



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

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Date: September 11, 2009
To: Interested Person
From: Kate Green, 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 **denied** a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-174405 AD

GENERAL INFORMATION

Applicant: Gean Camps, Paramount Pest Control
5207 NE Portland Highway
Portland OR 97218

Property Owner: Betty Fisher
5207 NE Portland Highway
Portland OR 97218

Site Address: 5207 NE PORTLAND HIGHWAY

Legal Description: TL 1100 LOT 1 BLOCK 15 LAND & IMPS ALSO SEE R45000-5921
(R197800), KILLINGSWORTH GARDENS; NLY OF HWY LOT 5 BLOCK 2,
ZWAHLEN HOME SITES

Tax Account No.: R450005920, R937900600
State ID No.: 1N2E18DB 01100, 1N2E18CA 01200
Quarter Section: 2436

Neighborhood: Cully, contact Steve Yett at 503-282-3251.
Business District: Columbia Corridor Association, contact Peter Livingston at 503-796-2892.
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

Zoning: General Industrial 2 (IG2)
Aircraft Landing Overlay (h)

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

Proposal: The applicant requests Adjustments to the landscaping standards required along the NE Portland and NE 52nd Avenue frontage. Per Zoning Code Section 33.140.250, Trucks and Equipment, heavy trucks are allowed to be parked on this site, provided that the development standards for exterior storage are met. Zoning Code Section 33.140.245, Exterior Display, Storage, and Work Activities, requires a 25 foot landscaped setback at the perimeter of parking areas abutting a street in an IG2 zone. This setback must be landscaped to meet either the L3 (landscaping) or the F2 + L2 (sight-obscuring fence + landscaping) standards, as described in Section 33.248.020, Landscaping and Screening Standards.

The project site consists of two parcels bisected by NE 52nd Avenue. The west half of the site is used to park heavy trucks, and as an exterior work and storage area, so a 25 foot wide landscape planter is required to be planted with trees, shrubs, and groundcover along each street frontage.

The applicant requests the following Adjustments to this standard:

- Reduce the required planter width to 5 feet along the NE Portland Boulevard frontage.
- Eliminate all required planter area and landscaping along the NE 52nd Avenue frontage.

Applicant's Statement: The applicant's narrative indicates she intends to seek a street vacation for the portion of NE 52nd Avenue that dead-ends between the two lots comprising the subject site. If the street vacation were approved, the applicant would use the vacated area for circulation of large trucks and or other development options. The applicant indicates that initial conversations with the railroad and *Portland Transportation* regarding approval of a street vacation have been positive. In anticipation of obtaining a street vacation, the applicant would like to waive landscaping standards along NE 52nd Avenue.

BDS Staff Note: If NE 52nd Avenue were vacated, the requirement to provide landscaping along that frontage would be moot. However, based on an inquiry to *Portland Transportation* right-of-way staff on August 31, 2009, no action to initiate a street vacation had been made as of that date. As such, the current standards apply to all street frontages as addressed in this report.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Section 33.805.040, Adjustments.

ANALYSIS

Site and Vicinity: The subject site consists of two properties with frontage along NE Portland Highway (also known as *Oregon Department of Transportation* Highway 30). The site is bisected by NE 52nd Avenue, which terminates at the railroad corridor to the north of the project site. The 12,135 square foot lot on the east side of NE 52nd Avenue (east lot) is relatively flat and has been developed with several single story structures. The 12,632 square foot lot on the west side of NE 52nd Avenue (west lot), slopes slightly (less than 5 percent grade) down from NE Portland Highway toward the railroad corridor that borders the north side of the site. The west lot has been almost entirely paved, and is used to park and work on heavy trucks and store other equipment used in the applicant's business.

Within 200 feet south of the subject site, the area across NE Portland Highway is zoned, single-dwelling residential (R5h), and is developed with one and two-story residences. Within 200 feet north of the subject site, north of the railroad tracks, development is predominantly industrial. A cluster of 4 residential sites is located directly north of the subject site, with industrial uses beyond. The sites immediately adjacent to the east and west of the subject site are developed as parking lots only. Development to the west is predominantly industrial, with the exception of a restaurant located 2 lots to the west.

Most existing industrial facilities and homes in the area were developed prior to the current zoning, and the surrounding development is not representative of the scale or appearance of development anticipated by the current industrial (IG2) and residential zone (R5, R7, R10) regulations.

Zoning: The subject site is located in the General Industrial 2 (IG2) zone, and the Aircraft Landing (h) overlay zone.

The General Industrial (33.140) zones implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zones provide areas where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry. The development standards for each zone are intended to allow new development which is similar in character to existing development. The intent is to promote viable and attractive industrial areas.

General Industrial 2 (IG2) areas generally have large lots and an irregular or large block pattern. The area is developed with sites having medium and low building coverages and buildings which are usually set back from the street.

The Aircraft Landing (h) overlay zone (33.400) provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The elevation of the project is approximately 86 feet above sea level, and the overlay 'h' height limit is 180 feet above sea level.

The site is also located within the Cully Neighborhood, which includes the area generally bounded by the Columbia Slough to the north, NE 82nd Avenue to the east, NE Prescott and NE Fremont to the south, and NE 47th and NE 42nd Avenues to the west. The *Cully Neighborhood Plan* was adopted by the Portland City Council in 1992.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A "Request for Response" was mailed on December 3, 2008. The following agencies have responded with no issues or concerns (Exhibits E.1-E.5):

- *Life Safety*
- *Fire Bureau*
- *Portland Transportation*
- *Urban Forestry*
- *Oregon Department of Transportation*

The following agencies have submitted additional comments:

- *Bureau of Environmental Services (BES)* cannot recommend approval at this time as an adequate stormwater management system has not been demonstrated. Prior to recommendation of approval, an adequate stormwater management system must be shown on the site plan. Stormwater facilities are often coincident with the property's associated landscaping. Without further information about the stormwater facilities BES cannot determine whether this adjustment will effect SWMM requirements for onsite stormwater discharge. (Exhibit E.6):
- *Site Development* will require a stormwater report and preliminary utility plan addressing the SWMM hierarchy, in order to evaluate the proposal. (Exhibit E.7):

Neighborhood Review: No written responses have been received.

ZONING CODE APPROVAL CRITERIA

ADJUSTMENTS

The regulations of the zoning code are designed to implement the goals and policies of the *Comprehensive Plan*. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

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

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

Findings: The applicant is requesting Adjustments to reduce or eliminate required landscaping along the abutting street frontages. To meet this criterion, the proposal must meet the purpose of the following regulation:

33.140.245, Exterior Display, Storage, and Work Activities

The exterior development standards of this section are intended to assure that exterior display, storage, and work activities:

- Will be consistent with the desired character of the zone;
- Will not be a detriment to the overall appearance of an employment or industrial area;
- Will not have adverse impacts on the adjacent properties, especially those zoned residential;
- Will not have an adverse impact on the environment.

This regulation calls for a 25 foot planter along each street frontage. Trees and groundcover are to be installed in the planters, along with shrubs or fencing to screen the exterior work and storage area.

The applicant requests an Adjustment to reduce the width of the planter along NE Portland from 25 to 5 feet, and to install the solid fence and tree and groundcover plantings otherwise required. The applicant also requests an Adjustment to entirely waive this standard along the NE 52nd frontage.

In order to be consistent with the desired character of the zone, as outlined in the IG2 base zone character statement and the goals of the Cully Neighborhood Plan (adopted in 1992), the proposal must be supportive of “an attractive and viable industrial area” (General Industrial Characteristics, 33.140.030.C) and “encourage businesses to meet high standards of appearance and maintenance of their buildings and grounds” (Issue 7A-1.1, Cully Neighborhood Plan).

The applicant’s proposal to install a 5 foot wide planter and solid fencing along NE Portland Highway is expected to provide a level of screening similar to that which would required if that frontage were developed with standard parking stalls, instead of being used for both parking and exterior work activities. So, while not meeting exact specifications of the exterior storage/work area standards, the proposal will improve the appearance of the site from NE Portland Highway and properties across the street.

Similarly, since traffic on NE 52nd Avenue is likely limited to employees and customers, reducing landscaping along this frontage will not be a significant detriment to the character of the area. However, since no plan has been provided to address stormwater management of the over 10,000 square feet of new pavement on the property (as requested by *Site Development* and *Environmental Services*), the complete elimination of screening would reduce the amount of area that could otherwise provide a vegetated stormwater facility to filter pollutants and protect water quality, and this could create adverse impacts to the environment, and diminish the desired appearance of the industrial area. Therefore, based on the foregoing, this criterion is not met.

B. 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 desired character of an area is based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.

As noted above, the site has an IG2 base zone designation, and it is located within the Cully Neighborhood, which has an adopted neighborhood plan. The base zone regulations and neighborhood plan goals encourage the development of an attractive and viable industrial area.

The abutting streets are classified as follows:

Street Name	Traffic	Transit	Bicycle	Pedestrian	Freight	Emergency Response	Street Design
NE Portland Boulevard	Regional and Major City Traffic	Community Transit	City Bikeway	City Walkway	Priority Truck Street Freight District	Major	Urban Road
NE 52 nd Avenue	Local Service	Local Service	Local Service	Local Service	Local Service	Minor	Local

Given the base zone regulations and the street classifications, development in the area is anticipated to be supportive of industrial facilities, while also buffering adjacent streets and properties, and providing a safe and attractive environment for motorists, pedestrians, and cyclists.

As noted above, without sufficient planter area or other measures to effectively manage the site's stormwater, the proposal could adversely impact the environment, which would not be supportive of the character anticipated by the IG2 zone or the street classifications. Therefore, this criterion is not 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: Two Adjustments are requested. To meet this criterion, the proposal must remain consistent with the overall purpose of the IG2 zone. As noted in the finding above, the proposal will make some improvements to the overall appearance of the area; however, without adequate stormwater management, the proposal could create detrimental impacts to the environment, which would not be consistent with the type of development anticipated by the IG2 zone standards. Therefore, this criterion is not met.

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

Findings: There are no designated scenic or historic resources on the site or adjacent lots, so this criterion is not applicable.

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

Findings: In lieu of meeting the exterior work/storage area standard, and to mitigate for the reduction of landscaping along the street frontages, the applicant has proposed landscaping along the west and north property lines. While this additional landscaping will contribute to the overall buffering and screening of the site, it will not adequately mitigate for the lack of vegetated stormwater facilities to manage the site's stormwater and minimize adverse impacts to the environment, as anticipated by the noted standard. Furthermore, the proposed plantings include species (pampas grass and bamboo) that are listed as Nuisance Plants on the *Portland Plant List*, and such plantings are prohibited in required planter areas.

Without a stormwater plan to demonstrate that the site can adequately manage storm runoff and the selection of appropriate plant materials, impacts to the appearance and the environment are not adequately mitigated. As such, this criterion is not 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, so this criterion is not applicable.

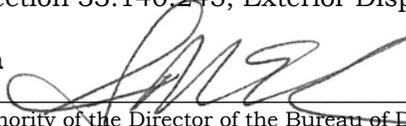
CONCLUSIONS

As outlined in the findings throughout this report, the applicant has not demonstrated that the proposal to reduce the landscaped setback along NE Portland Highway and waive the entire landscape setback along NE 52nd Avenue will equally or better meet the purpose of the noted standard, since the proposal could adversely impact the environment, which would not be consistent with the desired character of the area. Therefore, the proposal should be denied.

ADMINISTRATIVE DECISION

Denial of the two requested Adjustments to reduce or entirely eliminate the planter area and landscaping required by Section 33.140.245, Exterior Display, Storage, and Work Activities.

Staff Planner: Kate Green

Decision rendered by:  **on September 8, 2009**

By authority of the Director of the Bureau of Development Services

Decision mailed: September 11, 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 October 30, 2008, and was determined to be complete on November 25, 2008.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on October 30, 2008.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended (Exhibit G.9), and the extension expired on September 2, 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.

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 25, 2009** at 1900 SW Fourth Avenue. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. Tuesday through Friday. After 3 p.m., and on Monday 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.

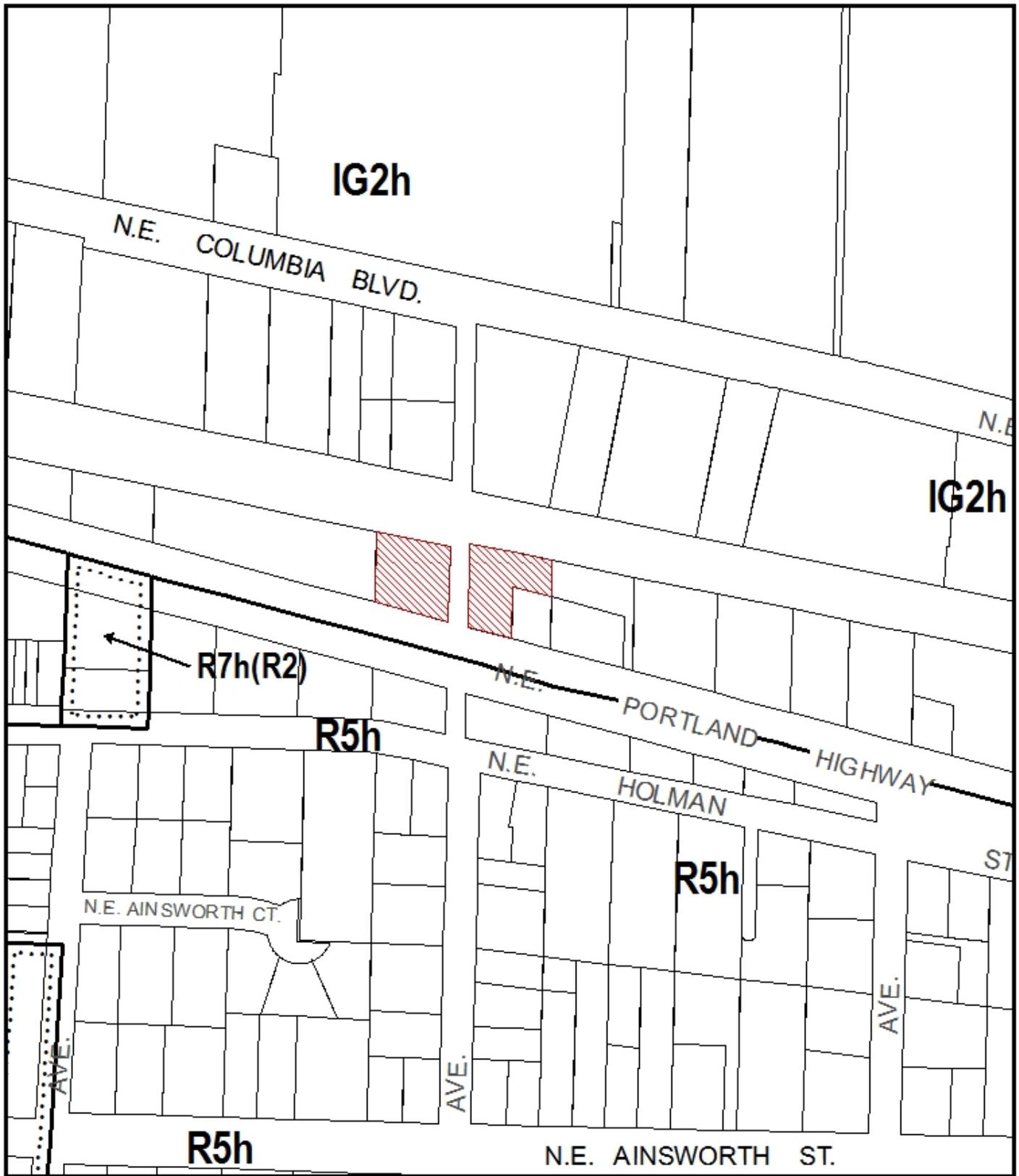
Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Site photos
 - 3. Plant list
 - 4. Plant photos
 - 5. Fence brochure
 - 6. Original site plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Life Safety
 - 2. Fire Bureau
 - 3. Portland Transportation
 - 4. Urban Forestry
 - 5. Oregon Department of Transportation
 - 6. Bureau of Environmental Services
 - 7. Site Development Review Section of BDS
- F. Correspondence:
None Received
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete letter
 - 4. Updated Notice of Enforcement Penalty
 - 5. Notice of Enforcement Penalty
 - 6. Aerial photos
 - 7. Notes from 9-25-08 Title 33 Team Meeting
 - 8. Statement of Damage RE: Gresham Paving
 - 9. Applicant's request to place 120-day review period on hold
 - 10. Email to applicant re: expiration of hold extension on September 2, 2009

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING

 Site



File No. LU 08-174405 AD
 1/4 Section 2436
 Scale 1 inch = 200 feet
 State_Id 1N2E18CA 1200
 Exhibit B (Nov 04,2008)

