



**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 31, 2022  
**To:** Interested Person  
**From:** Amanda Rhoads, Land Use Services  
503-865-6514 / [Amanda.Rhoads@portlandoregon.gov](mailto:Amanda.Rhoads@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 22-145117 AD**

#### **GENERAL INFORMATION**

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

**Owners:** Kelsey & Jedediah Smith  
7393 SE 118th Dr | Portland, OR 97266

**Site Address:** 7393 SE 118TH DR

**Legal Description:** BLOCK 1 LOT 4, TRUE HAVEN  
**Tax Account No.:** R844300100  
**State ID No.:** 1S2E22AD 07400  
**Quarter Section:** 3742  
**Neighborhood:** Pleasant Valley, contact Steve Montgomery at [foxtrotlove@hotmail.com](mailto:foxtrotlove@hotmail.com).  
**Business District:** NONE  
**District Coalition:** East Portland Community Office, contact at [info@eastportland.org](mailto:info@eastportland.org)  
**Plan District:** Johnson Creek Basin - South  
**Zoning:** R10 – Residential 10,000  
**Case Type:** AD – Adjustment Review  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant proposes a second-floor addition to an existing house. A corner of the house was already located in the required 20-foot front setback. Much of the front porch that was added around 2011 without permit is also located within the front setback. The current proposal would legalize that porch and add a second level on much of the house with a new second-story exterior stairs and deck, parts of which are also within the front setback. The applicant requests an Adjustment to Zoning Code Section 33.110.220.B and Table 110-4 to reduce the front setback from 20 feet to as little as 12 feet, 6.5 inches as shown on the site plan to

accommodate the front porch and the new addition, making up roughly 110 square feet within the front setback area.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

**ANALYSIS**

**Site and Vicinity:** The site is a 10,900-square-foot lot developed with a single-dwelling residence constructed in 1954. The detached garage was converted to an accessory dwelling unit in 2020/21. The site has a curved front street lot line, surrounded by other curved lots typical of mid-century land divisions in this Outer Southeast part of the city. SE 118<sup>th</sup> Dr is classified as Local Service for all modes. There is no sidewalk constructed in the area.

**Zoning:** The Residential 10,000 (R10) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 6,000 square feet, with minimum width and depth dimensions of 50 and 60 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 10,000 square feet of site area.

Under some circumstances, more than two dwelling units are allowed on lots in the R20 through R2.5 zones. The Constrained Sites “z” overlay zone reduces development potential to comply with protective measures adopted and acknowledged pursuant to statewide land use planning goals. This overlay zone reduces risk to life or property from certain natural hazards.

The Johnson Creek Basin Plan District provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services. At certain locations, the density of development is limited by applying special regulations to new land division proposals. In addition, restrictions are placed on all new land uses and activities to reduce stormwater runoff, provide groundwater recharge, reduce erosion, enhance water quality, and retain and enhance native vegetation throughout the plan district. At other locations, development is encouraged and mechanisms are included that provide relief from environmental restrictions. The site is within the South Subdistrict of this plan district.

**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 **June 24, 2022**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4); and
- Site Development Section of BDS (Exhibit E.5).

The Bureau of Environmental Services (BES) noted the proposal would likely trigger the requirements of the City’s Stormwater Management Manual, and that BES will require a detailed stormwater management plan for the project during building permit review. However, BES does not object to the Adjustment review (Exhibit E.1).

**Neighborhood Review:** No written responses were received from either the Neighborhood Association or notified neighbors in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 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:** The applicant requests Adjustments to reduce the minimum front building setback from 20 feet to 12 feet, 6.5 inches for a second-story addition to the house. The relevant purpose statements and associated findings are found below:

#### 33.110.220 Setbacks

- A. Purpose.** *The setback regulations for buildings and garage entrances serve several purposes:*

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of residences in the city's single-dwelling neighborhoods;*
- *They foster a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

The applicant provided a written statement as part of this application (Exhibit A.1). For this criterion, the applicant provided the following reasons in support of the purpose statements for setbacks:

- Part of the existing house is already located in the front setback several feet; the SE corner of the house is roughly 16 feet, 8 inches from the front property line. Adding somewhat more does not change the fundamental relationship of the house to the street.
- However, most of the house exceeds the minimum setback due to the curved front lot line and orientation of the house. The southwest corner of the house is almost 50 feet to the front lot line. The overall impact to the setback is minimal.
- The existing house is up from the street level, with a retaining wall and low fence already providing vertical separation between the site and the street. This helps

to buffer the impact of the reduced setback.

- The nearest neighbor to the north will not be affected – the proposal is not in the required side setback, and a 5-foot-tall fence already provides screening between the two sites.

Staff generally agrees with the applicant's assessment and adds the following supportive findings:

The site is across the street from lots that have Environmental Conservation and Protection overlays. These overlays allow development to encroach fully into the front setback. It appears some nearby sites have taken advantage of this setback reduction. Because of this, it is not unusual in this R10 area to see houses closer than 20 feet from the street lot line.

Because of the lack of sidewalks, pedestrian traffic is not expected to be particularly high. The impact of the corner of the house and deck being closer than 20 feet to the front property line will not be experienced at a pedestrian scale.

The deck floor is at roughly 10 feet above grade (though much of the area within the front setback is the stairs up to that height); the front porch is at 11 feet; and the expanded house is at roughly 23 to 24 feet. The height limit for the R10 zone is 30 feet. The site plan shows only small portions of the structure intrude into the front setback. The proposal does not try to maximize the amount of area within the setback (height or overall square footage), or externalize the impacts of the building coverage on the neighbors. Rather, the addition is modest, only adding a second story on two-thirds of the house, and is located on top of the existing house.

For these reasons, staff finds 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 site is within the R10 zone, a residential zone. The proposed addition is on the southeast portion of the house. Nearby landscaping and site work will not be impacted by the addition.

Impacts of the front setback are also minimized due to the low height of the addition (23-24 feet) for the second story, and 10-11 feet for the front porch and deck. While the addition is only 12.5 feet from the front property line, most of the existing street facing façade of the house is set back 20 to 50 feet from SE 118<sup>th</sup> Dr due to the angle of the house and curvature of the street.

However, the site had 7 or 8 mature trees east of the house until recently when several were removed through Urban Forestry permits. Large, mature trees are common for the area, and the additional ones (which were removed because they died or were dangerous) would have substantially helped to screen this development closer than allowed to the street. The applicant narrative states, “[a] small tree or large shrubs could easily be planted between the SE corner of the house and the front property line” (Exhibit A.1). To ensure visual separation between the subject site and the street, a condition of approval will require the planting of one large or two medium trees (as calculated using the categorization described in Zoning Code Section 33.248.030.C.2.c) on the property between the part of the house in the front setback and the front property line. Staff also notes there is an over-height fence in the front setback that was not approved. This decision does not legalize this fence taller than 3.5 feet in the front setback.

For the above reasons, and with the condition to plant one large or two medium trees between the front property line and the area in the reduced setback, 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 requested. This criterion is not applicable.

- 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 condition to plant one large tree or two medium trees between the house and the street will work to screen the part of the house (including the deck and front porch) that will be located in the front setback. Mature trees are common in the area and provide important screening in the neighborhood. With this condition, 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 Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As the site is not within an environmental zone, 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

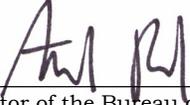
The applicant proposes to reduce the front setback for the front porch, a second story on the existing house, and a new stairs and deck, from 20 feet to as little as 12 feet, 6.5 inches. The area within the reduced setback is limited, approximately 120 square feet. With a condition for tree planting between the area of reduced setback and the street, and based on the information provided, staff finds this proposal meets the approval criteria and should be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.220.B and Table 110-4 for an addition to the house to reduce the front setback from 20 feet to as little as 12 feet, 6.5 inches, per the approved plans, Exhibits C.1 through C.2, signed and dated August 26, 2022, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition B 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 22-145117 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. As part of the building permit application for this proposal, the applicant must plant one large tree or two medium trees (as categorized by Zoning Code Section 33.248.030.C.2.c) between the area of reduced setback and the street.

**Staff Planner: Amanda Rhoads**

**Decision rendered by:**  **on August 26, 2022**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: August 31, 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 May 20, 2022, and was determined to be complete on June 22, 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 May 20, 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 20, 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 14, 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 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 **September 14, 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:

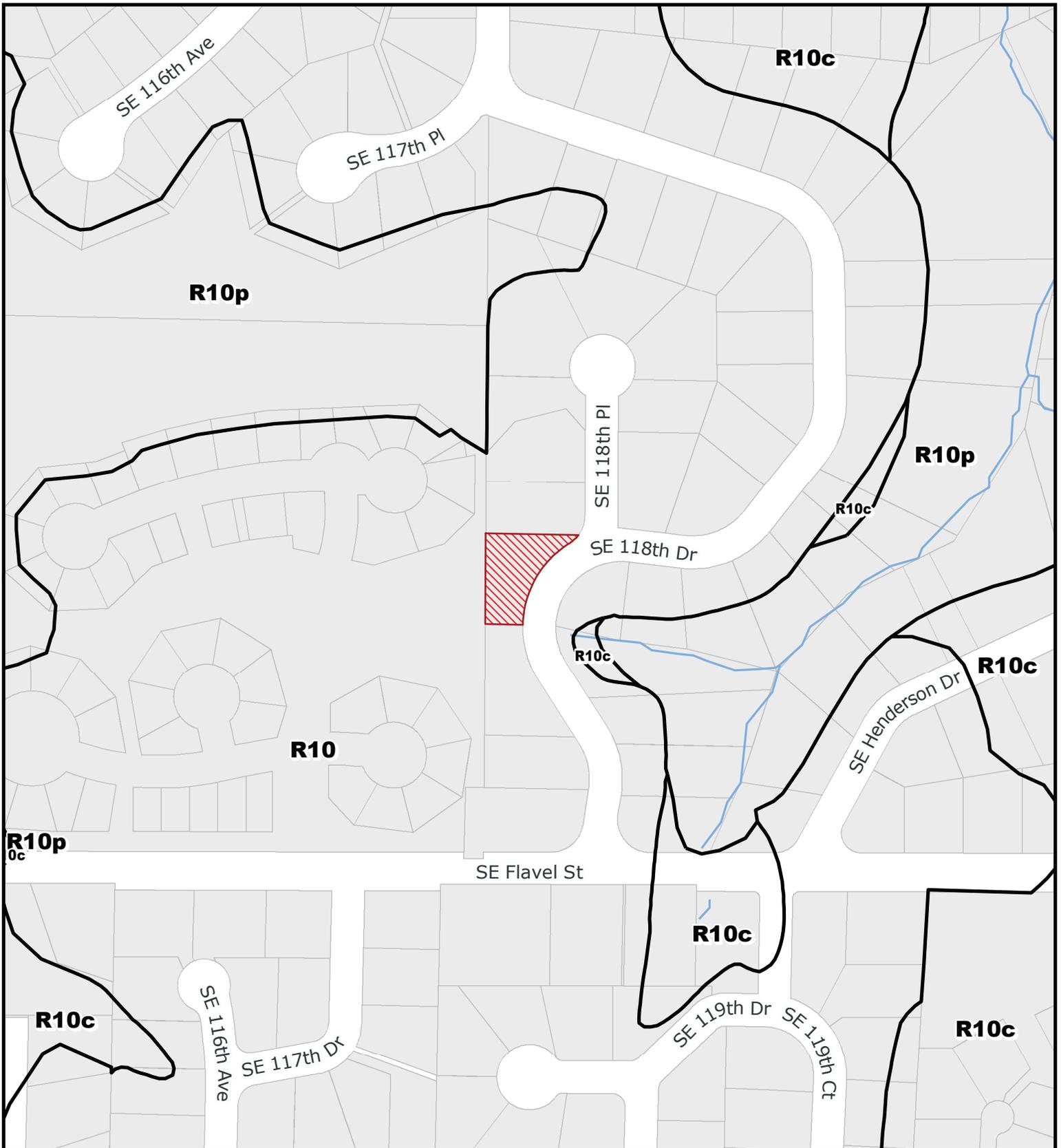
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Applicant Narrative
  2. Original Plan Set
  3. Google Street View
  4. Applicant email, June 15, 2022
  5. Updated plans, June 15, 2022
  6. Updated site plan, June 16, 2022
  7. Site survey
- 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. Life Safety Plans Examiner
- F. Correspondence: none received
- G. Other:
  1. Original Land Use Application
  2. Incomplete Letter, June 14, 2022
  3. Planner email, June 16, 2022
  4. Planner email, June 21, 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

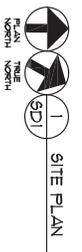
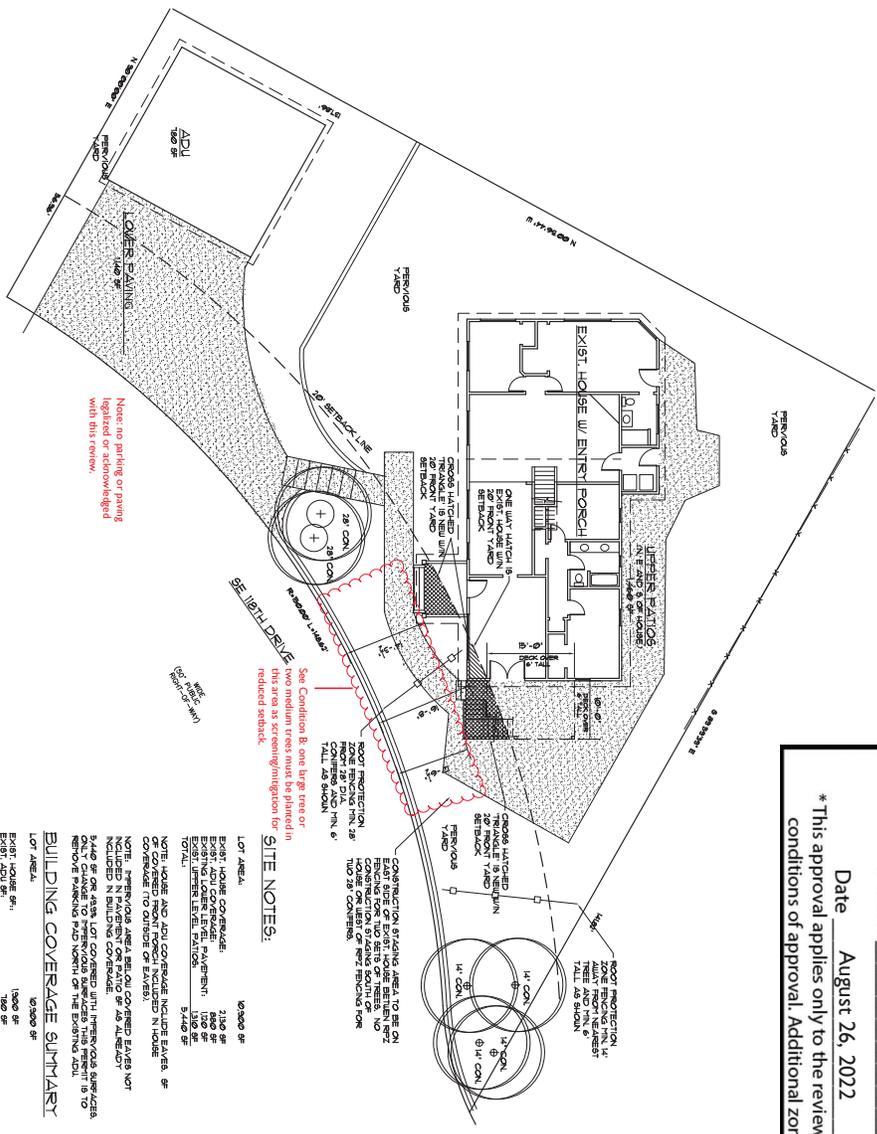


For Zoning Code in effect Post August 1, 2021

JOHNSON CREEK PLAN DISTRICT  
SOUTH SUB DISTRICT

File No.	LU 22 - 145117 AD
1/4 Section	3742
Scale	1 inch = 200 feet
State ID	1S2E22AD 7400
Exhibit	B May 20, 2022

\* Approved \*  
 City of Portland  
 Bureau of Development Services  
 Planner Amanda Rhoads  
 Date August 26, 2022  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



Note: no printing or reuse implied or acknowledged with this review.

See Condition B one large tree or two medium trees must be planted in this area as screening/mitigation for reduced setback.

**SITE NOTES:**

- LOT AREA: 10300 SF
- EXIST. HOUSE COVERAGE: 2130 SF
- EXIST. LOWER LEVEL PAVEMENT: 1050 SF
- EXIST. UTILITY LEVEL PATIO: 1310 SF
- TOTAL: 4490 SF
- NEW PATIO AND DECK COVERAGE: 1000 SF
- NEW LOWER LEVEL PAVEMENT COVERED: 1000 SF
- NEW UTILITY LEVEL PATIO COVERED: 1000 SF
- NEW ADU COVERED: 1000 SF
- NEW LOWER LEVEL PAVEMENT COVERED: 1000 SF
- NEW UTILITY LEVEL PATIO COVERED: 1000 SF
- TOTAL: 4490 SF

**BUILDING COVERAGE SUMMARY**

LOT AREA	10300 SF
EXIST. HOUSE SF	2130 SF
EXIST. ADU SF	1000 SF
EXIST. LOWER LEVEL PAVEMENT SF	1050 SF
EXIST. UTILITY LEVEL PATIO SF	1310 SF
TOTAL	2830 SF
NEW ADU COVERED SF	1000 SF
NEW LOWER LEVEL PAVEMENT COVERED SF	1000 SF
NEW UTILITY LEVEL PATIO COVERED SF	1000 SF
TOTAL	3000 SF

LU 22-145117 AD  
 Exhibit C.1

SHEET	SD1 of 1
JOB NO.	000016
DRAWN	DMS
CHECKED	DMS
DATE	6-15-22
REVISIONS	

SHEET CONTENT	SITE PLAN
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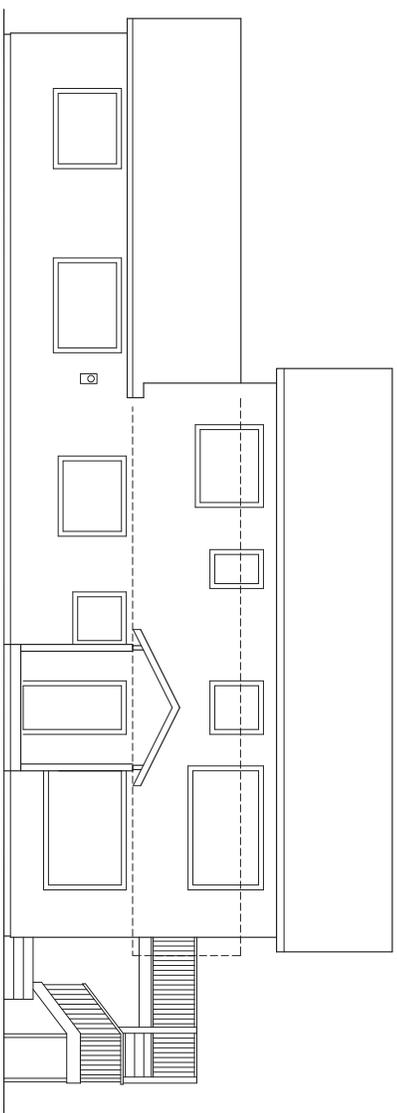
SMITH RESIDENCE  
 7393 SE 118TH DRIVE  
 PORTLAND, OREGON 97203

3225 NE 10TH AVE.  
 PORTLAND, OR 97212

OFFICE 503.335.9040  
 FAX 503.335.5456  
 DAVE@DMSARCHITECTS.COM

DMS ARCHITECTS

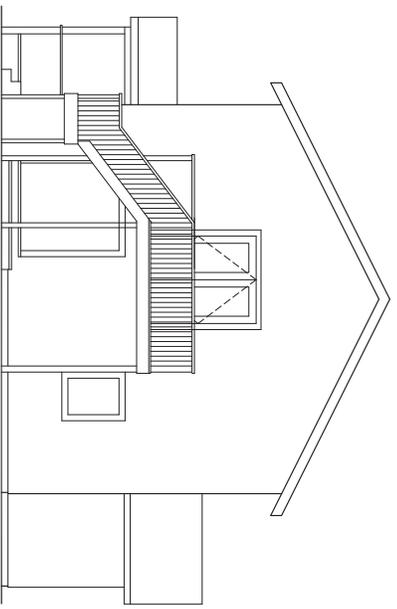
REGISTERED ARCHITECT  
 DAVID BITZER  
 DMS ARCHITECTS  
 PORTLAND, OREGON  
 STATE OF OREGON



1 SOUTH ELEVATION  
A3

1/4" = 1'-0"

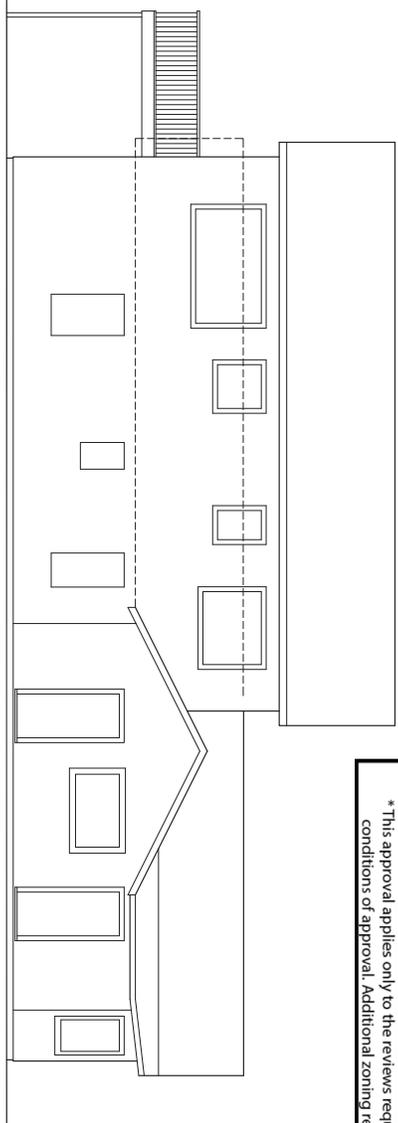
STAIRS REVERSE



2 EAST ELEVATION  
A3

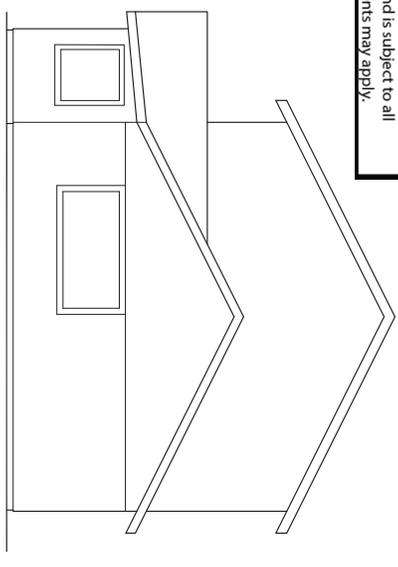
1/4" = 1'-0"

**\*Approved\***  
 City of Portland  
 Bureau of Development Services  
 Planner Amanda Rhoads  
 Date August 26, 2022  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



3 NORTH ELEVATION  
A3

1/4" = 1'-0"



4 WEST ELEVATION  
A3

1/4" = 1'-0"

LU 22-145117 AD  
 Exhibit C.2

JOB No.	000016
DRAWN	DMS
CHECKED	
DATE	4-12-22
REVISIONS	
SHEET	A3 of 5

SHEET CONTENT  
 EXTERIOR ELEVATIONS

SMITH RESIDENCE

7393 SE 118TH DRIVE  
 PORTLAND, OREGON 97203

2325 NE 10TH AVE., 2  
 PORTLAND, OR 97212  
 OFFICE 503 335 9040  
 FAX 503 335 5856  
 DAVE@DMSARCHITECTS.COM

