



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

Dan Ryan, Commissioner  
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[www.portland.gov/bds](http://www.portland.gov/bds)

**Date:** August 25, 2022  
**To:** Interested Person  
**From:** David Besley, Land Use Services  
503-865-6715 / [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 22-137206 AD**

**GENERAL INFORMATION**

**Applicant:** Dave Spitzer  
DMS Architects  
2325 NE 19th Ave  
Portland OR 97212  
Email: [dave@dmsarchitects.com](mailto:dave@dmsarchitects.com)  
Phone: (503) 335-9040

**Owner:** Patrick Juliano  
10675 NW Jericho Ct  
Portland, OR 97229

**Site Address:** 4408 SE 36TH PL

**Legal Description:** BLOCK 1 LOT 10, ODEEN  
**Tax Account No.:** R624300190  
**State ID No.:** 1S1E12DD 19800  
**Quarter Section:** 3434

**Neighborhood:** Creston-Kenilworth, contact Seth Otto at [ckna.landchair@gmail.com](mailto:ckna.landchair@gmail.com)  
**Business District:** Greater Brooklyn, contact at [greaterbrooklynba@gmail.com](mailto:greaterbrooklynba@gmail.com)  
**District Coalition:** Southeast Uplift, contact Matchu Williams at [matchu@seuplift.org](mailto:matchu@seuplift.org)

**Plan District:** NONE  
**Zoning:** R2.5(Residential 2,500)

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

**Proposal:**

The applicant is proposing to convert a 424 square foot attached garage into living area, which would result in the driveway being used for parking. The Portland Zoning Code requires vehicle parking spaces to not be within the first 10 feet of a front lot line (Section 33.266.120.C.2.a). The proposed parking area (the existing driveway) is 20 feet in length and, given the required parking space length of 18 feet (Section 33.266.120.D.1), the parking space will encroach 8 feet into the 10-foot front setback; therefore, an Adjustment is required to allow parking within the first 10 feet of a front lot line.

**Relevant Approval Criteria:**

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 5,000 sq.ft. site is located on the east side of SE 36<sup>th</sup> Place at the intersection of SE Mall Street and SE 36<sup>th</sup> Place. The site is relatively flat and developed with a 2,172 sq.ft. single story dwelling with a basement and 424 sq.ft. attached garage. This area is developed primarily with 1-to-2-story single and multi-dwelling residences.

**Zoning:** The R2.5 base 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.

**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 5, 2022**. The Life Safety Review Section of the Bureau of Development Services (BDS) responded with no concerns regarding the Adjustment review, and noted that a Building Permit will be required for the work proposed (Exhibit E.1).

The following Bureaus have responded with no concerns (Exhibit E.2):

- The Site Development Review Section of BDS;
- The Fire Bureau
- The Bureau of Environmental Services;
- Bureau of Transportation Engineering and Development Review; and
- The Water Bureau.

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

**ZONING CODE APPROVAL CRITERIA****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. 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 to convert an attached garage into living space, which results in the driveway being used as a parking space. This requires an Adjustment to

allow a parking space 2 feet from the front lot line where a minimum 10-foot front lot line setback is required. The purpose for the vehicle parking regulations is as follows:

**33.266.120 Development Standards for Houses and Duplexes**

*The size and placement of vehicle parking areas are regulated in order to enhance the appearance of neighborhoods.*

No new development or expansions to the existing driveway is proposed as part of this Adjustment request, so there will be no negative impacts to the appearance of the neighborhood. It is common in this area for cars to park within the first 10 feet of a front lot line; the proposal is therefore consistent with the appearance of the neighborhood.

PBOT noted no concerns to the request.

***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, the proposal is consistent with the appearance of the neighborhood. It is common in this area for cars to park within the first 10 feet of a front lot line. Furthermore, no exterior construction is proposed as part of this Adjustment request. As such, 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:** Only one Adjustment is proposed; therefore, this criterion is not applicable.

- 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:** There are no discernible impacts that would result from granting the requested Adjustment for which mitigation would be required.

***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 is proposing to convert an attached garage into living space, which results in the driveway being used as a vehicle parking space. An Adjustment is requested to allow vehicle parking 2 feet from the front lot line, where a minimum 10-foot front setback is required. No new development or expansions to the existing driveway is proposed as part of this Adjustment request, so there will be no negative impacts to the appearance of the neighborhood. It is common in this area for cars to park within the first 10 feet of a front lot line; the proposal is therefore consistent with the appearance of the neighborhood. The proposal meets the applicable approval criteria and should therefore be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum vehicle parking setback from 10 feet to 2 feet from the front lot line as a result of converting an attached garage into living area (Section 33.266.120.C.2.a), per the approved site plans, Exhibits C-1 through C-2, signed and dated August 16, 2022, subject to the following conditions:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 22-137206 AD. No field changes allowed."

**Staff Planner: David Besley**



**Decision rendered by:** \_\_\_\_\_ **on August 16, 2022.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: August 25, 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 April 29, 2022, and was determined to be complete on June 28, 2022.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on April 29, 2022.

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: October 26, 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 September 8, 2022. 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 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 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 8, 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:

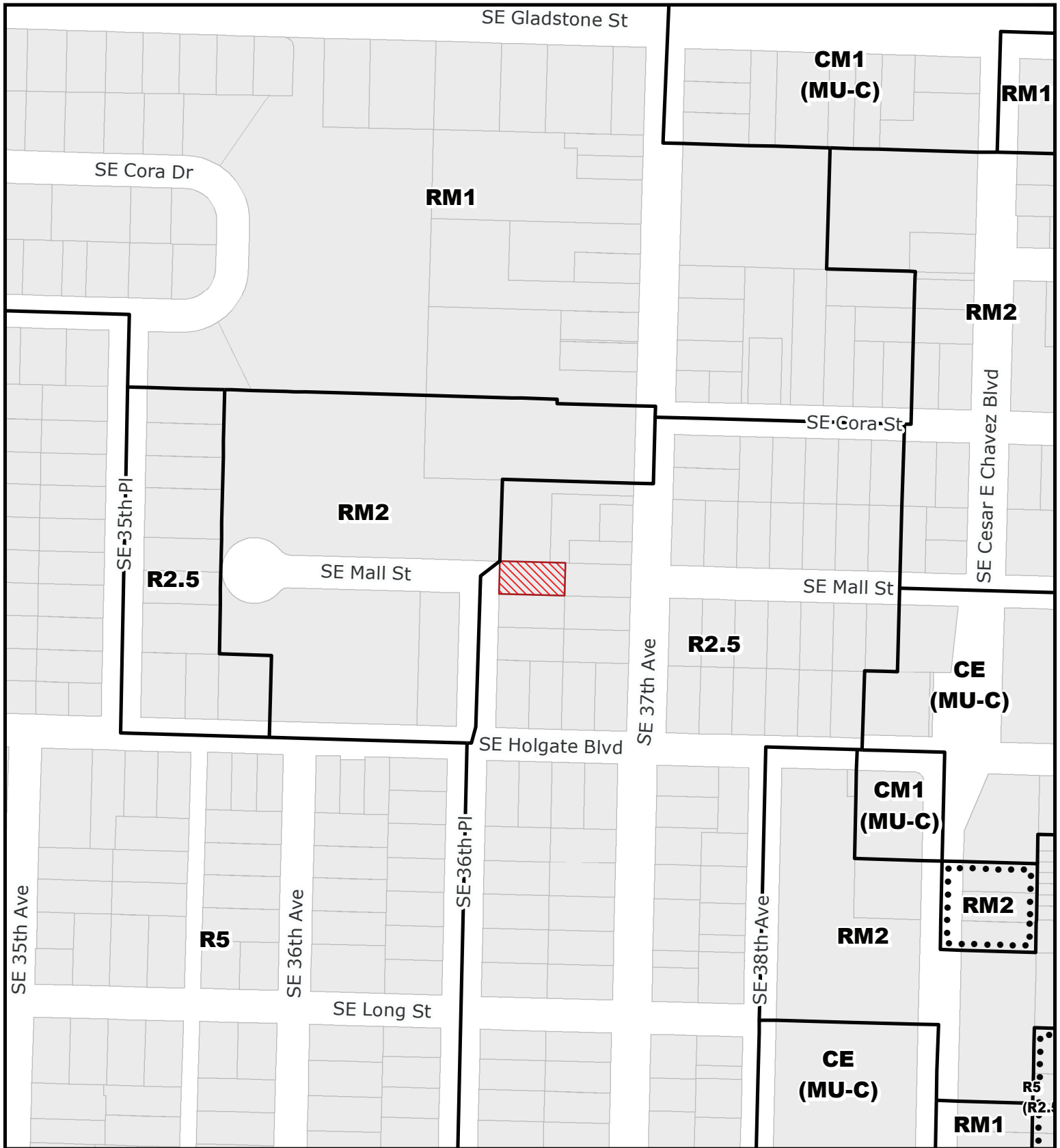
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation Drawings and Details (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. The Life Safety section of the Bureau of Development Services
  - 2. Agencies responding with "no concern"
- F. Correspondence: none
- G. Other:
  - 1. Original LU Application and Receipt
  - 2. Incomplete letter from staff to applicant, sent May 20, 2022

**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

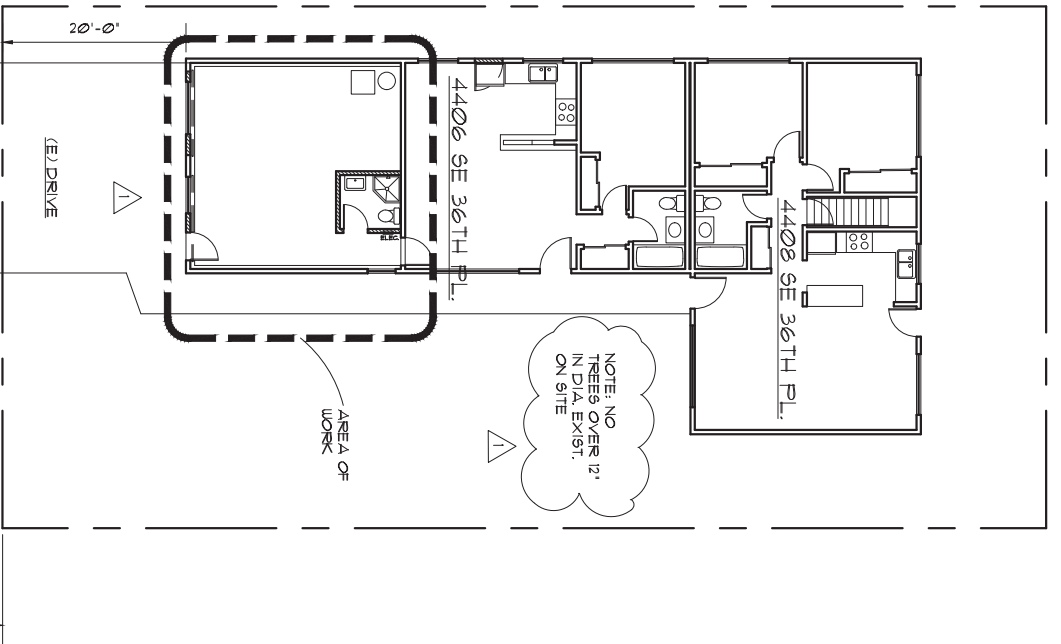


For Zoning Code in effect Post August 1, 2021

File No.	LU 22 - 137206 AD
1/4 Section	3434
Scale	1 inch = 200 feet
State ID	1S1E12DD 19800
Exhibit	B Apr 29, 2022

\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner **David Besley**  
 Date **8/16/22**

\*This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



1 SITE PLAN



