with a strong street edge of buildings. The scale of development is intended to be larger than what is allowed in lower intensity commercial/mixed use zones. Design review is typically required in this zone.

The proposal was originally approved under CG, General Commercial, zoning development standards. The site has since been re-zoned to CM3. Nevertheless, the building overall, and the proposed Adjustments, specifically, still result in a development which is “intensely urban”. Although the loss of the retail space may result in loss of walkable retail opportunities for residents in the neighborhood, the CM3 zone is intended to host a mix of both commercial and residential uses as a whole, not necessarily on a site-by-site basis.

The purpose statement does not specifically address on-site parking, other than saying that the building should be “intensely urban” and “pedestrian-oriented”.

Design overlay zone purpose statement: The site is located within the Design overlay zone. The purpose statement of the Design overlay zone is stated in Zoning Code Section 33.420.010:

The Design Overlay Zone promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The Design Overlay Zone also promotes quality high-density development adjacent to transit facilities. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review or compliance with Community Design Standards. In addition, design review or compliance with the Community Design Standards ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

The Design Overlay zone was applied to this site with the adoption of the Hollywood and Sandy Plan in 2000, and with the adoption of this plan and the application of the

Design Overlay zone, the *Community Design Guidelines* were adopted as Design Review approval criteria and amended to include Hollywood- and Sandy Boulevard-specific examples as to how Guideline *P1 – Plan Area Character* may be met within the area.

The original Design Review approval for this building was decided by the Design Commission upon appeal of the initial Administrative Decision in the Autumn of 2017. The appeal of the Type II Administrative Decision, filed by a neighborhood resident, focused on the building's height relative to other development in the vicinity and the amount of parking provided on-site. In its decision on the appeal of the administrative Design Review, the Design Commission noted that it lacks the purview to require additional parking spaces in excess of the minimum required.

The original Design Review approval also included a Modification to Zoning Code Standard 33.266.100.F, to allow for four stacked parking spaces with no attendant. Approval of this Modification found that the stacked spaces “will be handled by the assigned tenants and building management” and that the proposal better met Guidelines *D4 – Parking Area and Garages*, *D7 – Blending into the Neighborhood*, and *D8 – Interest, Quality, and Composition*.

The proposal, as designed, does not require Design Review or conformance with the Community Design Standards in zoning code Chapter 33.218. The definition of “desired character”, however, does include the “preferred and envisioned character based on any adopted... design guidelines for the area,” which in this case is the *Community Design Guidelines*. The proposal remains consistent with these guidelines, including Guidelines *E3 – The Sidewalk Level of Buildings* and *D8 – Interest, Quality, and Composition* by maintaining the building's essential form and composition and retaining windows on the ground floor that will afford passing pedestrians views of the dwelling units' interiors. The replacement of two storefront doors for storefront windows satisfies, Guideline *D6 – Architectural Integrity*, by utilizing the same storefront system. None of the Hollywood and Sandy Blvd-specific examples apply to this site with respect to meeting Guideline *P1 – Plan Area Character*. Additionally, because the proposal does not change the exterior design of the structured parking area, it remains consistent with Guidelines *D4 – Parking Area and Garages*, *D7 – Blending into the Neighborhood*, and *D8 – Interest, Quality, and Composition*.

Guideline *D2 – Main Entrances* reads, “Make the main entrances to houses and buildings prominent, interesting, pedestrian accessible, and transit-oriented”, and the background to the guideline states that “[i]n successful project design the main entrance should be visible and inviting from the street. In pedestrian-friendly environments the best location for the front entry is directly off the street sidewalk and clearly visible from the street.”

The subject site lies in a pedestrian-friendly environment. Doors into the ground level residential area are provided off NE Sandy Blvd where existing recesses in the building are located, which are consistent with this guideline. Additionally, the main lobby entrance off NE 51<sup>st</sup> Ave, which will remain and provide access for the ground level units, is pedestrian accessible and transit-oriented, due to its location directly off the public sidewalk. The ground level dwelling units could be made to be more transit-oriented and interesting by having individual doors that open into the dwelling units from the street, even if there is no extension of the sidewalk which would provide for a more porch or stoop-like character, like what is proposed at two of the five street-facing units. However, the push to maximally Guideline *D2* should be balanced against the grading of the sidewalk and finished floors within the building, which prevent the simple insertion of doors into the existing façade and would require greater modification of the ground level streetscape.



For these reasons, the proposed Adjustment to reduce the number of parking spaces is consistent with the *Community Design Guidelines*, as is the proposed Adjustment to the ground floor windows standard.

Sandy Boulevard Plan District purpose statement: The site is located within the Sandy Boulevard Plan District. The purpose statement of the plan district is stated in zoning code section 33.575.010:

The Sandy Boulevard Plan District implements the Sandy Boulevard elements of the Hollywood and Sandy Plan through special height transitions and unique setback treatments.

The proposal does not change the building's height or setback from the sidewalk.

Adopted Hollywood and Sandy Plan (2000): The Hollywood and Sandy Plan includes "Vision Principles" (p. 51), "A Vision for Sandy Boulevard and Broadway Main Streets in the Year 2020" (pp. 52-53), and an "Urban Design Concept" (pp. 57-64) that help to inform the desired character for this site.

The "Vision for Sandy Boulevard..." envisions development between "nodes" (the subject site is not located at a node, per the Urban Design Concept map on p. 59) that "provide a range of housing choices and take advantage of frequent transit service" along NE Sandy Blvd and that "some of these buildings will have commercial uses on the ground level" (p. 52). The Vision also states that "[b]uildings are set close to the streets and have frequent sidewalk-oriented entrances, to enhance the sense of connection between each main street and developments that support it" (p. 53).

The "Urban Design Concept" identifies the subject site as being located in the "Sandy Boulevard Corridor" area (or "Sandy Boulevard between the nodes" on the Urban Design Concept map). This area's character is described as follows (p. 60):

Well-designed residential and mixed-use developments with ground levels contributing to a pedestrian-friendly environment are located along the corridor. Newer commercial development transitions in scale when located adjacent to residentially zoned areas. Established businesses of local and regional significance continue to play a key role in the corridor areas.

The revised proposal for the ground floor dwelling units, with entries into three of the units plus a door into the amenity space help to create a ground level that contributes to a pedestrian-friendly environment and are spaced sufficiently to provide the frequency of entrances desired by this plan.

The subject site's desired character only speaks to parking issues obliquely.

Adjacent streets have the following classifications in the city's Transportation System Plan (TSP):

- NE Sandy Boulevard: Major City Traffic Street, Major Transit Priority Street, Major City Bikeway, Major City Walkway, Major Truck Street, Major Emergency Response Street, and Civic Main Street.
- NE 51<sup>st</sup> Avenue has local service classifications for all transportation modes.
- NE Thompson Street has local service classifications for all transportation modes.

The proposed Adjustment to the ground floor windows standard will have no effect on the function of adjacent streets or the city's transportation system. As noted in the Portland Bureau of Transportation's (PBOT) response (Exhibit E.1), the proposed Adjustment to the number of off-street parking spaces will not result in an increase in

intensity of use of the transportation system or demand for parking beyond what would have been expected from likely retail uses in the building's ground floor.

For these reasons, staff finds the proposal is consistent with the classifications of the adjacent streets.

*Therefore, the requested Adjustments to both standards meet this criterion.*

- 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 purpose of the Commercial/Mixed Use zones is as follows:

The commercial/mixed use zones are intended for commercial and mixed use areas of the City as designated on the Comprehensive Plan map. These zones implement the vision, guiding principles, and goals and policies of the Comprehensive Plan, and encourage economic prosperity, human health, environmental health, equity, and resilience. These zones are primarily distinguished by the uses allowed and the intensity of development allowed. The zones allow a mix of commercial activities, housing, and employment uses that reflect the different types of centers and corridors described in the Urban Design chapter of the Comprehensive Plan, and also accommodate smaller, dispersed commercial and mixed use areas to provide opportunities for services in areas between the centers and corridors.

The commercial/mixed use zones are intended to serve local neighborhood areas, larger districts, as well as broader citywide or regional markets. The regulations promote uses and development that support healthy complete neighborhoods—places where people of all ages and abilities have safe and convenient access to the goods and services they need in their daily life, and where people have the opportunity to live active lifestyles. The zones encourage quality and innovative design, and facilitate creation of great places and great streets.

The development standards are designed to allow development flexibility, within parameters, that supports the intended characteristics of the specific zone. In addition, the regulations provide guidance to property owners, developers, and neighbors about the limits of what is allowed.

Two Adjustments are requested, and both are tied to the creation of additional ground floor dwelling units in a space currently design for retail uses.

The effects of the requested Adjustment to the ground floor windows and frontage standard is essentially limited to the street-facing facades of NE Sandy Blvd and NE 51<sup>st</sup> Ave and does not create further effects or impacts on the site or surrounding area. The effects of the requested Adjustment to the minimum parking standard are noted to be of limited impact, per PBOT's findings, under Findings for Criterion A, and further mitigation is required through a condition of approval under the Findings for Criterion E.

The final result still retains a building that is consistent with the purpose of the Commercial/Mixed Use zones, in that the ground floor still has flexibility in its design for later conversion back to retail or other commercial space uses and supports the intended characteristics of the CM3 zone.

*Therefore, this criterion is met.*

**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:** The proposed increase in dwelling units, without a corresponding increase in on-site parking spaces, is likely to have an outsized impact on the provision of pedestrian and bicycle safety by shifting on-street parking demand from short-term needs to longer-term parking needs. Additionally, on-street parking for retail uses in the ground floor of the building will likely occur along NE Sandy Blvd. The converse is not necessarily true for residential uses, however, because on-street parking on NE Sandy Blvd is currently time-limited to a maximum of 1 hour. There are no such time limits on NE 51<sup>st</sup> Ave, NE Thompson St, or nearby NE 50<sup>th</sup> Ave.

PBOT states in its response to the proposed Adjustments in Exhibit E.1:

While the demand for residential parking spaces usually happens at different times of day from the demand for non-residential parking, it is reasonable to assume there will be no more impact to the overall parking supply from the residential use than there would have been should commercial uses ever have occupied the tenant spaces. Reducing the potential off street parking supply by one space is unlikely to have a significant demand on the overall neighborhood.

Although it is true to say that the overall parking *supply* will likely not be impacted by the conversion of retail space to residential uses, the *distribution* of parking demand will likely be different, due to the parking time limitations on NE Sandy Blvd, shifting the anticipated parking demand off of NE Sandy Blvd and onto the narrower side streets.

Testifiers in Exhibits F.1 through F.3 cite significant compromises to both pedestrian and fire safety in the adjacent neighborhood due to poor on-street parking behavior, which is likely directly tied to existing parking demand caused both by current dwelling units on the subject site as well as adjacent residences. Staff further notes that the existing retail space in this building is currently empty and, therefore, generating no on-street parking demand on these streets, at present.

As noted in the Findings for Criterion A, above, the existing building was approved under old CG zoning and not the current CM3 zoning. For this reason, the building was not subject to current Transportation and Parking Demand Management requirements found in zoning code section 33.266.410. These same requirements would apply if the proposal were adding 10 or more units to the current building. This zoning code section provides an option for meeting objective standards of Title 17.107 or obtaining approval through a discretionary Transportation Impact Review. Among the objective standards of Title 17.107 is the following requirement:

17.107.035, Pre-approved Multimodal Incentives for Development.  
B. Multimodal financial incentives equal to the value of a 1-year adult TriMet pass per residential unit, for the first year of building occupancy. This obligation will pay for a menu of incentives that will be offered to residents of the site to increase the use of transit, bicycling, walking, and other alternatives to driving alone. Specific rates for affordable dwelling units and market-rate dwelling units are found in the annual fee schedule.

Provision of a 1-year adult TriMet pass per residential unit for the six proposed new ground floor units could help to provide some level of mitigation to the parking issues found on streets adjacent to the site.

For all these reasons, approval of the Adjustment to reduce the minimum number of on-site parking spaces should be conditioned upon the provision of a 1-year adult TriMet pass per residential unit for the six proposed new ground floor units.

Regarding the Adjustment request to the ground floor windows standard, since staff finds that this Adjustment does not meet approval Criteria A or B, no additional mitigation will be required.

*Therefore, with the condition of approval that a 1-year adult TriMet pass shall be provided per new ground floor residential dwelling unit, this criterion will be 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). This site is not within an environmental zone.

*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 proposal includes two Adjustment requests—one to the ground floor windows and frontage standards for dwelling units, and the other to reduce minimum parking on the site by one space. With additional revisions to the ground floor plan, adding two additional doors into ground level dwelling units, staff finds that the ground floor windows and frontage standards Adjustment request satisfactorily meets the purpose of the regulation being adjusted (Criterion A), the desired character of the area (Criterion B), and does not create a negative cumulative effect requiring further mitigation (Criteria C and E).

For the Adjustment request to the minimum parking standards, staff finds that it meets the relevant approval criteria with a condition to provide mitigation in the form of 1-year TriMet passes for the proposed dwelling units.

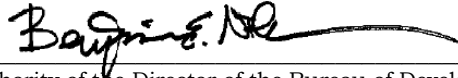
## ADMINISTRATIVE DECISION

Approval of the requested Adjustment to 33.130.230.B.4.a – Ground floor window and frontage standards for dwelling units, Flexible ground floor design; and,

Approval of the requested Adjustment to 33.266.110.B – Minimum number of required parking spaces, to reduce the minimum number of required parking spaces by one, per the approved site plans, Exhibits C.1 through C.3, signed and dated 10/01/2021, 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 21-059169 AD. No field changes allowed."
- B. A 1-year adult TriMet pass shall be provided per new ground floor residential dwelling unit.

**Staff Planner: Benjamin Nielsen**

**Decision rendered by:**  **on October 1, 2021.**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: October 5, 2021.**

**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 22, 2021, and was determined to be complete on August 4, 2021.

*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 22, 2021.

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: December 2, 2021.**

**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 to the Design Commission, 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 October 19, 2021. 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 Office of Community and Civic Life 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 this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

**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 Design Commission 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 Design Commission 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 on or after **October 20, 2021** 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.

Zone Change and Comprehensive Plan Map Amendment approvals do not 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 Submittals
  1. Original Drawing Set
  2. Revised Drawing Set
  3. Narrative
  4. Response to Incomplete Letter
  5. Revised Ground Floor Plan
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. Proposed Ground Floor Plan (attached)
  3. Required Parking Analysis (attached)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Transportation Engineering and Development Review
  2. Life Safety Review Section of BDS
- F. Correspondence:
  1. Laura Skokan, 09/02/2021, letter in opposition
  2. Tamara DeRidder, Chairwoman, RCPNA, 09/03/2021, letter in opposition
  3. Tamara DeRidder, Chairwoman, RCPNA, 09/09/2021, letter in opposition
- G. Other:
  1. Original LU Application
  2. Incomplete Application Letter
  3. Email from applicant with Exhibits A.2-A.4 and request to deem the application complete, 08/04/2021
  4. Email thread between staff and applicant re: public comments, 09/13/2021
  5. Email thread between applicant and staff re: decision and ground floor plan, 09/29 – 10/01/2021

**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).**