



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

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Date: July 23, 2009
To: Interested Person
From: Suzanne Savin, Land Use Services
503-823-5888 / Suzanne.Savin@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 09-134098 AD

GENERAL INFORMATION

Applicant: Lisa Barker
LMB Permit Services
307 NW 16th Avenue
Battleground WA 98604

Owner: Blair Agee
21401 NE Shore Dr
Fairview, OR 97024-6789

Also Notify: Kristy Raasch
Raasch Construction Ltd
3880 SE Deer Creek Way
Gresham, OR 97080

Site Address: No address assigned; site located at the southwest corner of SE Stark Street and SE 157th Avenue

Legal Description: LOT 1, BRINTON TRACT
Tax Account No.: R103900020
State ID No.: 1S2E01AB 00100
Quarter Section: 3146

Neighborhood: Centennial, contact Louise Cody at 503-252-4302.
Business District: Gateway Area Business Association, contact Fred Sanchez at 503-256-3910.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Plan District: None

Zoning: R2a (Multi-Dwelling Residential 2,000, with Alternative Design Density Overlay Zone)

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

Proposal:

The property owner plans to construct two pairs of attached townhouses on this currently vacant site. One pair of townhouses will be served by driveways extending from SE 157th Avenue to those buildings.

The other pair of townhouses will be served by a pair of driveways extending from SE Stark Street to those buildings. These driveways are proposed to include hammerhead turn-around areas. The hammerhead turn-around portions of these driveways are the subject of this Adjustment request.

Per Zoning Code Section 33.266.130.C and Table 266-3, vehicle areas are not allowed between the portion of the building that complies with the maximum street setback and the transit street. SE Stark Street is a transit street, and the maximum transit street setback is 20 feet from the north property line. The vehicle areas (hammerhead turn-around portions of the driveways) are located within the 20-foot maximum transit street setback area from SE Stark Street.

Therefore, the applicant is requesting an Adjustment to Section 33.266.130.C and Table 266-3, to allow the hammerhead turn-around portions of the driveways to be within the 20-foot maximum transit street setback area from SE Stark Street. As mitigation for the location of the turn-around areas, the applicant is proposing to surface them with pavers, rather than with asphalt or poured concrete.

Relevant Approval Criteria:

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

ANALYSIS

Site and Vicinity: The site is located at the southwest corner of SE Stark Street and SE 157th Avenue, is approximately 9,800 square feet in size, and is vacant.

To the north of the site, on the north side of SE Stark Street, are properties zoned R7 and R1d, developed with multi-dwelling structures and single-dwelling residences. To the east of the site, on the east side of SE 157th Avenue, are properties zoned R2a, developed with multi-dwelling structures. To the south of the site are properties zoned R2a and R5a, developed with multi-dwelling structures and single-dwelling residences. To the west of the site are properties zoned R2a, developed with an auto repair facility (immediately abutting the site), and single-dwelling residences and multi-dwelling structures.

Zoning: The property is zoned R2a, Multi-Dwelling Residential 2,000 with Alternative Design Density Overlay Zone.

The R2 zone is a low density multi-dwelling zone. It allows approximately 21.8 dwelling units per acre. Density may be as high as 32 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one to three story buildings, but at a slightly larger amount of building coverage than the R3 zone. The major types of new development will be duplexes, townhouses, rowhouses and garden apartments. These housing types are intended to be compatible with adjacent houses. Generally, R2 zoning will be applied near Major City Traffic Streets, Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.

The purpose of the Alternative Design Density Overlay Zone (designated with a lowercase 'a') is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements. For sites that are zoned R2, the Alternative Design Density Overlay Zone allows bonus residential density for projects that voluntarily go through a Type III design review process; allows triplexes, subject to specific requirements; and allows the creation of flag lots, subject to specific requirements. However, the applicant is not proposing bonus residential density, a triplex, or creation of a flag lot, so the Alternative Design Density Overlay Zone standards are not applicable to this Adjustment request.

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 **June 26, 2009**. The following Bureaus have responded with no issues or concerns:

- Water Bureau
- Fire Bureau
- Bureau of Parks-Forestry Division

The Bureau of Environmental Services (BES) responded that BES has no objection to approval of the proposed Adjustment. BES has already approved the Site Development permit #09-131361 for the paving, stormwater disposal, common site utilities, landscaping, and other associated improvements. BES has no objection to the proposed use of pervious pavement. (Exhibit E-1)

The Site Development Section of BDS responded that Site Development has no objection to the approval of the proposed Adjustment. Site Development permit #09-131361 SD is currently under review. The proposed use of pavers rather than asphalt or poured concrete is acceptable. (Exhibit E-1)

The Bureau of Transportation Engineering and Development (PBOT) responded that PBOT supports the requested Adjustment. Providing hammerhead turn-around areas will allow vehicles to safely enter and exit the site in a forward manner. The response included additional information for the benefit of the applicant, regarding requirements that will be applicable at time of building permit. (Exhibit E-2)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 26, 2009. One written response was received from the Centennial Community Association in response to the proposal.

The response was supportive of the request, noting that the request appeared to comply with the relevant Adjustment Approval Criteria. The response recommended a condition of approval requiring the placement of "no parking" signs within the hammerhead turn-around areas, to prevent the turn-around areas from being used for any other purpose.

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., below, have been met.

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

Findings: The requested Adjustment is to place the hammerhead turn-around portions of two adjacent driveways within the 20-foot maximum transit street setback area from SE Stark Street. The purpose of the regulation that restricts vehicle area locations is set forth in Section 33.266.130.A, and reads:

The development standards promote vehicle areas which are safe and attractive for motorists and pedestrians. Vehicle area locations are restricted in some zones to promote the desired character of those zones. Together with the transit street building setback standards in the base zone chapters, the vehicle area restrictions for sites on transit streets and in Pedestrian Districts:

- Provide a pedestrian access that is protected from auto traffic; and
- Create an environment that is inviting to pedestrians and transit users.

The applicant states that the request to allow vehicle areas (hammerhead turn-around areas) within the maximum street setback equally meets the above purpose of the regulation for the following reasons:

- 1) As shown on the Site Plan, the pedestrian connections from the sidewalk to the front doors of the townhouses will cross the proposed turn-around areas. However, the applicant notes that vehicle parking for the residences will be accommodated within the proposed garages and within the driveways in front of the garages, and is not proposed to occur within the turn-around areas. The applicant states that the purpose of the turn-around areas is solely to facilitate forward-only motion onto SE Stark Street. As a result, the turn-around areas will be occupied by vehicles only briefly, and will otherwise be unobstructed portions of the pedestrian connections to the residences. Therefore, the locations of these turn-around areas will not cause a conflict between pedestrian access to the townhouses and auto traffic.
- 2) The turn-around areas will be surfaced with pavers, which will enhance their appearance and provide a pedestrian-friendly visual character.
- 3) The approximately 5-foot wide area between the front property line and each turn-around area will be landscaped with low shrubs and a tree, to further soften the appearance of each turn-around area when viewed from the sidewalk and street.

Regarding Item 1 above, Staff notes that the proposal's compliance with the first bullet point purpose of the regulation (provide a pedestrian access that is protected from auto traffic) is contingent on use of the hammerhead turn-around areas for turning around only, and not for parking. Furthermore, the pedestrian standards of Zoning Code Section 33.120.255.B.2.d apply to the development proposal. This subsection allows a pedestrian connection to cross an auto travel lane if the auto travel lane provides access to 16 or fewer parking spaces, and is surfaced with paving blocks or bricks. If the hammerhead turn-around areas are used for turning motions only, they will comply with this subsection of the pedestrian standards, as they will provide access to fewer than 16 parking spaces, and they are proposed to be surfaced with pavers. However, if the hammerhead turn-around areas are used as parking spaces, they will not comply with the pedestrian standards.

Therefore, to ensure that the proposal will equally meet the first bullet point purpose of Section 33.266.130.A, and will comply with the pedestrian standards of Section 33.120.255.B, a condition of approval is warranted, requiring the turn-around areas to be posted for no parking. In addition, to ensure that the proposal will equally meet the second bullet point purpose of Section 33.266.130.A (create an environment that is inviting to pedestrians and transit users), conditions of approval are warranted, requiring the turn-around areas to be surfaced with pavers and to be landscaped, as shown on the applicant's Site Plan. With compliance with these conditions, the proposal will equally meet the purpose of the regulations.

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 and proposal are within a residential zone.

The applicant notes that several other properties along SE Stark Street, within close proximity to the site, already have vehicle areas (paved surface parking) within the 20-foot maximum transit street setback area from SE Stark Street.

This proposal will also place vehicle areas (two turn-around areas) within the maximum transit street setback area of the site. However, the turn-around areas will be surfaced with pavers rather than asphalt, so they will have a more attractive, pedestrian-oriented appearance. In addition, the turn-around areas will be landscaped with low shrubs on their east, south, and west sides, and will feature one tree along the street side of each turn-around area, further enhancing the appearance of the turn-around areas.

Due to the modest square footage of the turn-around areas within the site's maximum street setback, as well as the attractive surfacing and landscaping of these areas, Staff concurs that the proposal will not significantly detract from the livability or appearance of the residential area.

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 being requested. Therefore, this criterion is not applicable.

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

Findings: There are no City-designated scenic or historic resources on the site. Therefore, this criterion is not applicable.

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

Findings: Visual impacts of the proposal have been mitigated to the extent practical by the proposed surfacing of the turn-around areas with pavers, and the landscaping of the turn-around areas with low shrubs and trees.

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. Therefore, this criterion is 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 has requested an Adjustment to Section 33.266.130.C and Table 266-3, to allow the hammerhead turn-around portions of the driveways to be within the 20-foot maximum transit street setback from SE Stark Street. The applicant has provided information to demonstrate that the Adjustment will comply with the Adjustment Approval Criteria. Therefore, the Adjustment can be approved, with conditions requiring the turn-around areas to be surfaced with pavers, landscaped, and posted for no parking. Approval of building permits is still required, after the decision is final and has been recorded with Multnomah County.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Section 33.266.130.C and Table 266-3, to allow the hammerhead turn-around portions of the driveways to be within the 20-foot maximum transit street setback area from SE Stark Street (as close as 5 feet from the north property line), per the approved site plan, Exhibit C-1, signed and dated July 21, 2009, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through D) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 09-134098 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The hammerhead turn-around areas must be surfaced with pavers as shown on the site plan (Exhibit C-1).
- C. The hammerhead turn-around areas must be flanked with landscaping (trees and shrubs) in the approximate locations shown on the site plan (Exhibit C-1).
- D. No parking is allowed within either hammerhead turn-around area. In order to ensure compliance with this condition, a sign no larger than 1 square foot in area, stating "No parking in turn-around area," must be posted at the end of each hammerhead turn-around area.

Staff Planner: Suzanne Savin

Decision rendered by:  **on July 21, 2009.**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 23, 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 June 8, 2009, and was determined to be complete on June 24, 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 June 8, 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. Unless further extended by the applicant, **the 120 days will expire on: October 22, 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 August 6, 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 **August 7, 2009 – (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:

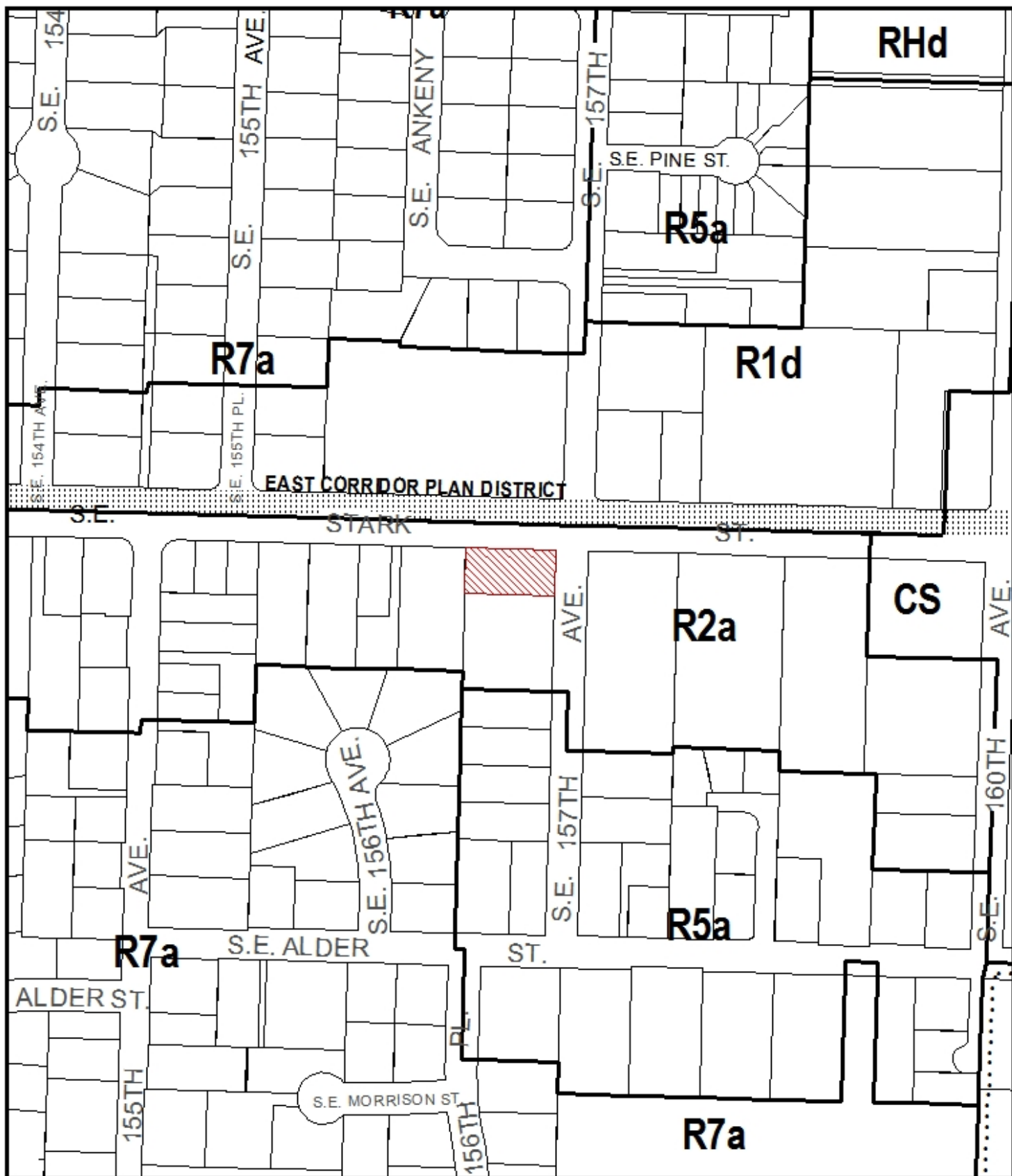
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. North Elevation of Proposed Attached Dwellings facing SE Stark Street (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. "No objections" responses from Bureau of Environmental Services, Site Development Review Section of BDS
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. "No concerns" response from the Water Bureau
 - 4. "No concerns" responses from the Fire Bureau, and the Bureau of Parks - Forestry Division
- F. Correspondence:
 - 1. Louise Cody, Land Use Chair of the Centennial Community Association, July 17, 2009, expressed support for the request with a recommended condition of approval.
- 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 503-823-7300 (TTY 503-823-6868).



ZONING

 Site

File No. LU 09-134098 AD

1/4 Section 3146

Scale 1 inch = 200 feet

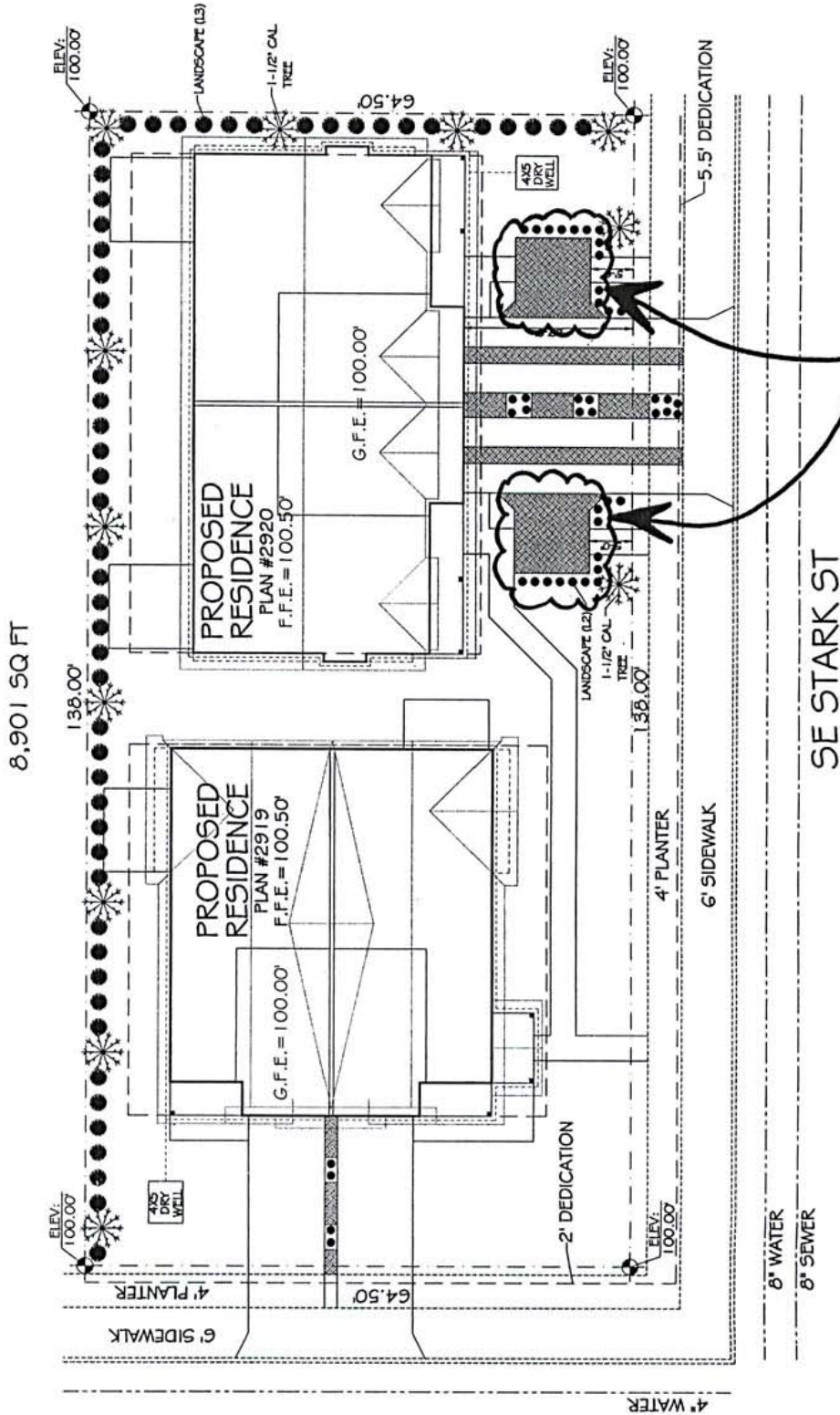
State Id 1S2E01AB 100

Exhibit B (Jun 09,2009)





SITE PLAN Exhibit C-1



Hammerhead turn-around
 areas within 20-foot
 maximum transit street
 setback. These areas
 are proposed to be surfaced with pavers.

Approved
 City of Portland - Bureau of Development Services
 Planner: *Suzanne Fair* Date: *July 21, 2009*
 *This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

SE STARK ST

8" WATER
 8" SEWER

SE 157th

North Elevation of
Proposed Attached Dwellings
Facing SE Stark Street

Exhibit C-2

