



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

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Date: March 15, 2022
To: Interested Person
From: Matt Wickstrom, Land Use Services
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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 22-105683 AD

GENERAL INFORMATION

Applicant: YBA Architects | Meghan Eubank and Alexander Yale
123 NW 2nd Ave #204 | Portland, OR 97209

Owner: HMS SE 52nd St LLC
6712 N Cutter Cir
Portland, OR 97217

Site Address: 5180 SE COOPER ST

Legal Description: LOT 1 LOT 2 EXC W 60', AMERATOS ADD
Tax Account No.: R022900010
State ID No.: 1S2E19BA 16500
Quarter Section: 3735

Neighborhood: Brentwood-Darlington, contact Stephenie Frederick at bdlanduse@gmail.com

Business District: Woodstock Community Business Association, contact at <http://www.woodstockbiz.com>

District Coalition: Southeast Uplift, contact Matchu Williams at matchu@seuplift.org

Zoning: CM1 (Commercial/Mixed Use 1)

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

Proposal:

The applicant has submitted for a permit to construct a 3-story residential building with 25 dwelling units at this site (20-182282 CO). The Portland Zoning Code requires outdoor area for new residential buildings in commercial zones. Outdoor area may be provided as separate areas for each dwelling unit, as a common outdoor area shared by all dwelling units, or a

combination. Where common outdoor areas are proposed, each area must be designed to be at least 500 square feet and must measure at least 20 feet in all directions. The applicant has proposed separate outdoor areas for 8 dwelling units and a combined outdoor area for the remaining dwelling units. The combined outdoor area measures 680 square feet in area; however, a small triangular area is cut off and prevents it from fitting an exactly 20x20-foot square within it. Because the common area does not fit an exactly 20x20-foot square, the applicant requests an Adjustment to Zoning Code Section 33.130.228.B.2.b.(1) to reduce the required 20-foot by 20-foot dimensions of the required outdoor area by 4.4 square feet, or 1.1 percent.

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 11,410 square foot vacant site is located at the corner of SE 52nd Ave. and SE Cooper St. The surrounding vicinity is primarily zoned residential and developed with one and two-story single-dwelling homes, a small commercial zoned section with few small scale commercial and office buildings, and a religious institution campus with many small one and two-story sleeping structures.

Zoning: The site is zoned Commercial/Mixed Use 1 (CM1). The CM1 zone is a small-scale zone intended for sites in dispersed mixed use nodes within lower density residential areas, as well as on neighborhood corridors and at the edges of neighborhood centers, town centers and regional centers.

Land Use History: City records indicate one prior land use reviews for this site:

LU 05-144534 AD – Approval of an Adjustment to reduce the front building setback, north side building setback, require parking area landscape setback and increase building coverage for a store-front style commercial building.

Staff note: Although the land use review was approved, no permits were applied for and no development occurred.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **February 7, 2022**. The following Bureaus have responded with no issues or concerns: Portland Bureau of Transportation, Bureau of Development Services Life Safety Division, Fire Bureau, Bureau of Development Services Site Development Section, Bureau of Environmental Services, and Water Bureau (Exhibits E.1-E.4)

Neighborhood Review: A total of three written responses have been received from notified neighbors in response to the proposal.

- The first response was in opposition to the proposal (Exhibit F.1) and stated that SE Cooper St. is a dead end street and has many cars parked on it at night and on weekends.
Staff response: The Adjustment request relates to the dimensional requirements for on-site outdoor area and therefore the availability of parking is not evaluated as part of the proposal. Incidentally, no on-site parking is required for the proposed residential development; however, nine on-site vehicle parking spaces will be provided with one of those spaces being dedicated to motorcycle parking.
- The second response was in opposition to the proposal (Exhibit F.2) and stated concerns regarding outdoor space, parking, traffic, property values, noise and safety. The response asks how the City will mitigate for impacts of the development and

mentions that a meeting was requested with the applicant but no response was received.

Staff response: The availability of outdoor space is the subject of this Adjustment Review, specifically, the dimensional requirements for on-site outdoor area and the dimensions proposed. This topic is addressed in the findings below. Parking, traffic and mitigation of impacts related to those two issues are not addressed in the findings below. These are factors evaluated when zoning requirements are developed and then applied. No on-site parking is required in this zone when affordability requirements are met and in other situations such as when a site has proximity to frequent bus service. While a significant concern to nearby property owners, impacts on property values are not part of the Adjustment review approval criteria and cannot be taken into account when issuing a decision. Noise and safety issues are addressed through other City codes.

- The third response (Exhibit F.3) stated that there are neighborhood concerns about impacts on on-street parking with regards to the requested Adjustment.

Staff response: The Adjustment request relates to dimensional requirements for required outdoor area and not parking. See the first staff response above.

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 statement for Required Outdoor Areas and related dimensional requirements are found under Section 33.130.228 of the Portland Zoning Code:

The required outdoor areas standards ensure opportunities for residents to have on-site access to outdoor space for recreation, relaxation, natural area, or growing food. Required outdoor areas are an important aspect for addressing the livability of a property with residential units by providing residents with opportunities for outdoor activities, some options for outdoor privacy, and a healthy environment. The standards ensure that outdoor areas are located so that residents have convenient access. These standards also allow for outdoor area requirements to be met by indoor community facilities because they provide opportunities for recreation or gathering.

The total amount of outdoor area required for new development on sites up to 20,000 square feet in area is at least 36 square feet of outdoor area per dwelling unit. In this case for 25 dwelling units, 900 square feet of outdoor area is required. Outdoor area may be provided as individual areas such as patios or balconies, common, shared areas such as outdoor courtyards, or indoor recreational facilities. There may also be a combination of individual and common areas.

The proposed apartment is designed with a combination of individual and common outdoor areas. Eight individual outdoor areas are proposed for the eight apartments located on the ground floor facing SE 52nd Avenue. These outdoor areas total 369 square feet in area and meet size and dimensional requirements; therefore, they are not subject to this review. The remaining 17 dwelling units in the building will share a common outdoor area. The amount of required area for the remaining 17 units is 612-square feet. Common outdoor areas must be at least 500 square feet in area and must measure at least 20 feet in all directions. The proposed outdoor area for the 17 units measures 680 square feet in area and is generally rectangular in shape. However, at its largest point the outdoor area does not measure 20 feet by 20 feet in all directions as a small triangular area measuring 4.4 square feet is left out due to the shape of the lot. In other words, the proposed dimensional requirements fall about 1.1% short of the area required (see Exhibit C.1).

Despite the minimum dimensions of the outdoor area measuring slightly less than 20 feet by 20 feet in all directions, the proposed outdoor area meets the intent of the regulation, especially because it exceeds the minimum 500 square foot requirement by 180 square feet. The proposed 680 square foot outdoor area is conveniently accessible and will provide residents with an area for recreating, relaxing and enjoying other outdoor activities. Plans show an outdoor grill and countertop as well as a tree, hardscape and synthetic turf within the proposed outdoor area. Plans also show it will be fenced and that it is not adjacent to right-of-way which will provide additional privacy and less noise. The area provided also allows plenty of room for seating so that residents can socialize outside.

For the reasons above, especially considering that the size of the proposed outdoor area is 180 square feet larger than the minimum area required, the proposal equally meets the purpose of the standard 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: Since the site is zoned CM1, the applicant must demonstrate that the proposal is consistent with the classifications of the adjacent streets and the desired character of the area, specifically the character of the CM1 zone and the 1992 Brentwood-Darlington Neighborhood Plan.

Street classifications

SE 52nd Avenue is classified as a Transit Access Street, a Neighborhood Collector, Major Emergency Response Street, Major City Bikeway, City Walkway, and Truck Access Street. SE Cooper Street is listed as a local street for all classifications. The proposal to reduce the dimensional requirement for the required outdoor area has no bearing on the classification of adjacent streets especially considering that the outdoor area is fenced and is not located adjacent to either SE 52nd Avenue or SE Cooper Street.

Desired character of area

Zoning Code Chapter 33.910 defines “desired character” as the character envisioned in the character statement of the zoning district and in any adopted area plans. The site is designated with the CM1 (Commercial/Mixed Use 1) base zone; the character statement is listed in 33.130.030.B and reads:

The Commercial/Mixed Use 1 (CM1) zone is a small-scale zone intended for sites in dispersed mixed use nodes within lower density residential areas, as well as on neighborhood corridors and at the edges of neighborhood centers, town centers and regional centers. The zone is also appropriate in core commercial areas of centers in locations where older commercial storefront buildings of 1 to 2 stories are predominant.

This zone allows a mix of commercial and residential uses. The size of commercial uses is limited to minimize impacts on surrounding residential areas. Buildings in this zone will generally be up to three stories tall. Development is intended to be pedestrian-oriented and compatible with the scale and characteristics of adjacent residentially zoned areas or low-rise commercial areas.

The character description above relates to overall factors considered when the CM1 zoning is applied including the features of development in the surrounding vicinity. Dimensional requirements for outdoor areas are a development standard required by the CM1 zone; therefore, provided an outdoor area meets the intended purpose of the requirement, it is consistent with the desired character of the zone and location where the zone was applied.

The Brentwood-Darlington Neighborhood Plan contains no policies or objectives related to the dimensional requirements for outdoor areas.

Summary

For the reasons stated above, staff finds the proposed Adjustment to be consistent with the classifications of the adjacent streets and the desired character of the area. Approval 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 because the dimensions of the proposed outdoor area are only slightly less than the 20-foot by 20-foot requirement and the proposed outdoor area is 180 square feet larger than the minimum size required. The outdoor area proposed will provide meaningful and conveniently accessible area for outdoor recreation and relaxation. 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). No portion of the site is identified as having one of the environmental zones.

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 has proposed an Adjustment to the Outdoor Area requirement of Portland Zoning Code Section 33.130.228. The proposed common outdoor area to be shared by the 17 dwelling units without individual outdoor areas has a space measuring slightly less than the 20x20-foot square required by only 4.4 square feet. but is 180 square feet more than the 500 square feet minimum area required. This larger outdoor area equally meets the purpose of the outdoor area by providing nearly a 20x20 foot square within the larger than required 680 square foot outdoor space for outdoor recreation, relaxation, and natural area. The proposal also is consistent with the adjacent street classifications; is consistent with the desired character of the area; and will not adversely impact historic, environmental or scenic resources.

ADMINISTRATIVE DECISION

Approval of an Adjustment to 33.130.228.B.2.b.(1) to allow the minimum dimensions of the required outdoor area to measure slightly less than the required 20 feet by 20 feet by 4.4 square feet, per the approved site plan, Exhibits C.1, subject to the following condition:

- 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. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 22-105683 AD. No field changes allowed."

Staff Planner: Matt Wickstrom

Decision rendered by:  **on March 11, 2022**
By authority of the Director of the Bureau of Development Services

Decision mailed: March 15, 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 January 21, 2022, and was determined to be complete on February 2, 2022.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 21, 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: June 2, 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 March 29, 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 March 29, 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:

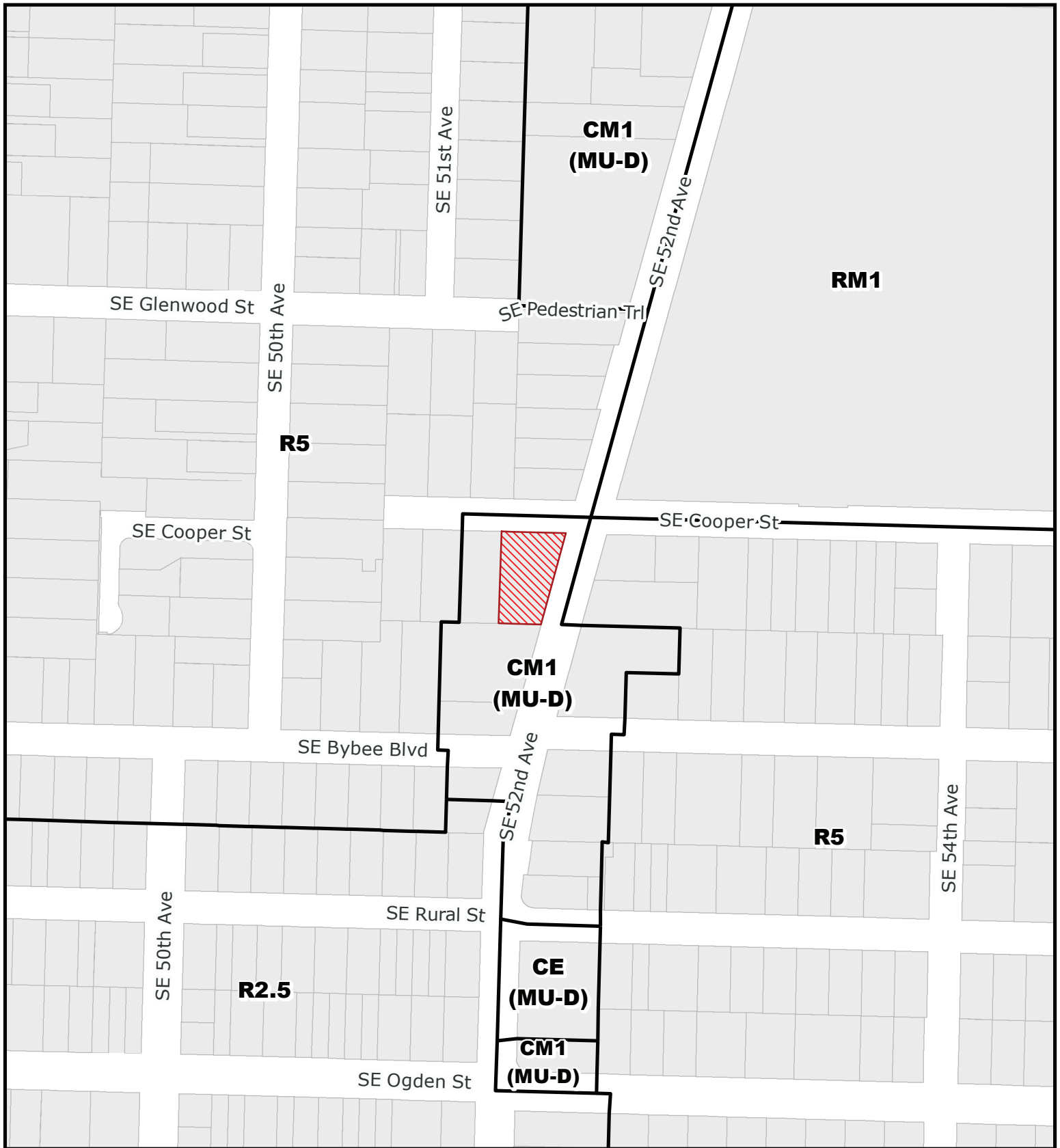
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Portland Bureau of Transportation
 - 2. Life Safety Section of BDS
 - 3. Fire Bureau
 - 4. Bureau of Environmental Services, Water Bureau and Site Development Section of BDS
- F. Correspondence:
 - 1. Ray Franz, February 27, 2022, opposition to development
 - 2. Leslie Christiansen, February 28, 2022, opposition to development
 - 3. Joshua Mayer, February 28, 2022, neighborhood concerns
- G. Other:
 - 1. Original LU Application

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).

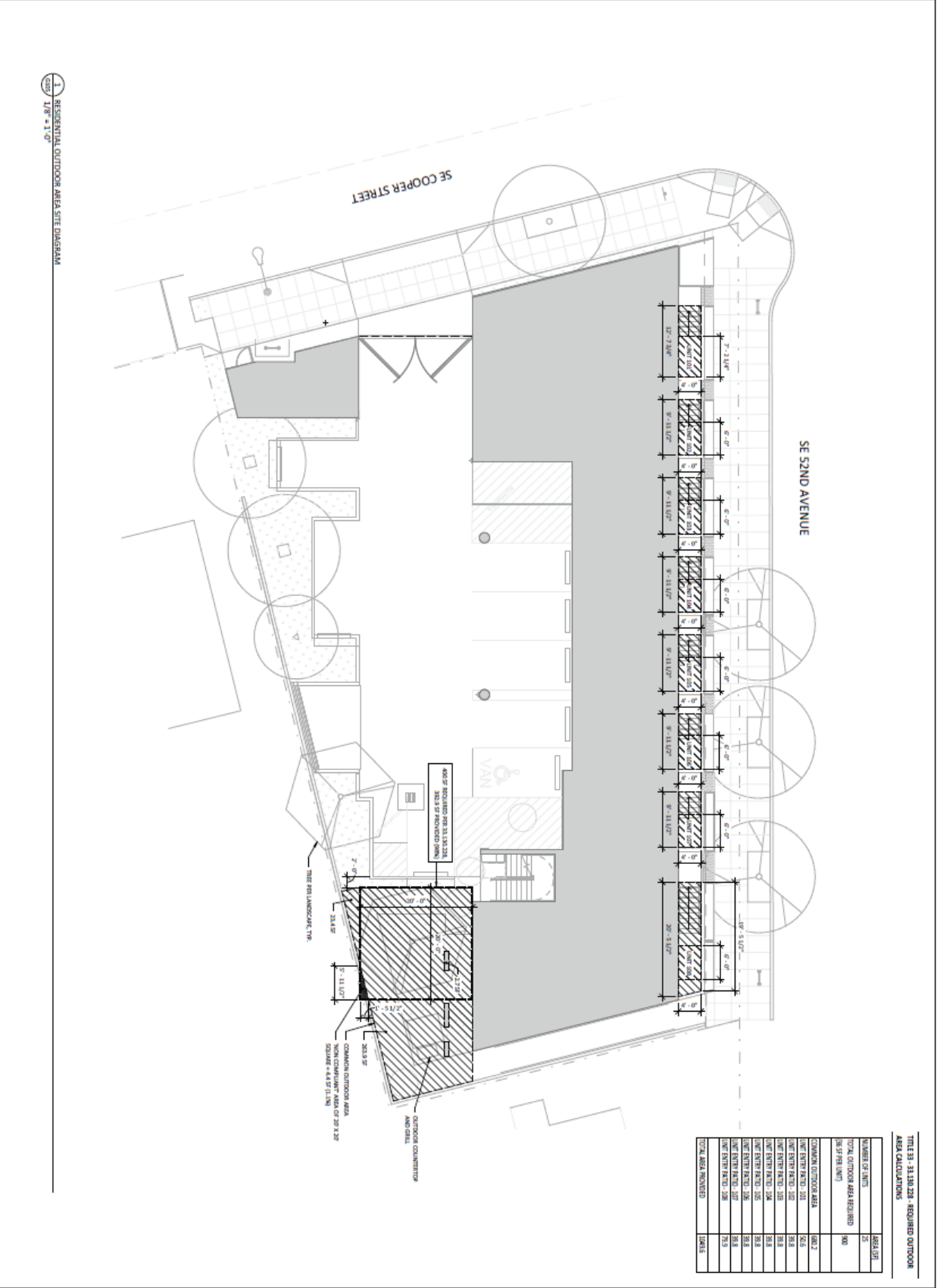


ZONING



For Zoning Code in effect Post August 1, 2021

File No.	<u>LU 22 - 105683 AD</u>
1/4 Section	<u>3735,3736</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1S2E19BA 16500</u>
Exhibit	<u>B Jan 21, 2022</u>



TITLE 53 - 53.130.028 - REQUIRED OUTDOOR AREA CALCULATIONS	
NUMBER OF UNITS	104
PER 100 OUTDOOR AREA REQUIRED	900
PER 100 PERMITS	93,600
COMPARISON TO OUTDOOR AREA	104,272
NET ENTRY PATIO 1.00	36,816
NET ENTRY PATIO 1.05	38,832
NET ENTRY PATIO 1.06	39,888
NET ENTRY PATIO 1.08	42,432
NET ENTRY PATIO 1.07	41,424
NET ENTRY PATIO 1.08	42,432
TOTAL AREA PROVIDED	104,272

1 RESIDENTIAL OUTDOOR AREA SITE DIAGRAM
 SCALE 1/8" = 1'-0"