



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

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Date: September 1, 2009
To: Interested Person
From: Nan Stark, Land Use Services
503-823-7828 / nstark@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 09-143797 AD

GENERAL INFORMATION

Applicant: Grace A. Jeffreys
Julia Reimann Field Project Team/Ainsworth PTA
4534 SW Hewett Boulevard
Portland, OR 97221

Owner: Marlys Mock
Portland Public Schools
501 N. Dixon Street
Portland, OR 97208

Site Address: 2425 SW VISTA AVE

Legal Description: INC 30' OF 22ND ST ADJ BLOCK 91 INC ALL 21ST ST VAC & ADJ
BLOCK 92, CARTERS ADD TO P

Tax Account No.: R140406460
State ID No.: 1S1E04CB 07900
Quarter Section: 3227

Neighborhood: Southwest Hills Residential League, contact Nancy Seton at 503-224-3840.

District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Zoning: R5 (Single-Dwelling Residential 5,000)

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

Proposal:

The applicant proposes to construct a 12-foot tall fence above an existing retaining wall on the north side of the Ainsworth Elementary School sports field. As shown on the attached drawings, the proposed fence will be slightly set back from an existing cast iron fence, which varies in height from 4 ½ feet to 6 ½ feet. The proposed fence would consist of 8-foot on center vertical black steel poles with bottom and top rails. Black nylon sports netting would be stretched

between the vertical poles and measure 12 feet in height and 141 feet in length. The intent of the fence is to prevent playground balls from going over the existing cast iron fence onto SE Elm Street and adjacent properties.

Section 33.110.255 of the Portland Zoning Code establishes fence standards within single-dwelling zones. Fences up to 8 feet high are allowed within required side building setbacks that abut a pedestrian connection, if the pedestrian connection is part of a right-of-way that is at least 30 feet wide. The proposed fence would be within the 5-foot side setback and would be 12 feet in height. An Adjustment to the maximum fence height standard is therefore required for this proposal.

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 school site is on approximately two full city blocks, comprising an area of approximately 2.2 acres. The school building covers the eastern half of the site and extends the full length between the Elm and Spring Street frontages. The original school was built in 1913, and additions have been made over time. The open play area and ball field are at the rear of the site, behind the school, also extending to both frontages. The western side of the site is fenced with a tall, approximately 12-foot high chain-link fence. Beyond the fence the site slopes down fairly steeply, and is covered with trees, shrubs and vegetation that fully screen and buffer it from properties to the west. Along the north frontage, adjacent to Elm Street, runs a retaining wall that starts along the rear of the school with a tall foundation, and continues from steps leading to the play area and rear of the school, holding up the play area and soccer field where the retaining wall reaches a maximum height, at the end of the field, of 30 feet. A 4 ½ foot high wrought iron fence is above the retaining wall along the full length of it.

Spring Street is adjacent to the south side of the school; it is a dead-end street at this block. There are pedestrian paths leading from it to the adjacent neighborhoods to the west. Along the Spring Street frontage, the school's play area and ball field are several feet below street level, and are separated from the street by a retaining wall and the same 4½ foot high wrought iron fence that is on the Elm Street frontage.

There are five residentially-developed lots across from the north side of the school, and three on the south side. Most of the houses on these lots are not oriented to the school, but rather to the adjacent side streets. The school building is oriented to Vista Avenue and faces commercial development to the east. Consequently, the subject net fence is adjacent to three residential properties on Elm Street to the northwest.

Zoning: The site is zoned R5, Single-Dwelling Residential 5,000. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing.

Schools may be allowed in single-dwelling zones as conditional uses. Ainsworth School was built in the early 1900's, and consequently has automatic conditional use status.

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 **July 29, 2009**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

The Bureau of Transportation Engineering responded that no work is proposed within the right-of-way. The proposed materials (post and netting) are not considered an obstruction to vehicle or pedestrian visibility. Additionally, the function of the proposed structure is typically associated with improved overall safety conditions. Transportation has no objection to the proposed sport-net fence to be located out of the public right-of-way. Though Transportation is not requiring a 10-foot setback, we are requesting that the applicant provide a setback that is as close to a 10-foot minimum distance as is functionally practical, but has no objection to the proposed 12-foot high sport net fencing being located at a 5-foot minimum setback distance. (Exhibit E-1)

The Life/Safety Plan Review Section of BDS responded that a separate building permit is required for the work proposed and the proposal must be designed to meet all applicable building codes and ordinances. (Exhibit E-2)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on July 29, 2009. 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 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 purpose of the standards for fences is stated in Section 33.110.255 as follows:

The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.

The school proposes a black net inside of and above the existing iron fence that runs along the Elm Street side of the soccer field, which is to the rear of the school. The existing fence is 4½

feet high above the retaining wall that is from 16 to 30 feet high from the public sidewalk, as the site slopes down to the northwest from the building. The varying height of the retaining wall allows the playground and ball field to be a level surface, with only about two feet of grade change from south to north. The ball field is approximately at grade with the top of the retaining wall along Elm Street. Along Spring Street, it is ten to twenty feet below street grade, with the 4½-foot high iron fence running above a retaining wall that is two to four feet high. Spring Street dead ends adjacent to the ball field and single house on the south side of the street.

Due to the sloping topography and the sizable retaining wall along the school site, the situation is not typical of school playgrounds and ball fields. The existing fence is fairly unnoticeable along the Elm Street frontage, as it is so high above the public sidewalk. It protects the children inside the fence who are using the playground without having any negative effect on the surrounding community. By placing a fairly transparent net along and above the fence for the primary purpose of keeping balls contained within the ballfield and playground, the net will provide the positive benefits of fences and will not create impacts. Therefore, this criterion is met.

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

Findings: The site is in a residential zone. The proposed netting will be set back from the existing iron fence by two to three feet, supported by black steel pipe at 8 feet on center. Consequently, the original fence, which is of a historic quality likely built at the time the school was constructed, will remain as the prominent feature above the tall retaining wall. The retaining wall faces three residential properties and from the dwellings on those, so there will not be a significant difference visually due to the height of the wall. From Vista Avenue, which the school faces, the netting will not be a prominent element, as the school building extends across the full block. The ball field and play area are behind it, and thus are not directly visible to most people using Vista Avenue by any mode of transport.

The netting is intended to prevent balls from leaving the site, which now is a common occurrence, resulting in children chasing them down the street. By keeping balls on the play field rather than in the street, safety is enhanced for children as well as drivers, pedestrians and nearby residents. The black open netting will not create an opaque screen but rather a minimally visible netting that will serve the intended purpose without visually detracting from the area. Consequently, the proposal will enhance the livability of this residential area without compromising its appearance, thus satisfying this criterion.

- 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, to fence height, is being requested. Therefore, this criterion is not applicable.

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

Findings: The site does not contain a City-designated scenic resource or historic resource, so this criterion is not applicable.

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

Findings: The proposed design appropriately sets the net fence a few feet back from the existing wrought iron fence that is above the tall retaining wall running along Elm Street. Consequently, the wrought iron fence will remain as the prominent element above the retaining wall and will

not be affected by the installation of the net fencing. The net fence will be basically open, made of black nylon that will make it minimally visible.

The net fence is proposed along the school's Elm Street frontage for a length of 141 feet. It will face two properties that are oriented to Elm Street, and will be in effect above most of the site line from either house. From the south, one house faces the playground, and will be about 250 feet away from the fence, consequently with minimal if any visual effect. The school's western boundary is fairly heavily covered with trees and vegetation, to the extent that the site is not visible from properties west of it.

Besides the fairly minimal visual effect that the net fence will have, there are no other impacts resulting from the adjustment to allow the fence at a height of twelve feet. It will provide a heightened safety feature for the school's students and other users of the ball field, as well as to pedestrians and others along Elm Street. 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 in an environmental zone, so 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 proposed 12-foot high net fence extending along one side of the ball field and play area behind Ainsworth School supports all of the relevant Adjustment approval criteria. The fence is intended to enhance safety for the children using the ball field, which will also create a safer experience for drivers, pedestrians and residents. Visually, the open, black nylon fence will be fairly invisible due to its composition. The black support poles will match the existing 4 ½ foot high original wrought-iron fence, and will be set back a few feet behind that fence, which is above the tall retaining wall on Elm Street. The design and location of the fence ensure that it will not detract from either the livability or appearance of this residential area, and will not create negative impacts. Consequently, an affirmative decision can be made.

ADMINISTRATIVE DECISION

Approval of an Adjustment to allow a net fence of up to 12 feet high above grade level of the ball field, with 12-foot high support posts, adjacent to the Elm Street frontage of Ainsworth School. This approval is subject to the approved site plan and elevation drawing, Exhibits C-1 and C-2, signed and dated August 28, 2009.

Staff Planner: Nan Stark

Decision rendered by:  **on August 28, 2009.**

By authority of the Director of the Bureau of Development Services

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 July 15, 2009, and was determined to be complete on July 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 July 15, 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: November 21, 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 September 15, 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 **September 16, 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.

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;

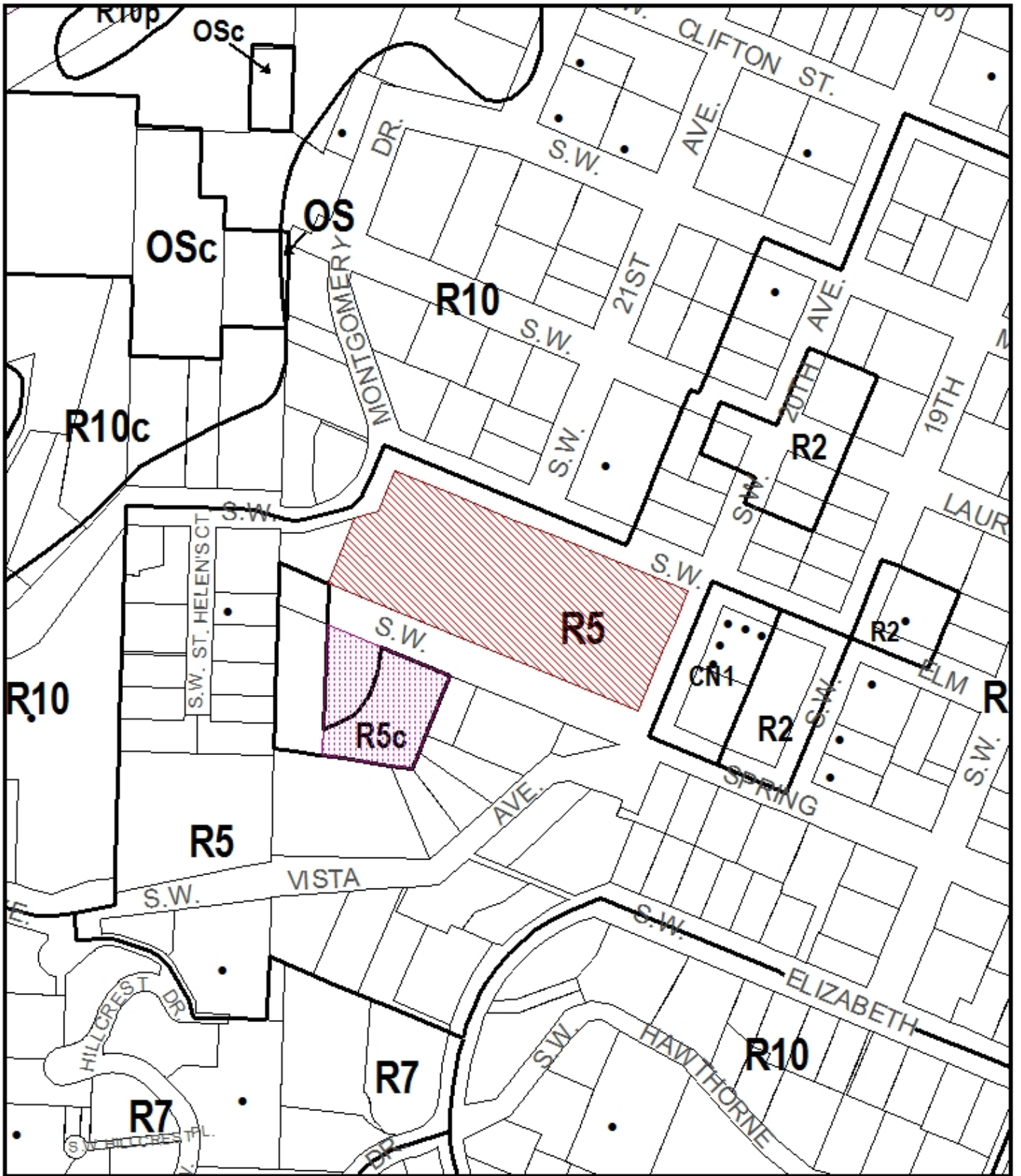
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan, elevation and details (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Transportation Engineering and Development Review
 - 2. Life/Safety Plan Review Section of BDS
 - 3. "No concerns" responses from Bureau of Environmental Services, Water Bureau, Fire Bureau, Site Development Review Section of BDS, Bureau of Parks - Forestry Division
 - 4. Portland General Electric
- F. Correspondence: none
- G. Other:
 - 1. Original LU Application

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
-  Also Owned
-  Historic Landmark



NORTH

File No.	LU 09-143797 AD
1/4 Section	3227
Scale	1 inch = 200 feet
State_Id	1S1E04CB 7900
Exhibit	B (Jul 16, 2009)

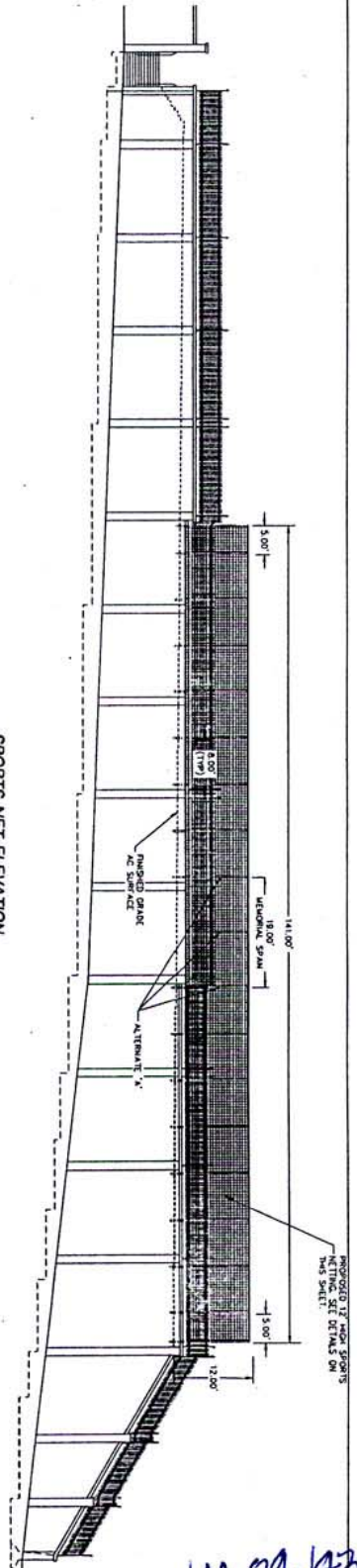
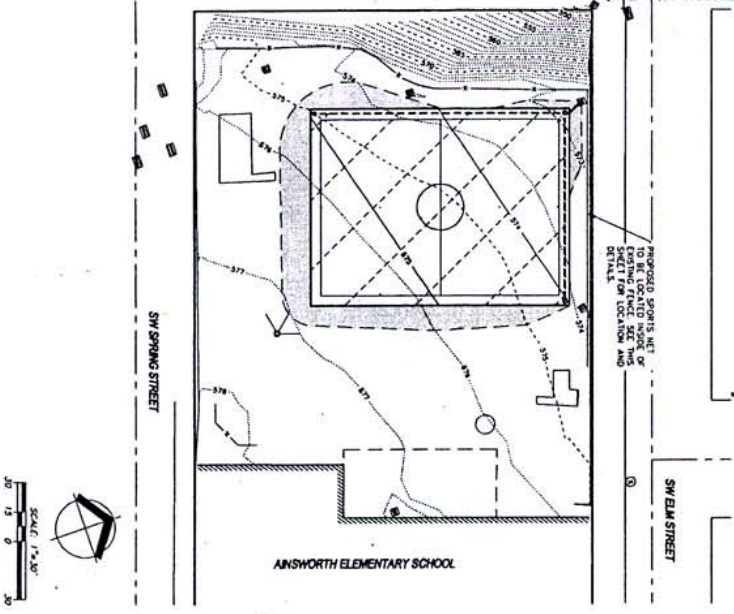
Approved

City of Portland - Bureau of Development Services

Planner N. Hank

Date Aug 28, 2009

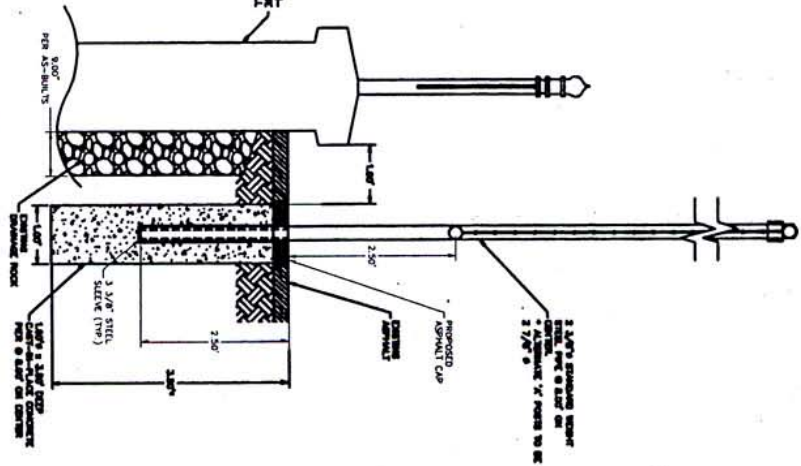
This approval applies only to the reviews requested and is subject to additional zoning requirements.



SPORTS NET ELEVATION

MO9-143797AD
Exhibit C-1

TYPICAL SPORTS NET FOUNDATION DETAIL



TYPICAL SPORTS NET CONNECTION DETAIL

