



CITY OF PORTLAND
Bureau of Development Services
1900 SW Fourth Avenue, Suite 5000
Portland, OR 97201 **P524**
Land Use Review Decision Enclosed
Case # LU 07-171608 NU



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: April 21, 2008
To: Interested Person
From: Kathleen Stokes, Land Use Services
503-823-7843 / kstokes@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 07-171608 NU

GENERAL INFORMATION

Applicant: Dana Moore, Emerick Architects
208 SW 1st Avenue #320
Portland, OR 97204

John Carlson, Roedel Tile Contracting Co Inc
PO Box 11221
Portland, OR 97211

Site Address: 1233 N Killingsworth Street

Legal Description: LOT 3&4 BLOCK 3, NORTH ALBINA
Tax Account No.: R610300190
State ID No.: 1N1E15CC 15700
Quarter Section: 2429

Neighborhood: Overlook, contact Claire Paris at 503-998-4878.
Business District: North Portland Business Assoc, contact Steve Weir at 503-283-3883.
District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

Zoning: R1 (RHd)—Medium Density Multi-Dweling Residential with a High Density Multi-Dwelling Residential and Design Overlay Comprehensive Plan Map Designation

Case Type: Nonconforming Situation Review
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal: Roedel Tile is a warehouse and office use that is a legal nonconforming use on this residentially-zoned site. Roedel recently made operational changes that resulted in much of the business that was previously conducted on this site now being conducted in satellite locations. Due to this, Roedel has freed some space in the existing building that they wish to lease to Eddie's Flat Iron Pizza.

At the time of that this application was submitted, the pizza business was located across the street, on the south side of Killingsworth. Subsequently, the pizza business relocated to the Roedell Tile building. Eddie's Pizza is a use that is classified as Retail Sales and Service, although they have reported that a large portion of their business consists of the manufacture and wholesale sales of their product to larger venues, such as the Rose Garden arena.

The proposed uses for the 6,800 square foot building would include three employees for Roedel Tile, working from 6:30 AM to 4:30 PM, Monday through Friday, and four employees for Eddie's Pizza, working from 9 AM to 5 PM, daily, including weekends. A total of four employee vehicles would regularly be on-site, for both businesses. The four staff members of Eddie's Pizza use their two vehicles for limited deliveries for the business. The only change that is proposed to the appearance of the building would be an upgrade to refurbish its vintage appearance and the addition of a small sign in the window, on the southwest corner, where they are seeking approval for Eddie's Pizza to be housed.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Code Section 33.258.080 B.

ANALYSIS

Site and Vicinity: The applicant's site is a 10,000 square-foot parcel that is located on the northeast corner of North Killingsworth Street and North Montana Avenue. The site is developed with a 6,822 square-foot commercial building that was constructed in 1948. A paved alleyway on the east side of the building provides an existing onsite loading area for the tile company.

The area around the site has a mixture of development and uses. Across Killingsworth, commercial storefronts abut the street, with residential development on the blocks to the south. Across Montana Avenue, there is multi-dwelling development on the northwest corner, with single-dwelling structures farther along the block, to the west. Interstate Avenue, with the Max light rail line is located two blocks to the west of the site. The area around this portion of Interstate Avenue is mainly developed with a mixture of commercial uses. The area to the east of the site, abutting North Minnesota Avenue is mainly developed with single-dwelling residences. Farther to the east, on the other side of Minnesota Avenue, is the I-5 Freeway.

Zoning: The site is currently zoned R1, Medium Density Multi-dwelling Residential. This zone allows up to one unit per 1,000 square feet of site area and requires a minimum of one unit per 1,450 square feet of site area, or 1 unit per 2,000 square feet of site area for sites that are smaller than 10,000 square feet.

The site has a Comprehensive Plan Map Designation of RHd or High Density Multi-dwelling Residential, with a Design Overlay. In the RH zone, density is not regulated by a maximum number of units per acre. Rather, the maximum size of buildings and intensity of use is regulated by floor area ratio (FAR) limits and other site development standards. Generally the density will range from 80 to 125 units per acre. Allowed housing is characterized by medium to high height and a relatively high percentage of building coverage. The major types of new housing development will be low, medium, and high-rise apartments and condominiums. Generally, RH zones will be well served by transit facilities or be near areas with supportive commercial services.

The Design Overlay Zone promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. This is achieved through

the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review or compliance with the Community Design Standards. In addition, design review or compliance with the Community Design Standards ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

The City of Portland Planning Bureau is currently conducting a study of zoning in the area around the Interstate Light Rail. The recommended zoning for this site, in that proposal, is CS, Storefront Commercial. This study is expected to be reviewed by City Council sometime later this year. If the zoning for the site is changed to CS, the proposed Retail Sales and Service Use would be allowed by right. Until such time as new zoning is adopted for this site, the current zoning designation applies and an expansion or change of use to another non-residential use category can only be approved through a Nonconforming Situation Review.

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 **February 11, 2008**. The following Bureaus have responded to indicate that there are no issues or concerns regarding approval of this land use review. Agencies that provided written comments regarding submittal requirements for building permits are noted with exhibit numbers:

- Environmental Services
- Transportation Engineering stated that only one loading area is allowed on the site, but no parking, because vehicles cannot enter and exit in a forward motion (Exhibit E-1).
- Water Bureau
- Fire Bureau (Exhibit E-2)
- Site Development Section of BDS
- Life Safety Plan Review Section of BDS (Exhibit E-3)
- Parks-Forestry Division

Neighborhood Review: A total of five written responses have been received in response to the notice of this proposal. Four of the responses were in support of the proposal and one was in opposition. The responses that were in support said that they would welcome having this business in its new location. One letter noted that the proposal should be approved because it would enhance the area with a pedestrian oriented and "family friendly" use (Exhibits F-1 through F-3). The fourth letter that was in support came from the Portland Development Commission. This letter indicated that the proposal is in keeping with the recommended plans for the Interstate Corridor Urban Renewal Area and the Interstate Light Rail Corridor Zoning Project because the proposed relocation of the pizza business would trigger reinvestment and revitalization of a nonconforming commercial property (Exhibit F-4).

The letter received from the neighbor who is opposed to the proposal stated that Eddie's Flat Iron Pizza had already moved into the Roedel Tile Building and is regularly open for business from 3 until 10 PM. This neighbor also reported that the staff of Eddie's Pizza are parking in front of the houses on Montana Street, along with other nonresidents who park their cars there to catch the light rail on North Interstate. The neighbor stated that, due to the issues related to the hours that the business would be operating, the increased traffic congestion and lack of on-street parking, she is opposed to approval of this request (Exhibit F-5).

The owners of Roedel Tile and Eddie's Flat Iron Pizza sent letters in response to the concerns expressed in the letter of opposition to approval of the proposal. John Carlson, the owner of Roedel Tile acknowledged that the Eddie's Flat Iron Pizza business is currently operating in his building. He stated that Ed Wiszowaty, the owner of Eddie's Pizza, lost the lease for the business in its previous location on the south side of Killingsworth. Mr. Carlson stated that he knew that allowing the business to move into his building before this review process was completed and a decision had been rendered was not the appropriate way to proceed. He stated that he had not made his representatives, Emerick Architects, aware of the situation, but that he felt that he was in part responsible for Eddie's Pizza losing its former lease and wanted to see the business be able to continue. Mr. Carlson stated that no permanent changes

have been made to the building, as yet, and that the increase in the number of out-of-area cars being parked along Montana Avenue was at least partially due to the temporary loss of parking on North Killingsworth due to street repairs. Mr. Carlson stated that Eddie's Pizza would adhere to the proposed business hours of 9 AM to 5 PM (Exhibit A-7).

Ed Wiszowaty explained the circumstances of moving his pizza business into the Roedel Tile Building in the same way that John Carlson did, stating that he asked to move into the building before this land use review decision was made because he lost his lease and could not afford to close his business. Mr. Wiszowaty expressed a desire to remain an active partner in the neighborhood and to participate in positive efforts to promote community activities and improve the character and appearance of this portion of North Killingsworth (Exhibit A-7).

ZONING CODE APPROVAL CRITERIA

NONCONFORMING SITUATION REVIEW

33.258.010 Purpose of Nonconforming Situation Regulations Nonconforming situations are created when the application of a specific zone to a site changes, or a zoning regulation changes. As part of the change, existing uses, density, or development might no longer be allowed. The intent of the change is not to force all noncomplying situations to be immediately brought into conformance. Instead, the intent is to guide future uses and development in a new direction consistent with City policy, and, eventually, bring them into conformance.

Legal nonconforming status is based on whether the situation was allowed when established, and if it has been maintained over time. This chapter also provides a method to review and limit nonconforming situations when changes to those situations are proposed. The intent is to protect the character of the area by reducing the negative impacts from nonconforming situations. At the same time, the regulations assure that the uses and development may continue and that the zoning regulations will not cause unnecessary burdens.

Nonconforming situations that have a lesser impact on the immediate area have fewer restrictions than those with greater impacts. Nonconforming uses in residential zones are treated more strictly than those in commercial, employment or industrial zones to protect the livability and character of residential neighborhoods.

33.258.050 Nonconforming Uses

B. Change of Use ... A change to a use in a different use category which is prohibited by the base zone may be allowed through a nonconforming situation review.

Nonconforming use status for this site and purposes for review requirements: This proposal is to convert a portion of the building that contains a nonconforming use, in order to add a second nonconforming use, retail sales and service. The existing warehouse and office uses would remain in the rest of the structure on the site.

This applicant has documented the legal nonconforming status for the warehouse and office use. Multnomah County records indicate that the building was constructed on this site in 1948. Prior to 1959, the zoning for the site was "red" or commercial. The zoning was changed to M-3 with the adoption of a new code in 1959. This "manufacturing" zone also allowed the business by right. The zoning was changed to the current R1 designation in 1981, following the adoption of the City's Comprehensive Plan. The applicant has provided standard evidence that shows the warehouse and office use has continued on this site since 1962. This documentation confirms the legal nonconforming status of these existing uses. The change of use, from warehouse and office to retail sales and service requires approval through this nonconforming situation review.

33.258.080 Nonconforming Situation Review

A. Procedure. A nonconforming situation review is processed through a Type II procedure.

B. Approval criteria. The request will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:

1. With mitigation measures, there will be no net increase in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:
 - a. The hours of operation;
 - b. Vehicle trips to the site and impact on surrounding on-street parking;
 - c. Noise, vibration, dust, odor, fumes, glare, and smoke;
 - d. Potential for increased litter; and
 - e. The amount, location, and nature of any outside displays, storage, or activities; and

Findings: The following are comparisons of the proposed operations and the most recent situation for the site:

- Roedel Tile will continue to operate from 6:30 AM to 4:30 PM, Monday through Friday. Periodic weekend hours, that reflected the need to meet the construction schedules of Roedel's customers have been eliminated for this site. The proposed hours of operation for Eddie's Pizza are from 9:00 AM to 5 PM, daily.
- Vehicle trips will include weekday travel of 3 staff persons for Roedel Tile and 4 staff persons for Eddie's Pizza. Roedel Tile will no longer regularly have clients or dispatch drivers who come to the site. Eddie's Pizza states that the bulk of their business is based on wholesale deliveries to the Rose Garden arena and other similar customers. Eddie's anticipates an average of about 2 deliveries and 7 customers coming to pick up pizzas, per day. The previous Roedel Tile operation at the site included additional staff persons who brought 6 to 8 vehicles that remained at the site through the work day, with an additional 9 to 12 in/out trips by field personnel for an average of at least 15 to 20 vehicle trips, per day. Impacts on parking in the area are not expected to occur because Roedel Tile will have fewer vehicles that need to use on-street parking spaces and Eddie's Pizza already brought vehicles to the area that used on-street parking, since they were previously located across the street from the Roedel Tile building. Also, the reduced hours that Eddie's Pizza will be operating, compared to their hours of operation in their old location, will reduce the impacts to on-street parking in the evening hours.
- No noxious impacts from noise, vibration, dust, odor, fumes, glare or smoke are expected from the proposed addition of this retail use. No impacts were noted to exist from the previous use, due to these factors.
- The applicants state that the premises will be well policed to eliminate litter. Previously, activities for the use resulted in some occurrence of littering.
- A sign that would be located outside of the separate entrance to Eddie's Pizza, on North Killingsworth, will meet Title 32, the Portland Sign Code.

The net detrimental impacts on the surrounding residential area are not expected to increase as a result of the addition of this retail use to the existing warehouse and office uses, if the proposed uses adhere to the stated hours of business and numbers of projected vehicle trips. Therefore, this criterion is met.

2. If the nonconforming use is in an OS or R zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the OS or R zoned area. This is based on taking into account factors such as:
 - a. Building scale, placement, and facade;
 - b. Parking area placement;
 - c. Buffering and the potential loss of privacy to abutting residential uses; and

d. Lighting and signs, and

Findings: The existing building has been located on this site since 1948. The applicants have indicated that the proposal does not include any changes to the building other than restoring the classic art-deco or "moderne" character of the structure. The applicant's representatives state that a small sign that identifies Eddie's Flat Iron Pizza will be placed on the Killingsworth façade of the building and will meet the requirements of Title 32, the Portland Sign Code. Therefore, no changes are proposed that will lessen the character of the adjacent R zoned area. This criterion is met.

3. If the nonconforming use is in a C, E, or I zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

Findings: The proposal is in a residentially zoned area. This criterion does not apply.

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

Roedell Tile is an existing legal nonconforming use in this residential zone. Due to a smaller operation for the office and warehouse uses that Roedell has at the site, some of the building space was freed up and offered under a lease agreement to Eddie's Flatiron Pizza. In order for the pizza business, which is a Retail Sales and Service Use to be legally located in the Roedell Tile building, approval of a Nonconforming Situation Review is required. All of the relevant approval criteria for this review have been met. There will be no net increase in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:

- The hours of operation;
- Vehicle trips to the site and impact on surrounding on-street parking;
- Noise, vibration, dust, odor, fumes, glare, and smoke;
- Potential for increased litter; and
- The amount, location, and nature of any outside displays, storage, or activities

The appearance of the building will not have any substantial change, so there will be no impacts on the appearance of the residential area.

ADMINISTRATIVE DECISION

Approval of a Nonconforming Situation Review to allow Eddie's Flat Iron Pizza to locate within a portion of the Roedell Tile building at 5512 N Montana/1233 N Killingsworth, as reflected on the approved site plan and elevation drawings, Exhibit C-1, signed and dated, April 17, 2008 and subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B) 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 07-171608 NU." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. Approval of the location of Eddie's Flat Iron Pizza on this site is subject to the proposed business hours, 9 AM to 5 PM. As long as the site has a residential zoning designation, this approval applies only to Eddie's Flat Iron Pizza and only to the operation as proposed in this land use review.



Decision rendered by: _____ **on April 17, 2008**

By authority of the Director of the Bureau of Development Services

Decision mailed: April 21, 2008

Staff Planner: Kathleen Stokes

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 October 23, 2007, and was determined to be complete on November 5, 2007.

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 October 23, 2007.

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 so that it did not begin until February 5, 2008, in order to provide more information. (Exhibit A-2) The 120-day review period was further extended by 41 days, from March 6th until April 16th, in order to address issues raised in response to the notice of the proposal (Exhibit A-6). Due to these extensions, the date for a final local decision on this case is July 17, 2008.

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 Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 5, 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. Recognized neighborhood associations are not subject to the appeal fee. 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 online 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 Hearings Officer 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 Hearings Officer 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 6, 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:

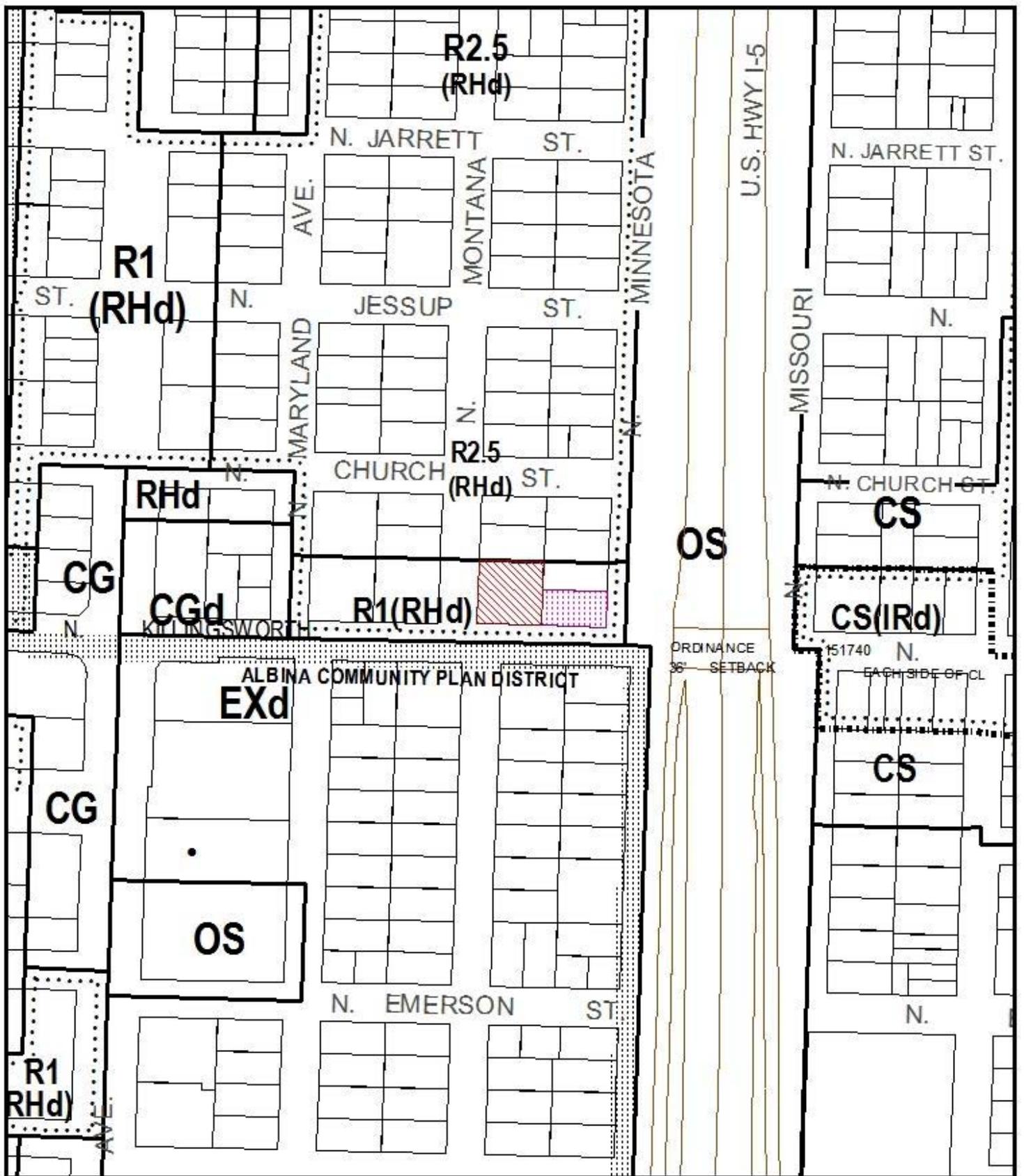
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Application and original submittal (nonconforming documentation, site plan, narrative)
 2. Request to extend 120day timeline for final decision, November 5, 2007
 3. Letters and petition sent by applicant, November, 2007
 4. Additional information, January 25, 2008 (revised narrative, plans, pictures)
 5. Additional information, dated February 4, 2008 (revised narrative)
 6. Request to extend 120day timeline for final decision, March 6, 2007
 7. Additional information from applicant with letters from John Carlson and Eddie Wiszowaty, March 12, 2007
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan/ Elevation Drawing (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Transportation, Engineering and Development Review (revised April 17, 2008)
 2. Fire Bureau
 3. Life Safety Plan Review Section of BDS
- F. Correspondence:
 1. Stacy Askew, received February 26, 2008
 2. Connie Coblantz, received February 28, 2008
 3. Ashley Helmstetter, received March 3, 2008
 4. Kate Deane, Portland Development Commission, dated January 7, 2008
 5. Melissa Alvarez, received February 29, 2008
- G. Other: (none)

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
-  Also Owned
-  Historic Landmark



File No.	<u>LU 07-171608 NU</u>
1/4 Section	<u>2429,2529</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N1E15CC 15700</u>
Exhibit	<u>B (Oct 31,2007)</u>

