



City of Portland
Bureau of Development Services
Land Use Services Division

1900 SW Fourth Ave. Suite 5000
Portland, Oregon 97201
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www.portlandonline.com/bds

Date: November 7, 2008
To: Interested Person
From: Crystal Hitchings, Land Use Services
503-823-7583 / Crystal.Hitchings@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 08-165666 AD

GENERAL INFORMATION

Applicant: Lisa Barker
LMB Permit Services
307 NW 16th Avenue
Battleground, Wa 98604

Property Owner: Steve Kreitzberg
Phoenix Redevelopment Inc
516 SE Morrison St #700
Portland, OR 97214-2347

Site Address: 4954 SE 108TH AVE

Legal Description: N 1/2 OF LOT 3 BLOCK 2, GAMMANS
Tax Account No.: R303100480
State ID No.: 1S2E15BD 08100
Quarter Section: 3541

Neighborhood: Lents, contact Judy Welch at 503-771-4667.
Powellhurst-Gilbert, contact John McDonald at 503-753-4226.

Business District: Midway, contact Bill Dayton at 503-252-2017.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Plan District: Johnson Creek Basin
Other Designations: Outer Southeast Neighborhood Plan area

Zoning: R5a, Residential 5,000 with an Alternative Design Density Overlay Zone

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

Proposal:

The applicant is proposing to locate a new, 9-foot by 26.5-foot access and parking pad at the north side of the subject site, labeled Parcel 1 on the site plan. The proposed driveway will be located 8 feet south of the north property line.

Zoning Code Section 33.266.120, Parking and Loading, Development Standards for Houses and Duplexes, states that required parking spaces are not allowed within the first 10 feet from a front property line, of within the front setback, whichever is greater. In this case, the front setback is also 10 feet. Additionally, Section 33.266.120 states that a parking space must be at least 9 feet wide by 18 feet long. Therefore, the required parking space must be located 10 feet from the front property line and be 18 feet deep, for a total depth of 28 feet from the property line.

Because of the location of the existing home on this site, the area available to locate a parking space between the house and the front property line is only 26.5 feet deep. Therefore, an Adjustment is required to allow the first 1.5 feet of the parking pad to occur within the front setback.

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 subject site is Parcel 1 of a recent land division (08-123345 LDP). Parcel 1 is a 4,487 square foot site located on the east side of SE 108th Avenue, between SE Liebe and SE Mitchell Streets. The subject site is developed with a 988 square foot house originally built in 1957. A pre-existing garage has been removed as part of the approved land division. The site contains 4 trees, which are all retained in the proposal. As per the conditions of approval of the land division, tree number 1, the tree located in the southwestern corner of the site, and tree number 4, located behind the existing house, are both required to be preserved, with root protection zones indicated for all 3 trees on the southwest property line.

The site was accessed via a driveway in the northwest corner, which led to the pre-existing garage. Before the flag lot was created, the site contained 2 parking spaces, one required space that was within the garage, and one non-required space that was in front of the garage. The site is accessed from SE 108th Avenue. In this location, SE 108th is a local service access street, and the 50-foot street ROW is developed with a 28-foot paved center strip only.

Within 200 feet of the subject site, development is single-dwelling residential. Homes are typically single-story, and many have attached garages beside the main entrance. Although some homes are well set back from the front property line, with deep vehicle areas, a large number of homes within 200 feet and also within the nearby neighborhoods have non-conforming, undersized driveways with one parking pad located within the front setback. These driveways are typically located in front of the attached garage, and are beside the main entrance of the home. Some are paved with cement or asphalt, some with gravel.

Zoning: The site is zoned Single-dwelling Residential 5,000 with an Alternative Design Density Overlay Zone. The R5 zone requires a front setback of 10 feet. A required parking space is not allowed within the front setback; residential development is required to provide 1 parking space per unit.

The development standards of the Alternative Design Density Overlay Zone are not triggered by this application.

The development standards of the Johnson Creek Basin Plan District are not triggered by this application.

The site is located within the Mixed-Era Neighborhoods portion of the Outer Southeast Community Plan area. The plan calls for development that provides a variety of housing choices for outer southeast community residents of all income levels by maintaining existing sound housing stock and promoting new housing development. In the eastern portion of the plan area, increased single-family dwelling densities are encouraged to promote the development of more single-family dwellings. The Mixed-Era sub-area calls for the orderly development of new housing at urban densities and the insurance that residential areas are served by convenient neighborhood commercial centers and transit.

Land Use History: City records indicate that prior land use reviews include the following: 08-123345 LDP: approval of a preliminary plan for a 2-lot partition, resulting in one standard lot and one flag lot, with conditions (see exhibit G.3 for detailed conditions of approval).

Agency Review: A “Request for Response” was mailed on **October 14, 2008**. The following Bureaus have responded with no issues or concerns (Exhibits E.1-E.5):

- Life Safety Bureau
- Fire Bureau
- Bureau of Transportation Engineering
- Water Bureau
- Bureau of Parks-Forestry Division

The following Bureaus have submitted additional comments:

- The **Bureau of Environmental Services** (Exhibit E.6): submitted comments stating that the parking pad must not impact the stormwater disposal system approved for the existing house under FP 08-123345, and that stormwater from private driveways must be managed on private property.
- The **Site Development Section of BDS** (Exhibit E.7): submitted comments stating that stormwater discharge from splash blocks cannot be directed toward the new driveway.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **October 14, 2008**. No written responses were received from either the Neighborhood Association or notified property owners in response to the proposal.

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 applicant has requested an Adjustment to Section 33.266.120, Parking and Loading; Development Standards for Houses and Duplexes. The purpose statement for this standard is as follows:

Purpose: The size and placement of vehicle parking areas are regulated in order to enhance the appearance of neighborhoods.

Parking on this site has traditionally occurred on the north side of the house, within the garage and in front of the garage. The garage has been removed, and the parking area is proposed to be moved south approximately 12 feet on center from its existing location. The main entrance of the home is located on the northwest corner of the street-facing façade of the home. The proposed parking pad is partially located in front of the main entrance to the house, and partially in front of the picture window on the street facing façade.

Most of the paved area that has served as the driveway to the subject site will become the driveway to the flag lot that was created behind the site. The new property line will run east/west through the existing driveway (as portrayed in exhibit C.3). Approximately 1/3rd of the existing pavement will remain on the subject site. Although the pavement remaining on the subject site is not a part of the new driveway, the pavement is not proposed to be removed. The new driveway will be located 8 feet south of the new property line, approximately 4 feet south of the existing driveway. An unpaved strip about 4 feet wide will be located between the remainder of the old driveway and the new driveway.

As noted in the Site and Vicinity description above, a large number of homes in the nearby neighborhoods have non-conforming parking pads located within the front setback. Unlike the subject site, these parking pads are typically located beside the main entrance of the home rather than in front of the entrance, and therefore do not typically block views of the main entrance from the street. The proposed location of the parking pad positions a vehicle in approximately the same location as the previous non-required parking area on the site (which was located in front of the garage), relative to the front property line, but that space is proposed to be shifted approximately 12 feet on center to the south of its previous location. The north edge of the proposed parking location will be positioned approximately at the center of the main entrance. Views of the main entrance could be partially blocked by parked vehicles. However, the front door is elevated above the grade of the parking area by approximately 1 foot, with two concrete steps, accented by a white railing, leading to the door. Therefore, more of the front door will be visible above the roof of a vehicle than if the door were at the grade of the parking area, and the railing around the steps helps emphasize the access point of the main entrance for pedestrians. Because the parking area is located slightly south of the center of the main entrance, the entrance will remain clearly visible to people coming from the north on SE 108th.

The proposal to allow 1.5 feet of the driveway to be located within the setback does not significantly alter the existing development patterns of the neighborhood, nor does it significantly alter the appearance of the streetscape on this area of SE 108th Avenue. Although views toward a portion of the main entrance could be somewhat blocked from the street by the presence of a vehicle parked in front of it, views of the main entrance will not be significantly blocked, and therefore the appearance of the site will not be detracted from. A large number of other sites within the neighborhood have non-conforming parking areas that are partially located within the setback, and thus the proposal is not out of character with the appearance of the neighborhood.

For these reasons, the proposal remains consistent with and does not detract from the existing appearance and character of the neighborhood, and the purpose statement for this standard is equally met by the proposal. 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 locate a required parking space 1.5 feet within the front setback remains in character with typical development patterns of the neighborhood, where required vehicle parking areas are commonly located within the front setback. The location of the required parking pad partially in front of the main entrance to the home could somewhat obscure the main entrance, but not to the point where the main entrance is no longer visible from the street. The front steps have been enhanced with a white railing, making them more visible and more attractive than they previously were.

Issues affecting livability, including noise, privacy, safety, and appearance are not affected by this proposal. The Bureau of Transportation has reviewed the proposal and has expressed no concerns with locating the parking pad 1.5 feet within the front setback.

The request to locate a required parking space 1.5 feet into the 10-foot setback does not significantly reduce the appearance or livability of the residential area. This criterion is met.

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

Findings: Only one adjustment is requested. This criterion is not applicable.

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

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

Findings: 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: The site is not within an environmental zone. This criterion is not applicable.

DEVELOPMENT STANDARDS

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

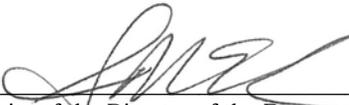
CONCLUSIONS

The proposal to locate the parking pad 1.5 feet within the front setback does not detract from the appearance or livability of the residential neighborhood. All criteria are met and this Adjustment should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Section 266.120, to allow the first 1.5 feet of the required parking pad to be located within the front setback, in significant conformance with the approved site plan, Exhibit C-1, signed and dated November 5, 2008, 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 Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 08-165666 AD."

Decision rendered by:  on November 5, 2008.

By authority of the Director of the Bureau of Development Services

Decision mailed: November 7, 2008

Staff Planner: Crystal Hitchings

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 September 25, 2008, and was determined to be complete on **October 9, 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 September 25, 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 November 21, 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 **November 24, 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.

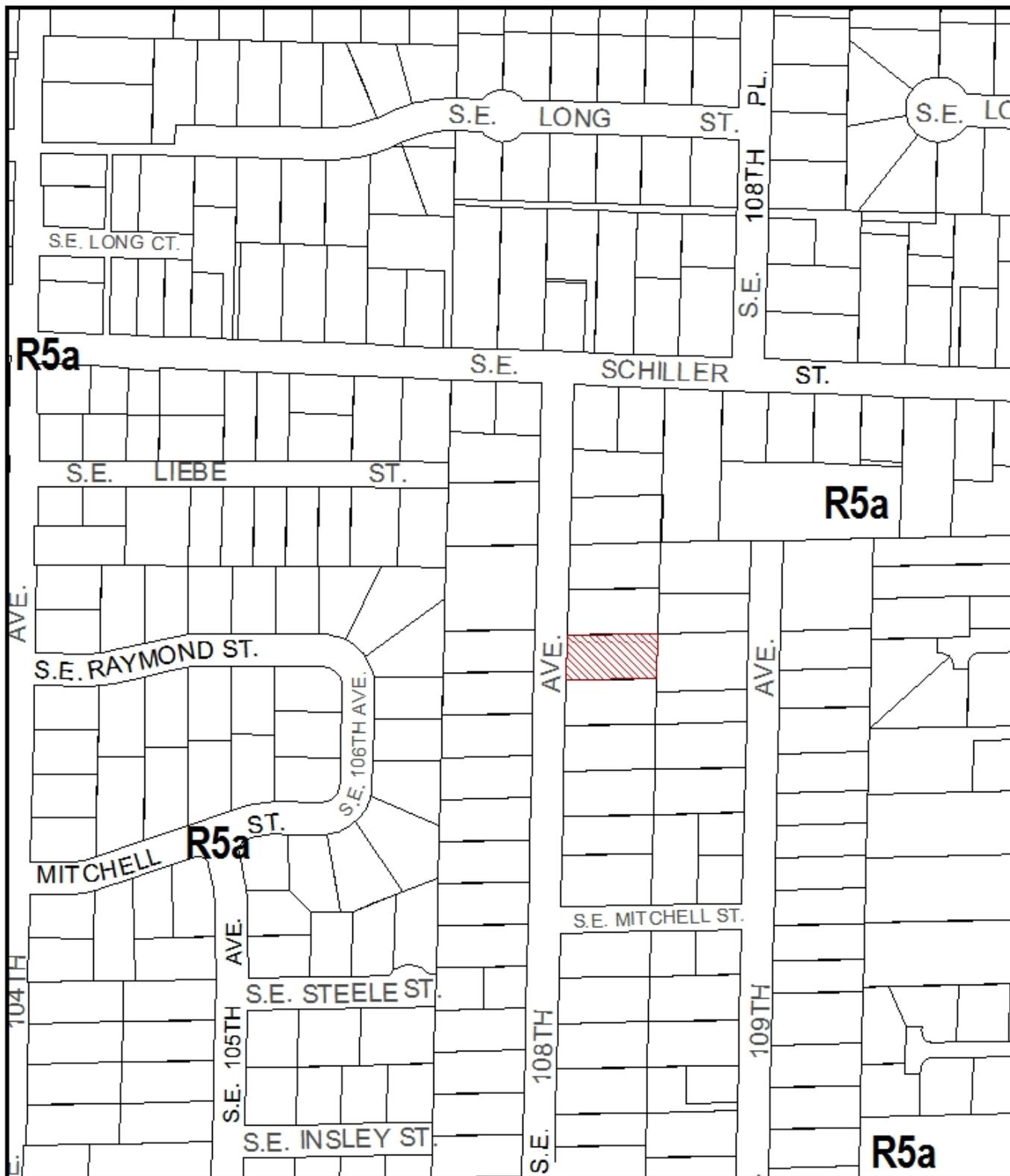
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Site photo, pre-existing conditions (pre-land division)
 - 3. Site photos, existing conditions (post-land division)
 - 4. Original submitted site plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Life Safety Bureau
 - 2. Fire Bureau
 - 3. Bureau of Transportation Engineering and Development Review
 - 4. Water Bureau
 - 5. Bureau of Parks, Forestry Division
 - 6. Bureau of Environmental Services
 - 7. Site Development Review Section of BDS
- F. Correspondence:
 - None received
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Notice of Decision on Type 1 Land Division Partition, LU 08-165666 AD
 - 4. Final plat status report, and status of Conditions of Approval



ZONING

 Site



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

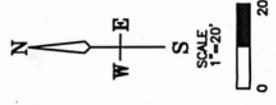
File No.	LU 08-165666 AD
1/4 Section	3541
Scale	1 inch = 200 feet
State_Id	1S2E15BD 8100
Exhibit	B (Sep 29,2008)

Approved
City of Portland
 Bureau of Development Services
 Planner *Crystal Hitchings*
 Date *11-15-08*

* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

SITE PLAN

A REPLAT OF THE NORTH 1/2 OF LOT 3, BLOCK 2, "GAMMANS", SITUATED IN THE NORTHWEST 1/4 OF SECTION 15, T.1S., R.1E., W.M., IN THE CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON
 DATE: APRIL 18, 2008

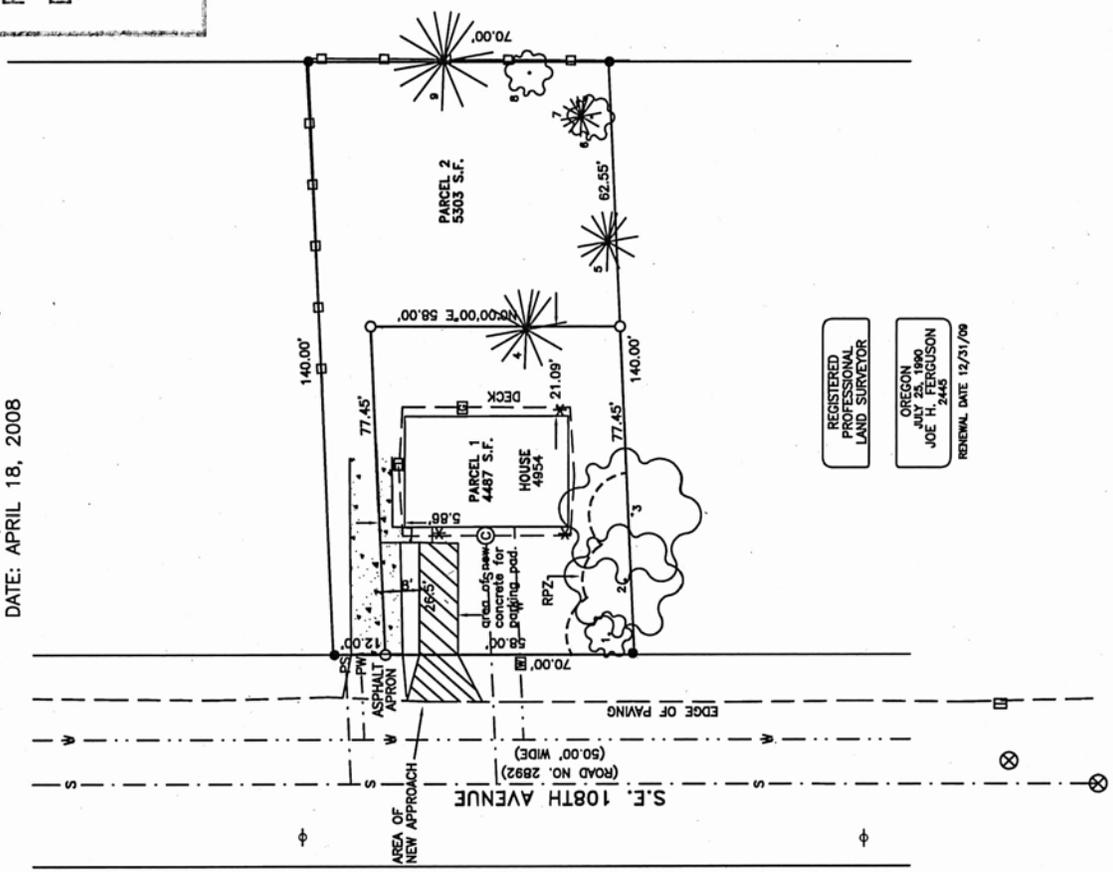
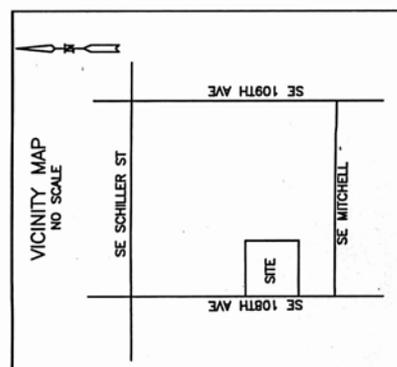


SYMBOLS

- ⊕ = POWER POLE
- W = WATER METER
- EL = ELECTRIC METER
- ⋆ = DOWN SPOUTS
- ⊗ = MANHOLE
- ⊙ = CLEAN OUT
- ⊕ = CATCH BASIN
- W — = WATER LINE
- S — = SANITARY SEWER
- PW — = PROPOSED WATER LINE
- PS — = PROPOSED SANITARY SEWER
- ⊕ = DECIDUOUS TREE
- ⊗ = CONIFEROUS TREE

LEGEND

- = INDICATES MONUMENT FOUND
- = AS NOTED
- = INDICATES 5/8" X 30" IRON ROD W/ RED PLASTIC CAP STAMPED "FERGUSON LS 2445", SET APRIL 2008



REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 JULY 25, 1980
 JOE H. FERGUSON
 2445
 RENEWAL DATE 12/31/09

NOTES:

- ZONE IS RS₀.
- FOR TREE INFORMATION SEE TREE REPORT BY TREE CARE AND LANDSCAPES UNLIMITED, INC.
- SEWER TRENCH AND OTHER UTILITIES TO BE LOCATED AT THE TIME OF BUILDING PERMITS.
- FIRE HYDRANT IS LOCATED 381.50' NORTH OF PROPERTY.
- DOWNSPOUTS ON EXISTING HOUSE WILL GO TO SPLASH BLOCKS.
- UTILITIES ARE DRAWN FROM MAPPING PROVIDED BY CITY.
- DIMENSIONS AND AREAS MAY VARY SLIGHTLY UPON FINAL BOUNDARY RESOLUTION.
- DISTANCES SHOWN FOR EXISTING HOUSE ON PARCEL 1 ARE PERPENDICULAR TO THE PROPOSED PARCEL LINES FROM THE FOUNDATION CORNERS.

CLIENT: J. LAUFENBERG
 4954 SE 108TH AVE
 PORTLAND, OR 97266

Ferguson Land Surveying, Inc.
 646 SE 106TH AVE., PORTLAND, OR 97216
 Phone (503) 408-0601 Fax (503) 408-0602

SHEET NO. 1 OF 1
 JOB NO. 08-022 SP.B
 DRAFTED 3/7/2008