



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

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**Date:** November 13, 2008  
**To:** Interested Person  
**From:** Matt Wickstrom, Land Use Services  
503-823-7840 / [WickstromM@ci.portland.or.us](mailto: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 08-128568 AD**

#### **GENERAL INFORMATION**

**Applicant:** Lina Berntsen  
3020 NE Rocky Butte  
Portland, OR 97220

**Owners:** Ronald R and Ruth P Porter  
3020 NE Rocky Butte  
Portland, OR 97220

**Site Address:** 330 NE 102ND AVE

**Legal Description:** TL 8700 0.15 ACRES, SECTION 34 1 N 2 E  
**Tax Account No.:** R942341940  
**State ID No.:** 1N2E34CB 08700  
**Quarter Section:** 3041  
**Neighborhood:** Hazelwood, contact Arlene Kimura at 503-252-9429  
**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:** Gateway  
**Zoning:** CMd (Mixed Commercial/Residential zone with a Design overlay)  
**Case Type:** AD (Adjustment)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

This site is currently occupied by a barbershop and residential use. Plans have been submitted to convert a portion of the residential unit to a naturopathic clinic and to pave and stripe a parking lot which has been constructed to the rear of the building. Based on the square footage of the building, the Zoning Code allows a maximum of four on-site parking spaces. Submitted plans show nine on-site parking spaces – one in front of the barbershop and eight to the rear of the building. The applicant requests one Adjustment to increase the maximum allowed on-site parking spaces from four to eight. As rationale for the Adjustment request, the

applicant points out an upcoming street improvement project along NE 102<sup>nd</sup> Avenue which will eliminate all on-street parking. City staff have informed the applicant that at the time of the street improvement project, the parking space in front of the barber shop will need to be removed.

**Relevant Approval Criteria:**

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

## ANALYSIS

**Site and Vicinity:** The approximately 6,500 square foot lot fronts on NE 102<sup>nd</sup> Avenue. It is developed with a single-story 1,900 square foot building used for office and retail. Two areas where vehicles park are located in front of the building. A driveway is located to the north of the building; this driveway leads to an unapproved parking area behind the building. An existing fence separates the site from the lot to the east which is developed with a single-dwelling residence. The surrounding vicinity is developed with a range of low-rise office buildings, other small scale retail development and single-dwelling residences. A Portland Transportation project to improve NE 102<sup>nd</sup> Avenue is currently underway.

**Zoning:** The site is zoned CMd (Mixed Use Commercial/Residential zone with a Design overlay). The CM zone promotes development that combines commercial and housing uses in a single building. This development type will support transit use, provide a buffer between busy streets and residential neighborhoods, and provide new housing opportunities in the City. The emphasis of the nonresidential uses is primarily on locally oriented retail, service, and office uses. Development is intended to be pedestrian-oriented with buildings close to and oriented to the sidewalk, especially at corners. The “d” overlay promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development and exterior modifications to existing development are subject to design review. Parking lot landscaping which meets the development standards of the Zoning Code is exempt from Design review; therefore the “d” overlay does not apply to this project.

**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 **June 4, 2008**. The following Bureaus have responded with no issues or concerns:

- The Bureau of Environmental Services responded with information regarding sanitary services, stormwater management and water resources. The response states that stormwater generated from the parking area must meet the requirements of the City of Portland’s Stormwater Management Manual. Surface (i.e. parking lots, driveways and other ground level impervious areas) run off must be managed in surface infiltration facilities. BDS Site Development reviews on-site infiltration. The initial BES response noted that the proposal could not be supported without information showing that infiltration is feasible at the site. Following the applicant’s submittal of a stormwater management plan, BES issued an addendum which stated that BES had reviewed the additional information and the use of a vegetated infiltration planter to manage stormwater from the parking lot. The addendum states that the facility meets the requirements of the Stormwater Management Manual (Exhibit E-1).
- The Site Development Section of BDS response states that at the time of building permit review, the proposed design of the parking area must comply with the stormwater destination/disposal hierarchy. This response initially stated that insufficient information was provided for Site Development to support the proposed Adjustment and a detailed list of information required for further review was provided. Following the applicant’s submittal of a stormwater management plan, Site Development responded to the revised proposal to use standard asphalt paving to drain to a stormwater infiltration planter. The response states that Site Development reviewed the infiltration test and PAC sizing calculations for the new parking

area and has no objections to the proposal. The response also includes some information about permit requirements (Exhibit E-2).

- The Development Review Section of Portland Transportation reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17 and for potential impacts upon transportation services. The response states that PDOT has no objection to the requested Adjustment. It notes that at the time of the NE 102<sup>nd</sup> Avenue street improvements, the parking space between the business and the street must be removed. Backing out onto NE 102<sup>nd</sup> Avenue will not be permitted (Exhibit E-3).
- The Life Safety Section of BDS responded that a building permit has been applied for and is currently under review. The response states no objections to the proposal and refers the applicant to correspondence from the Life Safety plans examiner reviewing the building permit (Exhibit E-4).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on June 4, 2008. One written response was received from the Neighborhood Association. The Hazelwood Neighborhood Association responded that its land use committee “has no issues” with the requested Adjustment provided the applicant removes the parking space in front of the building when the 102<sup>nd</sup> Boulevard Project is completed (Exhibit F-1).

## 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.

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

**Findings:** The applicant requests one Adjustment to increase the maximum allowed on-site parking spaces from four to nine. The purpose of the parking regulations in the Gateway Plan District is listed below:

#### **Purpose 33.526.340 Parking**

*The regulations of this section ensure that development is oriented to transit, bicycling and pedestrian travel while ensuring accessibility for motor vehicles. Limiting the number of parking spaces promotes the efficient use of land, enhances urban form, encourages use of alternative modes of transportation, provides for a better pedestrian environment, and protects air and water quality. Parking that is provided in structures is preferred over parking in surface lots because, as a more efficient use of land, structured parking promotes compact urban development. In addition, parking structures with active uses on the ground floor provide a better environment for pedestrians and contribute to the continuity of street-level retail and service uses that support a thriving urban area.*

*The parking ratios in this section will accommodate most auto trips to a site and take into account the intensity of development in the area, on-street parking supply, pedestrian activity, and proximity to frequent transit service.*

*Limiting the location of parking and access on light rail alignments improves access to transit, supports a transit-oriented development pattern, and reduces conflicts between motor vehicles and pedestrians or bicycles. In particular, it reduces conflicts between motor vehicles and light rail trains, especially where the access would require cars to cross the light rail tracks.*

The eight parking spaces proposed as part of this review will all be located behind the existing structure, accessible by a driveway to the north of the structure. The driveway is shared with the business to the north of the site. Utilizing a shared driveway to access parking promotes a more efficient uses of land because driveways aren't duplicated on both sites. In order to ensure that the shared driveway continues to be utilized by both sites, a condition of approval has been added with this review which requires the execution of a reciprocal access easement. The easement will state that both sites have rights to use the driveway to access parking behind the buildings. As this is a small site in a less intensely developed portion of the plan district, providing parking in a parking structure, as preferred for a more efficient use of land, isn't feasible. The location of the proposed parking spaces also promotes urban form as locating parking between a building rather than between a building and a street ensures that structures are more visible from the street than vehicles and parking areas. This also helps provide for a better pedestrian environment. In order to ensure that any parking spaces currently located between the building and the street are eliminated, a condition of approval has been included with this review. The condition states that parking spaces between the building and NE 102<sup>nd</sup> Avenue must be removed within 2 years or following the completion of the 102<sup>nd</sup> Avenue street improvement project, whichever comes first. The new parking area behind the building will be required to meet the landscaping requirements of the Portland Zoning Code which includes planting one medium sized tree per every 22 feet of landscaped setback. This helps promote better air quality. In addition, BES and Site Development stormwater management requirements have required the inclusion of an infiltration planter as part of the parking area design; this helps protect water quality. The parking ratios in the Gateway Plan District consider the availability of on-street parking; however, an upcoming street improvement project for NE 102<sup>nd</sup> Avenue will eliminate on-street parking in front of this site. Therefore, additional on-site parking beyond the plan district maximums is appropriate and 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 site is located on NE 102<sup>nd</sup> Avenue which is classified by the Transportation Element as a District Collector, a Major Transit Priority Street, a City Bikeway, a Minor Truck Street, a Major Emergency Response Street and a Community Main Street. The site is also located on the edge of the Gateway Pedestrian District. The reviewer from Portland Transportation examined the proposal in relation to the street designations and stated no objections. The reviewer did request a condition of approval which requires that the parking space in front of the business (to the west of the business) be removed at the time the 102<sup>nd</sup> Avenue street improvements are completed. This condition has been included with this report.

The desired character of the area is defined by the CM zoning of the site and its location in the Gateway Plan District. The CM zone promotes development that combines commercial and housing uses in a single building. This development type will support transit use, provide a buffer between busy streets and residential neighborhoods, and provide new housing opportunities in the City. The emphasis of the nonresidential uses is primarily on locally oriented retail, service, and office uses. Development is intended to be pedestrian-oriented with buildings close to and oriented to the sidewalk, especially at corners. The building on this site

has both residential and commercial components. The street improvements and the removal of parking west of the building will promote a more pedestrian-oriented environment and will bring the building closer to the street. The Gateway plan district provides for an intensive level of mixed-use development including retail, office and housing to support light rail stations and the Regional Center at Gateway. As the parking is located behind the building, the proposal will not conflict with the intent of the Gateway plan district.

Based on the information above, this criterion is met.

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

**Findings:** Impacts associated with the Adjustment request have been mitigated to an appropriate extent. First of all, the conditions of approval help to mitigate for the increase in the number of allowed on-site parking spaces from four to eight. These conditions promote a more efficient use of land by requiring a reciprocal access easement so the site and the lot to the north can share a driveway used to access parking behind both buildings. The other condition requires that parking between the building and the street (to the west of the building) must be removed within 2 years or after the 102<sup>nd</sup> Avenue street improvements are completed, whichever comes first. This mitigates for the increased parking on the site by removing a parking space which doesn't meet current standards and which detracts from the pedestrian experience. Secondly, the overall project helps mitigate for the Adjustment request because all the parking is located behind the building. Once again, this helps promote a more urban environment and a better pedestrian experience. BES and Site Development requirements also ensure that stormwater associated with the parking area will be effectively handled on site. 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.

**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:** Only one adjustment is requested, 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.

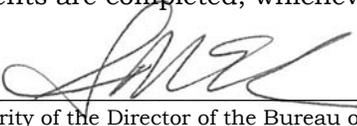
## **CONCLUSIONS**

The applicant proposes one Adjustment to increase the maximum number of on-site parking spaces from four to eight. As noted in this report, the proposal is able to meet the Adjustment approval criteria with approval granted based on the location of the proposed parking and the condition of approval that any parking space located in front of the building be removed. Also supporting the Adjustment request is the lack of on-street parking which will exist once improvements are made to NE 102<sup>nd</sup> Avenue. With approval requiring that the permit drawings substantially conform with the site plan attached, the request meets the applicable criteria and should be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code standard 33.526.340 to increase the maximum allowed number of on-site parking spaces from four to eight, per the approved site plans, Exhibit C-1, signed and dated November 10, 2008, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through C) 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 08-128568 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The applicant must provide a copy of an executed reciprocal access easement which shows that the site and the site to the north both have rights to use the shared driveway between the two sites to access parking behind both sites.
- C. The approved site plan must note that any parking located between the building and NE 102<sup>nd</sup> Avenue (to the west of the building) must be removed within 2 years or after the 102<sup>nd</sup> Avenue street improvements are completed, whichever comes first.

Decision rendered by:  on November 10, 2008  
By authority of the Director of the Bureau of Development Services

**Decision mailed: November 13, 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 May 12, 2008, and was determined to be complete on May 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 May 12, 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 requested that the 120-day review period be extended by 140 days, as stated with Exhibit A-1.

**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 28, 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](http://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 **December 1, 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:

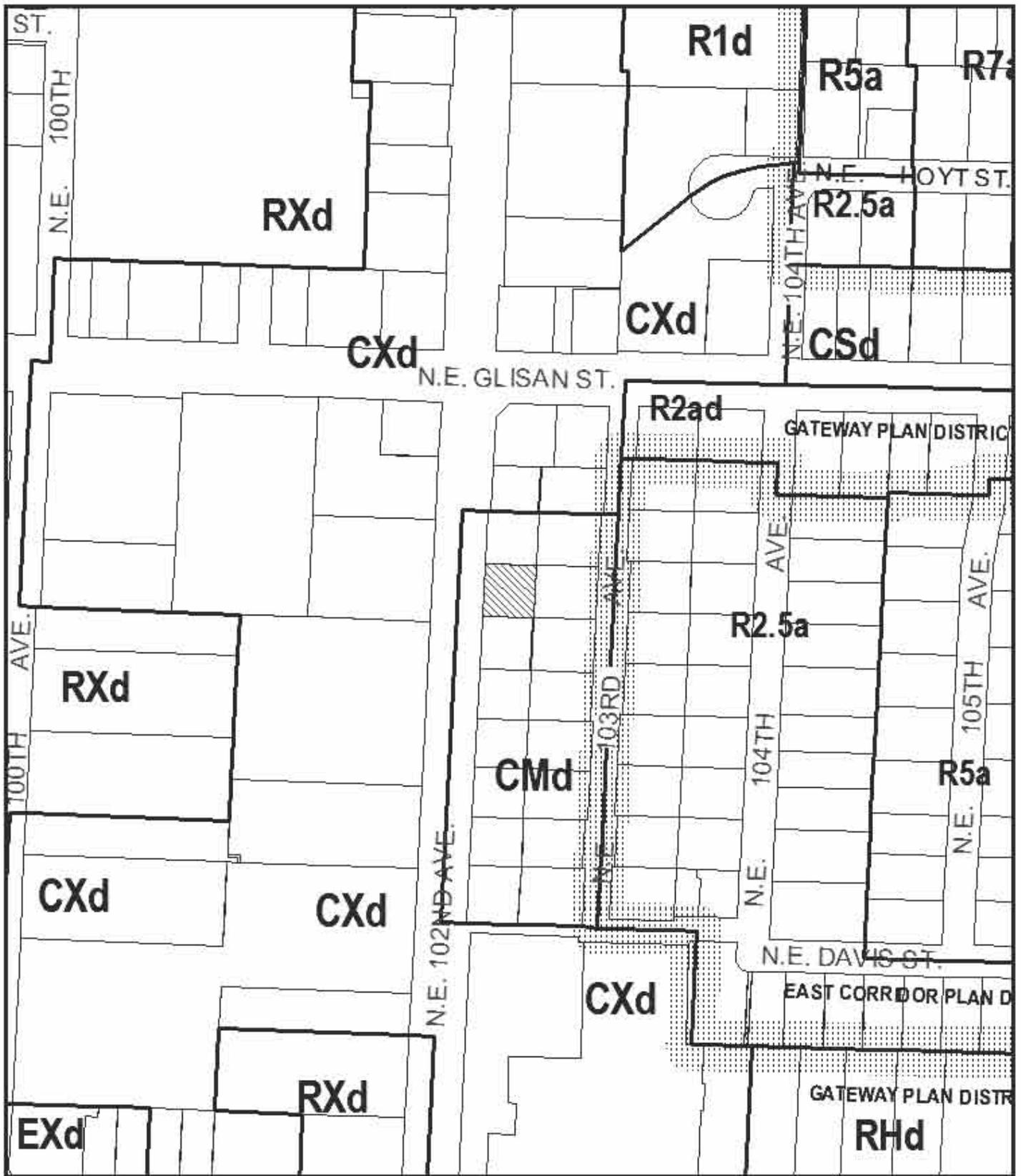
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Proposal
  1. Email from Lina Berntsen to Matt Wickstrom requesting to extend the decision deadline dated June 25, 2008
  2. Supplemental Submittal received October 6, 2008
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site/Landscape Plan (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. Bureau of Transportation Engineering and Development Review
  4. Life Safety Section of BDS
- F. Correspondence:
  1. Arlene Kimura, Hazelwood Neighborhood Association, June 25, 2008, support for approval with conditions of Adjustment request
- 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

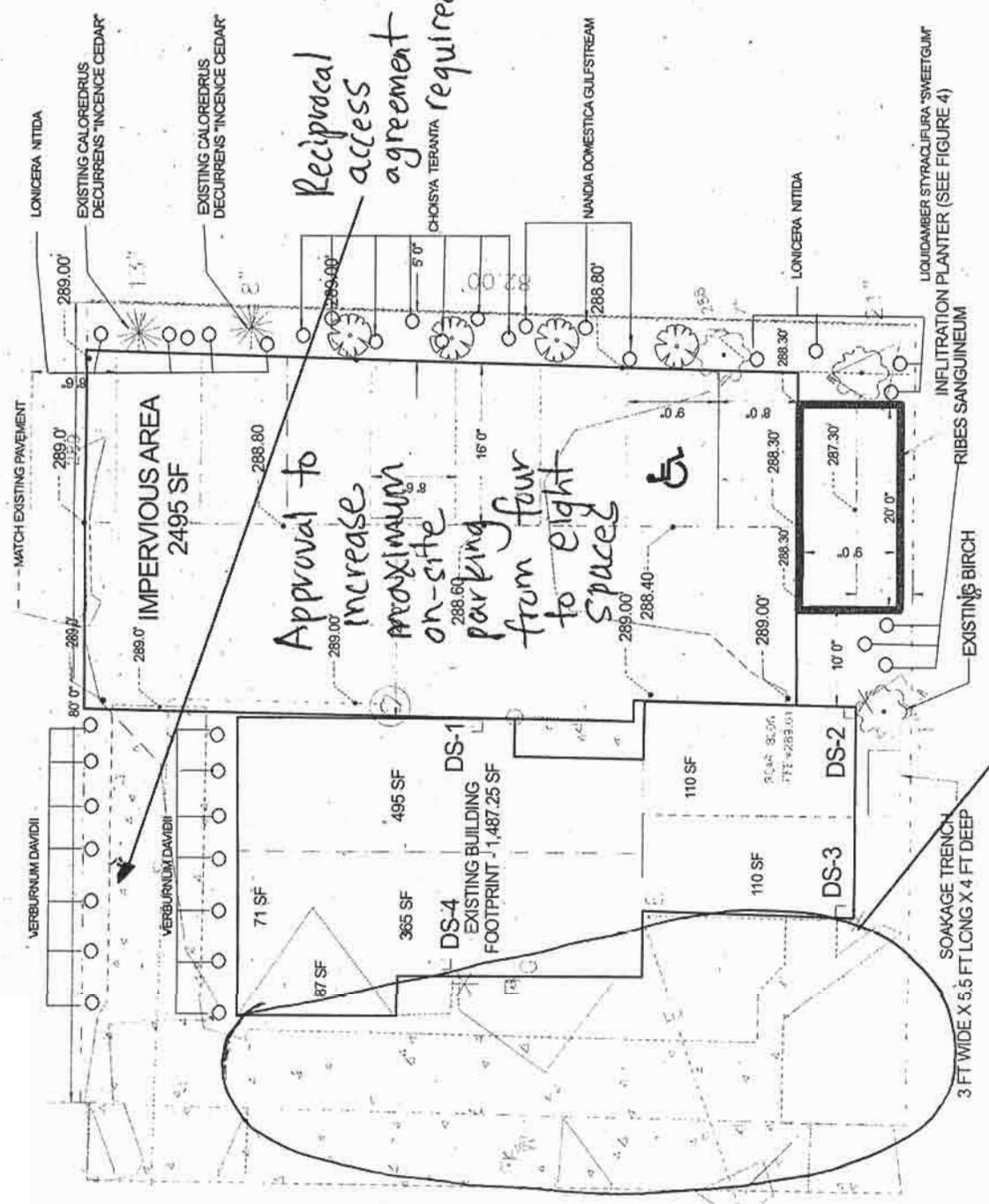
 Site



This site lies within the:  
GATEWAY PLAN DISTRICT

File No. LU 08-128568 AD  
 1/4 Section 3041  
 Scale 1 inch = 200 feet  
 State Id 1N2E34CB 8700  
 Exhibit B (May 21, 2008)

Bertsen Property 330 NE 102nd Ave Portland, Oregon	Planting Plan	Project No. 336-001 September 16, 2008
Terra Dolce Consultants, Inc. 4706 NE 75th Avenue Portland, Oregon 97218		Figure 5



Approval to increase maximum on-site parking from four to eight spaces

Reciprocal access agreement required

Any parking in front of the building must be removed when 102nd Avenue improvements are complete or within 2 years, whichever is less.

NE 102nd Avenue

