



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

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**Date:** June 16, 2008  
**To:** Interested Person  
**From:** Matt Wickstrom, Land Use Services  
503-823-7840 / [WickstromM@ci.portland.or.us](mailto:WickstromM@ci.portland.or.us)

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

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

### **CASE FILE NUMBER: LU 08-119168 AD**

#### **GENERAL INFORMATION**

**Representative:** Donna Eggemeyer  
NW Land Design Services LLC  
10240 SW 59th Ave  
Portland OR 97226

**Applicant:** Andy Tran  
Andy's Towing  
7941 SE 82nd Ave  
Portland Oregon 97266

**Owner:** Peter Chu CL  
7941 SE 82nd Ave  
Portland, OR 97266

**Site Address:** 7941 SE 82ND AVE

**Legal Description:** N 100' OF S 1/2 OF LOT 12, D & O LITTLE HMS SUB 2  
**Tax Account No.:** R202611190  
**State ID No.:** 1S2E20DA 05000  
**Quarter Section:** 3838

**Neighborhood:** Brentwood-Darlington, contact Steve White at 503-788-2096  
**Business District:** Eighty-Second Avenue, contact Nancy Chapin at 503-774-2832  
**District Coalition:** Southeast Uplift, contact Gary Berger at 503-232-0010

**Zoning:** EG2 (General Employment 2)  
**Case Type:** AD (Adjustment)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

**Proposal:** The applicant plans to construct a new building on this site and to create a paved exterior storage area for towed vehicles. The Zoning Code requires that exterior storage which

abuts a residentially zoned lot (the lot to the north of the site is zoned residential) must be set back 10 feet from the property line. The 10-foot deep setback must be landscaped with trees and shrubs and a 6-foot tall masonry wall must be placed along the interior side of the landscaped area. The applicant's plans show a 10-foot deep landscaped area; however, citing concerns about safety and accessibility, the applicant proposes an Adjustment to allow the 6-foot tall masonry wall to be placed along the exterior side of the landscaped area rather than the interior side or 0 feet from the north property line rather than 10 feet from the north property line.

**Relevant Approval Criteria:**

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

## ANALYSIS

**Site and Vicinity:** The approximately 43,600 square foot lot is located on SE 82<sup>nd</sup> Avenue just north of SE Crystal Springs Boulevard. The site is currently developed with two buildings and a large unpaved lot used for vehicle storage. The surrounding vicinity is composed of a variety of development. The site to the north is developed with a house and a mobile home and RV park. The lot to the south which extends around the west of the site is developed with a fencing supply company with exterior storage of fencing and wood materials. Development across SE 82<sup>nd</sup> Avenue from the site is composed of a retail/warehouse use and a vehicle sales business.

**Zoning:** The site is located in the EG2 (General Employment 2) zone. The EG2 zone allows a wide range of employment opportunities without potential conflicts from interspersed residential uses. The emphasis of the zone is on industrial or industrially-related uses. EG2 areas have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street. Vehicle storage lots are classified as Industrial Service by the Portland Zoning Code.

**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 **May 14, 2008**. The following Bureaus have responded with no issues or concerns:

- The Development Review Section of Portland Transportation responded with no objections to the Adjustment proposal. The response provided comments associated with frontage improvements and a dedication which may be required by the Oregon Department of Transportation for the site to meet the designation of a City Walkway in the City's Transportation System Plan (Exhibit E-1).
- The Oregon Department of Transportation which has jurisdiction over SE 82<sup>nd</sup> Avenue in this location responded with conditional approval provided that the applicant submit a copy of the building permit approval from the City of Portland, including the approved site plan and project description that demonstrate the locally approved plans and project description are consistent with the plans submitted (Exhibit E-2).
- The Life Safety Section of BDS responded that a separate Building Permit is required for the work proposed and exterior building walls located less than 5 feet to a property line must be one-hour fire-rated for exposure to fire from both sides (Exhibit E-3).
- The Site Development Section of BDS, the Bureau of Environmental Services as well as the Fire, Parks and Water Bureaus responded with no concerns (Exhibit E-4).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on May 14, 2008. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### Title 33.805.10 Purpose of Adjustments

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the code's regulations would preclude all use of the site. Adjustment reviews provide flexibility for unusual situations and to allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

#### 33.805.40 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below are met.

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

**Findings:** The applicant requests one Adjustment to allow the 6-foot tall masonry wall required for screening of the exterior storage of vehicles from an adjacent residential zone to be located at a 0-foot setback from the shared property line rather than at a 10-foot setback as required by the Portland Zoning Code. The purpose of the exterior storage regulation is listed below:

#### **Purpose 33.140.245 Exterior Display, Storage, and Work Activities**

*The exterior development standards of this section are intended to assure that exterior display, storage, and work activities:*

- *Will be consistent with the desired character of the zone;*
- *Will not be a detriment to the overall appearance of an employment or industrial area;*
- *Will not have adverse impacts on adjacent properties, especially those zoned residential;*
- and*
- *Will not have an adverse impact on the environment.*

The desired character of the EG2 zone is "to allow a wide range of employment opportunities without potential conflicts from interspersed residential uses. The emphasis of the General Employment zones is on industrial and industrially-related uses". The site is adjacent to a residentially zoned property to the north; however, the requirement to screen and separate the exterior storage of vehicles from that lot helps reduce potential conflicts between the two zones and allows the site to continue functioning in an industrial capacity. The location of the masonry wall at a 0-foot rather than 10-foot setback will not interfere with the industrial use of the site.

The site is currently used for the storage of vehicles without adequate separation between that activity and the residentially zoned lot to the north. The masonry wall will help improve the appearance of the employment area by providing a physical barrier between the site and the adjacent lot, regardless of the setback of the masonry wall at 0 feet from the property line. In addition, the 10-foot setback of the vehicle storage area from the property line to the north which is required to be landscaped with trees, grass and shrubs will also help improve the appearance of the employment area, regardless of the location of the masonry wall at a 0-foot setback.

Allowing the masonry wall to be located at a 0-foot setback will not result in adverse impacts to the residentially zoned lot to the north. The exterior storage of vehicles is already occurring on the site without adequate separation and would be allowed to continue were it not for the improvements to the site which are proposed. Therefore, views of the masonry wall from the

site to the north will be an improvement to the current views of the exterior storage of vehicles. Trees required to be planted within the 10-foot landscaped setback behind the masonry wall will also, when mature, provide additional visual relief and separation between the two sites. Other adjacent properties also will not experience adverse impacts resulting from the proposed location of the masonry wall.

Based on the above information, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** The site is located on SE 82<sup>nd</sup> Avenue. In this location SE 82<sup>nd</sup> Avenue is classified by the Transportation System Plan as a Major City Traffic Street, a Major Transit Priority Street, a City Bikeway, a Major Truck Street, a Major Emergency Response Street and a Regional Corridor. The Adjustment request was reviewed by both representatives of ODOT and PDOT neither of whom expressed concern that the proposal was inconsistent with the classification of the adjacent street. The PDOT reviewer noted possible frontage improvements which may be required along SE 82<sup>nd</sup> Avenue at the time of building permit review. Issues related to the consistency of the proposal with the desired character of the area are addressed above under Criterion A which states that the proposal still allows the site to function in an industrial capacity. This criterion is met.

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

**Findings:** No negative impacts are expected from the requested Adjustment. The addition of a masonry wall along the north property line will provide needed separation between the site and the residentially zoned lot to the north. Its location at a 0-foot setback rather than a 10-foot setback will allow the operator of the site to easily access the required 10-foot deep landscaped area and will eliminate security concerns that a portion of the site would be inaccessible from the site. In addition, the trees which will be planted within the landscaped area will, when mature, provide additional visual relief from the lot to the north. Based on this information, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone.
- D.** City designated scenic resources and historic resources are preserved; and
- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resources and resource value as is practical.

**Findings:** Only one adjustment is requested, the site does not contain any identified scenic or historic resources and the site is not located in an environmental zone; therefore, these criterion are not applicable.

## DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## CONCLUSIONS


The applicant requests one Adjustment associated with planned improvements to this site used for vehicle storage and requirements to construct a masonry wall to separate and screen the

vehicle storage from the residentially zoned site to the north. As noted in this report, the project is able to meet the Adjustment approval criteria with approval granted based on the consistency of the proposal with the purpose statement for Exterior Display, Storage and Work Activities and the current situation where inadequate separation is provided. With approval requiring that the permit drawings substantially conform with the site plan attached, the request meets the applicable criteria and should be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to 33.140.245.C to allow the required masonry wall to be located 0 feet from the north property line rather than 10 feet, per the approved site plans, signed and dated June 12, 2008, 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 Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 08-119168 AD."

Decision rendered by:  on June 11, 2008

By authority of the Director of the Bureau of Development Services

Decision mailed: June 16, 2008

Staff Planner: Matt Wickstrom

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on March 31, 2008, and was determined to be complete on May 9, 2008.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on March 31, 2008.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

**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 June 30, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the final decision.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed,* The final decision may be recorded on or after **July 1, 2008 – (the day following the last day to appeal).**
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.

- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
  1. Incomplete letter from Matt Wickstrom to Donna Eggemeyer dated April 15, 2008
  2. Supplemental submittal received May 6, 2008
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Development Review Section of Portland Transportation
  2. Oregon Department of Transportation
  3. Life Safety Section of BDS
  4. Summary sheet of Bureau responses
- F. Correspondence: None received
- G. Site History Research

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).**



# ZONING

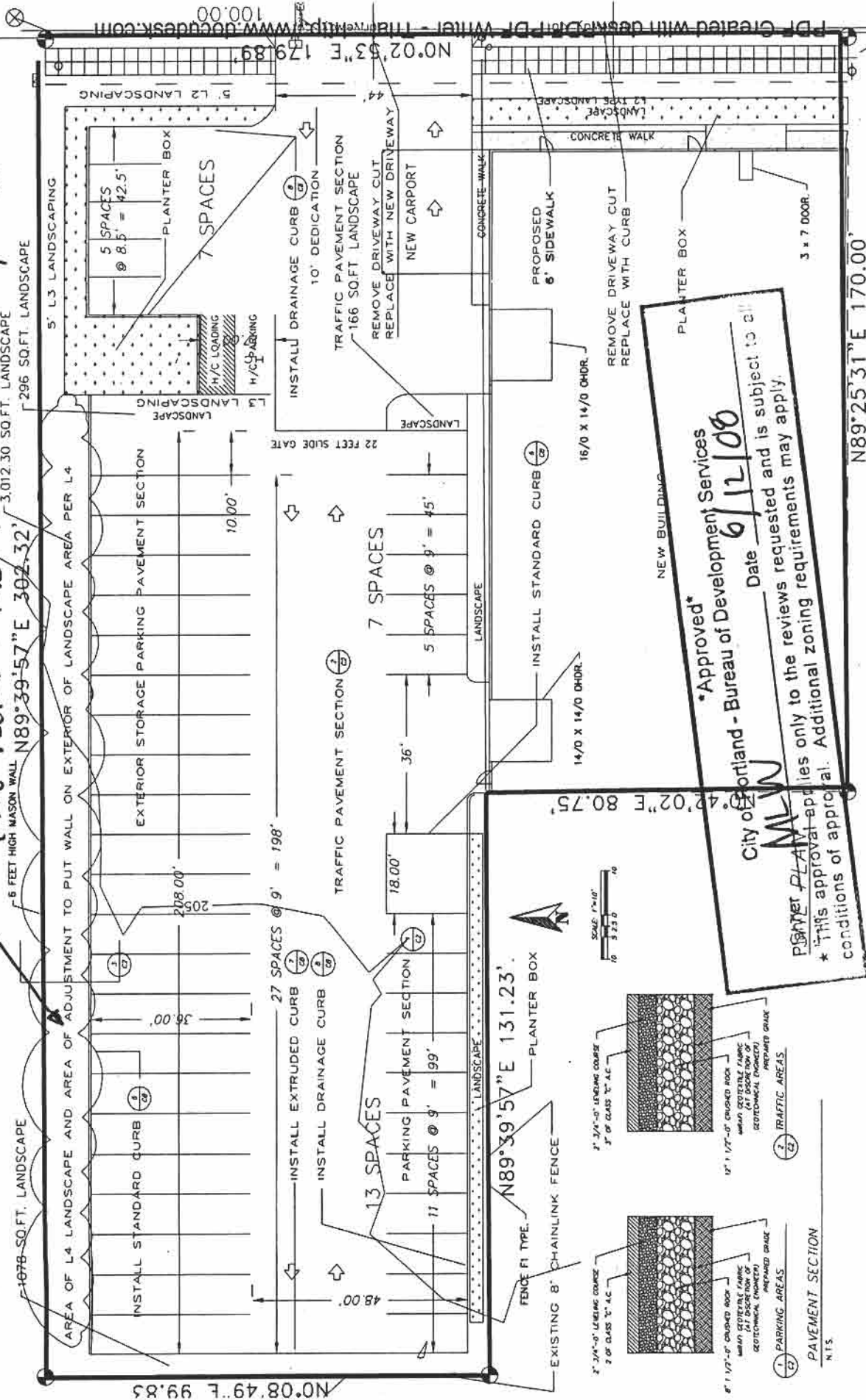
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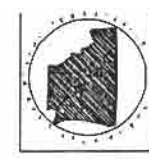
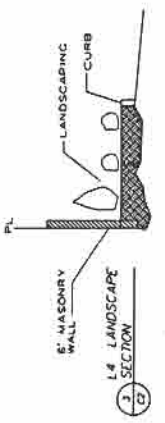
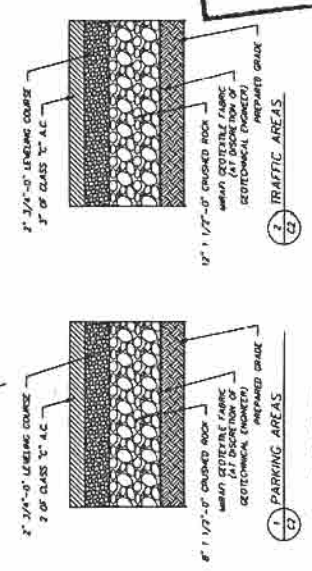
File No.	LU 08-119168 AD
1/4 Section	3838
Scale	1 inch = 200 feet
State_Id	1S2E20DA 5000
Exhibit	B (Apr 02,2008)



Approved Adjustment request to locate 6-foot tall required masonry wall at 0 feet from North property line rather than the 10 feet as required.



\*Approved\*  
 City of Portland - Bureau of Development Services  
 Date 6/12/08  
 This approval applies only to the reviews requested and is subject to all conditions of approval.  
 PLANNING  
 MLW



ELEVATION OF 6" MASONRY WALL ON PROPERTY LINE FACING NORTH  
 Exhibit C-1

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