



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

1900 SW 4th Avenue, Suite 5000  
Portland, Oregon 97201  
503-823-7300  
Fax 503-823-5630  
TTY 503-823-6868  
[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** April 3, 2009  
**To:** Interested Person  
**From:** Kathleen Stokes, Land Use Services  
503-823-7843 / [kstokes@ci.portland.or.us](mailto: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 09-108806 AD**

#### **GENERAL INFORMATION**

**Applicant:** Jaret Foster/Ann Forsthoeful, Portland Farmer's Market  
1001 SE Water Ave. Ste455  
Portland Oregon 97214 503-241-0032

Paige Coleman, Northeast Coalition Of Neighborhoods  
4825 NE 7th Ave  
Portland, Oregon 97211 503-823-3151

City Of Portland (property owner)  
1221 SW 4th Ave #140  
Portland, Oregon 97204

**Site Address:** NE 6<sup>th</sup> – NW 7<sup>th</sup> Avenue (with/4906 NE 6<sup>th</sup> Avenue)

**Legal Description:** INC PT VAC ST-E 1/2 OF LOT 1&2 BLOCK 3, HIGHLAND; EXC PT IN ST-INC PT VAC ST W 1/2 OF LOT 1&2 BLOCK 3, HIGHLAND; INC PT VAC ST-W 50' OF LOT 11&12 BLOCK 3, HIGHLAND; INC PT VAC ST-E 50' OF LOT 11&12 BLOCK 3, HIGHLAND

**Tax Account No.:** R384300260, R384300270, R384300360, R384300370  
**State ID No.:** 1N1E23BC 08900, 1N1E23BC 08800, 1N1E23BC 09700, 1N1E23BC 09800

**Quarter Section:** 2531

**Neighborhood:** King, Maureen Mimiaga at 503-381-4805.  
**Business District:** North-Northeast Business Assoc, Joice Taylor at 503-445-1321.  
**District Coalition:** NE Coalition of Neighborhoods, Lauren McCartney at 503-823-4135.

**Zoning:** R5ah (R5,000, High Density Single-Dwelling Residential with Alternative Design Density and Aircraft Landing-height Overlays)

**Case Type:** Adjustment Review  
**Procedure:** Type II, administrative decision with appeal to Adjustment Committee.

**Proposal:** The applicants are proposing to locate a new Farmer's Market in the parking lot, adjacent to the south side of King Elementary School and the King Neighborhood Facility,

which are located at 4906 NE 67<sup>th</sup> Avenue. The proposed market would have about 30 to 41 stalls and a music stage. To start, the event would be held from early spring through late fall, on Sundays from 10 AM to 2 PM. With about 2 hours for setup and teardown, the activity would last from 8 AM to 4 PM. Entrance for setup for the market and exiting after the teardown of the stalls and music stage would both occur with access to and from NE 7<sup>th</sup> Avenue.

Code Section 33.296.030 A.3.b. regulates Temporary Activities and limits seasonal outdoor sales in residential zones to two times per year, with each occurrence allowed for up to five consecutive weeks. This regulation would allow these types of sales to occur for up to 70 days per year.

The applicants are requesting approval of an Adjustment to allow an exception to this regulation for the proposed schedule of the new Farmer's Market. The proposed Farmer's Market would be occurring for fewer than 70 days. In 2009, the applicants are proposing a season that would run for about five months or approximately 25 Sundays. The applicants stated that, if an exception to the regulation is approved, they would not exceed 70 days per year, even with eventual growth, since there are generally 52 Sundays in a calendar year.

**Relevant Approval Criteria:** 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 proposed site for the Farmer's Market is a parking lot that is made up of four lots that are located between NE 7<sup>th</sup> Avenue and a cul-de-sac on SE 6<sup>th</sup> Avenue, south of the vacated right-of-way of NE Wygant Street. Immediately to the north of the parking area is the site of the King Neighborhood Facility and King Elementary School. Farther north, beyond the school, there is a commercial area along NE Alberta Street. King School Park is directly to the west of the site, on the opposite side of NE 6<sup>th</sup> Avenue. The remainder of the surrounding area generally consists of residential properties, which are mainly developed with single-dwelling housing in the area south of the site and also, across NE 7<sup>th</sup> Avenue, to the east.

**Zoning:** The site is zoned R5, High Density Single-Dwelling Residential. This zone is intended to accommodate single-dwelling development, with an average of one unit per 5,000 square feet of site area. Institutional Uses, such as the adjacent school and neighborhood center, are allowed when approved as Conditional Uses.

The site also has an "a" or Alternative Design Density Overlay and a "h" or Aircraft Landing Overlay. The "a" Overlay Zone allows opportunities for increased residential density in certain situations. The provisions of the "h" or Aircraft Landing Overlay limit the height of structures within the aircraft landing approach patterns for the Portland International Airport. Neither of these overlay zones apply to this situation.

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

**CU 046-74** 1974 approval of a Conditional Use Review for the creation of parking lots, on the north and south sides of King Elementary School, and linked to the community service facility building that was approved under CU 34-73. Conditions of approval of this review do not apply to this situation.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **March 10, 2009**. The following Bureaus have responded to indicate that there are no issues or concerns regarding approval of the proposed schedule for the Farmer's Market in this location:

- Bureau of Environmental Services
- Transportation Engineering (No concerns for up to 70 days per year, Exhibit E-1).
- Water Bureau (No concerns, information on water services for location, Exhibit E-2).
- Fire Bureau (No concerns, but noted that Fire Marshal's permit required, Exhibit E-3).
- Site Development Section of BDS

- Life Safety Plan Review Section of BDS
- Parks-Forestry Division

**Neighborhood Review:** Three written responses, all in general support of the proposal have been received from notified property owners. These neighbors indicated that the market would be a welcome addition to the neighborhood activities. One letter expressed concern, however, about how the new activities would impact traffic safety on NE 7<sup>th</sup> Avenue and made some recommendations for addressing those potential impacts. Another letter stated concerns about parking impacts, noise and potential for litter (Exhibits F-1, F-2 and F-3).

*Note: While long term traffic calming recommendations can be discussed with the City's Transportation officials, the impacts that might be expected from the proposed market hours do not exceed those that could be allowed by right under the Code, in a different configuration, and so they are not considered as a part of the approval criteria for this review. To follow up on neighborhood traffic concerns, citizens are advised to call 503-823-SAFE.*

The applicant also provided copies of eleven letters of support from neighborhood property owners, as a part of the application submittal (Exhibit A-2).

## ZONING CODE APPROVAL CRITERIA

**33.805.010 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 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 to provide certainty and rapid processing for land use applications.

### 33.805.040 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, have been met.

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

**Findings:** The purpose of the regulations for temporary activities is to allow short-term and minor deviations from the requirements of the zoning code for uses which are truly temporary in nature, will not adversely impact the surrounding area and land uses, and which can be terminated and removed immediately.

The proposed Farmer's Market would only be set up on Sundays, between the hours of 8 and 4, including two hours on either end of the event for setup and teardown of the temporary facility. The neighborhood, in general, has expressed support for the proposal which will provide an amenity for the area without any permanent changes to the built environment. Because the event would be held in a parking lot that is not regularly used on Sundays and because it will be adjacent to King Park, the King Neighborhood Facility and King Elementary School, it is a logical community gathering place. The activities are not expected to have any adverse impacts on the surrounding area. The event will not be held for more time than would be allowed by right, as a temporary activity, under current Code provisions. The adjustment is only being requested, because the configuration of the time allotted to the use is different than the time limitations defined in the Code. It is likely that having the market occur on a weekly basis, which would generally be 52 days per year, would create fewer impacts than having an event occur for 5 continuous weeks, twice a year, or 70 days, as the subject Code section would allow by right. Therefore, the purposes of the regulation are equally fulfilled and 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:** As stated in the findings above, the proposed activities of the seasonal farmer's market will not cause any negative impacts on the appearance or the livability of the residential area. Neighbors who commented stated that they had lived in the neighborhood for a number of years and that they were looking forward to the idea of having the market held in this location. Safety will be assured through compliance with the permit requirements of the Portland Fire Bureau for these types of activities. The market organizers will be required to supervise customer parking, to ensure that neighbor's driveways are not blocked. Organizers also will be required to curtail noise in the hours before the market opens and to clean up any litter that is generated by the market visitors. Therefore, with these conditions, this criterion can be 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
- D.** City-designated scenic resources and historic resources are preserved; and

**Findings:** Only one adjustment has been requested. There are no scenic or historic resources on the site. Therefore, these criteria do not apply.

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

**Findings:** Impacts that may require mitigation include potential for parking that could block neighbors' driveways, safety issues, noise and litter. These impacts are all addressed through the conditions of approval that will require a permit from the City's Fire Marshal and oversight of parking, noise and litter by the market organizers. Therefore, with these conditions, this criterion can be 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 located in an environmental zone. Therefore, 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

The proposed Farmer's Market will provide an amenity on this site that is welcomed by the neighborhood and which will have no adverse impacts or any permanent effects on the built environment of the area. The proposed schedule, which is limited to 8 hours per week, including setup and teardown of the operation, will have fewer impacts on the surrounding area than an outdoor sale that could occur in this zone, under the current Zoning Code regulations, for up to 70 days, in a continual period for 5 weeks, two times per year. Requirements for permits from the City of Portland Fire Marshall will ensure that the activities are conducted in a manner that is safe for the neighborhood. The market organizers will be required to oversee parking, noise and litter to ensure that there are no impacts on the adjacent neighbors. Because the proposal equally meets the purpose of the regulation and will not have any significant adverse impacts on the livability or appearance of the residential area,

the requested adjustment to allow an exception to the schedule for the temporary activities can be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to Temporary Activities, Code Section 33.296.030 A.3.b, to allow a Farmer's Market to be held one day per week, on Sundays from 10 AM to 2 PM, beginning in May, 2009. With 2 hours, each, for setup and teardown, the activity would last from 8 AM to 4 PM. Entrance for setup for the market and exiting after the teardown of the stalls and music stage are both to occur with access to and from NE 7<sup>th</sup> Avenue.

Approval is subject to general compliance with the approved site plan, Exhibit C-1, signed and dated April 1, 2009, and also subject to the following conditions:

- A. As part of the application submittal to the Fire Marshal for any required permits, the site plan must reflect general compliance with the information and design approved by this land use review as indicated in Exhibit C.1, Case File # LU 09-108806 AD.”
- B. Organizers of the Farmer's Market are required to oversee parking along the adjacent rights-of-way, to ensure that market participants and customers do not block access to driveways on nearby properties.
- C. Organizers of the Farmer's Market are required to direct vendors and other participants to minimize noise levels during morning setup. No music is allowed to start prior to the opening of the market at 10AM.
- D. Organizers of the Farmer's Market are required to maintain the market site and the surrounding sidewalk, on both NE 6<sup>th</sup> and 7<sup>th</sup> Avenues, from NE Going Street to the midblock area that aligns with NE Humbolt Street, to ensure that it is free of litter each week at the end of the market.

**Staff Planner: Kathleen Stokes**

**Decision rendered by:**  **on April 1, 2009**

By authority of the Director of the Bureau of Development Services

**Decision mailed: April 3, 2009**

**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 17, 2009, and was determined to be complete on March 6, 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 February 17, 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 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 April 17, 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 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 **April 20, 2009 – (the first business 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.

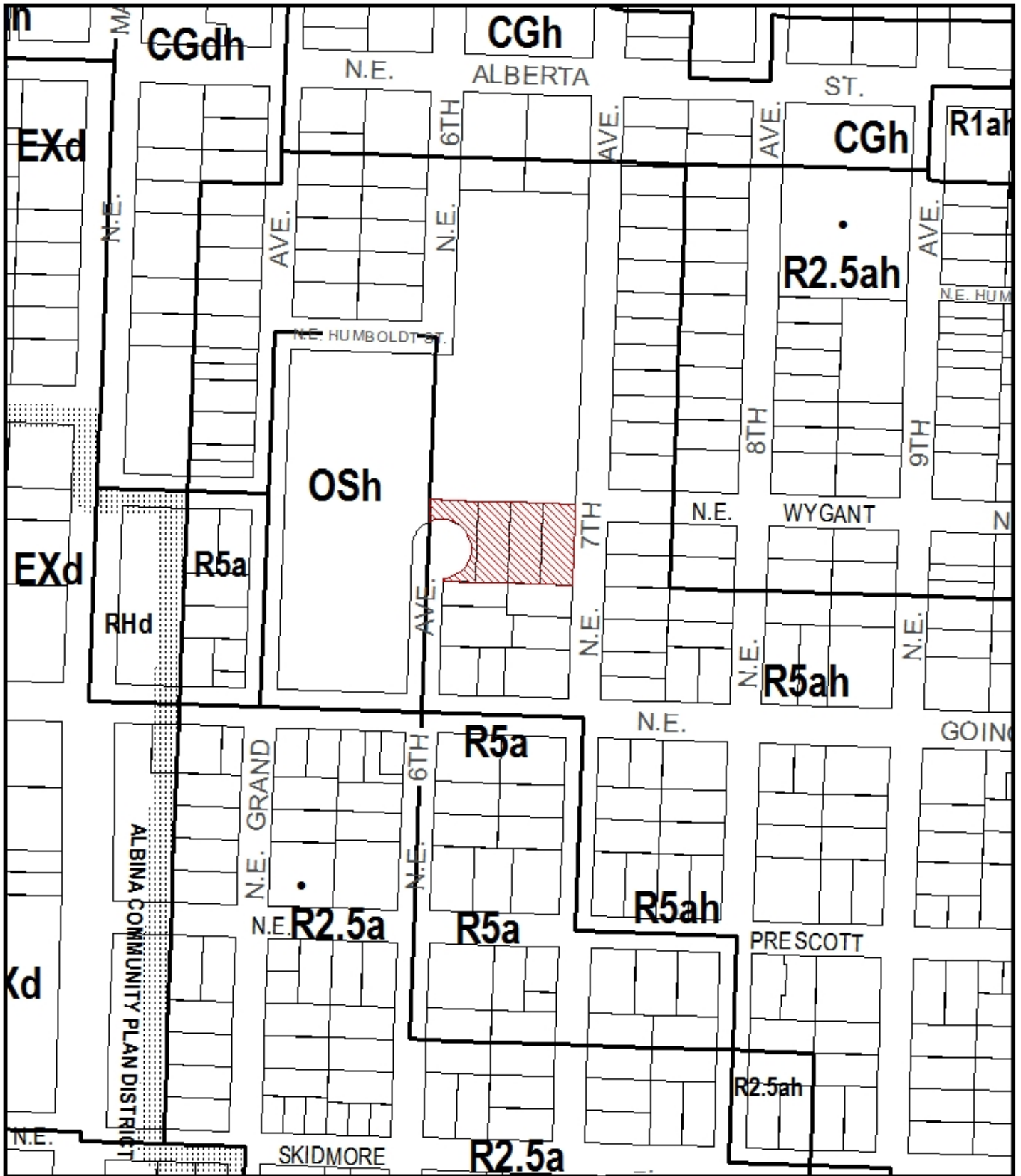
**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Application form, original narrative and plan
  - 2. Letters in support from eleven neighbors (submitted as part of application)
  - 3. Supplemental information and revised site plan, received February 26, 2009
  - 4. Final revised site plan, received March 6, 2009
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Transportation Engineering and Development Review
  - 2. Water Bureau
  - 3. Fire Bureau
  - 4. Summary of agency responses
- F. Correspondence:
  - 1. Rachel and Abra Ancliffe
  - 2. Jason Wilson and Diann Eisnor
  - 3. Emily Wilson and Michael Deegan
- G. Other:
  - 1. Site History Research
  - 2. Letter from Kathleen Stokes to Jaret Foster, March 3, 2009

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-7300 (TTY 503-823-6868)**





# ZONING

 Site



NORTH

File No. LU 09-108806 AD  
 1/4 Section 2531  
 Scale 1 inch = 200 feet  
 State\_Id 1N1E23BC 8900  
 Exhibit B (Feb 20,2009)

King Elementary School/King  
Neighborhood  
Facility  
4906 NE 6th Av

N.E. 7th Avenue

\*Approved\*

City of Portland - Bureau of Development Services

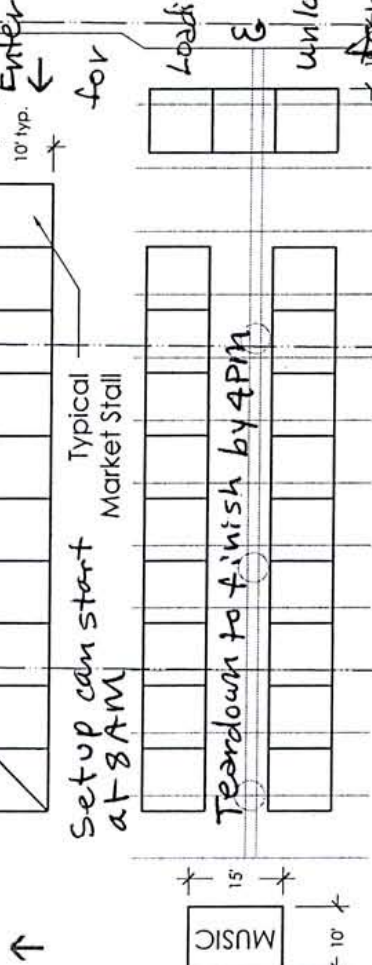
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Planner

*Kathleen A. Stokes* Date *April, 2009*

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

Approval of Adjustment for Farmer's Market  
on Sundays, 10 AM - 2 PM



Setup can start at 8 AM

Teardown to finish by 4 PM

Typical Market Stall

Conditions A-D, regarding  
Fire Marshall's permits  
and Market organizers  
oversight of parking,  
noise and litter must  
be met. These include  
no music prior to 10 AM.

Exit for Vendors

King

School

Park

North ↑

N.E. 6th Avenue