



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

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Date: March 4, 2009
To: Interested Person
From: Rachael Hoy, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

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

CASE FILE NUMBER: LU 09-101472 AD

GENERAL INFORMATION

Applicant: William J Sells
7951 SW 46th Ave
Portland, OR 97219

Representative: Jenelle Isaacson
3122 SW Maricara St
Portland, OR 97219

Site Address: 7951-7953 SW 46TH AVE
Legal Description: INC PT VAC ST LOT 10-12 BLOCK 2 N 1/2 OF LOT 13 BLOCK 2, PORTLAND PK ADD

Tax Account No.: R669400290
State ID No.: 1S1E19DA 09500
Quarter Section: 3824
Neighborhood: Multnomah, contact Mary Verghies at 503-244-3553.
Business District: None
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Plan District: None
Zoning: R7 – Residential 7,000
Case Type: AD - Adjustment
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal: The applicant is requesting adjustments to the front setback adjacent to Multnomah Boulevard from 15' to 6.9' and a reduction of the west side setback from 5' to 4'6" for the existing guest house and 2'6" for the garden shed on this site. The guest house will become a primary structure if separate Property Line Adjustment (09-101475PLA) is approved as shown on the attached site plan. As such, these structures on Tract 2 must meet building setbacks.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are the Adjustment Approval Criteria in the Zoning Code Section 33.805.040, A-F.

ANALYSIS

Site and Vicinity: The site is relatively flat, but the Multnomah Boulevard Right of Way to the north of the site is steeply sloped down from the north property line of the site. The site is developed with a single family home, a guest house and garden shed. A majority of the surrounding homes are single family with a large subdivision to the west. To the east of SW 45th Avenue is commercial and multidwelling zoning along Multnomah Boulevard.

Zoning: The R7 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.

Land Use History: City records indicate that prior land use reviews include the following:

- 82-034088 VZ- Site did not meet the 12,000 sq.ft. requirement for sites with guest houses. Guest house was 42' from the main house rather than the required 60'.
- LU 08-191731 LC – This is a lot consolidation that is currently under review to consolidate lots 10, 11, and 12 of Block 2, Portland Park Addition and a portion of vacated SE 46th Avenue into one parcel.
- 09-101475 PLA- This is a request for a property line adjustment that is currently under review to move a portion of the abutting lot line of lot 13, which is in the same ownership, in order to create two lots.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **January 21, 2009**. The following Bureaus have responded with no issues or concerns related to the adjustment request. (Exhibits E 1-7 detail bureau comments, which relate to issues associated with the future approval of the property line adjustment).

- Bureau of Environmental Services
- Fire Bureau
- Water Bureau
- Site Development Section of BDS
- Department of Transportation
- Bureau of Parks-Forestry Division
- BDS Life Safety

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on January 21, 2009. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

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.

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: Currently, this site is comprised of lots 10, 11, 12 and ½ of 13 of Block 2, Portland Park Addition and a portion of vacated SE 46th Avenue. The site is developed with a single family home, a guest house and a garden shed. If the Lot Consolidation and Property Line Adjustment are approved the lots will be reconfigured with the main house on Tract 1 and the guest house and garden shed on Tract 2 (see Exhibit C.1). The guest house and garden shed will be on their own lot and will be subject to development standards for a single family home. The applicant proposes two adjustments to reduce the front building setback from 15 feet to 6.9 feet for the existing guest house along SW Multnomah Boulevard and an adjustment to the west side setback from 5 feet to 4.6 feet for the guest house and from 5 feet to 2.5 feet for the garden shed (See Exhibit C.1)

Although there is no new development associated with this adjustment request, the guest house will become a primary structure in the future with the submittal of a building permit to convert it to a single family home. As part of the Property Line Adjustment process, the applicant will be required to sign a covenant with the City of Portland to convert the guest house to a single family home or demolish it within two years. If the applicant demolishes the guest house and/or the garden shed, the front setback adjustment may be applied to a new single family home; however, the west side setback adjustment will be void and side setback standards in the zone will need to be met for any new development on the site.

The proposed Property Line Adjustment will reconfigure the existing lots so that each will have frontage on SW Multnomah Boulevard and SE 46th Avenue. The existing house, on Tract 1, meets setback standards from SW Multnomah Blvd and SW 46 Avenue, however, the guest house and garden shed, on Tract 2, do not meet front setback standards or west side setback standards in the R7 as described above. The purpose of the setback regulation is listed below:

The setback regulations for buildings 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.*

The existing guest house is located 6.9 feet from the SW Multnomah Boulevard Right of Way and approximately 30 feet from the paved roadway. Previously, the guest house met setback standards when approved as a guest house; however as a primary structure on its own lot the front setback of 15 feet in the R7 zone is not being met. As mentioned above, no new development is being requested, the adjustment is needed because the reconfiguration of lot lines will result in two lots with two front lot lines. Development Standards will need to be met on both front lot lines. It is important to point out that the applicant is requesting the adjustment to front and side setback standards with this review; however, at the time of the conversion of the guest house to a primary structure, there may be the need for other adjustments if all development standards cannot be met. For example, the applicant will be required to meet Street Facing Façade (33.110.232.C), Main Entrance (33.110.230.C) and Off Street Parking (33.266.115.B) requirements for the new primary structure (See photos Exhibit A.2).

The change in the front lot line will not have any impact on the location of the existing guest house or its proximity to SW Multnomah Boulevard. Vehicle access and all utilities to serve the guest house will continue to come from SW 46th Avenue. SW Multnomah Boulevard is a very wide right-of-way that varies from 150-200 feet in width along the frontage of this site and the adjacent properties. Because of this, residents across the street on SW Multnomah Boulevard will not be impacted.

The requested west side setback adjustment from 5 feet to 4.6 feet for the guest house and from 5 feet to 2.5 feet for the garden shed will not negatively impact light, air or privacy for adjacent properties. The northwest corner of the guest house, to approximately 10 feet south along the building wall, is at 4.6 feet to the property line. The southern portion of the guest house meets the 5 foot side setback standard with allowed projection of the 12" eaves. The house on the adjacent property is approximately 45 feet from the property line. Upon visiting the site, staff noted that the garden shed is over 6 feet in height, which necessitated the need to adjust the west side setback of the shed from 5 feet to 2'6" feet (33.110.250C 4b). Again, there is no new development proposed as part of these adjustments. There will be adequate access for fire fighting and the structures meet fire protection requirements of the Building Code. The existing guest house has sufficient outdoor area along the side of the house facing the existing house on Tract 1 and private backyard with approximately 53 feet from the building wall to the rear property line. Based on this 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 reduced front setback and reduced side setback for the existing guest house will not detract from the livability or appearance of the residential area. As mentioned above, no new development is being proposed at this time. The existing guest house has a door facing SW Multnomah Boulevard as well as a door facing SW 46th Avenue. Many houses on the block and on adjacent blocks along SW Multnomah Boulevard have frontage along this major transit street however, vehicle access comes from local service streets to the south. This is due in part to a steep slope down to SW Multnomah Boulevard. Again, there are no proposed physical changes or additions to the existing guest house or garden shed at this time, so existing privacy and other livability-related values will not change. 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.

Findings: These two setback adjustments remain consistent with the overall purpose of the R7 zone. As mentioned above, given the steep slope of the Right-of-way adjacent to SW Multnomah Boulevard, the guest house is actually more than 30 feet from the roadway. Also, as mentioned above there are no physical changes or additions proposed to the existing guest house, so existing privacy and other livability-related values will not change for the adjacent neighbors.

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

Findings: There are no noticeable impacts from these adjustments since no changes are requested to the existing guest house or the garden shed through these adjustments. As mentioned above, no privacy or livability-related values are impacted, nor has there been any physical relationship change between residences. Based on this information, no mitigation is necessary. This criterion is met.

- 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: 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.

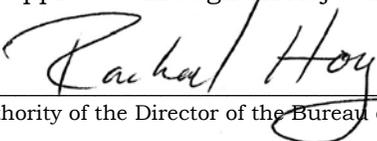
CONCLUSION

The applicant requests two adjustments for the existing guest house to reduce the front building setback from 15 feet to 6.9 feet along SW Multnomah Boulevard and the west side setback from 5 feet to 4.6 feet for the guest house and from 5 feet to 2.6 feet for the garden shed. As noted in this report, no additions or modified development are requested through this adjustment. The adjustments are needed because the reconfiguration of the lot lines (under the PLA 09-101475) creates two lots with two front lot lines and development standards apply to both frontages.

ADMINISTRATIVE DECISION

Approval of two Adjustments to 33.110.220.B to reduce 1) the required minimum north front building setback from 15 feet to 6.9 feet and 2) the west side building setback from 5 feet to 4.6 feet for the existing guest house and from 5 feet to 2.6 feet for the existing garden shed, per the approved site plan, Exhibit C-1, signed and dated March 2, 2009.

If the guest house is demolished, the approved reduced north front setback may be applied to a new single dwelling residence; however, the approved west side reduced setback for the guest house will not be carried forward to a new residence, unless approved through an Adjustment Review. If the garden shed is demolished any replacement accessory structure must also meet setback standards, unless approved through an Adjustment Review.

Decision rendered by:  **on March 2, 2009**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 4, 2009

Staff Planner: Rachael Hoy

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 January 9, 2009, and was determined to be complete on January 16, 2009.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 9, 2009.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant extended the 120-day review period by 16 days (See Exhibit A.3). The 120th day is June 1, 2009.

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 March 18, 2009** 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 **March 19, 2009**
- 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.

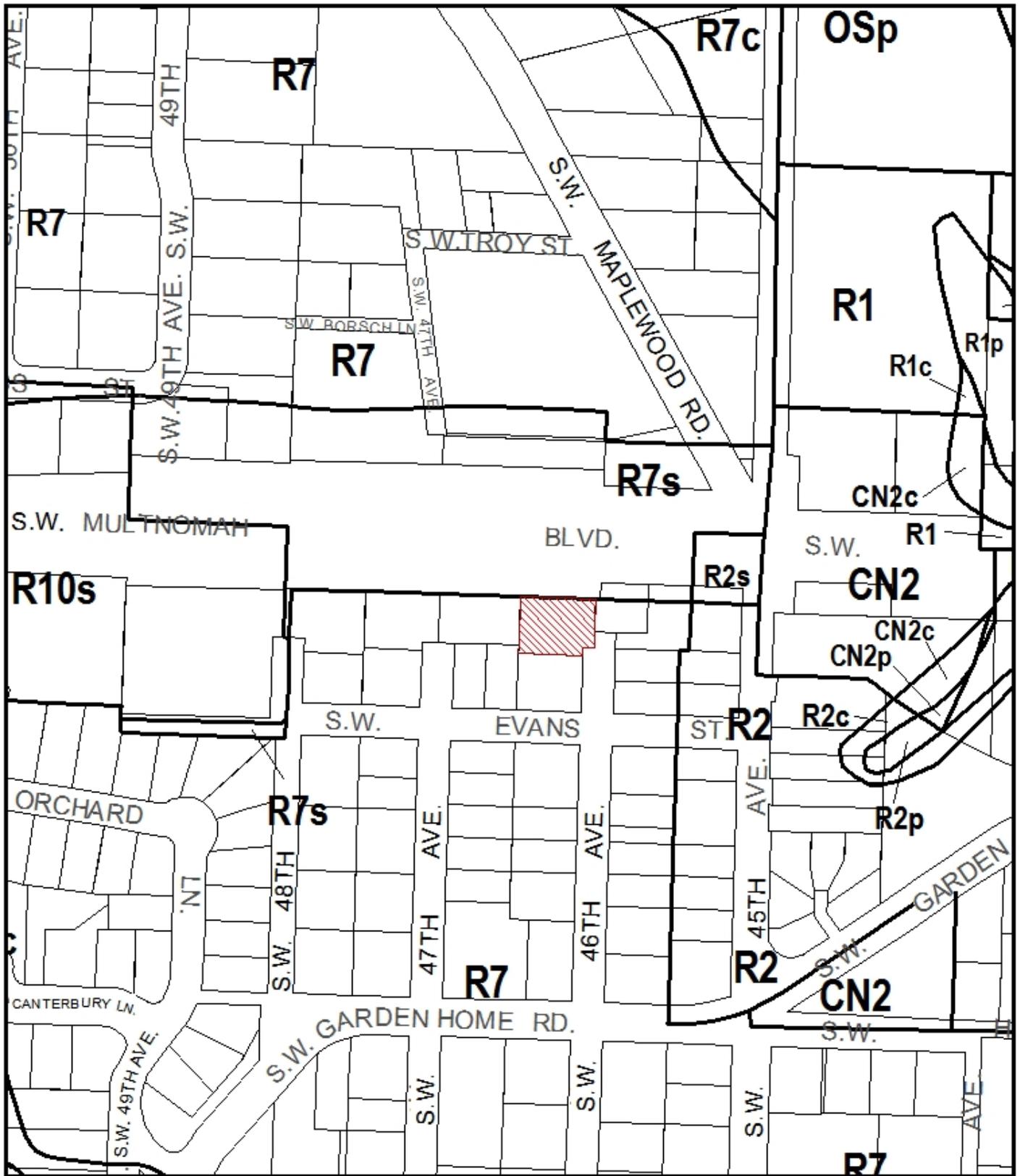
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Narrative
 2. Photos of site

- 3. E-mail from Applicant extending the 120 days
- 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. Bureau of Parks, Forestry Division
 - 7. Life Safety
- F. Correspondence: none
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

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



ZONING

 Site



File No.	<u>LU 09-101472 AD</u>
1/4 Section	<u>3824</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E19DA 9500</u>
Exhibit	<u>B (Jan 12, 2009)</u>

