



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: June 6, 2008
To: Interested Person
From: Matt Wickstrom, Land Use Services
503-823-7840 / WickstromM@ci.portland.or.us

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 reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-115751 AD

GENERAL INFORMATION

Applicant: Mark Beirwagen, Stone Creek Building & Development
10117 SE Sunnyside #F502
Clackamas OR 97015

Owner: Ron Bistline, Bistline Enterprises Ltd.
24474 S Hayfield Rd.
Beavercreek, OR 97004

Site Address: 308 SE 151ST AVE

Legal Description: EXC N 40'-W 1/2 OF LOT 285; N 35.5' OF W 1/2 OF LOT 286, ASCOT AC

Tax Account No.: R041808990

State ID No.: 1N2E36CD 01500

Quarter Section: 3045

Neighborhood: Glenfair, contact Donna-Lynn Kublick at 503-257-3784

Business District: Gateway Area Business Association, contact Fred Sanchez at 503-256-3910

District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550

Plan District: East Corridor

Zoning: R5a (Residential 5,000 with an Alternative Design Density overlay)

Case Type: AD (3 Adjustments)

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

Proposal:

The applicant is developing Lots 4 and 5 of this new subdivision with attached houses, one of which is oriented to the new private street, SE Pine Court, and one of which is oriented toward SE 151st Avenue. The houses are attached by the two single-car garages. The Portland Zoning Code considers both Lots 4 and 5 to be *through lots* because they have frontage on two parallel streets. Consequently, both the north and south street frontages of the lots are considered to be front property lines, and neither lot has a rear property line. Therefore the minimum 10-foot front setback must be met for both the north and south street lot lines. As proposed, the

applicant has designed the houses to be situated such that the south property line functions as the rear property line. One house is situated 5 feet from the south property line and the other is situated 7 feet from that property line. The applicant has requested two Adjustments to zoning code standard 33.110.220, Setbacks, to allow a 5-foot setback from the house to the south property line on Lot 4, and a 7-foot setback from the house to the south property line on Lot 5.

A minimum outdoor area of 250 square feet with a minimum dimension of 12' x 12' is also required for each house. The proposal meets both standards, but on Lot 5, a portion of the 12' x 12' area is located in the "front" (south) setback which the Zoning Code does not allow. The applicant has requested a third Adjustment to zoning code standard 33.110.235, Required Outdoor Areas, to allow part of the 12' x 12' area to be in the front setback on the south side of the lot.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of 33.805.040 A-F, Adjustments, cited below:

ANALYSIS

Site and Vicinity: The approximately 22,000 square foot site is relatively flat and is currently under development. A Land Division review approved a five-lot subdivision with a private street tract at the site in 2007. The surrounding vicinity is developed with single-dwelling residences and low density multi-dwelling development. A private street/cul-de-sac for another subdivision is located to the south of the site.

Zoning: The site is zoned R5a. The R5 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Attached houses are allowed on smaller corner lots provided the lot before land division meets the 3,000 square foot minimum size requirement. The "a" overlay is intended to allow increased density that meets design compatibility requirements. The proposal does not utilize provisions of the "a" overlay.

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

LU 05-141455 LDS: A 2007 approval of a land division to create 5 lots, with lot areas ranging from 2202 to 4636 square feet in area, and a private street. Two of the five lots, which are the subject of this land use review, were required to be developed with attached housing.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **May 2, 2008**. The following Bureaus have responded with no issues or concerns:

- The Bureau of Environmental Services responded with information on sanitary services, stormwater management and water resources. Information provided by the BDS planner notes that the applicant plans to install a 4-foot by 4-foot drywell in the driveway of each lot for stormwater management. The response states no objections to the proposal and notes that the stormwater generated from the proposed development must meet the requirements of the City of Portland's Stormwater Management Manual (Exhibit E-1).
- The Site Development Section of BDS responded with no objections to the proposed Adjustments. The response notes that at time of building permit review, plans must show the proposed sanitary and stormwater connections, and an infiltration test may be required. The response also notes that the location of drywells must be shown on the plans and the drywells may not be located closer than 10 feet to any structures or 5 feet to any property lines, as measured to the middle of the facility (Exhibit E-2).
- The Development Review Section of Portland Transportation as well as the Fire, Water and Parks Bureaus responded with no concerns (Exhibit E-3).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 2, 2008. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

Title 33.805.10 Purpose of 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 code's regulations would preclude all use of the site. Adjustment reviews provide flexibility for unusual situations and to allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.40 Adjustment Approval Criteria

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

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

Findings: The applicant requests three Adjustments associated with plans to develop two attached houses on Lots 4 and 5 of this subdivision. One Adjustment request is to reduce the front (south) setback for the attached house on Lot 4 from 10 feet to 4 feet; the second Adjustment request is to reduce the front (south) setback for the attached house on Lot 4 from 10 feet to 7 feet; and the third Adjustment request is to allow a portion of the required outdoor area for the attached house on Lot 5 to be within the front (south) setback. The purposes of the setback and required outdoor area regulations are listed below:

Purpose 33.110.220 Setbacks

The setback regulations for buildings and garage entrances 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 houses in the city's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *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.*

Purpose 33.110.235 Required Outdoor Areas

The required outdoor area standard assure opportunities in the single-dwelling zones for outdoor relaxation or recreation. The standards work with the maximum building coverage standards to ensure that some of the land not covered by buildings is of an adequate size and shape to be usable for outdoor recreation or relaxation. The location requirements provide options for private or semiprivate areas. The requirements of a required outdoor area serves in lieu of a large rear setback requirement and is an important aspect in addressing the livability of a residential structure.

Adjustments 1 and 2 – Front (south) setback

The attached site plan shows that the attached house on Lot 4 is proposed to be located 5 feet from the front (south) property line and the attached house on Lot 5 is proposed to be located 7 feet from the front (south) property line. The Zoning Code considers both lots to be *through lots* because they have street frontage on two roughly parallel streets (Lot 5 also has frontage on SE 151st Avenue but because that street property line is longer than the other two, that street frontage is considered to be a side property line). A reduced setback for both attached houses

will not negatively impact the availability of light and air for neighboring development because an existing approximately 24-foot wide private street separates the south side of the proposed homes from the closest nearby development. The proximity of the proposed attached houses to the private street also preserves access for fire fighting and fire protection. This also helps promote a reasonable physical relationship between residences. Backyard privacy for neighboring development will also be preserved because the homes to the south of the site are oriented toward the private street which means that the rear yards of these homes will not be impacted by the reduced front (south) setback. The larger front setback requirements of the Zoning Code (as opposed to side and rear setbacks) promote open, visually pleasing front yards. Because the proposed attached houses are oriented toward the north, the front yards of these houses will not be impacted by the proposed development. The requested Adjustments to front setback allow for adequate flexibility to site the proposed attached houses on the site while maintaining compatibility with the neighborhood and outdoor areas which, as discussed in the findings below, meet the intent of the zoning code regulations. Based on this information, this criterion is met.

Adjustment 3 – Required outdoor area

The attached site plan shows that the required outdoor area for the attached house on Lot 5 meets the minimum 12-foot by 12-foot dimensional standards and the minimum 250 square foot size requirement; however, the Zoning Code does not allow a required outdoor area to be located within the front setback. This regulation discourages required outdoor areas from being located within the front setback because these areas are typically where the front yard is located and where adequate privacy for outdoor recreation would not be provided. In this situation Lot 5, the attached house is oriented toward the west with a “front yard” located between the home and the private street to the north which will serve development on Lots 4 and 5 of the subdivision. Locating the required outdoor area to the rear of the proposed home for Lot 5 will still allow for outdoor recreation and relaxation. The minimum dimensional and size requirements are also met so that the outdoor area functions adequately. Adequate privacy also exists through the existing arbor vitae planted along the south property line and through an existing 3.5-foot chain link fence. Based on this information and especially considering the orientation of the proposed attached house to the west (and north), the location of the required outdoor area within the front setback to the south of the structure will still allow for outdoor enjoyment and privacy. This criterion is met.

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

Findings: The proposal to reduce the front setback requirements along the south property line for the two attached houses will not detract from the livability or appearance of the residential area. The homes are proposed to be located on *through lots* and because of this the Zoning Code applies the minimum 10-foot front setback requirements along the north and south sides of both lots. However, as designed, the “front” of the home proposed for Lot 4 is oriented toward the north and the “front” of the home proposed for Lot 5 is oriented toward the west (with the garage entrance oriented toward the north). Considering this design, when the development is viewed from surrounding sites and by passersby, a typical front yard will be seen to the north of the structures and the reduced setback along the south property line will much less visually apparent as it will appear similar to a rear setback which the Zoning Code requires to be 5 feet in depth. Furthermore the attached houses are designed with various siding materials which provides additional visual interest and can further detract from the appearance of the reduced front (south) setback. In order to ensure that the construction of these homes incorporate these varying siding materials, a condition of approval has been added as part of this review which requires the use of varying siding materials as shown on the attached elevation drawings. The homes are also designed with adequate articulation especially along the south façade where only about two-thirds of the façade of each home is actually proposed to be located within the front (south) setback and where the home on Lot 5 is set back 7 feet rather than the originally proposed 5-foot setback. The location of the required

outdoor area for the home proposed on Lot 5 within the front (south) setback will also be less visually apparent due to the orientation of the home to the west (and north). 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: The overall purpose of the R5 zone is to preserve land for housing and to provide opportunities for individual households. The proposed Adjustments to the front setback requirements for the attached houses on Lots 4 and 5 as well as the requested Adjustment to allow the required outdoor area for the home on Lot 5 to be located within the front (south) setback do not conflict with this purpose. The attached home on Lot 4 is oriented toward the north and the house on Lot 5 is oriented toward the west (with the garage entrance oriented toward the north). Therefore, the south side setbacks of the homes will appear consistent with the 5-foot minimum rear setback in the R5 zone and the location of the required outdoor area for the home on Lot 5 to the south of the home will appear consistent with the location of a typical rear yard. This criterion is met.

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

Findings: Impacts resulting from the requested Adjustments have been mitigated to the extent practical. The site design and layout of the proposed homes for Lots 4 and 5 provides for adequate front yard area to the north of the structures. Adequate and functional outdoor recreation area is also provided for both homes to the east of the home on Lot 4 and through this Adjustment Review to the south of the home on Lot 5. The articulation and varying siding materials proposed and required through the condition of approval add visual interest which further detracts from the reduced front (south) setbacks and location of the required outdoor area.

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

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resources and resource value as is practical.

Findings: The site does not contain any identified scenic or historic resources and the site is not located in an environmental zone; therefore, these criterion are 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

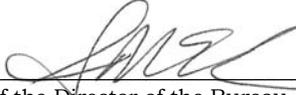
The applicant proposes three Adjustments associated with the planned construction of two attached houses on Lots 4 and 5 of this approved subdivision. As noted in this report, the proposal is able to meet the Adjustment approval criteria with approval granted based on the orientation of the two homes to the north and west rather than to the south, the presence of an adequately sized “front” yard for both homes and the location of the proposed outdoor area for the home on Lot 5 within what will ultimately function as the rear yard of the home. Approval is also granted based on the articulation of the homes and the condition of approval which requires the use of varying siding materials. With approval requiring that the permit drawings substantially conform with the site plan and elevation drawings attached, the request meets the applicable criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of three Adjustments to 33.110.220 and 33.110.235 to:

- Reduce the front (south) setback for the attached house on Lot 4 from 10 feet to 5 feet; and
 - Reduce the front (south) setback from the attached house on Lot 5 from 10 feet to 7 feet; and
 - Allow the required outdoor area for the attached house on Lot 5 to be located within the front (south) setback,
- per the approved site plans, Exhibits C-1 through C-2, signed and dated June 4, 2008, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) 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 08-115751 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The facades for both attached houses must incorporate varying siding materials as illustrated on the attached elevation drawings.

Decision rendered by:  **on June 4, 2008**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 6, 2008

Staff Planner: Matt Wickstrom

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 March 14, 2008, and was determined to be complete on April 30, 2008.

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 March 14, 2008.

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.

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, which will hold a public hearing. Appeals must be filed **by 4:30 PM on June 20, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

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 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, 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 must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed,* The final decision may be recorded on or after **June 23, 2008 – (the day following the last day to appeal).**
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.

- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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:

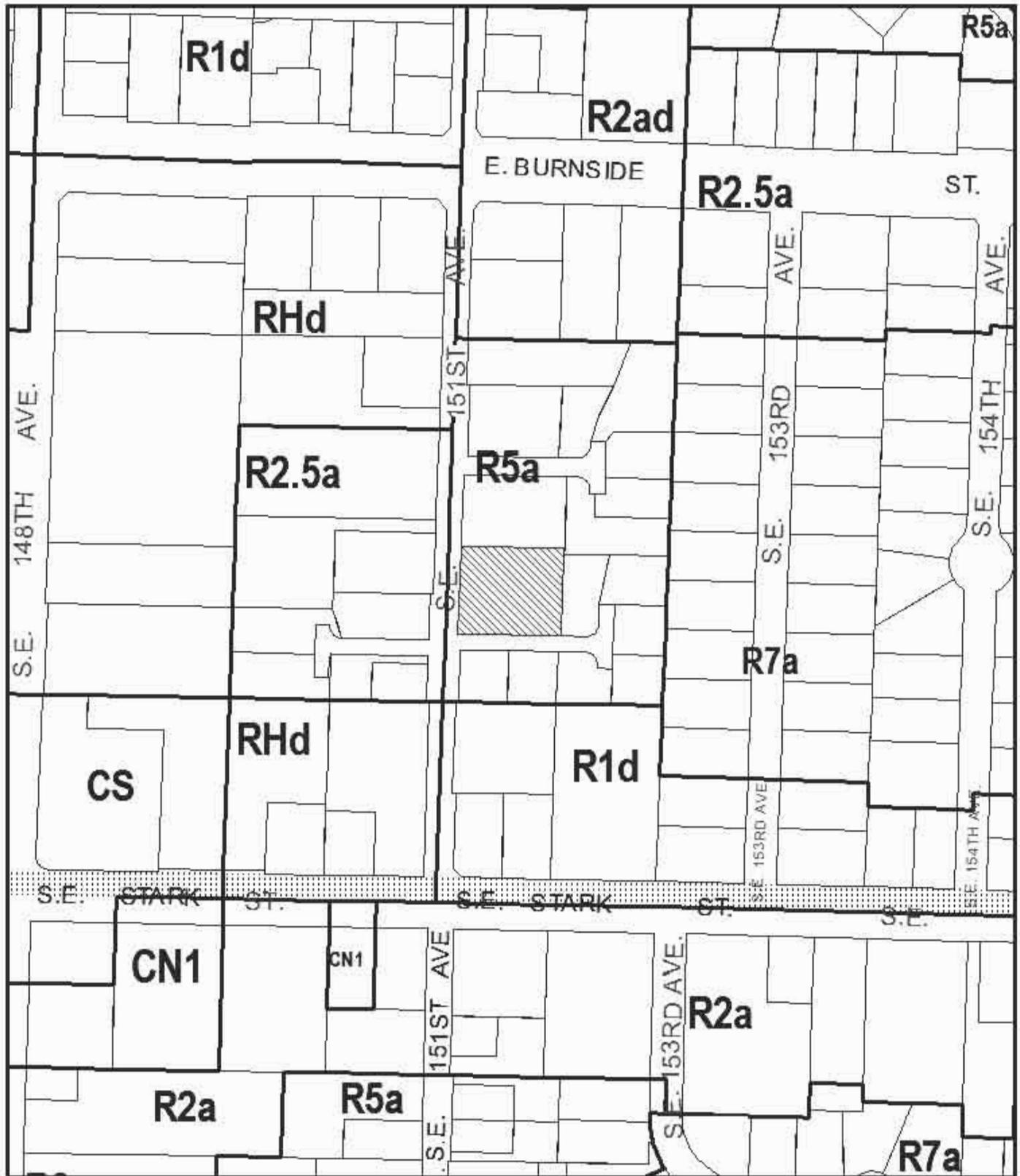
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
 1. Incomplete letter from Nan Stark to Mark Bierwagen dated March 28, 2008
 2. Supplemental submittal received April 17, 2008
 3. Incomplete letter from Nan Stark to Mark Bierwagen dated April 25, 2008
 4. Supplemental submittal received April 28, 2008
 5. Supplemental submittal received May 1, 2008
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Elevation Drawing (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Site Development Review Section of BDS
 3. Summary sheet of Bureau responses
- F. Correspondence: None received
- G. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).

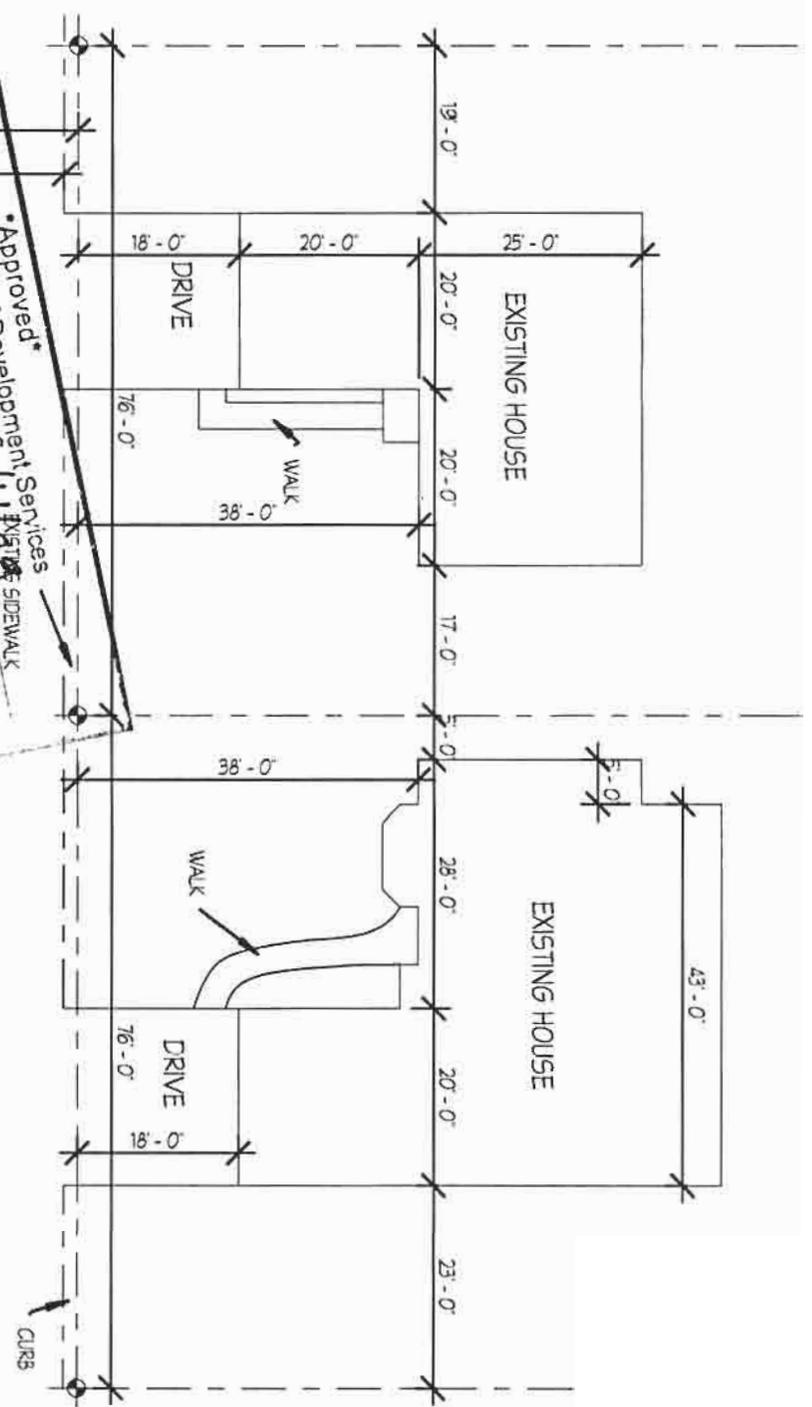


ZONING



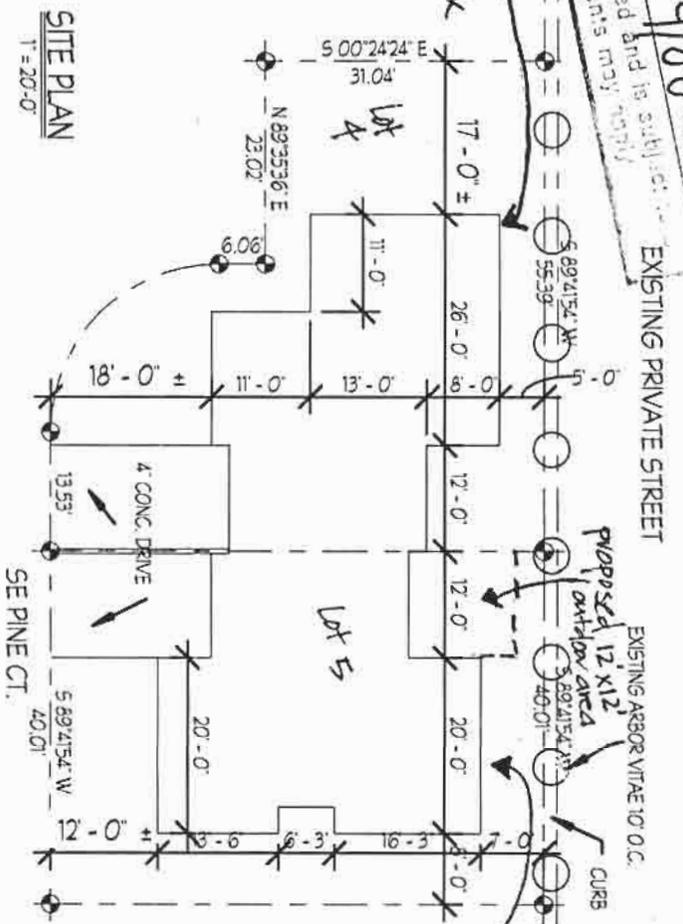
This site lies within the:
EAST CORRIDOR PLAN DISTRICT

File No.	LU 08-115751 AD
1/4 Section	3045
Scale	1 inch = 200 feet
State_Id	1N2E36CD 1500
Exhibit	B (Mar 20, 2008)



City of Portland - Bureau of Development Services
 Approved*
 Date 6/14/08
 * This approval is only to the reviews requested and is subject to additional zoning requirements may apply.
 Planner: [Signature]
 * This approval applies to the reviews requested and is subject to additional zoning requirements may apply.

Approval to reduce front (south) setback from 10 feet to 5 feet for attached house on Lot 4 and from 10 feet to 7 feet for attached house on Lot 5



Approval to allow required outdoor area for attached house on Lot 5 within front (south) setback from 10' to 7'

SITE PLAN
 1" = 20'-0"

