



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

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Date: April 29, 2009
To: Interested Person
From: John Cole, Land Use Services
503-823-3475 / ColeJA@ci.portland.or.us

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has conditionally 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 09-110983 AD

GENERAL INFORMATION

Applicant: Host Development Inc
3835 NE Hancock St #101
Portland, OR 97212-5319

Representative: Chris Goodell
Aks Engineering And Forestry
13910 SW Galbreath Drive Ste 100
Sherwood OR 97140

Site Address: 5459 SE 142ND PL

Legal Description: Lot 4 Scottsview Subdivision
Tax Account No.: R750620200
State ID No.: 1S2E13BC 01605 **Quarter Section:** 3645
Neighborhood: Powellhurst-Gilbert, contact John McDonald at 503-753-4226.
Business District: None
District Coalition: East Portland Neighborhood, contact Richard Bixby at 503-823-4550.
Plan District: Johnson Creek Basin - South
Other Designations: Potential Landslide Hazard
Zoning: R5 Single Dwelling Residence 5,000
Case Type: AD Adjustment
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

Section 33.266.120 of the Portland Zoning Code requires that parking spaces (9' X 18') not be located within the first 10 feet from a front lot line or within a required setback, whichever is greater. In this case the required setback is 10 feet. To meet this dimensional requirement, a parking pad and drive would need to be a minimum of 28 feet deep. The applicant requests an Adjustment from this standard to allow two on-site parking spaces that have already been constructed at a two-foot setback from the front property line to remain.

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 property on which this adjustment request is located is a 5,721 square foot rectangular property containing a single dwelling residence. This existing residence was located on a larger property prior to a recent subdivision approved by the City of Portland in 2008. Vacant residential lots that surround the subject property were created as part of this same land division.

This site is located on the west side of SE 142nd Place, a local service street. On-street parking is allowed on both sides of this street's standard 26' wide pavement width. A concrete curb, driveway apron, 5-foot wide sidewalk and a 3-foot wider planter strip are also located within the right-of way located in front of the site.

The larger surrounding neighborhood consists of both large residential lots originally platted in Multnomah County and smaller single dwelling lots resulting from more recent land divisions meeting the City of Portland R5 zoning district development standards. Significant open space and recreational opportunities are available to this neighborhood due to its proximity to Powell Butte Park to the east and the Springwater corridor to the south.

Zoning: This site and the surrounding area is zoned R5 Single-Dwelling Residential.

Land Use History: This lot was created as part of the Scottsview Subdivision (LU 05-166024) whose final plat was approved by the City in 2008. This subdivision divided a 121,532 square foot site into 19 single family (detached) lots, including the one subject to the current adjustment request, two public street segments and a public stormwater detention facility.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **March 13, 2009**. The following Bureaus have responded with no issues or concerns:

- Water Bureau
- Fire Bureau
- Bureau of Parks-Forestry Division

The Bureau of Transportation responded by noting that, as currently configured, there was adequate space for a vehicle to park without interfering with the sidewalk and indicated that they had no concerns regarding this request.

The Site Development Section of BDS indicated that they had no objection to the requested adjustment but indicated that the constructed flow-through planter does not conform to the approved plans submitted for permit 08-1147443 SD. As constructed, the planter does not qualify as the "flow-through vegetated swale with overflow to the public storm – only sewer on the west side as required. No inspections have been conducted for the existing facility and it is possible that the existing planter will not be approvable in its current location."

The Bureau of Environmental Service also responded with no objections to the requested adjustment but did also indicate that the flow through planter permit discussed above and a related (expired) sewer branch permit work must be completed.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on March 13, 2009. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply citywide, 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.C Development Standards for Houses and Duplexes; Parking Area Locations. The purpose for this standard states that: *“The size and placement of vehicle parking areas are regulated in order to enhance the appearance of neighborhoods.”*

As constructed, the paved area provides an 18-foot wide curb cut and parking spaces for two cars, both of which encroach eight feet into the required ten-foot front setback. Such a configuration violates Code Section 33.266.120 C.1 which states that required parking spaces must be located beyond the required front setback or the first ten feet whichever is greater.

Vehicles parked close to a pedestrian corridor (sidewalk) can have a negative impact on the pedestrian experience and detract from the appearance of the neighborhood. The impact on appearance is made even more obvious when, as in this situation, a parking pad is also in front of a house and in line with an access door facing the street. Furthermore, in this case, the parking pad is raised above the access door due to topography. This elevation further impacts the appearance of the neighborhood and the residence by obscuring views to and from the house. Finally, a front setback provides, among other things, the opportunity for open and visually appealing front yards. In this case, locating two parking spaces in front of and at a higher elevation than the grade level of the residence, within the front setback, will result in a situation where parked vehicles are the dominant feature adjacent to the pedestrian corridor. As presented, this criterion is not met.

The application indicates that the present design is “the only reasonable solution available to provide adequate parking for the property.” While this land use review does not require a finding of need or an alternative analysis, staff respectfully disagrees.

Staff acknowledges that the placement of the existing house 30.7 feet back from the street right of way, combined with the five foot grade change between the right of way and the residence limits the options for placing parking spaces on this site in conformance with City Codes. However, the Zoning Code requires only one on-site parking space for this residence. By eliminating the second parking space provided, the amount of encroachment into the front setback can be reduced. By eliminating the northern parking space the obstruction of views between the front entryway and the street can be reduced. Additionally, landscaping can be used to partially screen the parking area and parked cars from view.

- 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 within a residential zone. Retention of a parking space within the front setback will result in one vehicle being parked in the frontyard setback. While this is not an ideal situation in terms of neighborhood appearance or livability it is not an uncommon occurrence. Steps can be taken (detailed below) that will reduce the amount of parking area in the front setback and the visibility of parked vehicles using the proposed parking space thereby reducing the impacts of this request to an acceptable level.

Subject to conditions 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: There are no such resources present on the site; this criterion is not applicable.

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

Findings: In order to mitigate the impact of pavement and parking in the front setback of this property staff is attaching conditions of approval that will limit the number of parking spaces to one car and require the installation of landscaping to partially screen the paved area and vehicle from view. More specifically:

- The northern six feet of concrete shall be removed from the existing concrete pad and replaced by soil and vegetation. This will leave a 12 foot wide parking space which gives enough room to provide a standard parking space and an additional 3' width to provide a hard surface for the vehicle passengers to step out onto. Removing the northern parking space will provide for greater visibility between the residence's front door and the street.
- The existing 24 foot wide curb cut (including wings) shall be reduced in width to 15 feet by moving the northern wing 9 feet to the south. This will provide for additional on-street parking and will improve the visibility between the front entry of this residence and the street right of way.
- Two areas ten feet in width on either side of the remaining parking space shall be landscaped each with a minimum of 1 tree, 6 shrubs and ground cover to screen the parking space from view and soften the view on any vehicle that is parked in this space.

Through these efforts any impact from the parking space will be mitigated to a practical extent meeting this criteria.

- 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. However, 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. In this case plans must be submitted for the parking pad and related stormwater management facilities including flow-through planters and stormsewer laterals that meet all applicable development standards.

CONCLUSIONS

Placing two parking spaces immediately adjacent to the front property line will result in vehicular parking within the front setback of this property. As constructed the parking area also obscures views of the front entryway to the existing residence. The current configuration does have a negative impact on the appearance of neighborhood and therefore does not meet adjustment approval criteria 33.805.040 A or B.

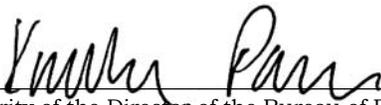
Reducing the number of paved parking spaces in front of the residence to one parking space; returning the northern segment of the existing paved area to landscaped area; and requiring landscaped screening on both sides of the remaining parking pad can result in a practicable solution that balances the needs of this residence to include one on-site parking space and the neighborhood goal of maintaining the appearance of front yards. Subject to such conditions this adjustment request can be approved

ADMINISTRATIVE DECISION

Approval of an adjustment from code Section 33.266.120 excluding required parking spaces from front setbacks to permit a 12' wide by 20 foot deep paved area to remain in front of this residence subject to the following conditions:

1. The northern six foot width of concrete shall be removed from the existing two car concrete pad located on this property.
2. The existing curb cut shall be reduced in width from 24' including wings to 15' including wings.
3. Landscaping shall be installed within ten feet of the sides of the remaining concrete pad that includes at a minimum on each side; 1 tree included on the medium or large tree list found in the BDS Tree and Landscaping Manual; six shrubs; and groundcover. The intent of this landscaping is to partially screen the concrete and parked vehicles from the public right of way.
4. As part of any zoning or right of way permit application submittal, each of the 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 08-182289 AD."

Staff Planner: John Cole

Decision rendered by:  on April 27, 2009
By authority of the Director of the Bureau of Development Services

Decision mailed: April 29, 2009

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 February 26, 2009, and was determined to be complete on March 10, 2009.

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 February 26, 2009.

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 extended by the applicant the 120 days will expire on July 8, 2009.

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 May 13, 2009**, 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 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 May 14, 2009 .
- A building or zoning or other 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;

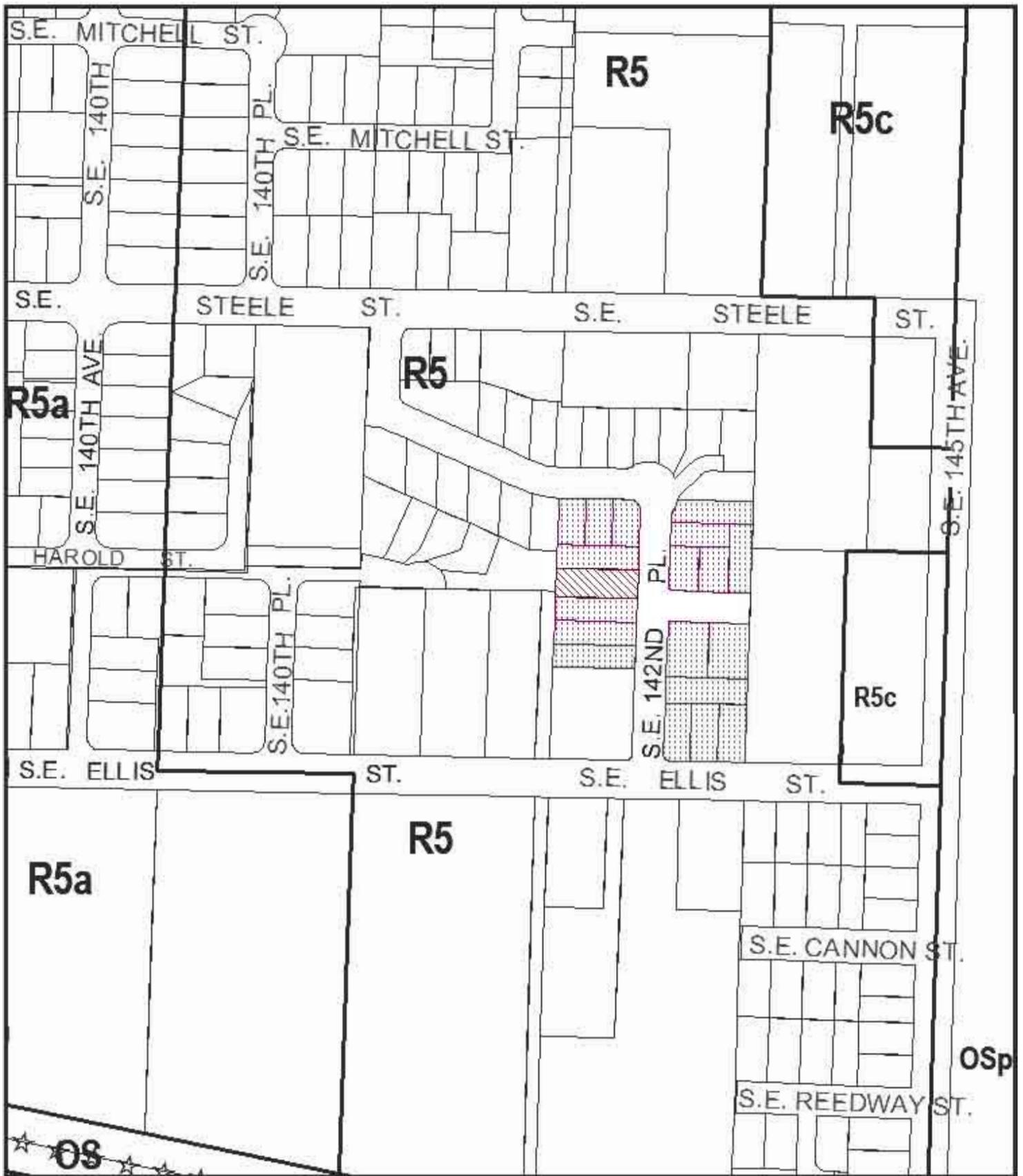
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Site Development Review Section of BDS
- F. Correspondence: None submitted
- G. Other:
 - 1. Original LU Application
 - 2. 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 503-823-7300 (TTY 503-823-6868).



ZONING

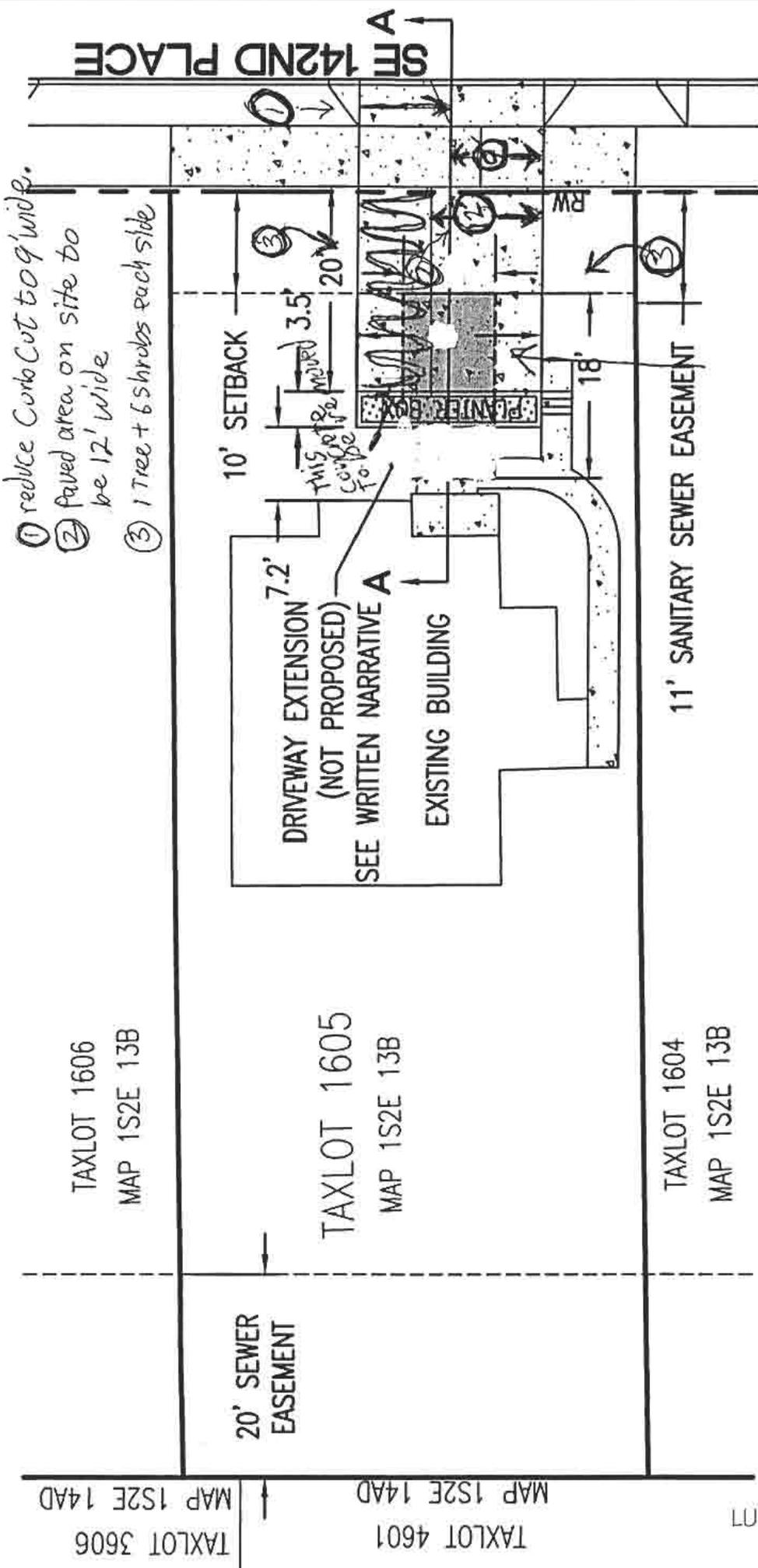
-  Site
-  Also Owned



This site lies within the:
JOHN SON CREEK BASIN PLAN DISTRICT

File No. LU 09-110983 AD
 1/4 Section 3645
 Scale 1 inch = 200 feet
 State_Id 1S2E13BC 1605
 Exhibit B (Feb 27, 2009)

SCOTTVIEW SUBDIVISION LOT 4 ADJUSTMENT



- ① reduce Curb Cut to 9' widr.
- ② paved area on site to be 12' wide
- ③ 1 Tree + 6 shrubs each side

SITE PLAN

R/W

TAXLOT 3606
MAP 1S2E 14AD

TAXLOT 4601
MAP 1S2E 14AD