



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

Carmen Rubio, Commissioner
Rebecca Esau, Director
Phone: (503) 823-7310
TTY: (503) 823-6868
www.portland.gov/bds

Date: May 25, 2023
To: Interested Person
From: David Besley, Land Use Services
503-865-6715 / David.Besley@portlandoregon.gov

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

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 22-197604 AD

GENERAL INFORMATION

Applicant: Nicholas Papaefthimiou
Infill PDX LLC
8535 SE 9th Ave
Portland, OR 97202
Email: nicholas@infillpdx.com
Phone: 503-380-8484

Owner: Moriah Kreeger
916 SE 47th Ave
Portland, OR 97215

Site Address: 916 SE 47TH AVE

Legal Description: BLOCK 9 LOT 6, PARADISE SPR TR
Tax Account No.: R642801040
State ID No.: 1S2E06BA 11700
Quarter Section: 3135

Neighborhood: Sunnyside, contact Ignacio Simon & Daniel Mandel at lutc@sunnysideportland.org

Business District: Belmont Business Association, contact at info@belmontdistrict.org.
District Coalition: Southeast Uplift, contact Matchu Williams at matchu@seuplift.org

Plan District: None
Zoning: R2.5 (Single-Dwelling Residential 2,500)

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

Proposal:

The applicant is proposing to build a new detached accessory structure containing a separated ground floor studio (474 sq.ft. of living area) and a second level Accessory Dwelling Unit (ADU), which includes a ground level foyer and storage area (793 sq.ft. of living area). The Portland Zoning Code requires that detached accessory structures be set back at least 40 feet from the front lot line or located behind the rear building wall of the primary dwelling (Section 33.205.040.C.3). The front lot line on this corner lot is the south (abutting SE Yamhill Street) and, because the existing primary dwelling is located on the north half of the lot, the accessory structure is proposed on the south half of the lot. The detached accessory structure is proposed to be 10 feet from the front lot line and in front of the existing residence. An Adjustment is therefore requested to reduce the minimum ADU front setback from 40 feet to 10 feet.

Relevant Approval Criteria:

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The 5,000 square foot site is located on the northeast corner of the intersection of SE Yamhill Street and SE 47th Avenue. The relatively flat site is developed with a 2,160 square foot two-story house with a finished basement and a 180 square foot attached garage. The surrounding vicinity is developed primarily with 1.5-to-2.5-story single-dwelling residences to the south. The abutting lot to the north has commercial zoning and a half-block to the north of the site is SE Belmont Street, a busy commercial corridor with a mix of higher density residential buildings and commercial development.

Zoning: The R2.5 zone is a single-dwelling zone that is intended to preserve land for housing, and to provide housing opportunities for individual households. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

Land Use History: City records indicate one prior land use reviews for this site LUR 20-111497 LDP: Approval with conditions of a Preliminary Plan for a 2-parcel partition, that will result in 2 standard lots with Parcel 2 containing the existing house to remain and Parcel 1 to be a new lot on the corner.

Note: A Final Plat was never submitted/reviewed.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **March 21, 2023**. The following Bureaus have responded as follows:

- The Portland Bureau of Transportation responded with no concerns regarding the Adjustment review and included information about street classification and Title 17 (Transportation Plan) requirements (Exhibit E.1);
- The Life Safety Review Section of the Bureau of Development Services (BDS) responded with no concerns regarding the Adjustment review, and included information about building permit requirements (Exhibit E.2); and
- The Bureau of Environmental Services (BES) responded with no concerns regarding the Adjustment review and noted that a stormwater management plan and sanitary connection are currently being reviewed under a separate building permit (Exhibit E.3).

The following Bureaus have responded with no concerns (Exhibit E.4):

- The Site Development Review Section of BDS;
- The Water Bureau; and
- The Fire Bureau.

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

ZONING CODE APPROVAL CRITERIA

33.805.040 Adjustment Approval Criteria

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

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

Findings: The applicant is proposing to reduce the minimum ADU front setback from 40 feet to 10 feet for a new detached accessory building containing a separated ground floor studio and a second level ADU, which includes a ground level foyer and storage area.

The relevant purpose statement and associated findings are found below:

33.205.010 Accessory Dwelling Units – Development Standards

Standards for creating accessory dwelling units address the following purposes:

- **Ensure that accessory dwelling units are compatible with the desired character and livability of Portland’s residential zones;**
- **Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;**
- **Ensure that accessory dwelling units are smaller in size than primary dwelling units; and**
- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

(applicable purposes in bold)

Ensure that accessory dwelling units are compatible with the desired character and livability of Portland’s residential zones;

Desired Character is a defined term in Section 33.910.030:

“Desired Character: The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.”

The site is in the R2.5 zone and in the boundary of the Sunnyside Neighborhood Plan. The purpose statement of the single-dwelling zones is as follows:

“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.”

The proposal is for a new ADU that provides an additional infill housing opportunity in the R2.5 zone. As noted in the Proposal section above, the front lot line on this corner lot is the south (abutting SE Yamhill Street) and, because the existing primary dwelling is located on the north half of the lot, the accessory structure is proposed on the south half of the lot. The detached accessory structure is proposed to be 10 feet from the front lot line and in front of the existing residence. The proposed structure is 2-stories, 20 feet in height, and has a reasonable building coverage (15% of the site, where up to 20% would be allowed per Section 33.110.245.C). This is compatible with the scale of the surrounding neighborhood which is developed primarily with 1.5-to-2.5-story single-dwelling residences to the south and commercial development to the north.

Furthermore, if the structure was a detached duplex, it would be allowed by right (without an Adjustment to the ADU standards) and would be permitted up to 25-feet in height.

A review of the Sunnyside Neighborhood Plan policies found one applicable policy:

- *Objective 4.2: Encourage a mix of housing types, including quality, affordable and attractive single and multifamily housing and accessory rentals, to serve a diverse population (p. 56).*

The ADU will provide an additional housing unit and will meet the objective above by encouraging a mix of housing types to serve a diverse population. The proposal is consistent with the identified and applicable policy of the Sunnyside Neighborhood Plan.

Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;

As noted above, the building scale is compatible with the scale of the surrounding neighborhood due to its 2-story design and lower than allowed building coverage. While the structure is proposed to be in “front” of the house, the existing primary dwelling is located on the north half of the lot which severely limits alternative placement for the new ADU. The ADU is proposed to meet all other setback requirements and is about 12 feet from the side (west) lot line, over twice the minimum required 5-foot side building setback. Furthermore, this is a corner lot with two frontages and the orientation of the ADU, with the front entrance facing south (toward SE Yamhill Street), will match that of the surrounding houses along SE Yamhill Street.

The ADU is proposed farther to the south than is strictly necessary in order to preserve a mature tree to the south of the existing primary dwelling unit (a 31-inch DBH Kanzan Cherry tree). The applicant is proposing a staggered design of the ADU and placement that will protect this tree. A condition of approval will require that a tree protection plan be provided at the time of building permit which includes preservation measures for this tree.

The existing primary dwelling and proposed ADU will share common space on the lot, including yards and patios.

Ensure that accessory dwelling units are smaller in size than primary dwelling units;

The existing primary dwelling has about 1,200 square feet of building coverage (including covered porches) while the ADU is proposed to have only 750 square feet of building coverage. The primary dwelling has a height of about 24 feet, while the ADU is proposed to have a height of 20 feet. As such, the proposed ADU is smaller in size than the primary dwelling unit.

As conditioned, 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 subject site is in the R2.5 zone, a single-dwelling zone. Staff found the proposed ADU is consistent with the appearance of residential area, in terms of scale and placement, under Finding A. The new 6-foot tall wire mesh fence proposed along the southern lot line must be removed from the building permit plan set and not built. All height and location requirements of the fence standards (Section 33.110.275) must be met.

Because three mature trees and two smaller trees are proposed to be removed from the site for the construction of the ADU, a condition of approval will require a minimum of one new large evergreen tree *or* two small or medium evergreen trees (consistent with the Portland Tree and Landscape Manual) be planted between the western wall of the proposed ADU and the western lot line of the site, and one new large evergreen tree *or* two small or medium evergreen trees be planted between the southern wall of the proposed ADU and the southern lot line of the site. The trees must be continuously maintained in a healthy manner. New evergreen trees will promote year-round screening, will offset impacts from the removal of existing trees, and will improve the appearance of the site.

For these reasons, the proposed ADU will not detract from the livability of adjacent properties.

As conditioned, this criterion is met.

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

Findings: Only one Adjustment is being requested, therefore this criterion is not applicable.

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

Findings: City designated scenic resources are identified on the Official Zoning Map with a lower case “s” and historic resources are designated by a large dot or as being within the boundaries of a Historic or Conservation district. There are no such resources present on the site; therefore, this criterion is not applicable.

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

Findings: As noted above, impacts from the proposed ADU front setback reduction from 40 feet to 10 feet are offset by an increased side (west) setback, reduced building coverage, and orientation which will match that of neighboring houses along SE Yamhill Street. As noted above, a condition of approval will require a minimum of two evergreen trees to be planted to the west and south of the ADU, which will offset impacts from the loss of mature trees on site.

As conditioned, this criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: Environmental overlay zones are designated on the Official Zoning Map with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). No environmental zoning is applied to the site; therefore, this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant is proposing to build a new detached accessory building containing a separated ground floor studio and a second level ADU, which includes a ground level foyer and storage area. An Adjustment is requested to reduce the minimum ADU front setback from 40 feet to 10 feet. The proposal will provide an additional infill housing opportunity in the R2.5 zone, consistent with the desired character of this residential area. While the structure is proposed to be in "front" of the house, the existing primary dwelling is located on the north half of the lot which severely limits alternative placement for the new ADU. The ADU is proposed farther to the south than is strictly necessary in order to preserve a mature tree to the south of the existing primary dwelling unit. The applicant is proposing a staggered design of the ADU and placement that will protect this tree. A condition of approval will require that this tree be preserved. Impacts from the Adjustment request are offset by an increased side (west) setback, reduced building coverage, a design which provides common space on the lot, including yards and patios, and orientation which will match that of neighboring houses along SE Yamhill Street.

Because mature trees are proposed to be removed from the site for the construction of the ADU, a condition of approval will require a minimum of one new large evergreen tree or two small or medium evergreen trees be planted between the western wall of the proposed ADU and the western lot line of the site and between the southern wall of the proposed ADU and the southern lot line of the site. The trees must be continuously maintained in a healthy manner. New evergreen trees will promote year-round screening, will offset impacts from the removal of existing trees, and will improve the appearance of the site. The new 6-foot tall wire mesh fence proposed along the southern lot line must be removed from the building permit plan set and not built. All height and location requirements of the fence standards must be met.

The proposal meets the applicable approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum ADU front setback from 40 feet to 10 feet for a new detached accessory structure including a ground floor studio area and a second level ADU (with a ground level foyer and storage area) per the approved site plans, Exhibits C.1 through C.2, signed and dated May 18, 2023, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B and C) must be noted on each of the 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 22-197604 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. At least one new large evergreen tree or two small or medium evergreen trees (consistent with the [Portland Tree and Landscape Manual](#)) must be planted between the western wall of the proposed ADU and the western lot line of the site, and one new large evergreen tree or two small or medium evergreen trees be planted between the southern wall of the proposed ADU and the southern lot line of the site. The trees must be continuously maintained in a healthy manner and if they die, they must be replaced in kind. A fine may be levied if the landscaping has not been maintained (consistent with Zoning Code Section 33.248.040 Landscaping and Screening Maintenance).
- C. A tree protection plan must be provided at the time of building permit which includes preservation measures for the mature Kanzan Cherry tree.
- D. The proposed 6-foot tall wire mesh fence along the front (south) lot line must be removed from the building permit plan set and not built. All fencing must meet the height and location requirements of Portland Zoning Code Section 33.110.275.

Staff Planner: David Besley



Decision rendered by: _____ **on May 18 2023.**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 25, 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 October 27, 2022, and was determined to be complete on March 9, 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 October 27, 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: July 7, 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 June 8, 2023. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded

if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIX decisions on property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in the file, please contact the planner listed on the front of this decision. The planner can provide some information over the phone. Please note that only digital copies of material in the file are available for viewing. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <https://www.portlandoregon.gov/citycode/28197>.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **June 8, 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:

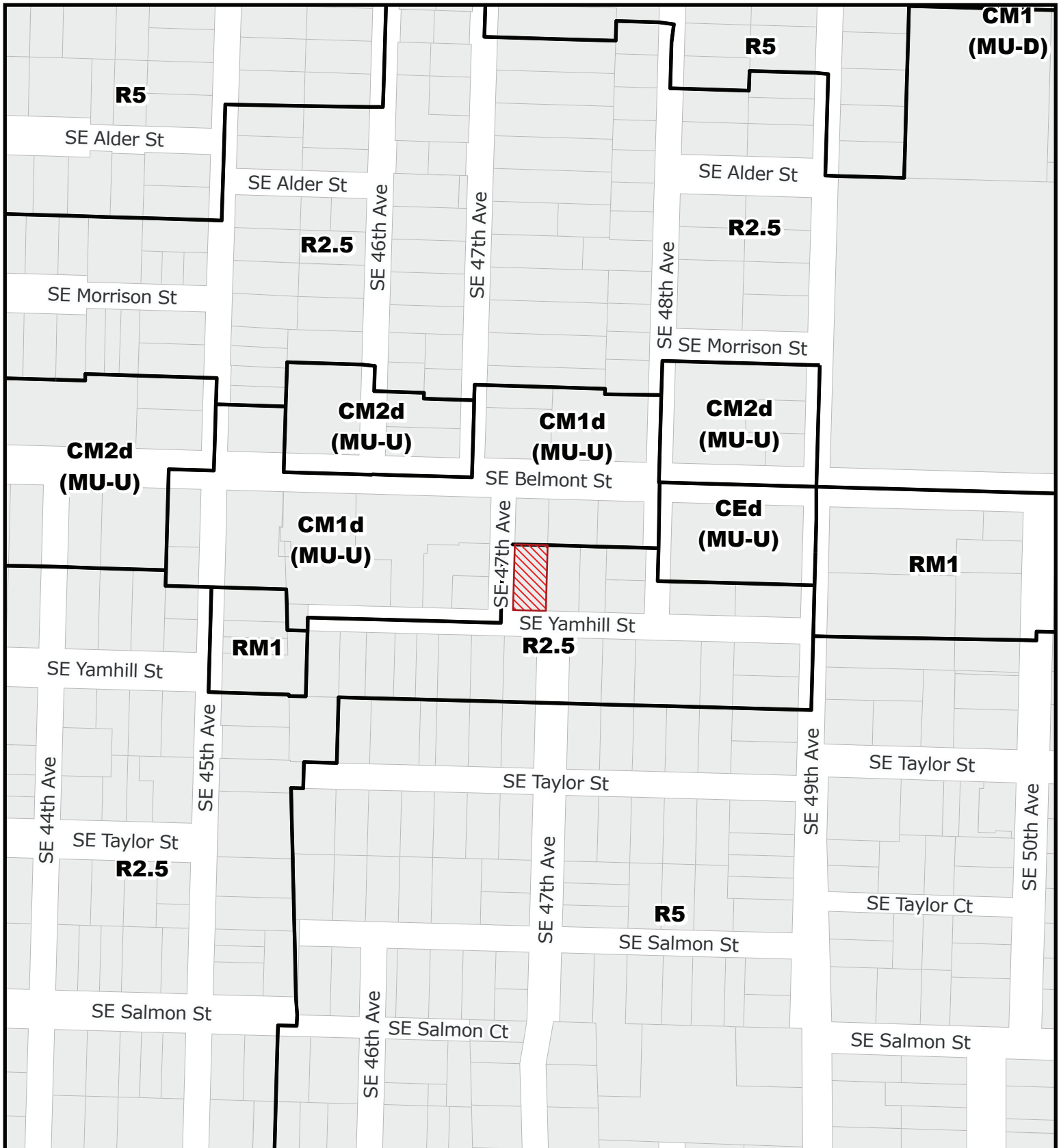
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan + Floor Plans (attached)
 - 2. Elevation Drawings
 - 3. West Site Elevation (reference only)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Transportation Engineering and Development Review
 - 2. Life Safety Section of BDS
 - 3. The Bureau of Environmental Services
 - 4. Bureaus responding with no concerns (Site Development, Water Bureau, and Fire Bureaus)
- F. Correspondence: none
- G. Other:
 - 1. Original LU Application and Receipt
 - 2. Incompleteness determination letter, November 16, 2022

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



For Zoning Code in Effect Post October 1, 2022

ZONING 

 Site

File No.	<u>LU 22 - 197604 AD</u>
1/4 Section	<u>3135</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1S2E06BA 11700</u>
Exhibit	<u>B</u> <u>Oct 27, 2022</u>

