



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

Carmen Rubio, Commissioner  
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 www.portland.gov/bds

**Date:** March 24, 2023  
**To:** Interested Person  
**From:** Amanda Rhoads, Land Use Services  
 503-865-6514 / 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 22-200375 AD**

**GENERAL INFORMATION**

**Applicant/Owner:** Douglas MacLeod | Urbanroost Development, LLC  
 7675 SE Alder St | Portland OR 97215

**Site Address:** 4401 SE 79TH AVE

**Legal Description:** S 53' OF N 105' OF LOT 18 S 2' OF N 52' OF W 155.5' OF LOT 18, KENT

**Tax Account No.:** R445401310  
**State ID No.:** 1S2E08DD 11000  
**Quarter Section:** 3438  
**Neighborhood:** Foster-Powell, contact Joseph Liu at land.use@fosterpowell.com  
**Business District:** None  
**District Coalition:** Southeast Uplift, contact Matchu Williams at matchu@seuplift.org  
**Plan District:** None  
**Zoning:** RM1 – Residential Multi-Dwelling 1  
**Case Type:** AD – Adjustment Review  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

**Proposal:**  
 Eight new dwelling units are under building permit review on the subject site, behind the existing house which will be retained. Between the new units and the house, a small parking lot with 8 spaces is proposed. To provide access to this parking area and the land-locked site to the north that has an access easement on the property, a driveway of permeable concrete pavers is proposed along the north property line.

Zoning Code Section 33.266.130.G.2.d(2) and Table 266-5 requires a 5-foot setback that is landscaped to the L3 high-screen standard for driveways and parking areas adjacent to residential zones. The L3 standard requires trees, a screen of tall shrubs, and groundcover in the remaining area. The applicant proposes to reduce this 5-foot setback along the north property line to 3.5 feet for the first 67 feet from the front lot line, then reduce the setback to 0

feet for an additional 52.5 feet. Within the reduced setback, a solid wood fence is proposed at 6 feet tall (beyond the first 10 feet) along with 3 feet of landscaping.

To develop as proposed, the applicant has requested an Adjustment to Zoning Code Section 33.266.130.G.2.d(2) and Table 266-5 to reduce the required driveway setback from 5 feet to 3.5 feet and 0 feet as described above and to provide a fence along most of the property line plus the proposed landscaping, instead of meeting the L3 standard adjacent to the driveway, as shown in the attached.

**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, like others on the block, is much deeper than wide, at roughly 53 feet wide but 255 feet deep. Elsewhere on the block this has led to some reconfigurations of lots or development of the overall sites with multi-dwelling development as proposed here. The area, therefore, is a mix of single-dwelling and multi-dwelling development, with the Holgate Library site across the street (currently under redevelopment) and commercial development off of SE 82<sup>nd</sup> Ave two blocks to the east.

SE 79<sup>th</sup> Ave is classified by the City's Transportation System Plan as Local Service for all transportation modes.

**Zoning:** The RM1 zone is a low-scale multi-dwelling zone that is generally applied in locations intended to provide a transition in scale to single-dwelling residential areas, such as the edges of mixed-use centers and civic corridors, and along or near neighborhood corridors. Allowed housing is characterized by one to three story buildings that relate to the patterns of residential neighborhoods, but at a somewhat larger scale and building coverage than allowed in the single-dwelling zones. The major types of new development will be duplexes, triplexes, rowhouses, courtyard housing, small apartment buildings, and other relatively small-scale multi-dwelling and small-lot housing types that are compatible with the characteristics of Portland's residential neighborhoods.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **January 13, 2023**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (BES) (Exhibit E.1);
- Bureau of Transportation (PBOT) (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5); and
- Life Safety Plans Examiner (Exhibit E.6).

Several reviewers noted the proposal was in for building permit currently.

**Neighborhood Review:** A total of seven written responses have been received from notified neighbors in response to the proposal. Some had reservations about the overall project (Exhibit F.1) or timing of the construction given the rebuilding of the library at the corner of SE 79<sup>th</sup> Ave and SE Holgate St (Exhibit F.1 and F.5). One neighbor wanted to see the development include parking with the creation of the new units (Exhibit F.4).

*Staff comment: The eight units are allowed by right in this multi-dwelling zone and no parking is required for this number of units in this location close to a transit street. The proposal is to provide vehicle access to eight parking spaces behind the existing house. The applicant has stated the construction vehicles will be able to be off the street due to the availability of the parking area (Exhibit A.11), but regardless, this Adjustment Review does not review construction proposals nor control construction timing.*

The property owner to the north at 4335 SE 79<sup>th</sup> Ave was concerned the fence would block views for them pulling out of that site, and he stated his property also has rights to use the easement on the subject site that provides access to 4337 SE 79<sup>th</sup> Ave, which the fence would block. He also had concerns about trees in the planting strip impacting his house, and the new landscaping impacting existing utilities in the easement. Finally, he opined the Adjustment was too complicated and the driveway would be of insufficient width to serve the eight new units plus 4337 SE 79<sup>th</sup> Ave. He also said the Adjustment was “a HUGE detriment to existing use of the easement” (Exhibit F.2). The owner at 4337 SE 79<sup>th</sup> Ave also wrote in to state that he preferred for all Zoning Code standards to be met (Exhibit F.3).

*Staff comment: The Zoning Code limits the height of fences to 3.5 feet within 10 feet of the front property line in this zone. This preserves the visibility for drivers leaving the site or adjacent sites. The site plan shows the fence height dropping to 3.5 feet in the 10 feet closest to the property line (Exhibit C.1). The Zoning Code standard limiting fence heights in setbacks but outside the front setback in this zone has an 8-foot height limit.*

*The Zoning Code also does not have a minimum driveway width on a property. Regarding the easement, it is staff's understanding the respondent's property (4335 SE 79<sup>th</sup> Ave) was not a party to the easement agreement, and no documentation of their legal rights to use it have been submitted. Therefore, staff does not concur the proposal denies the respondent a legal right to access the subject site. Landscaping and other concerns will be addressed in the findings below; however, there are no Zoning Code restrictions on planting trees on a site if they are within a certain distance to an adjacent residence. The proposed trees along the north property line, however, are classified as small trees and will ultimately have a smaller root area than a mature large tree in the same location.*

*Finally, the Adjustment request to reduce landscaping to 0 feet near the area where access is taken for 4337 SE 79<sup>th</sup> Ave will provide more maneuvering area both for the residents of that site and for the users of the small parking lot on the subject site; therefore, granting the Adjustment would support the continued access to 4337 SE 79<sup>th</sup> Ave.*

Other neighbor comments focused on the proposed landscaping and mitigation issues (Exhibits F.6 and F.7). These will be addressed in the findings below.

## **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:** A 5-foot setback landscaped to the L3 landscape standard is required around parking areas and along driveways for this development. The applicant proposes to reduce this 5-foot setback along the north property line to 3.5 feet for the first 67 feet from the front lot line, then reduce the setback to 0 feet for an additional 52.5 feet to allow for increased maneuvering space for vehicles exiting the parking lot, and to support continued access to 4337 SE 79<sup>th</sup> Ave through the access easement area. The property line will have a 6-foot-tall fence that lowers to 3.5 feet in the first 10 feet of the property (with a proposed 20-foot break in the fence for the access easement) and the front 67 feet will have a 3-foot landscape buffer.

The purpose of the vehicle area development standards is stated in Zoning Code Section 33.266.130.A:

- A. Purpose.** *The development standards promote vehicle areas that are safe and attractive for motorists and pedestrians. Vehicle area locations are restricted in some zones to promote the desired character of those zones...The setback and landscaping standards:*

- *Improve and soften the appearance of parking areas;*
- *Reduce the visual impact of parking areas from sidewalks, streets, and especially from adjacent residential zones;*
- *Provide flexibility to reduce the visual impacts of small residential parking lots;*
- *Direct traffic in parking areas;*
- *Shade and cool parking areas;*
- *Reduce the amount and rate of stormwater runoff from vehicle areas;*
- *Reduce pollution and temperature of stormwater runoff from vehicle areas;*  
*and*
- *Decrease airborne and waterborne pollution.*

Relevant purpose statements are addressed below.

- *Improve and soften the appearance of parking areas;*
- *Reduce the visual impact of parking areas from sidewalks, streets, and especially from adjacent residential zones;*
- *Provide flexibility to reduce the visual impacts of small residential parking lots;*

In order to mitigate for the reduced landscaping adjacent to the driveway, the applicant has proposed to increase the number of trees planted around the site. In total 35 trees are proposed: 33 trees in the “small” category, and 2 “medium” trees. Five of these trees, including the two medium trees, are proposed south of the driveway to provide screening from points south to the vehicle area. Additionally, the applicant has proposed to install a new 6-foot-tall, fully sight-obscuring cedar fence around the property to further screen the new parking area from the residentially-zoned properties surrounding the site.

The landscape and setback standards are met on the south property line adjacent to the parking lot outside of where the bicycle parking structure is located, as required. While existing and new buildings between the parking area and the street and adjacent property to the west negate the need for the landscaped setback for the parking area, the applicant proposes to plant 8 trees in those areas for additional softening of the vehicle area. The 6-foot-tall fencing proposed around the property will block views into the site and provide commensurate screening to the required 6-foot-tall high-screen hedge. Along the front 67 feet, 7 trees are proposed along the driveway, which will provide screening from more

vantage points (though the house to the north is one story). Only 5 small trees would be required in this area to meet the L3 standard, so the applicants are proposing 40 percent more trees than required in this area. To ensure the other parts of the L3 standard are met, a condition of approval will require the 3 feet of landscaping in the first 67 feet to meet the L3 standard as would be required in a 5-foot setback.

Further back, past the parking, 9 more trees planted between the new buildings and the north fence will also screen views to the parking area from oblique angles. While there will be a break in the fencing to provide access to 4337 SE 79<sup>th</sup> Ave per the shared access easement on the site, the break will be appropriate to retain that access and not greater than needed (see Exhibit A.10).

Granting this Adjustment will provide flexibility to the site to both enable the applicant to honor the existing shared-access easement encumbering the property, while providing parking with sufficient maneuvering area for the new units. While parking is not required, at least one neighbor was strongly in favor of providing parking on the site (Exhibit F.5).

With a condition of approval requiring the applicant to meet the L3 standard for trees, shrubs, and groundcover in the reduced-width setback, and with the placement of the sight-obscuring fence along the north property line, staff finds the proposal equally meets these purposes.

- *Shade and cool parking areas;*
- *Reduce the amount and rate of stormwater runoff from vehicle areas;*
- *Reduce pollution and temperature of stormwater runoff from vehicle areas;*  
*and*
- *Decrease airborne and waterborne pollution.*

No interior parking lot landscaping is provided on this site because the parking lot only has 8 spaces (interior landscaping is required for parking lots with more than 10 spaces). The proposal includes required landscaping to the south, including 4 Natchez crape myrtle trees that will grow on maturity to 30 feet with a canopy 20 feet wide. The additional non-required 8 trees, proposed to be distributed east and west of the parking area, would also shade and cool the parking area. These trees (*Betula jaquemontii*) would have a canopy at maturity of between 25 and 35 feet, and grow to 30-40 feet tall.

The Bureau of Environmental Services reviewed the requested Adjustment and did not raise any concerns about stormwater runoff or airborne or waterborne pollution as a result of the reduced perimeter landscaping along the north property line (Exhibit E.1). Stormwater management would be further enhanced by the installation of pervious pavers in both the driveway and small parking lot.

For these reasons, and with the condition that the reduced landscaping area along the first 67 feet of the north property line meet all L3 screening requirements within the reduced 3-foot landscape area, staff finds the proposed Adjustment equally meets the intent of the regulation and this criterion is met.

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

**Findings:** The site is zoned residential, and therefore the proposal to reduce the landscaping north of the driveway must not significantly detract from the livability or appearance of the residential area.

The applicant has proposed several steps to ensure the proposal does not detract from the livability or appearance of the area. First, the new wooden fence along the perimeter of the

property will provide visual separation between the driveway and the abutting residential properties, as well as shield the adjacent neighbor to the west and south from the glare of car headlights. The numerous new trees will improve the appearance of the site and neighborhood. The condition of approval to require L3 landscaping north of the driveway will ensure the proposed landscaping sufficiently mitigates any loss of greenery and screening from the reduction of the landscape buffers adjacent to the driveway. The applicant is far exceeding the number of trees required by Zoning Code standards. Also, both the driveway and the parking area are proposed as permeable, interlocking concrete pavers, which will provide more visual interest than asphalt or concrete while providing stormwater benefits as well.

The owner of 4335 SE 79<sup>th</sup> Ave raised a livability concern about the proposed fence blocking the shared curb cut and apron that is used to access their dirt/gravel driveway. He stated, “the fence would block our access and put a wall up right in our existing driveways...[and] block the existing apron and area of access for 4335...” This neighbor also raised concerns that the driveway would be too narrow for use of the people on the subject site (Exhibit F.2).

From a street view of the two properties, it appears that the dirt driveway at 4335 is at least 3 feet north of the shared property line with the subject site (Exhibit A.4). Since the fence is located on the subject site, it will not block access to the northern property’s use of its own driveway. The applicant submitted documentation that they have already received approval from PBOT to retain the shared curb cut (Exhibit A.3). The PBOT traffic engineer who reviewed the Driveway Design Exception request stated, “PBOT sees minimal concern with allowing a shared apron to remain for these adjacent properties.”

This engineer also noted that the width of the driveway met the requirements of TRN 10.40.E.1.a.3.a, the Transportation administrative rules section on multi-dwelling driveway width, which allows multi-dwelling driveways to be 10 feet wide if the street is Local Service for traffic, if the driveway provides access to 10 or fewer parking spaces, and if cars can exit in a forward motion. Since, as discussed above, the width of the driveway is not regulated by the Zoning Code, and meets the Transportation Bureau’s administrative rules relevant to this development type, staff does not have concerns that the proposed width of the driveway will cause livability issues for the residents on the subject site or 4337 SE 79<sup>th</sup> using the access easement.

Two neighbors were concerned about the number of trees in the “small” category versus “medium” (the applicant is providing 2 medium trees) and “large” trees (none are proposed), and also the size of these trees at planting. One neighbor said, “[a] mitigation option for the reduced landscaping space should include more trees and shrubs that are large enough to provide benefits sooner,” and stated, “The West side of the property could also use more tall shade trees (evergreens are best) to help cool units from hot afternoon sun and provide privacy to neighbors.” (Exhibit F.6). Another stated, “the size of trees shown are of the smaller variety overall, and also the entire West side of the property along the fence line is without a plan for trees” (Exhibit F.7).

The landscaping requirements in the Zoning Code take the potential size of trees into account in the standards. For example, the perimeter parking lot landscaping standards require 1 large tree per 30 linear feet, or 1 medium tree per 22 linear feet, or 1 small tree per 15 linear feet to meet the tree portion of the standard. In this case, the front 67 feet of perimeter landscaping would require 3 large trees, 4 medium trees, or 5 small trees to approximate a similar screening effect. As noted above, the applicant is providing 7 small trees in this area, which covers up to 105 linear feet. The 9 additional trees along the north property line, while not located near the parking area, add substantially to the tree cover along this property line.

Another standard, tree density, looks at canopy cover as represented by tree size category. For this multi-dwelling development, Title 11 Trees requires a 20% tree density, or 2,771

square feet. Again, small trees cover less area than larger ones: each small tree gets credit for 300 square feet; medium trees are 500 square feet, and large trees are 1,000 square feet. The standard could be met by only 3 large trees on the entire site, or 10 small trees. Instead, the applicant is proposing in total 33 small trees and 2 medium trees distributed throughout the site, far exceeding the tree density standard by providing 10,900 square feet of tree density coverage.

Finally, the Zoning Code dictates minimum sizes of trees upon planting per Zoning Code Section 33.248.030.C.1 to be as follows:

- a. Broadleaf trees at the time of planting must be fully branched and must be a minimum of 1.5 caliper inches.
- b. Conifer trees at the time of planting must be fully branched and a minimum of 5 feet in height.

The applicant addressed these minimum requirements in their discussion of mitigation:

*With regards to landscaping in areas unrelated to our adjustment request, the most effective way to create more impressive, attractive, and lush landscaping is to provide larger trees. By company policy and unprompted by city code, UrbanRoost routinely provides trees in the 10 to 15-foot-tall range as compared to code requirements of 5 or 6 feet for evergreen and deciduous trees. We are comfortable guaranteeing that the 8 Himalayan White Birches will be a minimum of 10 feet tall, the 6 Goldspire Ginkgos will be at least 8 feet tall, the 5 Italian Cypress will be at least 8 feet tall, and the 2 Jefferson Maples will be at least 10 feet tall. Beyond that it is not possible to foresee the practical availability of the appropriate nursery stock at time of construction (Exhibit A.8).*

Staff appreciates the neighbors' concerns about the length of time for trees to grow to maturity, and the applicant's initiative in providing larger trees at time of construction. To alleviate those neighbors' concerns and ensure the landscaping provided truly mitigates the landscaping not provided along the property line, staff adds a condition of approval that the minimum height for the trees listed above be as the applicant states in the paragraph above. This results in 4 trees along the driveway landscape area that will be at least 8 feet tall on planting, and two trees on the western half of the north property line that will be 8 feet tall as well. Further, trees planted elsewhere on the site will be more mature than required at time of construction, successfully mitigating the roughly 53 feet of no landscaping north of the vehicle area.

Regarding the western property line, staff notes that small trees are proposed to be planted in the northwest and southwest corners of the property. While the neighbors both suggested additional trees be planted along this property line, there is no Zoning Code requirement that trees be planted in required building setbacks. There is no direct connection either to losing landscaping adjacent to vehicle area, but gaining it behind the building. In addition, the property immediately west of the subject site is currently heavily treed, resulting in significant shading on the western portion of the subject site especially in afternoon and evening hours.

The proposed development overall is similar in scale to other multi-dwelling developments on the block. The Adjustment enables the site to have a small parking lot to serve the new residents of the site where no parking is required. For the reasons above, and with the two conditions of approval noted above, staff finds the proposal does not significantly detract from the appearance or livability 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:** As described in the findings for criterion B above, the applicant is proposing several things that help to mitigate the reduced landscaping adjacent to the driveway. This includes far exceeding the number of required trees on the property; planting trees taller than required by code; installing a fully-sight-obscuring fence along three property lines to limit impacts to neighbors; and proposing pavers to create more visual interest for the driveway and parking area. Staff is also placing a condition to ensure the L3 landscape standards are met along the north property line (while recognizing the tree standard is exceeded in this area). Staff finds the impacts from the Adjustment are sufficiently mitigated through the proposal and conditions. 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

Staff finds that, with a new wooden fence along the north property line, and with conditions requiring the L3 standard to be met in the 67-foot-long, reduced-width landscape area north of the driveway; as well as a condition requiring the planting of some of the proposed trees taller than what is required by code, the proposed Adjustment is consistent with the purpose of the requirement to be modified and with the character intended for the area. With the described conditions, staff finds the approval criteria for the Adjustment are met. Since the approval criteria are met, the Adjustment request must be approved.

## ADMINISTRATIVE DECISION

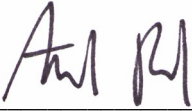
Approval of an Adjustment to Zoning Code Section 33.266.130.G.2.d(2) and Table 266-5 to reduce the required driveway setback from 5 feet to 3.5 feet and 0 feet north of the driveway and to provide a fence along most of the north property line plus provide the proposed landscaping, instead of meeting the L3 standard adjacent to the driveway.

Approval is per the approved plans, Exhibits C.1 through C.2, signed and dated March 22, 2023, subject to the following conditions:



- A. As part of the building permit application submittal, the following development-related conditions (B through C) 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 22-200375 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The landscaping in the reduced setback area north of the proposed driveway must meet the L3 standard for shrubs and ground cover (the tree standard is exceeded as proposed).
- C. Per the landscaping plan of Exhibit C.2, the applicant must plant the following species and number of trees at the minimum heights indicated:
- 8 Himalayan White Birches will be a minimum of 10 feet tall;
  - 6 Goldspire Ginkgos will be at least 8 feet tall;
  - 5 Italian Cypress will be at least 8 feet tall; and
  - 2 Jefferson Maples will be at least 10 feet tall.

**Staff Planner: Amanda Rhoads**

**Decision rendered by:**  **on March 22, 2023**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: March 24, 2023**

**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 November 4, 2022, and was determined to be complete on January 4, 2023.

*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 November 4, 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: May 4, 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 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 April 7, 2023. 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 **April 7, 2023** 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. Narrative
  - 2. Original Plan Set (superseded by A.7)
  - 3. PBOT Driveway Design Exception
  - 4. Street View
  - 5. Supplemental Survey with Easement
  - 6. Easement Survey
  - 7. Updated Plans
  - 8. Incomplete Response Letter
  - 9. Example Fence picture
  - 10. Easement Fence Gap Proposal
  - 11. Applicants Email 1/31/2023
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Landscape Plan (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:
  - 1. Susan Ma, January 20, 2023, with concerns about the development overall
  - 2. Gilbert Stoffels, January 20, 2023, in opposition
  - 3. Gedeon Andreyuk, January 23, 2023, in opposition
  - 4. Emily Newman, January 26, 2023, in favor of providing parking
  - 5. Roy Lewis, January 31, 2023, with construction timing concerns
  - 6. Remedios Rapoport, February 3, 2023, in opposition
  - 7. Justin Riede, February 3, 2023, in opposition
- G. Other:
  - 1. Original Land Use Application
  - 2. Updated Land Use Application with new applicant
  - 3. Incomplete Letter

**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).**