

City of Portland, Oregon Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Dan Ryan, Commissioner Rebecca Esau, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portland.gov/bds

Date: July 14, 2022

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 21-109802 AD

GENERAL INFORMATION

Applicant: Greg Brown | GSB Architecture

15749 SE Taggart St | Portland, OR 97236 503-422-5125 | architecture503@comcast.net

Owners: Garden Courtyard Condominium Owners Association

1820 NW 137th Ave | Portland, OR 97229

CCW LLC

1820 NW 137th Ave | Portland, OR 97229

Site Address: NE KILLINGSWORTH ST

Legal Description: BLOCK 2 LOT 6&11 TL 2300, JORBADE; GENERAL COMMON

ELEMENTS, GARDEN COURTYARD CONDOMINIUM

Tax Account No.: R434103780, R304250010

State ID No.: 1N2E19BB 02300, 1N2E19BB 80000

Quarter Section: 2535

Neighborhood: Cully, contact David Sweet at cullyyuw@gmail.com
Our 42nd Avenue, contact at michael@42ave.org
Central Northeast Neighbors, contact Alison Stoll at

alisons@cnncoalition.org

Plan District: None

Zoning: RM1h – Residential Multi-Dwelling 1 with "h" Aircraft Landing Overlay

Zone

Case Type: AD – Adjustment Review

Procedure: Type II, an administrative decision with appeal to the Adjustment

Committee.

Proposal:

The applicant proposes to build a new fourplex on this site with three existing residential buildings. The location for this building is the currently open space in the southwest portion of the site, directly behind an existing multi-dwelling building. Zoning Code Section 33.120.220.B.2, the Eastern Pattern Area minimum rear building setback, requires the rear setback to be a minimum of 25 percent of the depth of the lot. In this case, with this 272.58-foot-deep lot, the minimum setback would be 68.15 feet. The applicant proposes to set the building 20 feet from the rear property line. Therefore, the applicant requests an Adjustment to Zoning Code Section 33.120.220.B.2 to reduce the required rear setback for the site from 68.15 feet to 20 feet.

All other Zoning Code standards have not been verified to be met by the proposal; the applicant proposes to demonstrate compliance at time of building permit.

Relevant Approval Criteria:

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

ANALYSIS

Site and Vicinity: The site is roughly 31,600 square feet in area, and is developed with multidwelling development in three residential structures, providing 10 units. The buildings were constructed prior to 1970. The location for the proposed building is a grassy yard area that currently serves the other units. Nearby development is a mix of single- and multi-dwelling development with commercial development primarily to the west along NE 42nd Ave.

NE Killingsworth St in this area is a District Collector for traffic, a Major Transit Priority Street, a City Bikeway, Major City Walkway, and Local Service for freight.

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.

The <u>Aircraft Landing Zone</u> "h" overlay provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The height limits of this overlay is not at issue in this review.

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 **May 18, 2022**. The following Bureaus have responded with no issues or concerns:

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

The Bureau of Environmental Services does not object to approval of the Adjustment, but notes the City's Stormwater Management Manual requirements must be met at time of permit (Exhibit E.1).

The Bureau of Transportation has no objections to the proposed Adjustment, but notes the existing pedestrian corridor does not meet City standards, and an approximately 8-foot dedication of property and reconstruction of the corridor will be required prior to building permit approval (Exhibit E.2).

The Life Safety Plans Examiner does not object to the approval of this proposal, but notes several building code standards that will apply to the project at time of building permit review (Exhibit E.6).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 18, 2022. A total of six written responses were received from three people living on the subject site in the existing condos. All three were opposed to granting the Adjustment. One resident wrote twice with questions, then submitted comments both representing the Condo Board and herself (Exhibits E.1 and E.2, and E.5 and E.6). Two other neighbors wrote in with additional comments opposed to the Adjustment. Some of the objections are listed below, along with staff responses:

- The new building would limit emergency access and fire protection to the two closest residential units and property to the west. There will be impacts to light and air as well.
- Privacy to the two closest existing units would be reduced, as well as the units to the
 west.
- The path to access the remaining yard area would be narrow.
- The location of the building may be on a required fire lane.
- Trees may be required to be removed for the new building.
- The new impervious area for the building may cause stormwater runoff.
- The site will have less open space for recreation after the building is built.
- Construction will be disruptive.

Staff comments: Statements directly related to approval criteria will be addressed in the findings below. The reduced rear setback is the only requested Adjustment; all other Zoning Code, Building Code, and other requirements like stormwater management, tree preservation, and Fire Bureau standards, will need to be shown to be met during building permit review before the building permit will be issued. The Fire Bureau had no concerns regarding the Adjustment (Exhibit E.4).

The Zoning Code does not have a minimum width required for accessing open space; however, the opening between the proposed building and the building in the southeast corner is 12 feet wide. While building a building on the lawn does reduce the amount of common open space on the site, the proposal will still meet the common area requirement of Zoning Code Section 33.120.240.B.2 and C.2 to have at least 10 percent of the site in a common area that is at least 500 square feet in size, with at least 20 feet by 20 feet in all directions. The two areas proposed to meet the common area requirement are shown on Exhibit C.2, and include the remaining yard to the south of the proposed building. This review does not consider construction process impacts.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

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

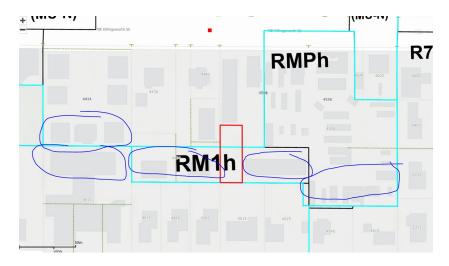
A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The purpose for the setback regulations in multi-dwelling zones is stated in Zoning Code Section 33.120.220.A:

- **A. Purpose.** The building setback regulations serve several purposes:
 - They maintain light, air, separation for fire protection, and access for fire fighting;
 - They reflect the general building scale and placement of multi-dwelling development in the City's neighborhoods;
 - They promote a reasonable physical relationship between residences;
 - They promote options for privacy for building residents and neighboring properties;
 - They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity;
 - Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users; and
 - They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.

The request is to reduce the Eastern Pattern Area rear setback requirement. This setback is a recent addition to the Zoning Code, added through the Better Housing by Design project that updated the multi-dwelling zone chapter and was effective March 1, 2020. No changes were made to the setback purpose statement with the addition of this new setback requirement that applies in some geographic areas. The adopted staff report for the project speaks to the desire to retain mature tree groves and rear yards in areas with typically deep lots. Potentially, the standard could help retain future options for connections through large blocks.

In this circumstance, the site already has a building at the rear of the property, as do all of the multi-dwelling developments nearby (see image below with buildings in rear setbacks circled in blue). These other buildings would prevent new right-of-way connections through this block. However, the distance on this block between NE Killingsworth St and NE Emerson St is approximately 420 feet, which is less than the 1000-foot-long blocks discussed in the staff report; therefore, it is questionable whether additional connections would be desired from a policy perspective. According to the applicant's tree plan (Exhibit A.5, page 5) no trees are proposed to be removed for the new building. The trees that are located in the southwest corner of the site are each 3 inches, 3 inches, and 10 inches in diameter. These sizes are below the size required to be considered for the tree preservation standards of Title 11, Trees, and are not the mature Douglas fir groves of trees mentioned in the staff report.



Sites that have at least 10 percent of the total site area as large common outdoor areas that measure at least 30 feet in all directions are exempt from this rear setback standard. The implication is that if larger open areas are provided for residents of the site, that will equally meet the purpose of this setback. In this case, the site does have an area that is roughly 30 feet by 80 feet on the east side of the site. If the proposed long-term bike parking spaces were relocated, the total area would be 2,658 square feet. This area does not meet the 10 percent site area minimum on its own (providing 2,400 square feet of open area, instead of 3,162), but the presence of this large outdoor area does indicate the site has amenities that are providing benefits intended to address the purpose of the new standard.

The proposal meets other setback requirements, therefore providing adequate air and light to buildings on adjacent properties and promoting a reasonable physical relationship between residences on different sites. As stated earlier, the Fire Bureau had no concerns with the Adjustment, and all Fire Code standards will need to be shown to be met prior to building permit issuance. Even on the subject site, the distance between the existing and proposed buildings is a minimum of 10 feet, a distance that would meet setback requirements if a property line were drawn between the two structures. The two-story building at 21 feet, 7 inches is well under the base zone height limit of 35 feet, and is in scale with surrounding one- and two-story multidwelling development. As shown in the image above, the location of this building reflects the placement of other multi-dwelling buildings in the area.

Several respondents raised privacy concerns. In this case, as mentioned, the west side setback is met, and the distances to adjacent buildings on the subject site exceed 10 feet. The house to the south of the proposed building is some 100 feet away from the south end of the proposed building. With these distances, we do not expect any privacy impacts to arise from the proposed two-story building that would be worse than a building meeting all Zoning Code standards.

Required outdoor areas are provided for the new units that meet the individual unit standards; the applicant claims the standard is met for all existing units as well (and could be met in provided common areas if individual areas do not meet standards). The site does exceed the 10 percent minimum common outdoor area requirement with the larger 30-foot by 80-foot area described above, and with the 20-foot by 50-foot outdoor common area to the south of the proposed building.

The final two bullet points address issues at the street; since this Adjustment addresses the rear setback, and there is no change to the front of the property proposed, these purpose statements are not applicable.

For the reasons stated above, staff finds the proposal equally meets the purpose of the regulation. Therefore, 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: Because the subject site is a multi-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. The comments received raised concerns about livability impacts on other residents at the site, including loss of greenspace, loss of light and air, privacy concerns, and the fact that the proposed pedestrian path in front of the proposed building, and leading to the remaining open area, would only be several feet from the main entrance of the southern units of the new building.

While the amount of common outdoor area is being reduced with the construction of the new building, staff noted above that both the individual and the common outdoor requirements are still met with this proposal. The Zoning Code does not regulate space between structures on and within a site. However, the proposed building is 10 or more feet away from the two closest existing structures. These distances would meet or exceed the standard separation required if the structures were all on separate properties in this zone, with its 5-foot side setbacks. Building Code also regulates minimum separation to ensure fire protection. These distances, allowed by right, are not anticipated to cause privacy concerns, nor impacts to light and air. The site plan does not fully show the pedestrian network as it will be required, but the pedestrian standards do not include minimum distances from residential entries.

As described in the findings for criterion A above, the location and height of the proposed building is consistent with what is seen on adjacent multi-dwelling sites, and the applicant states all other Zoning Code regulations will be met at time of permit. The proposal is therefore not anticipated to detract from the appearance of the residential area, nor cause livability impacts to adjacent properties (or the rest of the subject site). All nearby multi-dwelling residential properties, including the subject site, already have buildings located in the rear 25 percent of the site. No tree groves are affected, and a 20-foot-deep rear yard is retained to the south of the proposed building which contributes to required common outdoor area. For these reasons, staff finds 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: 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: There are no discernible impacts that would result from granting the requested adjustment. 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. The applicant has not demonstrated that all regulations have been met, nor have nonconforming upgrades been addressed in detail in the provided plans.

CONCLUSIONS

Staff finds the proposed Adjustment to be consistent with the purpose of the building setback requirements. No significant negative impacts are expected, and the proposal will not detract from the appearance or livability of the surrounding residential area. Staff finds the proposal meets each of the applicable Adjustment Review approval criteria. Since the approval criteria are met, the proposal must be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.120.220.B.2 to reduce the required rear setback for the site from 68.15 feet to 20 feet, per the approved plans, Exhibits C.1 through C.4, signed and dated July 11, 2022, subject to the following conditions:

A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.4. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 21-109802 AD."

Staff Planner: Amanda Rhoads

Decision rendered by: ______ on July 11, 2022

By authority of the Director of the Bureau of Development Services

Decision mailed: July 14, 2022

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on November 29, 2021, and was determined to be complete on May 10, 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 November 29, 2021.

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: September 7, 2022.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, and if appealed a hearing will be held. The appeal application form can be accessed at https://www.portlandoregon.gov/bds/45477. Appeals must be received by 4:30 PM on July 28, 2022. 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 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 **July 28, 2022** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

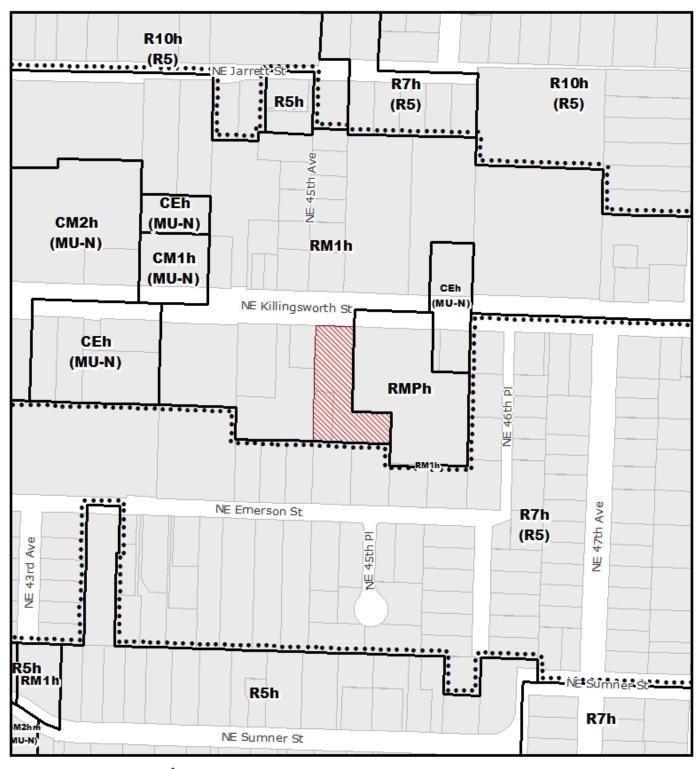
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original Narrative
 - 2. Original Plan Set
 - 3. Applicant email, December 30, 2021
 - 4. Revised Narrative
 - 5. Revised Plan Set
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Outdoor Area Plan
 - 3. East and South Elevations (attached)
 - 4. West and North Elevations
- 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. Steph Caldera, Garden Courtyard Condominium HOA Board Secretary, May 24, 2022, with questions
 - 2. Steph Caldera, June 8, 2022, with questions
 - 3. Jill Cunningham, June 8, 2022, in opposition
 - 4. Morgen Lennox, June 8, 2022, in opposition
 - 5. Steph Caldera, representing the Garden Courtyard Condominium HOA Board, June 8, 2022, in opposition
 - 6. Steph Caldera, June 8, 2022, in opposition
- G. Other:
 - 1. Original Land Use Application
 - 2. Planner Incomplete Letter, December 29, 2021
 - 3. Revised Incomplete Letter, December 30, 2021

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



ZONING





For Zoning Code in effect Post August 1, 2021

File No.	LU 21 - 109802 AD
1/4 Section	2535
Scale	1 inch = 200 feet
State ID	1N2E19BB 2300
Exhibit	B Nov 30, 2021

