



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

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**STAFF REPORT AND RECOMMENDATION TO THE HEARINGS OFFICER**

**CASE FILE:** LU 22-108225 CU AD (PC # 21-061883)  
**REVIEW BY:** Hearings Officer (Hearings Office Case # 4230002)  
**WHEN:** March 22, 2023, at 1:30 PM

This land use hearing will take place remotely via the Zoom platform. See the instructions on how to participate online or by phone at <https://www.portlandoregon.gov/bds/article/811732> or contact the Hearings Office at [HearingsOfficeClerks@portlandoregon.gov](mailto:HearingsOfficeClerks@portlandoregon.gov) or 503-823-7307. Additional Hearings Office information is available at [www.portland.gov/omf/hearings/land-use](http://www.portland.gov/omf/hearings/land-use).

**BUREAU OF DEVELOPMENT SERVICES STAFF: ANDREW GULIZIA / ANDREW.GULIZIA@PORTLANDOREGON.GOV**

**GENERAL INFORMATION**

**Applicant:** Dave Spitzer  
 DMS Architects  
 2325 NE 19<sup>th</sup> Ave.  
 Portland, OR 97212  
 (503) 335-9040  
 dave@dmsarchitects.com

**Property Owner:** Aman LLC  
 2105 NE Fairway Dr.  
 Portland, OR 97211-1685

**Site Address:** 4735 NE 72<sup>nd</sup> Ave.

**Legal Description:** BLOCK 6 INC PT VAC ST-E 50' OF N 100' OF LOT 6, PADDOCK AC; BLOCK 6 INC PT VAC ST-SLY 40' OF NLY 140' OF LOT 5&6, PADDOCK AC

**Tax Account No.:** R637202410, R637202460  
**State ID No.:** 1N2E20BD 01600, 1N2E20BD 01900  
**Quarter Section:** 2537, 2538  
**Neighborhood:** Cully, contact David Sweet at [cullyguy@gmail.com](mailto:cullyguy@gmail.com)  
**Business District:** None  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at [alisons@cnncoalition.org](mailto:alisons@cnncoalition.org)  
**Plan District:** None

**Zoning:** R7h – Single-Dwelling Residential 7,000 base zone with Aircraft Landing (“h”) overlay zone

**Case Type:** CU AD – Conditional Use Review and Adjustment Review  
**Procedure:** Type III, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to City Council.

**Proposal:** The applicant requests Type III Conditional Use Review approval to establish a daycare use on this site. The new daycare would occupy an existing, single-story building. The existing

vehicle area south of the building would be used for 5 striped, off-street parking spaces. The only new construction proposed are new canopies to be attached to the building and a 176-square-foot accessory building on the west side of the parking lot.

A daycare is classified as an institutional use in Zoning Code Table 110-1. In addition to the Conditional Use Review, the applicant requests an Adjustment to the Institutional Development Standards in Zoning Code Section 33.110.270.C.1, Table 110-8<sup>1</sup>. Table 110-8 requires a 15-foot-wide, landscaped setback around the entire perimeter of the site, except for parts of the site perimeter which are adjacent to parking areas and grassy play areas (Table 110-8, footnote 5 and Zoning Code Section 33.110.270.C.8). The applicant requests for this requirement to be modified as follows:

- To allow the existing building to remain only 12'-5" from the east lot line (6'-5" from the new main entrance canopy and 9'-5" from other new canopies), and to waive the requirement for all of this setback to be landscaped;
- To allow the existing building to remain only 1 foot from the north lot line (zero for new canopies), and to waive the requirement for this setback to be landscaped;
- To allow the existing building to remain only 8'-1" from the west lot line, and to waive the requirement for all of this setback to be landscaped;
- To allow a hardscape play area to be only 2'-3" from the south lot line, and to waive the requirement for new trees in this setback; and
- To allow a hardscape play area to be only 5'-6" from the north lot line.

**Relevant Approval Criteria:** To be approved, this proposal must comply with the approval criteria of Title 33, the Portland Zoning Code. The applicable approval criteria are:

- Zoning Code Section 33.815.105.A-E (Conditional Use Review); and
- Zoning Code Section 33.805.040.A-F (Adjustment Review).

The Portland Zoning Code is available online at <https://www.portland.gov/code/33>.

## ANALYSIS

**Site and Vicinity:** The subject site is in the Cully neighborhood in Northeast Portland. The site is an "L"-shaped, 15,600-square-foot property on the southwest corner of NE 72<sup>nd</sup> Avenue and NE Wygant Street. The site is developed with a single-story, approximately 5,900-square-foot building that was previously used as a print shop. A surface parking area is on the south side of the building. On the opposite side of NE 72<sup>nd</sup> Avenue from the site is a church building that is also used as a food pantry. Most other neighboring lots are developed with houses. Mobile home parks along NE Lombard Street are five blocks north of the site.

**Zoning:** The R7 single-dwelling residential zone is intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. Daycares may be allowed in the R7 zone through Conditional Use Review (Zoning Code Section 33.110.100.C, Table 110-1).

The Aircraft Landing ("h") overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation in

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<sup>1</sup> These regulations are in Table 110-9 in the Zoning Code at the time of this writing but were in Table 110-8 at the time the application was submitted. The Zoning Code that applied at the time the application was submitted continues to apply to this review, per Zoning Code Section 33.700.080.A.1.b.

employment, industrial, and open space zones. The “h” overlay height regulations do not apply to the subject site because it’s in a residential zone (Zoning Code Section 33.400.030.B).

**Land Use Review History:** The site was subject to the following prior land use review decisions:

- MCF 74-72 BA: 1972 Multnomah County approval to expand a nonconforming printing business.
- MCF 2-65 C: 1965 Multnomah County approval of a zoning ordinance interpretation for a nonconforming use.
- MCF 30-63 MC: 1963 Multnomah County approval to expand a nonconforming use.
- MCF 3-56 ZC: 1956 Multnomah County approval for a warehouse and contractor’s office.

Conditions of approval from these prior decisions are no longer applicable because each of these was applied for prior to 1981 (Zoning Code Section 33.700.110.A).

**Agency Review:** A “Request for Response” was sent to City agencies February 6, 2023 (Exhibit D-1). The following City reviewers responded:

- The Bureau of Environmental Services (BES) found the applicant’s plan for sanitary sewer and stormwater disposal to be adequate. (Exhibit E-1)
- The Portland Bureau of Transportation (PBOT) evaluated the approval criteria related to the transportation system. The response is referenced in the findings for Zoning Code Section 33.815.105.D.1-2, below. (Exhibit E-2)
- The Water Bureau responded with information on water service and no concerns about the land use review proposal. (Exhibit E-3)
- The Fire Bureau responded with information on permit requirements and no objections to the land use review proposal. (Exhibit E-4)
- The Police Bureau responded that police will be able to adequately serve the site. (Exhibit E-5)
- The Site Development Review Section of the Bureau of Development Services (BDS) responded with no concerns. (Exhibit E-6)
- The Life Safety Review Section of BDS responded with information on permit requirements and no objections to the land use review proposal. (Exhibit E-7)
- The Urban Forestry Division of the Parks Bureau responded with information on street tree requirements and no objections to the land use review proposal. (Exhibit E-8)

**Neighborhood Review:** Signs notifying neighbors of the public hearing were posted on February 11, 2023 (Exhibit D-3) and a “Notice of Public Hearing” was mailed to neighbors on March 1, 2023 (Exhibits D-4 and D-5). In response to the public notice, the Cully Association of Neighbors submitted a letter in support of the application (Exhibit F-1).

## **ZONING CODE APPROVAL CRITERIA**

### **Conditional Use Review**

**33.815.105 Institutional and Other Uses in Residential and Campus Institutional Zones**

These approval criteria apply to all conditional uses in R and campus institutional zones except those specifically listed in sections below. The approval criteria allow institutions and other non-Household Living uses in residential and campus institutional zones that maintain or do not significantly conflict with the appearance and function of residential or campus areas. Criteria A through E apply to institutions and other non-Household Living uses in residential zones. Criteria B through E apply to all other conditional uses in campus institutional zones. The approval criteria are:

**A. Proportion of Household Living uses.** The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the Household Living category in the residential area. Consideration includes the proposal by itself and in combination with other uses in the area not in the Household Living category and is specifically based on:

1. The number, size, and location of other uses not in the Household Living category in the residential area; and
2. The intensity and scale of the proposed use and of existing Household Living uses and other uses.

**Findings:** For purposes of this criterion, staff considers the residential area to be residentially zoned lots within 400 feet of the subject site, which corresponds to the public notice radius required by Zoning Code Section 33.730.030.E.1 for this review. The residential area around this site includes all or part of 75 residentially zoned tax lots. Seventy of these tax lots (93%) are in Household Living (residential) use. The five tax lots not in residential use include the subject site, two tax lots used by Luther Memorial Church at 4800 NE 72nd Avenue, and two tax lots within a Portland Public Schools property at 7321 NE Wygant Street.

The proposed daycare will reuse an existing non-residential site with an existing commercial building and parking lot. The boundaries of the existing non-residential site will not expand, and the proposal will not change the existing proportion of non-residential uses in the neighborhood.

With plans to accommodate as many as 75 children (Exhibit A-1, page 3), the proposed daycare is likely to be more intense than the prior commercial use of the site as a print shop. However, as discussed in the findings for criteria B through D, below, the site will maintain compatibility with the surrounding residential area and will not impose unreasonable impacts on neighborhood livability or on neighborhood residential streets.

For these reasons, staff finds the proposal will not significantly lessen the residential appearance and function of the area and that criterion A is met.

**B. Physical compatibility.**

1. The proposal will preserve any City-designated scenic resources; and

**Findings:** City-designated scenic resources are identified on the official zoning maps with a lower case "s." There are no City-designated scenic resources on the site or in the surrounding area (Exhibit B). Therefore, criterion B.1 is not applicable.

2. The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks, tree preservation, and landscaping; or

3. The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, tree preservation, and other design features.

**Findings:** The subject site's land area (15,600 square feet) is comparable to some neighboring residential lots and larger than others. The site is developed with an approximately 5,900-square-foot, single-story commercial building that is significantly larger than neighboring homes. The surface parking lot on the subject site will also differ from residential properties nearby, which have narrower off-street parking areas without parking space striping.

Staff finds the new landscaping and screening proposed for the perimeters of the site will both improve the appearance of the property and mitigate differences in appearance and scale. A new 6-foot-tall, solid fence and landscaping behind the fence will fully screen views of the subject site from all abutting residential lots (Exhibit C-1).

Therefore, staff finds the proposal will effectively mitigate differences in appearance and scale with adjacent residential development. With conditions of approval requiring the landscaping and fencing illustrated in Exhibit C-1 to be installed and maintained, staff finds criterion B.3 is met. (Since B.3 is found to be met, B.2 does not need to be addressed.)

- C. Livability.** The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to:

1. Noise, glare from lights, late-night operations, odors, and litter; and
2. Privacy and safety issues.

**Findings:** The components of approval criterion C are discussed individually below:

Noise

Some noise impacts will occur from children playing outside, but staff does not expect significant, adverse noise impacts. Outdoor play will happen during regular business hours, and the site is likely to be empty in the early morning, evening, and overnight hours when most people in neighboring houses are likely to be home. The outdoor play area will also be reasonably far from neighboring windows. The play area is adjacent to a driveway on the abutting lot to the south and to the back yard on the abutting lot to the north. The play area will be approximately 30 feet from the nearest neighboring house, and the solid fencing along the lot lines will dampen some noise (Exhibit C-1).

Glare from lights

The only exterior lights proposed will be downward-focused lights at the building entrances (Exhibit A-4, pages 1 and 3). While these light fixtures are unlikely to significantly affect neighbors in any case, the fencing, trees, and tall shrubs proposed along the residential lot lines will block glare from reaching the abutting lots (Exhibit C-1).

Late-night operations

No late-night operations are proposed.

Odors

A daycare operation is unlikely to create unusual or offensive odors that affect neighboring properties.

Litter

The daycare operation is unlikely to increase litter in the neighborhood. Garbage and recycling will be stored inside a new accessory structure adjacent to the parking lot (Exhibit C-1), and the daycare operator will regularly pick up any litter from the site (Exhibit A-4, page 1).

Privacy

Six-foot-tall, fully sight-obscuring fencing will extend along all lot lines shared with residential lots (Exhibit C-1). This fencing will prevent activity on the subject site from adversely affecting the privacy of any abutting lot.

Safety

The daycare operation is unlikely to create safety impacts on neighboring residential lots. The Fire Bureau, Police Bureau, and Life Safety Review Section of BDS all reviewed the proposal and responded with no objections (Exhibits E-4, E-5, and E-7, respectively). All applicable building code and fire safety requirements will be enforced in the building permit review required to convert this building to daycare use.

Summary

With conditions of approval requiring the landscaping and fencing illustrated in Exhibit C-1 to be installed and maintained, staff finds the proposal will not create significant adverse impacts on residential properties related to noise, glare, late-night operations, odors, litter, privacy, or safety. With the recommended conditions of approval, staff finds criterion C is met.

**D. Public services.**

1. The proposal is supportive of the street designations of the Transportation Element of the Comprehensive Plan;

**Findings:** PBOT reviewed the proposal and submitted the following response to approval criterion D.1 (Exhibit E-2):

*The subject site has frontage on two streets- NE 72nd Ave. and NE Wygant St. These streets are classified in the City’s Transportation System Plan (TSP) as follows:*

<i>Street Name</i>	<i>Pedestrian</i>	<i>Bicycle</i>	<i>Transit</i>	<i>Freight</i>	<i>Traffic</i>	<i>Design</i>
<i>NE 72<sup>nd</sup> Ave</i>	<i>City Walkway</i>	<i>City Bikeway</i>	<i>Local Service</i>	<i>Local Service Truck Street</i>	<i>Local Service</i>	<i>Local Street</i>
<i>NE Wygant St</i>	<i>Local Service</i>	<i>Local Service</i>	<i>Local Service</i>	<i>Local Service Truck Street</i>	<i>Local Service</i>	<i>Local Street</i>

*Please note at this location NE Wygant St. is not maintained by the City of Portland.*

*Pursuant to the TSP, the above referenced street classifications include, but are not limited to, the following functions:*

*City Walkway streets are “intended to provide safe, convenient, and attractive pedestrian access along major streets and trails with moderate level of pedestrian activity supported by current and planned land uses. These includes Community and Regional Corridors, non-frequent transit lines, and moderate-demand off-street trails.”*

*Local Service Walkways are “intended to serve local circulation needs for pedestrians and provide safe and convenient access to local destinations.”*

*City Bikeway streets are “intended to serve the Central City, regional and town centers, station communities, and other employment, commercial, institutional, and recreational destinations”.*

*Local Service Bikeway streets are “intended to serve local circulation needs for bicyclists and provide access to adjacent properties.”*

*Local Service Transit streets “primarily facilitate movement of smaller transit vehicles, including paratransit and community/jobs connector shuttles. Local Service Transit Streets seldom have regular transit service except for short street segments and do not typically include transit-specific street design elements such as bus stops. Local Service Transit Streets may be used for bus movements to and from a layover facility or bus garage, for turning around at the end of a line, or for temporary reroutes of a fixed-route line.”*

*Local Service Truck streets are “intended to serve local truck circulation and access.”*

*Local Service Traffic streets are “intended to distribute local traffic and provide access to local residences or commercial uses.”*

*All of the surrounding streets will continue to function as intended above; the conversion of the existing commercial building to a day care will not impact the classifications or functions of said streets. PBOT finds that the proposed use is supportive of the street designations of the Transportation Element of the Comprehensive Plan.*

Based on PBOT’s findings above, staff finds criterion D.1 is met.

2. Transportation system:

- a. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced; a finding of failure in one or more factors may be acceptable if the failure is not a result of the proposed development, and any additional impacts on the system from the proposed development are mitigated;
- b. Measures proportional to the impacts of the proposed use are proposed to mitigate on- and off-site transportation impacts. Measures may include transportation improvements to on-site circulation, public street dedication and improvement, private street improvements, intersection improvements, signal or other traffic management improvements, additional transportation and parking demand management actions, street crossing improvements, improvements to the local pedestrian and bicycle networks, and transit improvements;
- c. Transportation improvements adjacent to the development and in the vicinity needed to support the development are available or will be made available when the development is complete or, if the development is phased, will be available as each phase of the development is completed;

**Findings:** PBOT reviewed the proposal and submitted the following response to approval criterion D.2 (Exhibit E-2):

*The applicant submitted a transportation study (TIS) prepared by Myla Cross and Jennifer Danziger, PE of Lancaster Mobley [Exhibit A-13]. This evaluation was reviewed and accepted by PBOT employee Andy Jeffrey, PE, a registered professional traffic engineer.*

*The submitted study provides detailed findings for each evaluation factor. PBOT generally concurs with the methods and findings presented in the TIS with some comments as noted below.*

*Prior to presenting findings, staff would like to describe the existing conditions and acknowledge City transportation projects that will benefit both future daycare users and the neighborhood generally. The site is at the intersection of two substandard streets. NE Wygant St. at this location is a paved local service street with no curbs or sidewalks. NE Wygant St. is not maintained by the City of Portland at this location. The right-of-way is 60-feet and, based on City GIS, the paved roadway is 18-feet in width. NE 72nd Ave. is a paved local service traffic street with a centerline stripe. Recent traffic count data is not available for NE 72nd Ave. The most recent traffic counts are from 2012, which show 3,127 daily trips within the frontage of the site. The AM peak hour was reported as 276 vehicles and the PM peak hour was reported as 313 vehicles. The right-of-way is 60-feet and, based on City GIS, the paved roadway is approximately 22-feet wide. NE 72nd Ave. is maintained by the City of Portland but has no curbs or sidewalks at this location. A city funded project is underway to establish a sidewalk and 2-way cycle track on the west side of NE 72nd Ave. touching the subject site. The TIS explains this project on page 6 as follows:*

*The Portland Bureau of Transportation (PBOT) is currently developing the 70s Greenway: Cully Connector project.<sup>1</sup> The project will build a neighborhood greenway on NE 72nd Avenue through the Cully and Roseway neighborhoods. Between NE Sumner Street to NE Prescott Street, this project is currently planned to have:*

- New sidewalk for pedestrians and a separate two-way bike path on the west side of the street*
- Parking not allowed on the west side of the street*
- No changes to the east side*

*The project is currently in the design phase with construction planned for 2023.*

*The Cully Connector project directly affects the NE 72nd Ave frontage of the site. The paved roadway for NE 72nd is offset to the east side of the right-of-way, providing an approximately 28-foot wide gravel shoulder which informally operates as head-in on street parking abutting the subject commercial building. The Google Street View image below shows the subject site on the left hand side of the screen. The utility pole in the foreground on the left side of the photo is in public right-of-way. The Cully Connector project will repurpose this substantial amount of right-of-way to provide facilities for walking and cycling. The driveway will be retained along with 5 on-site parking spaces. All on street parking will be removed from the west side of NE 72nd Ave. abutting the site. The construction of these improvements is currently planned and funded, and will not be the responsibility of the daycare. As described below, improvements to the NE Wygant St. frontage will be the responsibility of the proposed daycare.*





Also prior to providing findings, staff would like to note the methodology used in the TIS described on page 12 as follows:

*To provide an analysis of the impact of the proposed development, an estimate of future traffic volumes is required. A growth rate must be applied to recorded traffic volumes to calculate future volumes. PBOT staff identified the study area growth rate to be 1.5 percent per year. Therefore, a compounding growth rate of 1.5 percent per year was applied to the existing traffic volumes over a two-year period to determine year 2024 background volumes.*

*Figure 5 shows the projected year 2024 background traffic volumes at the study intersections during the morning and evening peak hours.*

#### *Buildout Conditions*

*Peak hour trips calculated to be generated by the proposed development, as described earlier within the Site Trips section, were added to the projected year 2024 background traffic volumes to obtain the expected year 2024 buildout volumes.*

#### Safety

*The submitted TIS findings regarding safety span pages 23 through 26.*

*The data analysis shows none of the study intersections have a motor vehicle crash rate approaching 1.00 CMEV. A crash rate above 1.00 CMEV means an intersection is experiencing more crashes than average for an intersection with the level of vehicles entering the intersection. Page 24 of the TIS states, "Based on the most recent five years of available crash data, no significant trends or crash patterns were identified at any of the study intersections that were indicative of safety concerns." PBOT staff concur with this assessment.*

*The study provided an assessment of both stopping sight distance and intersection sight distance. Intersection sight distance is the more conservative measure, providing a longer length of clear sight distance. The recommended intersection sight distance is exceeded at this driveway location.*

*As detailed below under the On-Street Parking Impacts evaluation factor, the majority of the parking for the project will be on street. The submitted TIS documented the likely locations for on street parking nearby. In order to meet the demand, there will be the need for users of the daycare to cross 72nd Ave. As noted in staff's opening comments, 72nd Ave. carries a higher volume of traffic than a standard local service traffic street. Due to the higher volumes of vehicular traffic, the applicants conducted a cross walk warrant analysis. The study assumed all 10 employees will park east of 72nd Ave. and 40 percent of parents dropping*

children off will park east of 72nd Ave. This equates to a pedestrian volume of 32 crossings in either peak hour, meeting the warrants for a striped cross walk. The warrant was verified by Andy Jeffrey, PE. Andy is the PBOT traffic engineer who reviewed and accepted the TIS.

PBOT staff recommends a condition of approval requiring the construction of a marked cross walk across 72nd Ave. at the intersection of NE 72nd Ave. and NE Wygant St. The location and treatment of this crossing will be determined at Public Work Permit concept phase. The applicants have submitted for a public works permit, but have not yet received concept approval. PBOT is willing to move forward with the application with a condition of approval requiring the cross walk. Dedication is not anticipated. With conditions of approval, this evaluation factor can be satisfied.

#### Street capacity, Level of service.

The proposed change of use to a daycare will result in an increase in trips to the site. Street capacity and level of service are terms that apply primarily to vehicular traffic. These evaluation factors were studied with findings on pages 27-28 of the TIS. The study methodology included current observations and comparison with the projected traffic at the build out year of 2024. Four nearby intersections were studied. These were NE 72nd Ave. and NE Killingsworth St, NE 72nd Ave. and NE Wygant St. (west of 72nd), NE 72nd Ave. and NE Wygant St. (east of 72nd), and NE 72nd Ave. and NE Prescott St. On page 27, the study states:

*The LOS, delay, and v/c results of the capacity analysis are shown in Table 14 for the morning and evening peak hours. Detailed calculations as well as tables showing the relationship between delay and LOS are included in Appendix E.*

*Based on the results of the operation analysis, all study intersections are currently operating acceptably per City of Portland standards and are projected to continue operating acceptably through the 2024 buildout year of the site. No operational mitigation is necessary or recommended at these intersections as part of the proposed development.*

*The study was reviewed and approved by a PBOT traffic engineer who concurred with the TIS findings that all intersections would continue to operate at the City's accepted Level of Service or better. Even with the increased trip generation, the surrounding intersections are anticipated to continue to operate within City standards. This evaluation factor is satisfied.*

#### Connectivity

*The City's spacing goals for public through streets and public pedestrian connections is a maximum of 530-ft and 330-ft, respectively. The site is at the intersection of two existing public streets. The site is approximately 140-feet north/south and approximately 80-ft east/west. Additional connections at this location are neither required nor desirable. This evaluation factor is satisfied.*

#### Transit availability

*Transit service is provided on NE Prescott St. and NE Killingsworth St. Both are within a ¼ mile walk of the site. Tri-Met service route 71 operates on NE Prescott Street with stops in both directions at NE 72nd Ave. A marked cross walk exists at this intersection to aid in crossing NE Prescott St. Route 71 provides daily service between the Clackamas Town Center transit center and the Parkrose/Sumner transit center. Connections to many other Tri-Met bus lines exist along this route with connections to C-Tran at the northern terminus and ClackCo connects at the southern terminus. Headwinds for the 71 are typically 10 to 15 minutes on weekday and 20 minutes on the weekends. Tri-Met service route 72 operates on Killingsworth with stops in both directions at NE 72nd Ave, which is signalized. The 72 provides service from the Clackamas Town Center transit center to Swan Island in North*

*Portland. This is a frequent service line, meaning buses come at intervals of 20 minutes or less all day, every day. Many transfer opportunities exist along this line to other Tr-Met bus routes and MAX. While transit is available within ¼ mile walk of the site, that walk is currently challenging due to the lack of sidewalks on NE 72nd Ave. Page 31 of the applicant's TIS states,*

*With the completion of the 70's Greenway: Cully Connector project, sidewalks or a shared multi-use path for transit users will be available on NE 72nd Avenue within the study area. The proposed pedestrian crossing of NE 72nd Avenue at NE Wygant Street will also improve the safety of pedestrians walking between the neighborhood and services along NE Wygant Street (East) and the bus lines on NE Prescott Street and NE Killingsworth Street.*

*Staff concurs with the applicant's assessment. This evaluation factor is satisfied.*

*Availability of pedestrian and bicycle networks*

*The applicant's TIS addresses this evaluation factor on page 32 as follows:*

*Sidewalks are available along NE Killingsworth Street and NE Prescott Street within the study area. With the completion of PBOT's 70's Greenway project, either a shared-use path or sidewalk will be available on the west side of 72nd Avenue for pedestrians. NE Wygant Street serves low volumes of traffic with a posted speed of 20 mph, allowing pedestrians and bicyclists the ability to safely and comfortably walk or bike along roadway shoulders when necessary.*

*The proposed pedestrian crossing located on the south side of the intersection of NE 72nd Avenue & NE Wygant Street (East) would provide a connection between the neighborhood east of NE 72nd Avenue with the greenway improvements on the west side of the roadway.*

*According to the City of Portland's Portland by Bicycle Map, there are two neighborhood greenway routes within an approximate half-mile walking/ biking distance of the site: NE Alberta Street & NE 77th Avenue. Neighborhood greenways are described as lower traffic streets with pavement markings and directional signs to guide cyclists. NE Alberta provides a bicycle route to the west from NE 72nd Avenue, and NE 77th Avenue provides connections to the south of the site. NE 72nd Avenue will also be converted into a neighborhood greenway and provide connectivity through the Cully and Roseway neighborhoods from NE Killingsworth to Sandy Boulevard as part of the 70's Greenway project. This will include the addition of either a shared-use path for bicyclists and pedestrians or a sidewalk with a separate two-way bike path on the west side of NE 72<sup>nd</sup> Avenue within the study area. Construction for this project is planned for 2023. Bike lanes are available on NE Killingsworth which provides connections east/ west of the project site but is considered a higher volume street.*

*Based on an assessment of the surrounding area, following the completion of the 70's Greenway project, sufficient pedestrian and bicycle facilities will be available within the site vicinity to serve the proposed development in addition to the surrounding existing uses.*

*Staff generally concurs with this assessment except that, in addition to the marked crossing at NE Wygant St, PBOT is recommending the applicant be required to construct a curb and separated sidewalk corridor within the site's Wygant St. frontage. Given this is a commercial use which will generate additional pedestrian trips throughout the area, it is not acceptable to leave the site's frontage as unimproved. The impact of the project is small enough that*

*seeking area wide sidewalk improvements is not appropriate. Asking the project to construct sidewalk improvements within the portion of the frontage not being built as part of the 70's Greenway Cully Connector is a mitigation for the impact to the transportation system. This incremental improvement will help alleviate the need for pedestrian improvements on local streets in the area. With conditions of approval, this evaluation factor is satisfied.*

*On-street parking impacts*

*The applicants spent a great deal of effort on this evaluation factor, which was the key issue requiring multiple iterations of the TIS to be submitted. The applicant's findings are on pages 16-21 of the TIS. The original proposal was to share the private parking lot owned by the church which is due east of the subject site across NE 72nd Ave. Negotiation of a shared parking agreement was not successful. As such, the applicant provided a study of the impacts of the proposed use to the on-street parking supply.*

*The anticipated parking demand exceeds the proposal to provide 4 standard parking spaces and 1 accessible parking space. The daycare is anticipated to have 16 employees. Mode split data leads to the reasonable conclusion that 13 of these employees will drive alone and park, all of which will need to be accommodated on street. To reduce peak hour parking demand, the proposal is to have day care families be scheduled for 15-minute intervals for pick up and drop off. The 4 spaces in the parking lot will be reserved for pick up and drop off activities with any additional parking needing to be accommodated on street. It is anticipated that 60% of pick up and drop off activities will need to be accommodated on street.*

*The applicant conducted parking counts for the following locations, which are shown in red on the image below and summarized in Table 5 of this TIS, which is also provided as an image below.*

**Table 5: Existing Parking Supply**

Roadway Segment	From	To	Side	Supply
NE Wygant Street (West)	NE 70th Avenue	NE 72nd Avenue	Both	15
NE Wygant Street (East)	NE 72nd Avenue	NE 74th Avenue	South	15
NE Wygant Street (East)	NE 72nd Avenue	NE 74th Avenue	North	4
NE 73 <sup>rd</sup> Avenue	NE Alberta Street	Southern dead-end	Both	47
Total				81



Figure 7: On-Street Parking Supply Locations (© Google Earth)

*The anticipated demand fluctuates throughout the day based on the staggered timing of pick up and drop off activities. The applicants counted the number of cars that are currently using the on street parking supply and added their anticipated demand to arrive at a total anticipated rate of on street parking use in the study area. Page 22 of the study finds the following:*

*The peak parking demand is estimated at 56 spaces during the morning peak and 36 spaces during both evening peaks. During a typical weekday, the maximum on-street parking occupation is estimated at 59 percent during the morning and 44 percent during the evening.*

*If the NEFP (North East Food Pantry) operations are considered, on Thursdays, the parking supply would decrease from 81 to 67 spaces and the maximum occupancy would be 72 percent during the morning peak hour.*

*The parking analysis shows that there is adequate parking supply available to accommodate the anticipated onstreet parking demand, even when the food pantry is operating on Thursday mornings.*

*The applicant's analysis was reviewed by a PBOT traffic engineer, Andy Jeffrey, PE, who concurred with the general finding that that on street parking supply is sufficient to absorb the anticipated increase in on street parking. PBOT staff does not object to the use of the on street parking supply, but does note this will result in an anticipated increase in pedestrian trips at an uncontrolled intersection that experiences high volumes of vehicular traffic during the same hours that pick up and drop off is anticipated to happen.*

*Given the fact that many users of the day care will need to park on the east side of 72nd Ave. and cross during AM and PM peak hours, a cross walk warrant analysis was also conducted. The use of the on street parking supply by the day care staff and families will result in the cross walk warrant being met as demonstrated by the "Parent Crossing Demand" section of the TIS on pages 25-26.*

*Page 25 of the TIS states there will be an anticipated, "pedestrian volume of 32 crossings of*

*NE 72nd Ave at NE Wygant St intersection during either peak hour.” Given the volume of vehicular traffic, the TIS goes on to state the suggested treatment is a marked cross walk.*

*Given the volumes of vehicular traffic on 72nd Ave. during peak hours and given that the project will result in the crosswalk warrants being met, PBOT staff recommends a condition of approval requiring the installation of a marked cross walk at NE 72nd Ave. and NE Wygant St. This is intended to allow the daycare users to safely access the on-street parking supply the TIS has documented will be needed to support the use. With the recommended condition of approval, this evaluation factor can be met.*

#### Access restrictions

*Given the location of the existing building, it is not feasible to relocate the driveway from NE 72nd Ave. to NE Wygant St. As the applicants have demonstrated in their parking analysis, the on-site parking spaces are anticipated to be needed in order to support the use. The existing driveway will be allowed to remain. This evaluation factor is satisfied.*

#### Neighborhood Impacts

*Impacts on pedestrian, bicycle, and transit circulation*

*No changes are proposed to the location of streets surrounding the site. The City is in the process of designing and building a sidewalk and two-way cycle track within the site’s frontage on 72nd Ave. The project will be responsible for constructing a ½ street improvement including the installation of a curb, street trees, and sidewalk on the NE Wygant St. side of the property. In addition, the parking analysis demonstrated that the use of the area’s on street parking supply will result in the cross walk warrants being met. PBOT is recommending conditions of approval requiring the installation of a sidewalk on the NE Wygant St. frontage and a marked crossing, which should improve pedestrian safety at the intersection of 72nd Ave. and Wygant St. The proposal should have an overall benefit for pedestrians, cyclists, and transit users in the area. This evaluation factor is satisfied.*

*As evidenced by the findings referenced above, PBOT supports the accompanying Transportation Impact Study’s methodologies, analyses, conclusions and recommendations and finds that the submitted materials are acceptable to adequately address the subject approval criteria. The TIS concludes that mitigation is necessary, in the form of a marked cross walk. PBOT’s traffic engineer who reviewed the study, Andy Jeffrey, PE, agreed with this conclusion.*

*In addition to standard frontage improvements within the NE Wygant St. site frontage, the TIS recommends the installation of a marked crossing at NE 72nd Ave. and NE Wygant St. The impacts to the transportation system are anticipated to be offset with the frontage improvements and cross walk that are currently being reviewed through the public works permit process. PBOT recommends a condition of approval requiring the crosswalk. With the recommended conditions of approval, it is anticipated the impact to the transportation system will be successfully mitigated.*

#### RECOMMENDATION

*PBOT has no objection to approval of the requested conditional use subject to the following conditions:*

- *A marked cross walk is required crossing NE 72nd Ave. at NE Wygant St. The location and treatment of this crossing will be determined through the review of a Public Work Permit.*
- *A standard ½ street improvement is required for the site’s frontage on NE Wygant St.*
- *Prior to building permit approval, Public Works financial guarantees for the public improvements shall be obtained to the satisfaction of Public Works.*

Based on PBOT's findings above, and with the conditions of approval recommended by PBOT, staff finds criterion D.2 is met.

3. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

**Findings:** The Water Bureau and the Fire Bureau reviewed the proposal and responded with no concerns (Exhibits E-3 and E-4, respectively), indicating that adequate water supply and fire protection will be available. The Police Bureau reviewed the proposal and responded that police can adequately serve the proposed use (Exhibit E-5). The Bureau of Environmental Services (BES) reviewed the application and found the applicant's plans for sanitary sewer and stormwater to be adequate for this criterion (Exhibit E-1). For these reasons, staff finds criterion D.3 is met.

- E. Area plans.** The proposal is consistent with any area plans adopted by the City Council as part of the Comprehensive Plan, such as neighborhood or community plans.

**Findings:** The site is within the boundaries of the Cully Neighborhood Plan, which was adopted by the City Council as part of the Comprehensive Plan. Staff finds the following statements from the Cully Neighborhood Plan to be relevant:

*Policy 3.A (Preserve Housing and Promote New Development): Preserve, protect, and improve existing housing stock while providing opportunities for new housing for people of all ages, family types and income levels.*

*Policy 4.A (Protect Residential Areas), Objective 4-A1: Encourage effective buffers, such as setbacks and landscaping, between commercial or industrial and residential uses.*

*Policy 5.A (Social and Cultural Center), Objective 5-A2, Strategy 1: Locate social service facilities centrally in the area, accessible by bus and pedestrians. These facilities include but are not limited to day care, senior citizen, and youth facilities.*

*Policy 5.B (Child Care): Maintain and encourage new safe child care facilities in the neighborhood.*

The proposal will convert an existing commercial building into a daycare. While the residential zoning on this site would allow new housing development if the existing commercial building were demolished, the proposal does not reduce the neighborhood's existing housing supply. The proposal creates a daycare in the heart of the Cully neighborhood, as envisioned by Policies 5.A and 5.B, above. As discussed in the findings for criterion B, above, fencing and landscaping will effectively buffer the daycare use from abutting residential lots. For these reasons, staff finds that on balance, the proposal is consistent with the Cully Neighborhood Plan and that criterion E is met.

## **Adjustment Review**

### **33.805.040 Approval Criteria**

Adjustment requests will be approved if the applicant has demonstrated 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 Adjustment Review proposal is to modify the buffering requirement for institutional uses in Zoning Code Section 33.110.270.C.1, Table 110-8 as follows:

- To allow the existing building to remain only 12'-5" from the east lot line (6'-5" from the new main entrance canopy and 9'-5" from other new canopies), and to waive the requirement for all of this setback to be landscaped;
- To allow the existing building to remain only 1 foot from the north lot line (zero for new canopies), and to waive the requirement for this setback to be landscaped;
- To allow the existing building to remain only 8'-1" from the west lot line, and to waive the requirement for all of this setback to be landscaped;
- To allow a hardscape play area to be only 2'-3" from the south lot line, and to waive the requirement for new trees in this setback; and
- To allow a hardscape play area to be only 5'-6" from the north lot line.

Zoning Code Section 33.110.270.A states the purpose of the Institutional Development Standards in single-dwelling residential zones such as R7:

*The general base zone development standards are designed for residential buildings. Different development standards are needed for institutional uses which may be allowed in single-dwelling zones. The intent is to maintain compatibility with and limit the negative impacts on surrounding residential areas.*

Because a daycare is classified as an institutional use, Zoning Code Section 33.110.270.C.1, Table 110-8 requires a 15-foot-wide landscape buffer around the entire perimeter of the site. Only grassy play areas (Zoning Code Section 33.110.270.C.8) and vehicle areas (Zoning Code Table 110-8, footnote 5) are exempt from this requirement without Adjustment Review approval.

Staff finds this level of buffering may be appropriate for a larger institutional use like a community center, school campus, or public library in a residential neighborhood. In this case, however, the subject site is not much larger than most neighboring residential lots, and the building to be used as a daycare is only a single story. Staff finds narrower buffering that allows the existing development to remain can equally meet the purpose of the standard to maintain compatibility and limit negative impacts on neighbors.

The applicant's site plan (Exhibit C-1) includes 6-foot-tall, solid fencing along the property lines of all abutting residential lots, with new trees and tall shrubs behind the fencing. The fencing will fully screen views of the site from abutting residential properties, with the landscaping behind providing additional buffering. Staff finds these improvements will equally meet the purpose of the standard even though the landscaped area behind the solid fencing will be less than 15 feet wide. The width of the landscaped area behind the fence will not be apparent from neighboring properties.

The applicant's site plan also includes lower, 3.5-foot-tall fencing and new trees and shrubs on the east side of the property along NE 72<sup>nd</sup> Avenue. This part of the site is currently almost completely paved, so these improvements will soften the view of the site from the street and create a more compatible appearance.

No landscaping is proposed between the building and the north lot line abutting NE Wygant Street because the existing building is set back only one foot from the north lot line. However, the north building façade faces a 60-foot-wide street right-of-way, and the home on the opposite side of NE Wygant Street is about 70 feet from the subject property. With this separation, and with the single-story building scale on the subject site, staff does not find it



necessary for the existing building to be cut back further from the north lot line for a compatible appearance to be maintained.

Staff notes Exhibit C-1 includes new trees between the south lot line and the paved play area and parking area, but the limited planting area available here (approximately 2 feet between the fence and the pavement) is likely to make tree growth difficult. Staff finds the solid fencing along the south lot line and tall shrubs behind the fencing are adequate for the purpose of the standard to be met in this location, so staff recommends that only the fence and shrubs should be required between the paved area and the south lot line. Since increased tree canopy will generally improve the appearance of the site and its compatibility with the residential area, even if buffering on the south lot line can be achieved with only fencing and shrubs, staff recommends requiring all other new trees shown in Exhibit C-1 to be planted and maintained.

For these reasons, and with conditions of approval for the landscaping and fencing to be installed as illustrated in Exhibit C-1 (except for some of the trees as explained above), staff finds criterion A 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:** Since the site is in a residential zone, the Adjustment Review proposal must not significantly detract from the livability or appearance of the residential area. The residential area around this site contains mostly single-story houses on lots that are not much smaller than the subject site. A church building and church parking lot are across NE 72<sup>nd</sup> Avenue from the site. As discussed above, the applicant's proposal will fully screen views of the subject site from all abutting residential lots, and new greenery will improve the appearance of the site and its compatibility with the residential neighborhood. As explained above, these benefits can be achieved on this site even though buffering at the perimeter of the property will be less than 15 feet wide. For these reasons, and with conditions of approval requiring the landscaping and fencing shown in Exhibit C-1, staff finds the proposal will not significantly detract from the livability or appearance of the area and that criterion B 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:** Zoning Code Section 33.110.010 describes the purpose of single-dwelling residential zones such as R7:

*The single-dwelling zones are 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.*

- A. Use regulations. The use regulations are intended to create, maintain and promote single-dwelling neighborhoods. They allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood.*
- B. Development standards. The development standards preserve the character of neighborhoods by providing six different zones with different densities and development standards. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site*

*development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed. The development standards are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.*

For an institutional use like a daycare, the most relevant aspect of the purpose statement above is to “allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood.” As discussed in the findings above, the reduced buffer width at the perimeter of the site will not prevent quality screening between the non-residential use on the subject site and neighboring residential lots. Though the buffer will be less than 15 feet wide, the applicant proposes solid fencing that will fully screen views, with new landscaping behind the fencing improving the appearance of the property and providing additional buffering. For these reasons, and with conditions of approval for the landscaping and fencing illustrated in Exhibit C-1, staff finds the proposal is consistent with the purpose of the R7 zone and that criterion C is met.

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

**Findings:** City-designated scenic resources are identified on the official zoning maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic resources or historic resources mapped on the subject site, this criterion is not applicable.

**E.** Any impacts resulting from the Adjustment are mitigated to the extent practical; and

**Findings:** Staff finds the 6-foot-tall, solid fencing proposed along all lot lines shared with neighboring properties will provide effective mitigation for the reduced buffer width at the perimeter of the site. The fencing alone will fully screen views of the subject property from abutting lots, and the landscaping behind the fencing will improve the appearance of the site and provide additional buffering. The width of the landscaped area behind the fence will not be apparent from abutting properties. For these reasons, and with conditions of approval for the landscaping and buffering shown in Exhibit C-1, staff finds criterion E 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 there are no environmental overlay zones mapped on the site, 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

Staff finds the proposed daycare will be compatible with the surrounding residential neighborhood and will not cause significant negative impacts on neighbors. The transportation system and other public services are adequate to support the proposal, and the proposal is consistent with the Cully Neighborhood Plan.

The proposed modifications to the buffering requirement for institutional uses will be consistent with the purpose of the standard to be modified and will not significantly detract from the livability or appearance of the neighborhood. Staff finds the applicant's proposal provides effective screening and buffering around the site.

With the recommended conditions of approval listed below, staff finds that each of the applicable Conditional Use Review and Adjustment Review approval criteria are met. With these conditions, staff recommends approval of the proposal.

### **TENTATIVE STAFF RECOMMENDATION**

(May be revised upon receipt of new information at any time prior to the Hearings Officer decision)

**Approval** of Conditional Use Review to establish a new daycare use on this site; and

**Approval** of Adjustment Review to modify the buffering requirements for an institutional use in Zoning Code Section 33.110.270.C.1, Table 110-8 as follows:

- To allow the existing building to remain only 12'-5" from the east lot line (6'-5" from the new main entrance canopy and 9'-5" from other new canopies), and to waive the requirement for all of this setback to be landscaped;
- To allow the existing building to remain only 1 foot from the north lot line (zero for new canopies), and to waive the requirement for this setback to be landscaped;
- To allow the existing building to remain only 8'-1" from the west lot line, and to waive the requirement for all of this setback to be landscaped;
- To allow a hardscape play area to be only 2'-3" from the south lot line, and to waive the requirement for new trees in this setback; and
- To allow a hardscape play area to be only 5'-6" from the north lot line.

Both approvals are per the approved site plan, Exhibit C-1, and subject to the following conditions of approval:

- A. A building permit is required to establish the daycare use on this site. The building permit plans must reflect the information and design approved by this land use review as indicated in Exhibit C-1. The building permit site plan must be labeled, "Proposal and design as approved in Case File # LU 22-108225 CU AD."
- B. New trees and shrubs as illustrated in Exhibit C-1 must be shown on the building permit plans, installed on the site before the final inspection for the building permit (except as allowed by Zoning Code Section 33.248.070), and maintained over time. The landscaping must comply with applicable requirements in Zoning Code Sections 33.248.030 - 33.248.060. Different plant varieties may be chosen as long as the L3 (high screen) landscaping standard in Zoning Code Section 33.248.020.C is met along all non-street lot lines, except that between the paved areas and the south lot line, high screen shrubs are required but not trees.
- C. New fencing as illustrated in Exhibit C-1 must be shown on the building permit plans, installed on the site before the final inspection for the building permit, and maintained over time. The perimeter fencing along non-street lot lines must be fully sight-obscuring and compliant with the F2 fence standard in Zoning Code Section 33.248.020.G. The perimeter fence must be at least 6 feet tall, except within 10 feet of the NE Wygant Street lot line and

within 5 feet of the NE 72<sup>nd</sup> Avenue lot line, where the fence must be no more than 3.5 feet tall.

- D. The applicant must construct a marked crosswalk across NE 72nd Avenue at NE Wygant Street. The location and treatment of this crossing will be determined through the review of a Public Works Permit.
- E. The applicant must construct a standard half-street improvement for the site's frontage on NE Wygant Street.
- F. Prior to building permit approval, the applicant must post financial guarantees for the public improvements in Conditions D and E, above, to the satisfaction of Public Works.

## PROCEDURAL INFORMATION

The application for this land use review was submitted on January 28, 2022 and was determined to be complete on July 20, 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 January 28, 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 requested to extend the 120-day review period by the maximum 245 days (Exhibit A-3). **The review period will expire on July 20, 2023.**

**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 recommendation 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.

**This report is not a decision. The review body for this proposal is the Hearings Officer, who will make the decision on this case.** This report is a recommendation to the Hearings Officer by the Bureau of Development Services. The review body may adopt, modify, or reject this recommendation. The Hearings Officer will make a decision about this proposal within 17 days of the close of the record. To comment, you may testify at the hearing, submit comments at

[www.portland.gov/omf/hearings/land-use](http://www.portland.gov/omf/hearings/land-use); email your comments to [HearingsOfficeClerks@portlandoregon.gov](mailto:HearingsOfficeClerks@portlandoregon.gov); write to the Land Use Hearings Officer, 1900 SW Fourth Ave., Suite 3100, Portland, OR 97201; or FAX your comments to 503-823-4347.

You will receive mailed notice of the decision if you submit written comments before the hearing or testify at the hearing, or if you are the property owner or applicant. This staff report will be posted on the Bureau of Development Services website at <https://www.portland.gov/bds/zoning-land-use/public-notice>. Land use review notices are listed on the website by the District Coalition in which the site is located. The District Coalition for this site is Central Northeast Neighbors.

**Appeal of the decision:** The decision of the Hearings Officer may be appealed to the City Council, who will hold a public hearing. If you or anyone else appeals the decision of the Hearings Officer, the City Council will hold an evidentiary hearing in which new evidence can be submitted to them. Upon submission of their application, the applicant for this land use review chose to waive the 120-day time frame in which the City must render a decision. This additional time allows for any appeal of this proposal to be held as an evidentiary hearing.

**Who can appeal:** You may appeal the decision only if you submit written comments which are received before the close of the record for the hearing, if you testify at the hearing, or if you are the property owner or applicant. Appeals must be filed within 14 days of the decision. **Appeals must be filed within 14 days of the decision. An appeal fee of \$5,789.00 will be charged.**

**Appeal Fee Waivers:** Neighborhood associations recognized by the Office of Community and Civic Life may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the chairperson or other person authorized by the association confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations who wish to qualify for a fee waiver must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

**Recording the final decision.** If this land use review is approved the final decision will be recorded with the Multnomah County Recorder 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.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit for the approved project has been issued.

**Applying for permits.** A building permit would be required for the proposed development. 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.

Planner's Name: Andrew Gulizia  
Date: March 8, 2023

**EXHIBITS** (not attached unless indicated)

- A. Applicant's Statement:
  - 1. Narrative
  - 2. Original plans
  - 3. Request for evidentiary hearing and to extend 120-day review period
  - 4. Addendum to narrative, submitted March 7, 2022
  - 5. Revised site plan, submitted March 7, 2022
  - 6. Stormwater plan, submitted March 31, 2022
  - 7. Memo from applicant, submitted April 4, 2022
  - 8. Revised plans, submitted April 4, 2022
  - 9. Proof of tax lot consolidation, submitted April 12, 2022
  - 10. Revised site plan, submitted April 12, 2022
  - 11. Original transportation study, submitted May 11, 2022
  - 12. Request for application to be deemed complete, submitted July 20, 2022
  - 13. Revised transportation study, submitted January 10, 2023
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Final site plan (attached)
- D. Notification Information:
  - 1. Request for Response
  - 2. Posting letter
  - 3. Applicant's statement certifying posting
  - 4. Notice of Public Hearing
  - 5. Mailing list for Notice of Public Hearing
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Portland Bureau of Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Police Bureau
  - 6. Site Development Review Section of BDS
  - 7. Life Safety Review Section of BDS
  - 8. Parks and Recreation - Urban Forestry Division
- F. Correspondence:
  - 1. Letter from Cully Neighborhood Association, dated March 2, 2023
- G. Other:
  - 1. Land use review application
  - 2. Incompleteness determination letter, dated February 18, 2022
- H. Hearing Exhibits:

**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).**