



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

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Date: December 23, 2009
To: Interested Person
From: Sheila Frugoli, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The 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 09-171408 AD

GENERAL INFORMATION

Applicant: Todd Lasher, Architect
Lasher Design
5632 N Atlantic Ave
Portland, OR 97217

Owners: James and Cynthia O'Leary
4224 SW Huber St
Portland, OR 97219

Site Address: 4224 SW HUBER ST

Legal Description: LOT 1, PARTITION PLAT 1997-158
Tax Account No.: R649776290
State ID No.: 1S1E29CB 05001
Quarter Section: 4025

Neighborhood: West Portland Park, contact Rob Shirley at 503-293-1010.
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

Zoning: R7, Single Dwelling Residential 7,000

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

Proposal: In order to construct an addition to the existing house, the applicant is requesting an Adjustment to reduce, along the north property line, the required building setback from 10 feet to 6 feet and to reduce the setback from 8 feet to 4 feet for the proposed roof eave. A 10 foot building setback is required along all property lines for flag lots. Eaves may extend within 8 feet of the property line (20 percent of the building setback).

The applicant is proposing to remodel and enlarge the existing house, adding an upper-story and expanding the building footprint with an eight foot deep increase to the east and two

additional feet on the west side of the house. The upper-story addition on the north side of the house will be constructed on the existing foundation. The plan also includes a new enclosed porch on the west side, a new entry porch and stairway on the east side, and an elevated deck on the south side of the house.

RELEVANT APPROVAL CRITERIA:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria have been met.

ANALYSIS

Site and Vicinity: The subject site is an 11,703 square foot flag lot with a home that was constructed in 1997. The “pole” provides access to SW Huber Street and the “flag” portion of the lot is located behind the home at 4232 SW Huber. The subject site is elevated above both SW Huber Street and the adjacent home. The surrounding area is generally developed with single-dwelling residences. Multi-dwelling residential development and auto-oriented commercial development is located to the west along SW Capitol Highway and on the north side SW Huber.

SW Huber Street contains a two-lane paved roadway with no curbs or sidewalks.

Zoning: The R7, Single-Dwelling Residential zone provides housing opportunities for individual households. This zone is generally developed with detached homes on individual lots at a density of 1 unit per 7,000 square feet of site area.

Land Use History: City records indicate there was a prior land use review for this site. A 2-lot minor partition, that created the subject lot, was approved in 1995 (LUR 95-00385 MP).

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **November 25, 2009**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Bureau of Parks-Forestry Division
- Bureau of Environmental Services (Exhibit E.4)

The Site Development Section of BDS responded with information regarding stormwater management requirements. A utility plan, identifying existing utilities and stormwater facilities must be included in the submittal for building permits. (Exhibit E.1)

The Fire Bureau responded, stating that minimum fire-flow requirements for Type V-B construction, greater than 4,800 square feet requires 2,000 gpm at 20 psi. The Water Bureau verifies existing fire flow. (Exhibit E.2)

The Water Bureau responded that at building permit review, a Fixture Unit Count worksheet must be submitted. This will be used to determine if the current metered service (5/8-inch) is adequate to serve the residence. The site is served from an 8-inch water main in SW Huber St. The static water pressure range at this location is estimated to be 67 to 84 psi. (Exhibit E.3)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 25, 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**Adjustments**

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 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 to provide 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., have been met.

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

Findings: Section 33.110.240. F and Section 33.110.220.A of the Zoning Code identifies the purpose of the flag lot development standards and the building setback standard as follows:

33.110.240. F, Flag lot development standards. *The development standards for flag lots include specific screening and setback requirements to protect the privacy of abutting residences.*

33.110.220.A, Setback. *The setback regulations for building and garage entrance 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 neighborhood;*
- *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; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

This proposal is to reduce the setback from 10 feet to 6 feet and to reduce the setback from 8 feet to 4 feet for the proposed roof eave. Even though the request is relatively significant, the characteristics of the site and actual improvements make this proposal remain consistent with intent of the setback requirement. The site, like numerous other lots located on the south side of SW Huber between Capitol Highway and SW 40th is a steeply sloping flag lot. According to City contour maps, the elevation from the front lot (driveway) to the rear of the lot increases by approximately 40 feet. The topography of the area differs significantly with a drop in elevation both from the PPC Sylvania campus to Interstate 5 and from SW Capitol Highway to SW 40th Avenue. Many of the lots have relatively new homes, built within the last 10 to 15 years. The newer homes are multi-story.

The lots on the block are relatively deep. The northern abutting lot is approximately 108 feet deep. The house on the northern lot is located at least 30 feet from the common property line. The north wall of the home will be increasing in size via the additional floor and a two-foot deep addition on the west side of the house. But the distance between the two homes will not be changing. The proposed new roof will include 2-foot deep eaves with decorative brackets. The eaves are consistent with the architecture of the remodel. Eaves on a 3-story home will not create noticeable impacts to the house to the north. The existing home is elevated above the home to the north and there are existing windows facing north to the adjacent property. The proposed addition will not substantially alter the current situation.

The home will maintain a reasonable physical relationship with the abutting house to the north. There will be adequate separation as the addition will not restrict light, air and access for fire fighting. The addition is consistent with the scale of other nearby homes. The improvements to the house will not cause the home to stand out as being unusual or excessively large.

For these reasons, 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: As stated above, the homes in the immediate area are multi-story and relatively new. The proposed addition and exterior remodel is consistent with the architecture of the house. There are numerous homes in the immediate area with similar roof lines and architectural features. The home is located on a flag lot and elevated above SW Huber Street. Therefore, the addition will not dominate the public street/pedestrian experience. The proposal will not be easily visible, except to the adjacent south and east properties. Dense trees and shrubs screen the site from homes on the adjacent southern and western lots. Even though it will be visible, the addition will not create new privacy impacts and therefore should not detract from the livability of the abutting neighbors. Therefore, 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. Therefore, this criterion does not apply.

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

Findings: City designated scenic resources are shown on the zoning map by the “s” overlay. Historic resources are designated by a large dot. There are no such resources present on the site. Therefore, this criterion does not apply.

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

Findings: There are no detrimental impacts created by the addition. Therefore, no mitigation is needed. 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: This site is not within an environmental zone, which is designated on the zoning map by either a “c” and “p” overlay. Therefore, 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 characteristics of the site and actual improvements make this proposal remain consistent with the intent of the setback requirement. Although the setback requirement is not met, the proposed six feet will allow adequate light, air and fire separation between the addition and the property to the north. All applicable criteria are met and therefore the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the required building setback on the north side of the residential flag lot from 10 feet to 6 feet (33.110.240.F.1) and to allow the eave to extend within 4 feet of the north property line (33.110.220.C), per the approved site plan, Exhibits C.1, signed and dated December 21, 2009, 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 Exhibits C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-171408 AD.

Staff Planner: Sheila Frugoli

Decision rendered by:  **on December 21, 2009**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 23, 2009

About this Decision. This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. 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 November 13, 2009, and was determined to be complete on November 23, 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 November 13, 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 further extended by the applicant, **the 120 days will expire on: March 23, 2010.**

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 January 6, 2010** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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 call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, 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 **January 7, 2010 – (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 503-823-7967.

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, or
- In situations involving only the creation of lots, the land division has been recorded.

Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the City Planning Director, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

Recording other land use decisions. If the preliminary land division approval also contains approval of other land use decisions (examples include adjustments, conditional uses, and environmental reviews), these other approvals must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

The applicant, builder, or their representative may record the final decisions on these other land use decisions 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.

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, or
- In situations involving only the creation of lots, the land division has been recorded.

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:

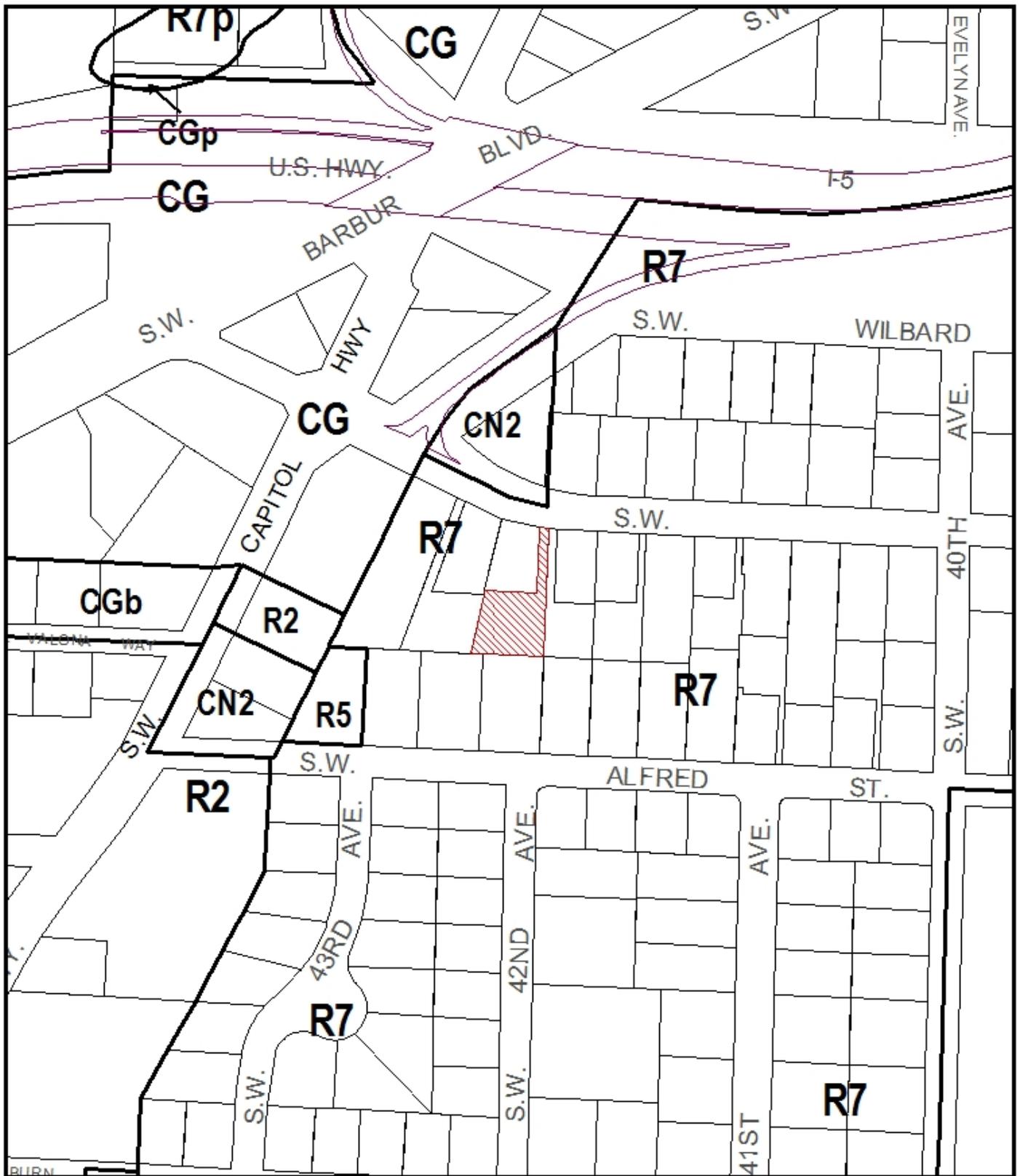
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. North Elevation
 - 3. East Elevation
 - 4. West Elevation
 - 5. South Elevation
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Site Development Review Section of BDS
 - 2. Fire Bureau
 - 3. Water Bureau
 - 4. TRACS printout identifying other Bureau's with "no concerns"
- F. Correspondence: NONE
- 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. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING

 Site



File No.	<u>LU 09-171408 AD</u>
1/4 Section	<u>4025</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E29CB 5001</u>
Exhibit	<u>B</u> (Nov 17, 2009)

