

City of Portland, Oregon Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Dan Ryan, Commissioner Rebecca Esau, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portland.gov/bds

Date: March 10, 2022

To: Interested Person

From: Marguerite Feuersanger, Land Use Services

503-823-7619 / Marguerite.Feuersanger@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision.

The reasons for the decision are included in the version located on the BDS website http://www.portlandonline.com/bds/index.cfm?c=46429. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 21-027966 AD

GENERAL INFORMATION

Applicant: Mark Rosenkranz

6329 SE 43rd Ave Portland, OR 97206

Owners: Rosenkranz, Mark Tr and Rosenkranz, Susan Tr

6329 SE 43rd Ave Portland, OR 97206

Site Address: 6329 SE 43rd Avenue

Legal Description: BLOCK 143 S 1/2 OF LOT 2, WOODSTOCK

Tax Account No.: R928913010 **State ID No.:** R928913010 1S2E18CC 06100

Quarter Section: 3635

Neighborhood: Woodstock, contact Thatch Moyle or Les Szigethy at

luc@woodstockpdx.org

Business District: Woodstock Community Business Association, contact at

http://www.woodstockbiz.com

District Coalition: Southeast Uplift, contact Matchu Williams at matchu@seuplift.org

Zoning: R5, Residential 5,000 Zone

Case Type: AD, Adjustment

Procedure: Type II, an administrative decision with appeal to the Adjustment

Committee.

Proposal: The applicant proposes to construct a detached accessory structure with a garage on the main level and an accessory dwelling unit on the second level. The structure will be located behind the house on this 5,000 square foot corner lot, with the garage entrance access at SE Henry Street. Garage entrances must be set back at least 18 feet from the street

lot line per Zoning Code Section 33.110.220.B and Table 110-3. The applicant is requesting an Adjustment to reduce the garage entrance setback from 18 feet to 5 feet. Exceptions to this regulation may be approved through an Adjustment Review if all relevant approval criteria are met or if the criteria can be met through conditions of approval. A proposed site plan and building elevations are attached to this notice.

Notes:

- SE Henry Street adjacent to the site is a 60-foot-wide platted right-of-way that is unimproved. The applicant's site plan shows two existing public trees will remain and a new gravel driveway and flagstone path are proposed within the right-of-way. The southwest corner of the property coincides with the location of an existing iron pipe survey marker.
- In October 2016, the property owners received Adjustment approval for the same proposal and structure (16-140754 AD). This approval, however, expired in October 2019 because building permits for the structure were not submitted within three years of the approval.

Relevant Approval Criteria:

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

ANALYSIS

Site and Vicinity: The subject site is a 5,000 square feet lot located at the northwest corner of the intersection of SE 43rd Avenue and SE Henry Street. Development on the site includes a single-dwelling house, built in 1909, that faces the SE 43rd Street frontage, and a detached single-car garage located behind the house, with the access from SE Henry Street. An existing maple tree (24-inch diameter) is located on the northwest corner of the site

Adjacent to the site, SE 43rd Avenue is improved with a paved roadway, curbs, and sidewalk; SE Henry Street is unimproved with only a narrow gravel roadway. An ash tree (32-inch diameter) is located within the SE Henry right-of-way, just south of the site. Also within this unimproved right-of-way is a fence and shed, associated with the subject site.

The area around the site is developed with other single-dwelling residences, dating from the same era of the subject house, in addition to more recent, mid-century construction. Detached accessory structures are generally located near rear and side property lines, but the location varies from property to property. The property west of the site contains an existing detached garage located near the SE Henry right-of-way.

A neighborhood commercial center is located four blocks to the north, on Woodstock Boulevard. The residential streets to the south of the commercial area are local service streets that vary with respect to the level of improvements.

Zoning: The R5 zone is one of the City's single-dwelling zones, intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing and provide options for infill housing that is compatible with the scale of the single-dwelling neighborhood.

Land Use History: City records indicate the following prior land use review on the site:

• LU16-140754 AD. Approval of Adjustments to reduce garage entrance setback and side setback for new detached garage with second story ADU, with conditions. Approval expired in 2019.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **May 21, 2021**. The following Bureaus have responded with no issues or concerns:

· Water Bureau

- Fire Bureau
- Site Development Section of BDS

The Bureau of Environmental Services has no objection to the proposal and responded with the following comment (Exhibit E-1):

The proposed project will add greater than 500 square feet of new impervious area and will therefore trigger the requirements of the City's Stormwater Management Manual (SWMM). It does not appear that approval of the requested adjustment will preclude the construction of adequately sized stormwater management facilities, therefore BES does not object to approval. However, BES will require a detailed stormwater management plan for this project during building permit review. Please refer to the Stormwater Infiltration and Discharge Hierarchy and submittal requirements in the SWMM: www.portlandoregon.gov/bes/swmm.

The Bureau of Transportation (PBOT) reviewed the proposal and site conditions. PBOT has no objection to the proposed Adjustment and provides findings in response to the Adjustment approval criteria. While not directly related to this request, PBOT noted concerns about structures within the unimproved portions of SE Henry Street (Exhibit E-2):

Given the existing conditions of SE Henry, PBOT does not object to the reduction in the garage entrance setback. However, privatization of the public resource is highly discouraged and creates a higher potential for unintended conflicts within the public ROW. Therefore, the fence and structure shall be either removed or obtain an Encroachment Permit prior to issuance of the building permit. At such time that SE Henry is improved to City standards, vehicles will not be permitted to extend across/block a future pedestrian corridor and will be required to park along the curb.

Subsequently, the applicant applied for an Encroachment Permit (Exhibit A-3) to request permission to retain the existing fence and shed. This permit request is currently under review by PBOT.

The Urban Forestry Division reviewed the proposal and the applicant's Arborist Report (Exhibit A-4) and submitted the following comments:

I have reviewed the Tree Protection Plan, Arborist Report, and other materials provided, and revisited the site. I am satisfied with the investigative work performed and the overall Tree Protection plan. My one concern is that the Arborist says, "If necessary, the proposed driveway should be designed to rest on top of existing grade to avoid the need to excavate and prune any roots." I am bothered by the "if necessary..." part because the point of this venture was to determine if other measures would be necessary. Because there is at least one root discovered within the new driveway foot print I feel that it is necessary to design in such a way that can best preserve tree roots. I would like to have required as a condition, that the driveway is to be built up, rather than excavated, and that the driveway must be constructed with 4"-6" of crushed rock over geotextile fabric to spread the load over potential tree roots. Also, it would be good to include the following boilerplate language:

 Additional inspection required prior to cutting street tree roots. Contact urban forestry (https://devhub.portlandoregon.gov) once roots are exposed.
 Consultation with the urban forester is required before cutting of roots.

Based on the Urban Forester's comments, conditions of approval are needed that require implementation of the applicant's Arborist Report, to require that the driveway be built up and not excavated, as described above, and to require inspection by the Urban Forester in the event that roots are proposed to be cut.

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the Notice of Proposal.

ZONING CODE APPROVAL CRITERIA

Adjustments 33.805.010 Purpose

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations. They also allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below, have been met.

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

Findings: The applicants are requesting approval of an Adjustment to Zoning Code Section 33.110.220 B, to reduce the minimum garage entrance setback from 18 feet to 5 feet from the SE Henry Street lot line.

The purpose of the setback regulations is stated in Zoning Code Section 33.110.220 A. This code section states that the regulations serve several purposes. The bolded text is relevant to this request to reduce the minimum garage entrance setback:

The regulations are intended to maintain light, air, separation for fire protection, and access for firefighting. Setback standards also reflect the general building scale and placement of development in the City's neighborhoods and promote a reasonable physical relationship between residences. They promote options for privacy for neighboring properties and 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. They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards. The minimum garage entrance setback requirement is intended to provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and to enhance driver visibility when backing onto the street.

The SE Henry Street lot line is the south side property line for this site, so the front setback purpose is not in question in this proposal. The R5 zone requires a minimum 5-foot building setback from the side and rear property lines. The proposed garage/ADU meets the building setback requirements and therefore meets all of the other aspects of the purpose statement, with the exception of the garage entrance. Therefore, the only portion of the purpose statement relevant to this Adjustment request is the last sentence regarding the garage entrance setback, shown in bold type above.

As noted in the response from the Portland Bureau of Transportation (PBOT, Exhibit E-2), SE Henry Street has a 60-foot-wide right-of-way. There is no curb and no sidewalk; the only improvement is the approximate 13-foot-wide gravel roadway. The gravel roadway is generally centered within the right-of-way, resulting in unimproved right-of-way areas extending 20 feet or more to the property line. Therefore, adequate room is available to

park a vehicle in front of the proposed garage door without incumbering the SE Henry gravel roadway.

PBOT staff express the following concerns about the proposal:

... whether the location of the garage door will encourage vehicles to park in front of the door in a manner that would block the sidewalk and extend into the abutting roadway. However, at this location, SE Henry St - which is underimproved with an approximate 13-ft wide gravel roadway within a 60-ft wide ROW with no curb or sidewalk – has an existing fence and structure placed within the ROW which has the potential to block visibility and limits maneuverability within the ROW. City records indicate the applicant has not obtained an Encroachment Permit for the aforementioned fence and structure placed within the ROW.

Given the existing conditions of SE Henry, PBOT does not object to the reduction in the garage entrance setback. However, privatization of the public resource is highly discouraged and creates a higher potential for unintended conflicts within the public ROW. Therefore, the fence and structure shall be either removed or obtain an Encroachment Permit prior to issuance of the building permit. At such time that SE Henry is improved to City standards, vehicles will not be permitted to extend across/block a future pedestrian corridor and will be required to park along the curb.

The applicant has applied for an Encroachment Permit (#22-108258 TR) to request that the existing fence and shed be allowed to remain. This request is currently under review. Therefore, a condition is needed that requires the removal of the existing encroachments if the current Encroachment Permit is not approved.

PBOT also notes that SE Henry Street may be improved with sidewalks in the future. In this case, a condition is need that prohibits vehicles from extending across or blocking a sidewalk or pedestrian corridor.

With the above-recommended conditions of approval, the purposes of the setback regulation are equally met, and this criterion is met.

B. If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The design and scale of the garage/ADU structure complements the architecture of the main house and its placement on the site is consistent with the placement of the neighboring garage to the west and other garages in the immediate area. An existing street tree (32-inch ash tree) contributes to the livability and appearance of the area and will be preserved and protected. For these reasons, the proposal will not significantly detract from the livability or appearance of the residential area. Therefore, this criterion is met.

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

Findings: Only one adjustment is being requested. Therefore, this criterion does not apply.

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

Findings: City-designated scenic resources are shown on the City's zoning maps by an "s" or Scenic Overlay Zone. City-designated historic resources are shown on the City's zoning maps, either as an adopted landmark, or as a site that is located within the boundaries of a Conservation or Historic District. There are no City-designated scenic or historic resources on the site. Therefore, this criterion does not apply.

E. Any impacts resulting from the adjustment are mitigated to the extent practical.

Findings: Potential impacts of the proposal have been identified by Urban Forestry staff, in that the proposed garage is within the root protection zone of an existing street tree. In response to these concerns, the applicant submitted an Arborist Report, which was reviewed by the Urban Forester. Conditions identified in the Criterion A findings are needed to limit impacts and require that the Arborist Report be part of the building permit plans, specific treatment for the driveway construction, and inspection by the Urban Forester if tree roots are proposed to be cut. Also, to mitigate for potential sight-distance impacts caused by the reduced garage entrance setback, existing fences and structures within the SE Henry must be removed or an Encroachment Permit must be obtained through PBOT. With these conditions, impacts of the Adjustment request will be mitigated and 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 zones are designated with either a lower case "c," for the Environmental Conservation Overlay, or "p," for the Environmental Protection Overlay. The site is not located in an environmental zone. Therefore, this criterion does not apply.

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

With conditions, all relevant approval criteria are met for the requested reduction of the minimum garage entrance setback along the SE Henry Street side property line. To preserve livability and appearance of the neighborhood area, conditions of approval are needed to preserve and protect an existing 32-inch-diameter ash street tree, located near the south property line.

An Adjustment approval criterion requires that the proposal equally or better meet the purpose of the garage entrance setback, which is

to ensure adequate distance to allow a vehicle to park in front of a garage without overhanging the sidewalk and to enhance driver visibility when backing onto the street.

The majority of the SE Henry Street 60-foot-wide right-of-way is unimproved, containing only a narrow gravel road surface. This condition allows additional space for vehicle maneuvering into and out of the garage. Currently, there are no sidewalks along SE Henry Street. In the future when sidewalks are installed, a condition is needed that prohibits vehicles from obstructing or blocking the sidewalk. To enhance driver visibility, an existing fence and shed within SE Henry Street must be removed or receive an Encroachment Permit through PBOT.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the Garage Entrance Minimum Setback from 18 feet to 5 feet, with a one-foot eave overhang (Section 33.110.220.B and Table 110-4), per the approved site plans, Exhibits C-1 and C-2, signed and dated March 8, 2022, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through E) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE Case File LU 21-027966 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The Arborist's Report (Exhibit A-4) and recommendations must be part of the building permit plans and implemented on the site with the following additional requirement: To spread the load over potential tree roots, the driveway must be constructed with at least 4 inches and no greater than 6 inches of crushed rock over geotextile fabric.
- C. Additional inspection by and consultation with the Urban Forester is required prior to cutting street tree roots. Contact Urban Forestry (https://devhub.portlandoregon.gov) once roots are exposed.
- D. At such time that SE Henry Street is improved partially or fully to City standards, vehicles are prohibited from extending across or blocking the sidewalk or pedestrian corridor.
- E. The existing fence and shed within the SE Henry right-of-way adjacent to the site must be removed or an Encroachment Permit must be obtained through PBOT, prior to issuance of the building permit plans.

Staff Planner: Marguerite Feuersanger

Decision rendered by: _____ on March 8, 2022

By authority of the Director of the Bureau of Development Services

Decision mailed: March 10, 2022.

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 March 22, 2021 and was determined to be complete on May 17, 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 March 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 extended the 120-day review period by an additional (maximum) 245 days, as stated in Exhibit G-2. Unless further extended by the applicant, **the 365 days will expire on May 17, 2022.**

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 Adjustment Committee, 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 March 24, 2022. The completed appeal application form must be emailed to 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 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 **March 24, 2022**, by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

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

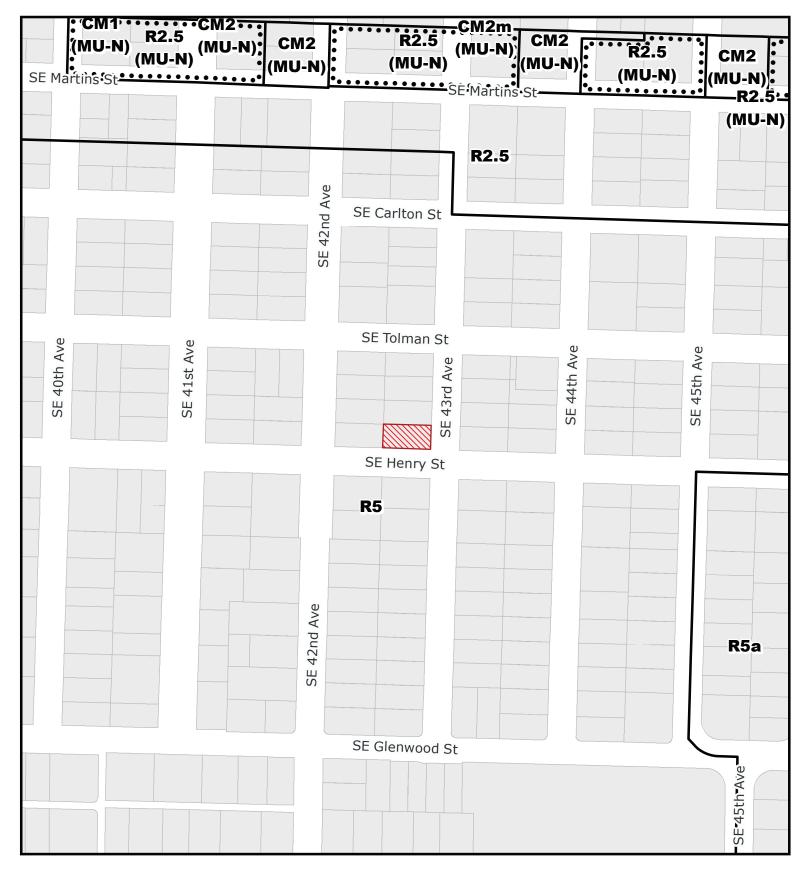
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review:
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original Submittal
 - 2. Updated Submittal, May 17, 2021
 - 3. Updated Submittal, January 24, 2022
 - 4. Arborist Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Residential Life Safety Plan Review Section of BDS
 - 7. Urban Forestry Division, Bureau of Parks and Recreation
- F. Correspondence:
 - None.
- G. Other:
 - 1. Incomplete application letter to applicant
 - 2. Applicant's signed extension form to extend 120-day review period
 - 3. Second Incomplete application letter to applicant

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 AND NORTH



LU 21 - 027966 AD File No. 3635 1/4 Section 1 inch = 200 feet Scale 1S2E18CC 6100 State ID Exhibit В Mar 22, 2021

