



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

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www.portlandoregon.gov/bds

Date: January 31, 2013
To: Interested Person
From: Kate Marcello, 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 the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the district coalition and then scroll to the relevant neighborhood and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 12-207809 HDZ

Three New Mechanical Units on Rooftop

GENERAL INFORMATION

Applicant: Patricia Gardner (Representative)
1116 NW Johnson Street | Portland, OR 97209 | 503-806-4186

Owner: The Singer Family LLC
416 NW Hermosa Blvd | Portland, OR 97210-3314

Site Address: 801-817 NW 23rd Avenue

Legal Description: BLOCK 3 LOT 3&4 EXC WLY 54.86', KINGS 2ND ADD; BLOCK 3 WLY 54.86' OF LOT 3&4, KINGS 2ND ADD

Tax Account No.: R452300460, R452300470

State ID No.: 1N1E33BC 09200, 1N1E33BC 09100

Quarter Section: 2927

Neighborhood: Northwest District; contact John Bradley at 503-313-7574

Business District: Nob Hill; contact Mike Conklin at 503-226-6126

District Coalition: Neighbors West/Northwest; contact Mark Sieber at 503-823-4212

Plan District: Northwest Plan District

Other Designations: Secondary Contributing Resource in Alphabet Historic District

Zoning: Storefront Commercial base zone (CS);
Historic Resource Protection overlay zone

Case Type: Historic Design Review (HDZ)

Procedure: Type II (an administrative decision with appeal to the Landmarks Commission)

Proposal: The applicant requests Historic Design Review approval to install three new mechanical units on the rooftop of the Menashe, Ezra & Benveniste, Nissim Building. The units will be installed in the southwest portion of the rooftop. Each mechanical unit will sit atop a curb. The building has an existing parapet that runs along the perimeter of the rooftop. The parapet is about 2'-2" tall.

- Unit 1 is a make-up air fan. It will be located 15'-3" from the west roof edge and 14'-0" from the south roof edge. The unit is about 2'-8" long x 2'-3" wide x 2'-6" tall. It will be mounted on a curb 1'-8" tall, making the overall height about 4'-2".
- Unit 2 is an exhaust fan. Its center will be located 27'-8" from the west roof edge and 10'-10" from the south roof edge. The unit is 3'-3" in diameter. It is about 2'-10" tall. It will be mounted on a curb 1'-8" tall, making the overall height about 4'-6".
- Unit 3 is an exhaust fan. It will be located 42'-3" from the west roof edge. Its center will be located 10'-10" from the south roof edge. The unit is approximately square-shaped, with each side about 1'-7" long. The unit is 1'-1" tall. It will be mounted on a curb about 3'-2" tall, making the overall height about 4'-3".

Note: Originally, a fourth rooftop unit, an exhaust fan, was proposed. It has been removed from the proposal.

Because the proposal involves exterior alterations to an existing building located in a historic district, Historic Design Review approval is required prior to the issuance of permits.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33 (Portland Zoning Code). The relevant criteria are the Community Design Guidelines and the Community Design Guidelines Addendum for the Alphabet Historic District.

ANALYSIS

- I. Site and Vicinity:** The subject property, originally known as the Menashe, Ezra & Benveniste, Nissim Building, is classified as a contributing structure in the Alphabet Historic District. The building was constructed in 1927. It is a classic single-story storefront commercial building. Divided into regularly spaced storefront bays, the building displays modest Mediterranean Revival style characteristics typical of the building's time of construction.

The building is located in the southeast corner of the block bounded by NW 23rd Avenue, Johnson Street, Kearney Street, and 24th Avenue. The building is one of three commercial buildings on the block, all with frontage on NW 23rd Avenue. The majority of the block is occupied by residential structures, ranging from single-family residences to multi-family structures.

The Alphabet Historic District was placed on the National Register of Historic Places in 2000. The District is significant for associations with individuals, associations with historic trends, and architectural expressions. The District includes a broad mixture of building types, including single-story residences, quarter-block apartment buildings, one- and two-story commercial structures, and religious institutions. The District's period of significance – 1889 to 1940 – means that a significant range of stylistic approaches is represented, from Italianate to Art Deco. The District's overall cohesion is supported by a regular pattern of tree-lined streets and a consistent mid-range scale of buildings, which is punctuated occasionally by a larger structure.

With regard to the surrounding transportation environment, NW 23rd Avenue is a designated Neighborhood Collector Street, Major Transit Priority Street, Community Main Street, Local Service Walkway, and Local Service Bikeway. NW Johnson Street is classified as a Local Service Walkway and City Bikeway. The site is located in the Northwest Pedestrian District.

II. Zoning:

The Storefront Commercial (CS) zone is intended to preserve and enhance older commercial areas that have a storefront character. The zone allows a full range of retail, service and

business uses with a local and regional market area. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged.

The Historic Resource Protection overlay zone is comprised of Historic and Conservation Districts, as well as Historic and Conservation Landmarks. The regulations that pertain to these properties protect certain historic resources in the region and preserve significant parts of the region's heritage. Historic preservation beautifies the city, promotes the city's economic health, and helps to preserve and enhance the value of historic properties.

III. Land Use History: City records indicate three prior land use reviews for the site.

- LU 08-141422 HDZ: Historic Design Review approval to replace three existing mechanical units on the rooftop with three larger units.
- LU 08-157663 HDZ: Historic Design Review approval for alterations to the northernmost storefront bay. Alterations included new tile surfacing in the existing recessed entry area and an indirectly lit aluminum tube frame sign in the area below the existing transom windows and above the existing storefront windows.
- LU 12-182688 HDZ: Historic Design Review approval for a new wood entry door and bi-fold wood windows at the southeast corner of the building, new bi-fold wood windows at the southernmost window bay on the east façade, and the option to install sliding wood windows at the third westernmost storefront bay on the south façade.

IV. Agency Review: A *Notice of Proposal in Your Neighborhood* was mailed on December 11, 2012. The Life Safety/Building Code Section of the Bureau of Development Services responded with comments and with no objections to the proposal (Exhibit E-1).

V. Neighborhood Review: A *Notice of Proposal in Your Neighborhood* was mailed on December 11, 2012. One written comment in response to the proposal has been received, from David Kabat, on January 2, 2013. He submitted two e-mails and a letter. The letter was attached to one of the e-mails. His e-mails and letter raise concerns regarding the possible noise from the proposed rooftop mechanical units. One of the e-mails states: "Presumably, the air conditioning will run during hot evenings when neighbors in apartments need to keep their windows open." The other e-mail states that the units will be "very noisy, and their placement near the westward edge of the roofline would drive the noise and fumes behind the building" toward residents of adjacent buildings. The letter states that the planned location of the units, the lack of acoustic mitigation, the "brevity of descriptions," and the lack of "noise descriptions" in the Notice of Proposal "indicate that this proposal must be completely rejected as inadequate and potentially very harmful to the neighborhood." Exhibit F-1 contains more information.

Staff response:

- None of the proposed mechanical units is an air conditioning unit.
- To address Mr Kabat's concerns, the applicant has removed one of the units from the proposal. The unit that has been removed, an exhaust fan, was the unit closest to the west roof edge and the residential property line.
- Now the closest proposed unit is the make-up air fan (unit 1). The applicant has stated that a noise barrier will be installed inside the unit, to dampen the sound emitted. With the noise barrier, the sound level of the unit is 45 dBA.
- The sound levels of units 2 and 3 are 63 dBA and 41 dBA, respectively.
- Staff has used a "loudness of sound" formula to determine what the approximate sound level of each unit will be at the west roof edge, which is located at or very close to the residential property line. The "loudness of sound" formula takes into account the inverse square law for distance and exponential dampening of sound over large distances, with a rate of $10^{-0,0003 r}$, where "r" is the distance to the source. The sound levels of units 1, 2, and 3 at the west roof edge, respectively, are 21.5 dBA, 34.2 dBA, and 8.5 dBA. According to 18.10.010.A of Title 18: Noise Control, noise originating in a commercial zone that is heard in an adjacent residential zone cannot be above 60 dBA, as measured at the property line. The proposed units are in compliance.

- Noise is not explicitly part of the applicable approval criteria for this Historic Design Review. Noise is regulated through a complaint-driven process. The Noise Complaint Hotline telephone number is 503-823-7350.

ZONING CODE APPROVAL CRITERIA

Chapter 33.846.060 - Historic Design Review

Purpose of Historic Design Review

Historic Design Review ensures the conservation and enhancement of the special characteristics of historic resources.

Historic Design Review Approval Criteria

Requests for historic design review will be approved if the review body finds the applicant has shown that all of the approval criteria have been met.

Findings: The site is located within the Alphabet Historic District and the proposal is for a non-exempt treatment. Therefore Historic Design Review approval is required. The approval criteria are the *Community Design Guidelines* and the *Historic Alphabet District Community Design Guidelines Addendum*.

Staff has considered all guidelines and addressed only those applicable to this proposal.

Historic Alphabet District - Community Design Guidelines Addendum

1. Historic Changes.

Most properties change over time; those changes that have acquired historic significance will be preserved.

Findings for 1: The proposal does not affect any changes to the building that have acquired historic significance. *Therefore this guideline is met.*

2. Differentiate New from Old.

New additions, exterior alterations, or related new construction will retain historic materials that characterize a property to the extent practicable. Replacement materials should be reasonable facsimiles of the historic materials they replace. The design of new construction will be compatible with the historic qualities of the district as identified in the Historic Context Statement.

Findings for 2: The proposal does not affect any historic materials that characterize the subject site. *Therefore this guideline is met.*

3. Hierarchy of Compatibility.

Exterior alterations and additions will be designed to be compatible primarily with the original resource, secondarily with adjacent properties, and finally, if located within a historic or conservation district, with the rest of the District. Where practical, compatibility will be pursued on all three levels. New development will seek to incorporate design themes characteristic of similar buildings in the Historic Alphabet District.

Findings for 3: The proposed mechanical units are a relatively minor addition to the rooftop and thus achieve compatibility, as follows:

- All of the proposed mechanical units are set back considerably from the adjacent roof edges. Unit 1 is 14'-0" from the south roof edge and 15'-3" from the west roof edge; the center of unit 2 is 10'-10" from the south roof edge and 27'-8" from the west roof edge; and the center of unit 3 is 10'-10" from the south roof edge and 42'-3" from the west roof

edge.

- Units 1, 2 and 3 are about 6'-0" sq ft, 9'-0" sq ft, and 2'-6" sq ft in area, respectively. Thus the total area of new mechanical units is about 17'-6" sq ft. The units are a comparatively small addition to the approximately 10,000-square-foot rooftop.
- Units 1, 2, and 3 respectively are 4'-2", 4'-6", and 4'-3" tall. The existing parapet on the building is about 2'-2" tall. As viewed in elevation, units 1, 2, and 3 extend above the parapet about 2'-0", 2'-4", and 2'-1", respectively.
- The units will be painted to match the rooftop.

With the condition of approval that the mechanical units be painted to match the rooftop, this guideline is met.

Community Design Guidelines

P2. Historic and Conservation Districts.

Enhance the identity of historic and conservation districts by incorporating site and building design features that reinforce the area's historic significance. Near historic and conservation districts, use such features to reinforce and complement the historic areas.

D7. Blending into the Neighborhood.

Reduce the impact of new development on established neighborhoods by incorporating elements of nearby, quality buildings such as building details, massing, proportions, and materials.

Findings for P2, D7: The relatively minor character of the proposed mechanical units enables them to be compatible with the character of the Alphabet Historic District. By virtue of their small size, small protrusion above the parapet, considerable setback from roof edges, consolidated location in the southwest portion of the rooftop, and paint color which will match the rooftop, the units are an inconspicuous addition to the subject building and the overall district. *With the condition of approval that the mechanical units be painted to match the rooftop, this guideline is met.*

D6. Architectural Integrity.

Respect the original character of buildings when making modifications that affect the exterior. Make additions compatible in scale, color, details, material proportion, and character with the existing building.

D8. Interest, Quality, and Composition.

All parts of a building should be interesting to view, of long lasting quality, and designed to form a cohesive composition.

Findings for D6, D8: The proposed mechanical units are a relatively minor addition to the subject building. The units will not be easily viewable from surrounding sidewalks. Units 1, 2, and 3 respectively are about 4'-2", 4'-6", and 4'-3" tall. The existing parapet on the building is about 2'-2" tall. As viewed in elevation, units 1, 2, and 3 extend above the parapet about 2'-0", 2'-4", and 2'-1", respectively. The south roof edge is the closest street-facing roof edge. Unit 1 is 14'-0" from the south roof edge, and units 2 and 3 are each set back 10'-10". The units' small protrusion above the parapet, combined with their considerable setback from the south roof edge, ensure that they will not detract from the building's defining architectural features – its hipped parapet with clay roof tiles, regularly spaced storefront bays, and brick façade, which includes a frieze with brick and decorative ceramic tiles arranged in panels.

In addition, the units will not appear obtrusive when viewed from taller structures nearby. The units will be consolidated into one area of the rooftop – the southwest portion – and they will be painted to match the rooftop. The total area of the new units is 17'-6" sq ft, which is small compared to the overall approximately 10,000-square-foot rooftop.

The units respect the original character of the building and allow it to remain a cohesive composition. *With the condition of approval that the mechanical units be painted to match the rooftop, this guideline is met.*

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 purpose of the historic design review process is to ensure that exterior alterations to existing buildings protect the integrity of the special characteristics of the historic resources. The minor character of the proposed mechanical units enables them to be compatible with the character of the Alphabet Historic District. With a condition of approval that the new mechanical units be painted to match the rooftop, the units can achieve visual integration. The proposal meets the applicable design guidelines and therefore warrants approval.

ADMINISTRATIVE DECISION

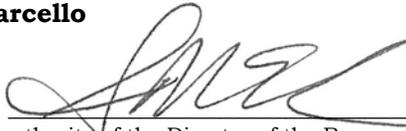
Approval of three new mechanical units on the rooftop of 801-817 NW 23rd Avenue in the Alphabet Historic District in the Northwest Plan District, as follows:

- One make-up air fan, about 2'-8" long x 2'-3" wide x 2'-6" tall, mounted on a curb 1'-8" tall, located 15'-3" from the west roof edge and 14'-0" from the south roof edge;
- One exhaust fan, 3'-3" in diameter, mounted on a curb 1'-8" tall, with its center located 27'-8" from the west roof edge and 10'-10" from the south roof edge; and
- One exhaust fan, approximately square-shaped with each side about 1'-7" long, mounted on a curb 3'-2" tall, located 42'-3" from the west roof edge, and with its center located 10'-10" from the south roof edge.

Approval per the approved plans and drawings, Exhibits C-1 through C-9, signed and dated January 28, 2013, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition must be noted on each of the four 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 12-207809 HDZ." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The mechanical units shall be painted to match the rooftop.
- C. No field changes allowed.

Staff Planner: Kate Marcello

Decision rendered by:  **on January 28, 2013**

By authority of the Director of the Bureau of Development Services

Decision mailed: January 31, 2013

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 November 21, 2012, and was determined to be complete on **December 5, 2012.**

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 21, 2012.

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: April 4, 2013.**

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 Landmarks Commission, which will hold a public hearing. Appeals must be filed **by 4:30 PM on February 14, 2013** 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 Landmarks Commission 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 Landmarks Commission 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 **February 15, 2013**.
- 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.

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.

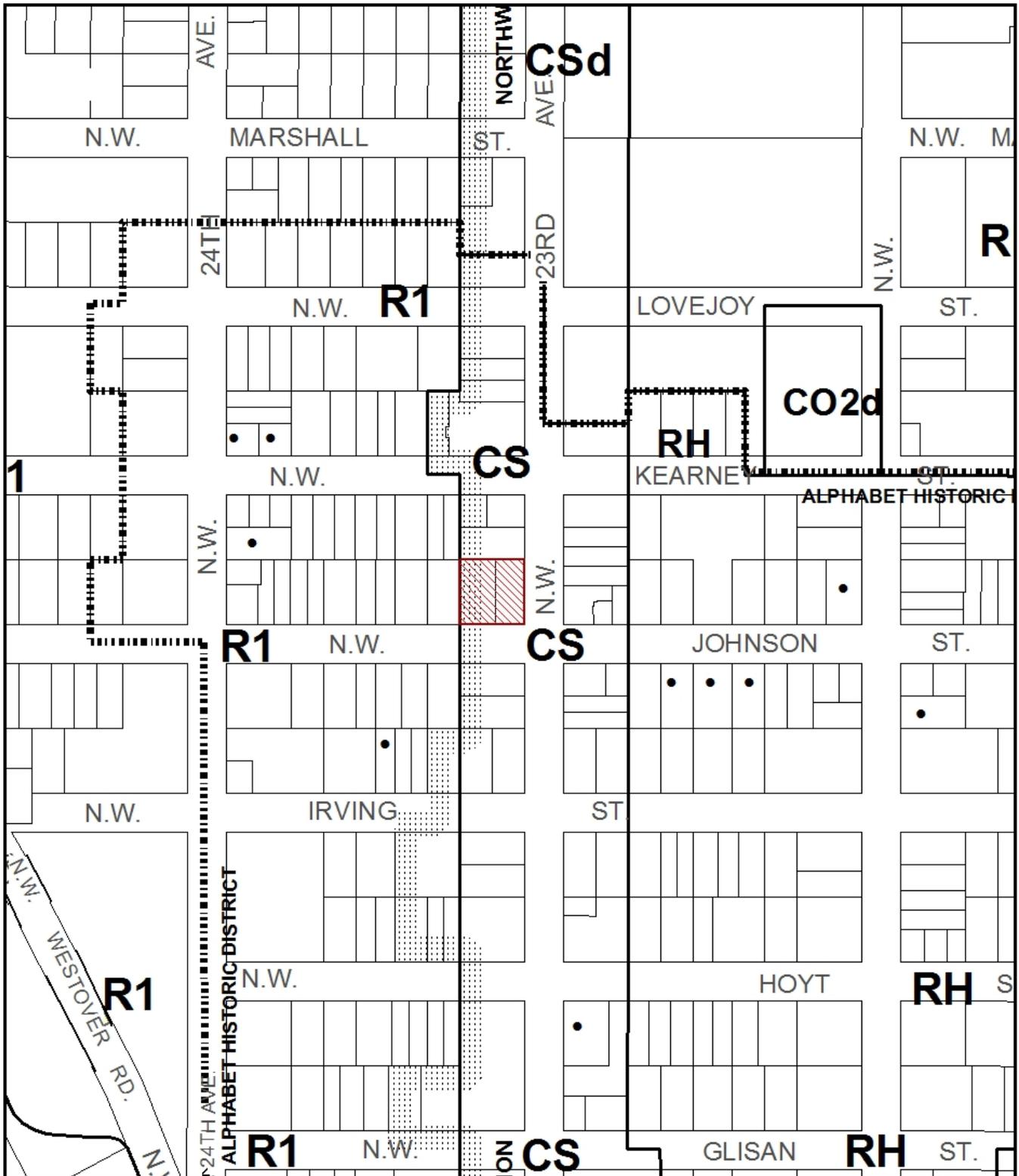
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement/Narrative
- B. Zoning Map (attached)
- C. Plans and Drawings:
 - 1. Site/Roof Plan (attached)
 - 2. Enlarged Roof Plan (attached)
 - 3. Cutsheet for Unit 1
 - 4. Noise Wrap Barrier Information for Unit 1
 - 5. Cutsheet for Unit 2
 - 6. Cutsheets for Unit 3
 - 7. Section Drawing for Unit 3

8. Floor Plan Indicating Equipment Locations
9. Building Section Drawings Indicating Parapet Height
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Response:
 1. Life Safety/Building Code Section of BDS
- F. Correspondence:
 1. David Kabat; owner of 2335-2337 NW Johnson Street; received January 1, 2013; in opposition to the proposal
- G. Other
 1. Original Land Use Review Application
 2. Applicant's Response Letter to David Kabat
 3. National Register of Historic Places – Alphabet Historic District – Listing for 801-817 NW 23rd Ave

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



Historic Landmark

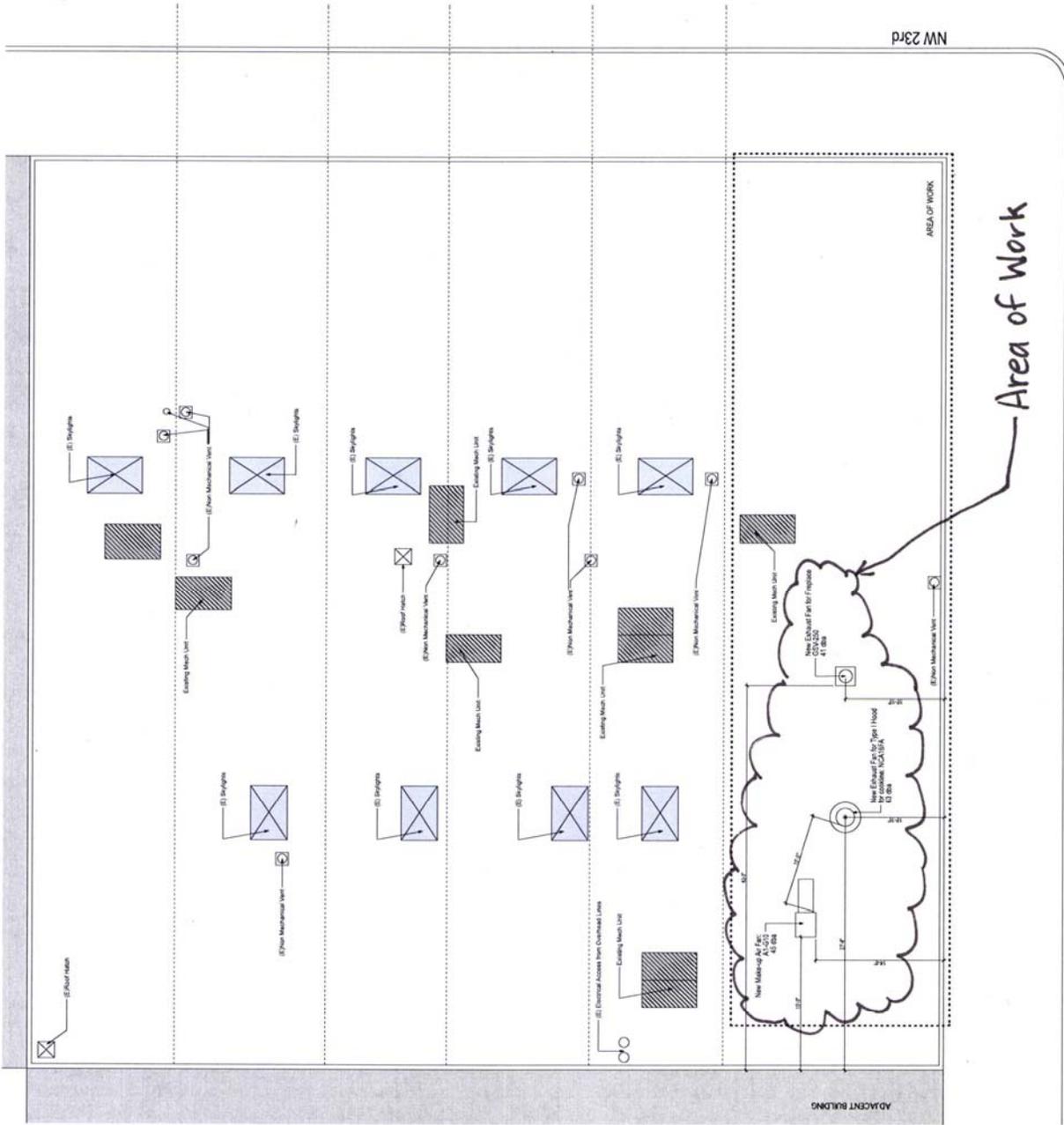


NORTH

This site lies within the:
ALHABET HISTORIC DISTRICT
NORTHWEST PLAN DISTRICT

File No.	LU 12-207809 DZ
1/4 Section	2927
Scale	1 inch = 200 feet
State_Id	1N1E33BC 9100
Exhibit	B (Nov 27, 2012)

Roof Plan

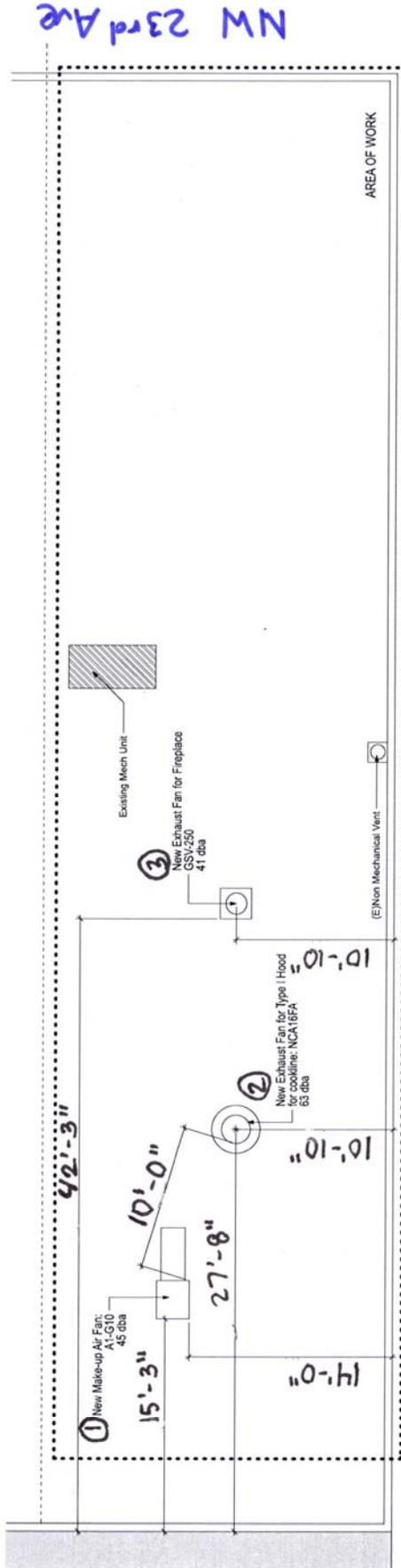


Approved
 City of Portland - Bureau of Development Services
 Planner *Kelly*
 Date *January 28, 2013*
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

NW JOHNSON
 Exhibit C-1

LU 12-207809 HDZ

Enlarged Roof Plan



NW Johnson St

- ① Make-up Air Fan (45 dba)
- ② Exhaust Fan (63 dba)
- ③ Exhaust Fan (41 dba)

* Approved*
 City of Portland - Bureau of Development Services
 Planner *Kutell* Date January 28, 2013
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

LU 12-207809 HDZ

Exhibit C-2