



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: January 22, 2009
To: Interested Person
From: Justin Fallon Dollard, Land Use Services
503-823-5276 / jfdollard@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 08-108898 AD

Setback Adjustment

GENERAL INFORMATION

Applicant: Justine Saudan,
3218 SE Tibbetts St
Portland, OR 97202

Site Address: 1410 NE GERTZ RD

Legal Description: TL 700 LOT 36&37, GOLF AC & PLAT 2
Tax Account No.: R331802520
State ID No.: 1N1E11AB 00700
Quarter Section: 2132

Neighborhood: East Columbia NA, contact Maryhelen Kincaid at 503-286-3354.
Business District: Columbia Corridor Association, contact Gregg Weston at 503-287-8686.

District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

Plan District: None

Zoning: R20h, Residential 20,000 with Aircraft Landing Overlay Zone

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

Proposal:

The applicant requests to adjust the side and rear setbacks required for detached accessory structures from 10'-0" to 1'-0" at the side and 2'-0" at the rear. The adjustment is requested in association with the Final Plat of a prior approved Land Division Subdivision and Planned Development.

LUR 07-102315 LDS PD approved a land subdivision that included retention of the existing house addressed as 1410 NE Gertz Road and demolition of several detached accessory structures to create seven new lots of record and associated street, stormwater, and wetland tracts.

At the time of Final Plat, a required supplemental survey identified that the new lot of record, Lot #1 (1410 NE Gertz Road) will include the existing house and detached garage and a covered accessory structure. Therefore, the lot and the existing development located therein must be brought into conformance with the base zone development standards for setbacks or an adjustment required prior to Final Plat approval.

The applicant requests the adjustment to the side and rear setback requirements in the R20 zone for the purposes of retaining existing detached garage and covered accessory structure located adjacent Lots 2, 3, and 4, as depicted on the attached site plan so that the Final Plat for LUR 07-102315 LDS PD may be approved.

The applicant proposes a 6 foot wide “Stormwater Management and No-Build” easement that will be required on the rear lot lines of Lots 2 & 3 and the side lot line of Lot 4 to mitigate for the adjustment to the required setbacks on Lot 1.

33.805.040 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 site is a 2.25-acres with an existing residence and an abandoned kennel facility and associated out buildings. The residence is located at the northeast side of the property and is accessed from NE Gertz Road. The southerly portion of the site (186,954 square feet) is delineated as wetlands and is shown as Tract B. There is a drainage ditch that runs east-west at the southern property line within the wetlands. NE 13th Avenue is undeveloped adjacent to the site. NE 13th is partially developed next to the neighboring property south of NE Gertz and west of the site and fully developed north of NE Gertz Road. The abandoned kennel facility and associated outbuildings are located in the middle of the site and accessed from NE Gertz Road.

There is a mix of land uses in the vicinity of the property. Recent subdivisions with single family residences are located to the north of this site. Older single family homes on originally platted lots are scattered about the vicinity of the site. Lands south of the site are open, undeveloped, grassy lowlands. Some industrial use exists south of the wetland areas of and adjacent to this site. The site is located under a flight path to the Portland International Airport.

Zoning: RF and R20h – Zoning: This site has two zoning designations (split zoned site). The southern two thirds of the site are zoned RF – Residential Farm and Forest – and the northern third is zoned R20h – Residential 20,000 with aircraft landing zone overlay.

The RF designation is one of the City’s single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The R20 designation is one of the City’s single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The Aircraft Landing (“h”) overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The allowed height limit for buildings and vegetation on the site per the “h” overlay is 180 feet above the lowest base point at Portland International Airport. The airport low base point is at an elevation of 18.3 feet. Therefore, the topographical elevation of the site PLUS the proposed building cannot exceed 198 feet. The highest ground elevation on the site is approximately 17 feet. Therefore, buildings and vegetation on the site cannot exceed 181 feet in height.

Land Use History: City records indicate one prior land use review:

- **LU 07-102315 LDS PD M-** Approval of a Planned Development, density transfer from the RF zoned portion of the site (1 lot) to the R20 portion of the site, modifications through a Planned Development Review for a reduction of the minimum lot size of Lot 5 from 12,000 to 11,012 square feet to allow for the buffer between the lot and the wetland (33.610.200); and a reduction of the minimum lot width of Lot 4 from 60’ to 52’ (33.610.200), and Approval of a Preliminary Plan for a 7-lot subdivision with a private street tract, an Open Space (flood hazard area and wetland protection reserve) tract, a stormwater management tract and a seep protection tract that will result in 3 standard lots and 4 lots for attached housing.

Summary of Applicant’s Statement: Due to a demolition mapping error for the above land use review, two existing detached structures were marked for demolition rather than retention. This has necessitated the adjustment request to rear and side setbacks for proposed Lot #1.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **February 22, 2008**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Environmental Services
- Site Development Section of BDS
- Life Safety Review Section of BDS
- Urban Forestry

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on February 22, 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

33.805.010 Purpose (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 zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.110.220 Setbacks

Purpose: The building setback regulations 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 neighborhoods;
- 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.

33.805.040 Approval Criteria

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

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

Findings: A proposed 6 foot wide "Stormwater Management and No-Build Easement" along the rear lot lines of Lots 2 & 3, and the side lot line of Lot 4 will ensure that the purpose of the setback standard is equally met to mitigate the adjustment to the side and rear setbacks of Lot 1. This width allows light, air, separation for fire protection, and access for fire fighting; maintains and promotes a reasonable distance between the planned residences in relationship to the existing residence and detached, covered accessory structures on Lot 1; and allows for the flexible design of privacy options through house placement, window alignments, outdoor area, and fencing for Lots 2, 3, & 4. *With conditions of approval that a continuous 6 foot wide "Stormwater Management and No-Build Easement" along the rear lot lines of Lots 2 & 3, and the side lot line of Lot 4 and directly adjacent Lot 1 must be shown on Final Plat and a Maintenance and Access Agreement, approved by the City Attorney, be recorded with Multnomah County at the time of Final Plat approval, this criterion can be 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 requested adjustment does not directly affect or detract from the livability of the surrounding residential area as the adjustment is to reduce the setbacks along lot line for planned development not yet under construction. The reduced setbacks do not conflict with the design guidelines approved for the Planned Development under LU 07-102315 LDS PD M. The setback adjusts will have no impact on the wetland / open space being preserved. A no build easement along the lot lines considered in this review ensures that reasonable physical relationship between residences are maintained in a manner consist with the Planned Development. *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. *This criterion is not therefore applicable.*

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

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. *This criterion is not therefore applicable.*

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

Findings: There are no discernible impacts that would result from granting the requested adjustment. *Therefore, 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: The site is not within an environmental zone. *This criterion is not therefore 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 proposed adjustment to the rear and side setbacks in a single-dwelling zone will equally or better meet the purpose of the setback regulation, will not detract from the livability or appearance of the prior approved Planned Development or the surrounding vicinity, and there are not discernible impacts to mitigate as a result of the adjustment. *The proposed adjustment therefore meets the applicable approval criteria and therefore merits approval.*

ADMINISTRATIVE DECISION

Approval of adjustment to the side and rear setbacks required for detached accessory structures stated in 33.110.220 from 10'-0" to 1'-0" at the side and 2'-0" at the rear and a continuous 6 foot wide "Stormwater Management and No-Build Easement" along the rear lot lines of Lots 2 & 3, and the side lot line of Lot 4 and directly adjacent Lot 1, per the approved site plan, Exhibits C-1, signed and dated 1/20/09, subject to the following conditions:

- A. As part of the final plat application submittal, A continuous 6-foot wide "Stormwater Management and No-Build Easement" along the rear lot lines of Lots 2 & 3, and the side lot line of Lot 4 and directly adjacent Lot 1 on each of the 4 required plat plans; and
- B. A maintenance and access agreement approved by the City Attorney be recorded with Multnomah County at the time of Final Plat approval.

Decision rendered by:  **on January 20, 2009**
By authority of the Director of the Bureau of Development Services

Decision mailed: January 22, 2009

Staff Planner: Justin Fallon Dollard

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

Procedural Information. The application for this land use review was submitted on February 13, 2008, and was determined to be complete on February 20, 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 February 13, 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 requested that the 120-day review period be extended.

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 2/05/09** 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.

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 **2/06/05 – (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

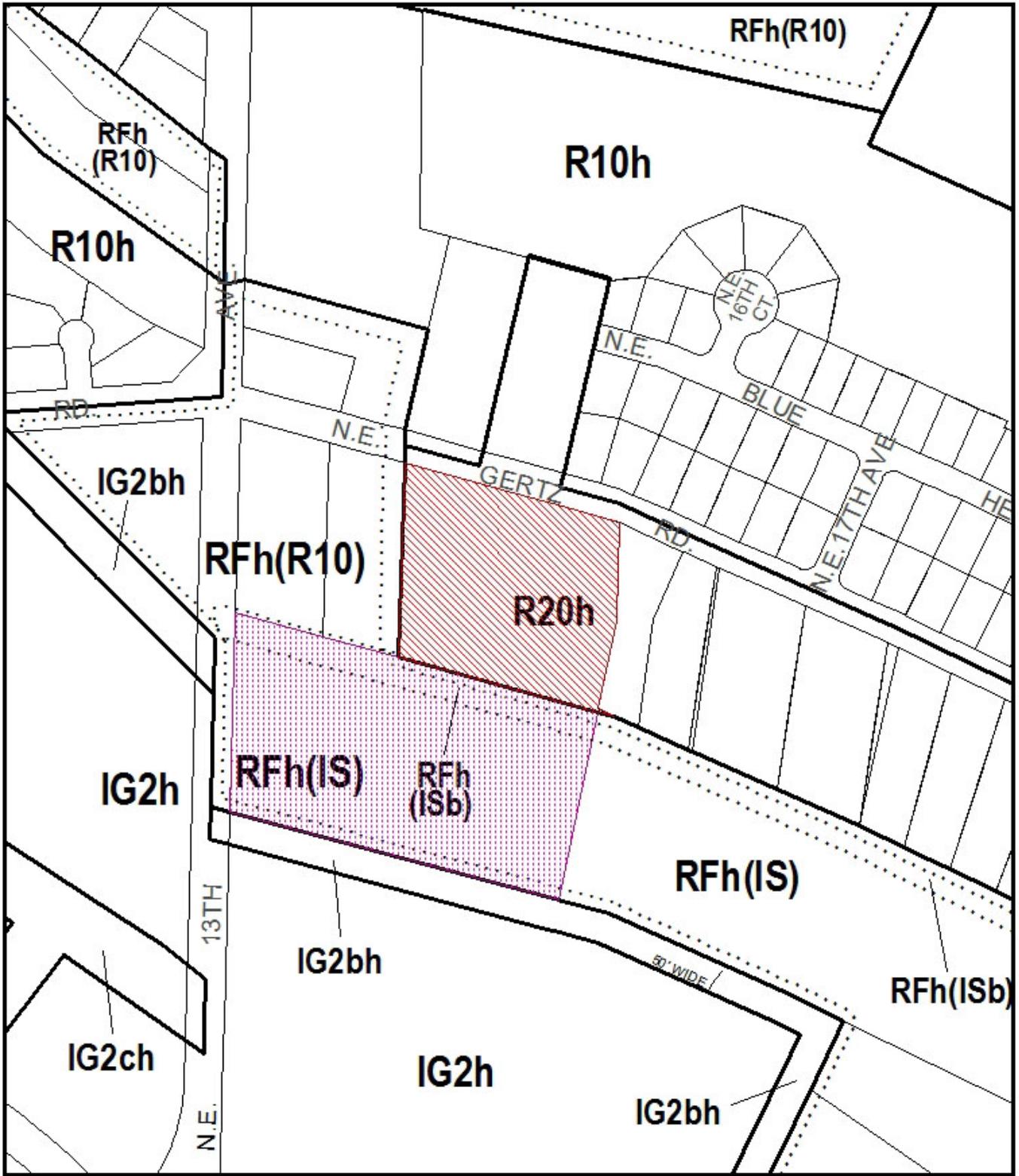
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Review Section of BDS
 - 7. Urban Forestry
- F. Correspondence: None
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Applicant's Request to Extend 120-Day Review Timeline

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).

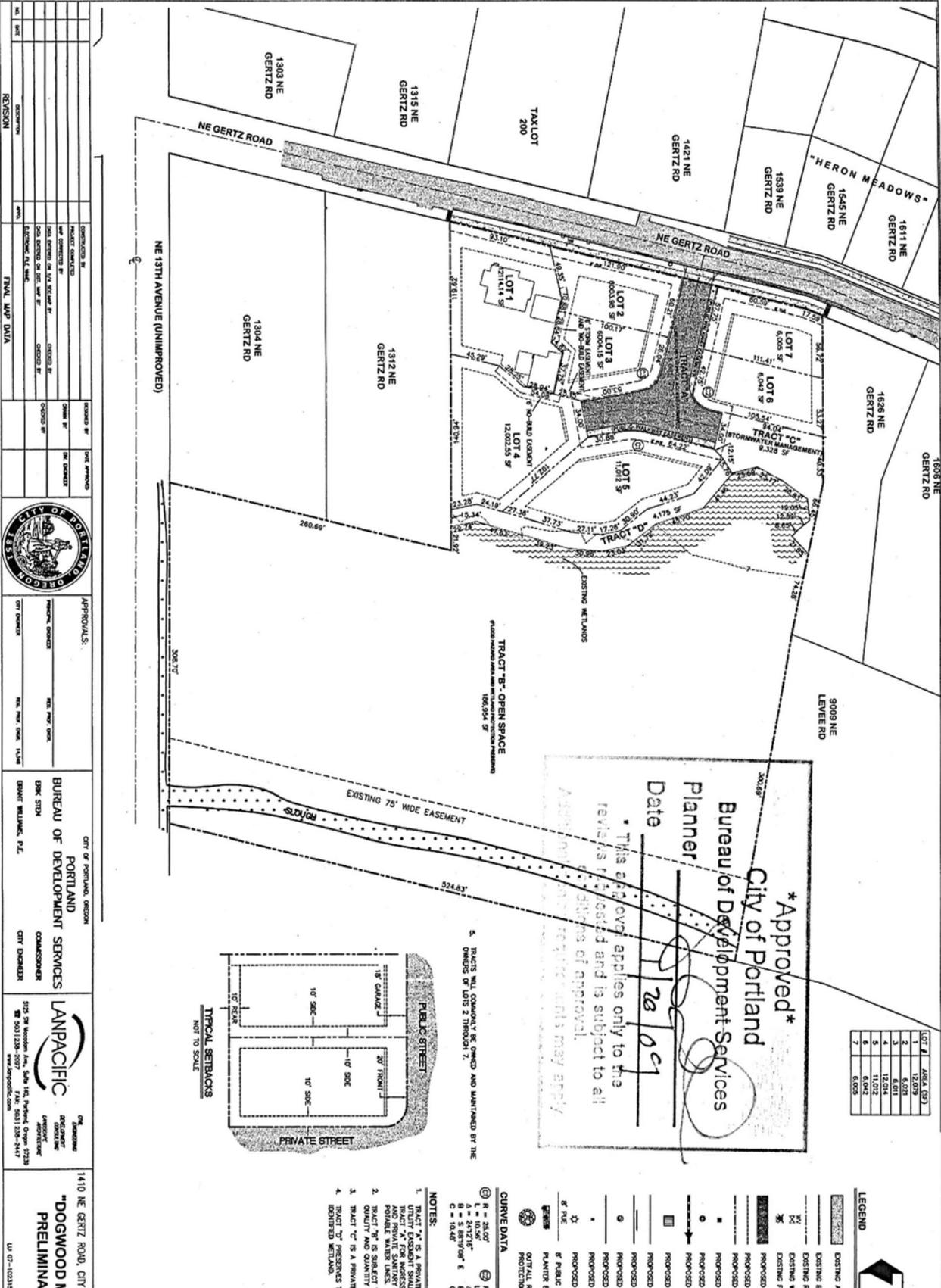


ZONING

-  Site
-  Also Owned



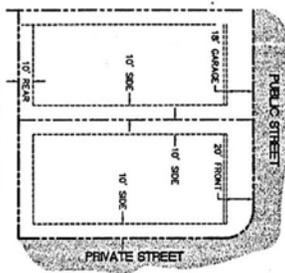
File No.	LU 08-108898 AD
1/4 Section	2132
Scale	1 inch = 200 feet
State_Id	1N1E11AB 700
Exhibit	B (Feb 21, 2008)



LOT #	AREA (SQ)
1	6,021
2	6,021
3	6,021
4	12,042
5	11,022
6	6,022
7	6,022
8	6,022

*** Approved ***
City of Portland
Bureau of Development Services
Planner
Date 2/21/09

* This approval applies only to the
 reviews requested and is subject to all
 conditions of approval.
 Additional conditions and requirements may apply.



5. TRACTS WILL COLLECTIVELY BE OWNED AND MAINTAINED BY THE OWNERS OF LOTS 2 THROUGH 7.

CURVE DATA

R	L	Δ	T	Δ	Δ
26.00'	10.00'	10.00'	10.00'	28.18'	28.18'
10.00'	10.00'	10.00'	10.00'	28.18'	28.18'
10.00'	10.00'	10.00'	10.00'	28.18'	28.18'
10.00'	10.00'	10.00'	10.00'	28.18'	28.18'

NOTES:

1. "A" IS A SERVICE LINE FOR GAS, WATER AND A PUBLIC UTILITY EXCEPT SMALL DRAINAGE AND SEWERAGE.
2. TRACT "A" FOR NECESSARY EGRESS, PUBLIC UTILITIES, PUBLIC PROVIDE WATER LINES, SEWER, STORM DRAINAGE AND PROVIDE WATER LINES.
3. TRACT "B" IS SUBJECT TO A PUBLIC STORM SEWER, WATER QUALITY AND QUANTITY FACILITY EXISTING OVER ITS DISTRICT.
4. TRACT "C" IS A PRIVATE STORM WATER QUALITY FACILITY.
5. TRACT "D" PRESERVES THE RECORDED BATTER FOR THE IDENTIFIED METLANS.

REVISIONS	FINAL MAP DATA	APPROVALS:	CITY OF PORTLAND, OREGON	PORTLAND BUREAU OF DEVELOPMENT SERVICES	LANPACIFIC	"DOGWOOD MEADOWS" PRELIMINARY PLAT
NO. DATE	DESCRIPTION	DESIGNED BY	CITY ENGINEER	COMMISSIONER	REGISTERED PROFESSIONAL ENGINEER	1410 NE GERTZ ROAD, CITY OF PORTLAND, OREGON

