



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

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Date: February 17, 2010
To: Interested Person
From: Sheila Frugoli, Land Use Services
503-823-7817 / frugolis@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 09-181078 AD

GENERAL INFORMATION

Applicant/Owner: John Schetky
The Schetky Family LLC
8430 NE Killingsworth St.
Portland, OR 97220

Site Address: 8430 NE KILLINGSWORTH ST

Legal Description: TL 300 1.23 ACRES, SECTION 21 1N 2E
Tax Account No.: R942210080
State ID No.: 1N2E21BB 00300
Quarter Section: 2539

Neighborhood: Sumner, contact Joanne Johnson at 503-257-3458.
Business District: Parkrose Business Association, contact Wayne Stoll at 503-284-1921.
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

Plan District: None
Zoning: IG2h, General Industrial 2 zone with h, Aircraft Landing overlay zone

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

PROPOSAL:

The applicant is requesting an Adjustment to waive perimeter landscaping that is required to screen an existing exterior storage area located at the rear of the property and to waive the required partially sight-obscuring fencing along the side property lines. The Zoning Code requires exterior storage areas that are adjacent to streets and residentially-zoned sites, to be set back at least 25 feet from the property line and screened along their perimeter with a continuous tall hedge and planted with trees and groundcover. Where the exterior storage area abuts other industrially-zoned sites, 50 percent sight-obscuring fencing is required.

RELEVANT APPROVAL CRITERIA:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria.

ANALYSIS

Site and Vicinity: The 2.2 acre site is developed with a three story commercial-like building and exterior storage area. The building is set back from NE Killingsworth by approximately 200 feet with parking in front of and along the eastern side of the building. An exterior storage area, approximately 35,000 square feet is located behind (south) of the building. School buses and other passenger buses are stored in that location. A thick bramble of Himalayan blackberry vines, a plant species listed as a nuisance/prohibited plant, has recently been removed from the elevated, undeveloped area adjacent to the south property line. A 6-foot tall chain link fence is constructed along the entire length of the back of the site to protect the exterior storage area.

There are four residential lots, with homes, that abut the site's southern property line. Two of the 4 lots have a solid wood fence constructed along the rear property line. The residential lots are elevated approximately 3-5 feet above the Schetky site. The eastern abutting site is developed with an alternative public school—Helensview School. The school has access off NE 87th Avenue. A large grassy field and paved play court area separates the school buildings from the subject site. A row of deciduous trees are planted along the eastern edge of the site.

The site has frontage on NE Killingsworth Street and NE 82nd Avenue. Specifically, the site is adjacent to the NE 82nd Avenue ramps that provide connection to NE Killingsworth. Vehicle access onto the site is provided off of NE Killingsworth. Both streets are major traffic/truck corridors.

Zoning: The site is zoned General Industrial 2 (IG2) zone with the Aircraft Landing (“h”) overlay zone. The General Industrial zones are two of the three zones that 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. IG2 areas generally have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street. The Aircraft Landing overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation.

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 January 11, 2010. The following Bureaus have responded with no issues or concerns:

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

The Bureau of Environmental Services (BES) responded with the following comment: Not related to the requested Adjustment, BES has identified the property as having a non-conforming sewer situation. There site does not appear to have a means of legal access for the sanitary sewer. Should building permits or other development be proposed on the site in the future, BES will require, at that time, sewer connection improvements. The requested Adjustment does not trigger the sewer improvements. Exhibit E.1

The Site Development Section of BDS stated that because of the topography of the site, any required landscaping at the perimeter could not serve as a stormwater management facility: Exhibit E.2

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on January 11, 2010. One written response has been received from the Neighborhood Coalition office in response to the proposal. Bill Barber, Neighborhood Planner for the Central Northeast Neighbors wrote that the coalition office received a comment from Eric Daniels a resident who owns a home that abuts the site. Mr. Daniels asked that if landscaping were required that it not be the type/size that would block his views of Mt. St. Helens.

ZONING CODE APPROVAL CRITERIA

33.805.010 Adjustments Purpose

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 Adjustments Approval Criteria

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

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

Findings: The standards that address exterior storage in the industrial zones (Section 33.140.245) are intended to assure that exterior 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 adjacent properties, especially those zoned residential; and*
- *Will not have an adverse impact on the environment.*

Although additional landscaping would soften the appearance of the exterior storage activities on the site, this area is primarily zoned for industrial uses where the undesirable appearance and impacts are generally not an issue. The uses on the north side of NE Killingsworth are developed with large warehouse-like buildings. The eastern abutting school site is also industrially-zoned. Directly west of the site is a large area developed with transportation on-ramps that provide connections to the major transportation corridors—NE 82nd Avenue, NE Killingsworth and NE Columbia Blvd. The ramp system is also zoned General Industrial 2. The General Industrial zones are characterized as the zones that “provide areas where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry.” Views of operable school and commercial buses behind a well maintained 2-story building do not create detrimental impacts to the overall character of this industrial area.

The property owners recently removed a large mass of blackberry vines, a nuisance/prohibited plant, from at the rear of the property. By removing this invasive dominant plant, other landscaping on the site and adjacent to the site will better survive. The request to waive the landscape screening will not adversely impact the environment. Both BES and BDS Site Development staff stated no objections or concerns. In her written response, Mary King, BDS Site Development noted that due to existing topography and grades it does not appear feasible to use perimeter landscaping for the purpose of fulfilling stormwater management functions.

Only to the south, is the area zoned for single-dwelling residential use. With the removal of the tall and dense blackberry brambles, two of the four adjacent residential lots now have ground-level views into the bus storage area. Rather than require extensive landscaping along the south property line where continued maintenance activities are necessary to fully eradicate the blackberry plants, a condition will require the applicant to install additional fencing either in the form of privacy slats onto the existing 6-foot tall chain-link fencing or an additional row of fencing along the south property line. The slats or other fence material will be required to create at least a 50 percent sight-obscuring visual barrier on the full southern length of the site, approximately 220 lineal feet. The privacy slats will provide a continuous level of screening and therefore minimize the adverse visual impacts of the exterior activities on the residential uses. With compliance with this condition, this approval 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 above this site is industrially-zoned and has frontage on both NE Killingsworth Street and NE 82nd Avenue. The proposal to waive the screening requirements for the exterior storage area landscaping does not conflict with the street classifications.

Rights-of-Way	Traffic Classification	Transit Classification	Bicycle Classification	Pedestrian Classification
NE Killingsworth	Major Traffic	Major Transit	City Bikeway	City Walkway
NE 82 nd Ave	Major Traffic	Major Transit	City Bikeway	City Walkway

The Adjustment to the screening requirement will not impact the operation of the streets. This request raised no concerns or objections by PDOT staff. The Adjustment request does not conflict with the desired character of the General Industrial zone, which is to provide a place where industrial uses may locate. 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 has been requested. Therefore, this criterion does not apply.

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

Findings: This site is not located within the scenic overlay zone nor is it designated as a historic landmark or resource. Therefore, this criterion is not applicable.

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

Findings: As mitigation for the requested reduction in screening, a condition will require the installation of additional fencing and/or privacy slats to provide at least 50 percent sight-obstruction along the southern property line. The additional fence screening will mitigate the impacts that were created when the blackberry bushes were removed and will provide a transition between the industrial use and adjacent residence on NE Sumner. With compliance with the condition, this criterion is satisfied.

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: This site is not located within an environmental resource overlay 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

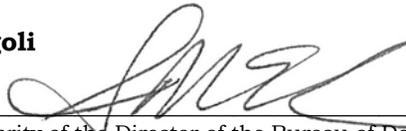
The required sight-obscuring fencing along the southern property line will minimize the adverse visual impacts of the exterior activities on the residential uses. Through compliance with conditions, the approval criterion will be met.

ADMINISTRATIVE DECISION

Approval of the Adjustment to waive the L3, high screen landscaping requirement where the exterior storage areas abuts residentially-zoned sites and to waive the F1, partially sight-obscuring fence standard along the east and west property lines where the exterior storage area abuts industrially-zoned sites (33.140.245.C), per the approved site plan, Exhibit C.1, signed and February 12, 2010, subject to the following conditions:

- A. Additional fencing, either in the form of privacy slats added to the existing chain-link fence or replacement fencing is required along the south property line. The slats or other fence material must be at least 6 feet tall and achieve at least a 50 percent sight-obscuring visual barrier along the full length of the southern property line.
- B. To verify compliance, a Zoning Permit is required. The Zoning Permit application submittal must include plans that graphically represent the location of the additional fencing and include a fence detail. The plans must be labeled "REQUIRED per Case File LU 09-181078 AD."

Staff Planner: Sheila Frugoli

Decision rendered by:  **on February 12, 2010**

By authority of the Director of the Bureau of Development Services

Decision mailed: February 17, 2010

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 December 29, 2009, and was determined to be complete on January 7, 2010.

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 December 29, 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: April 29, 2010.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on March 3, 2010** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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 call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional

information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

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

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after March 4, 2010 – **(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;

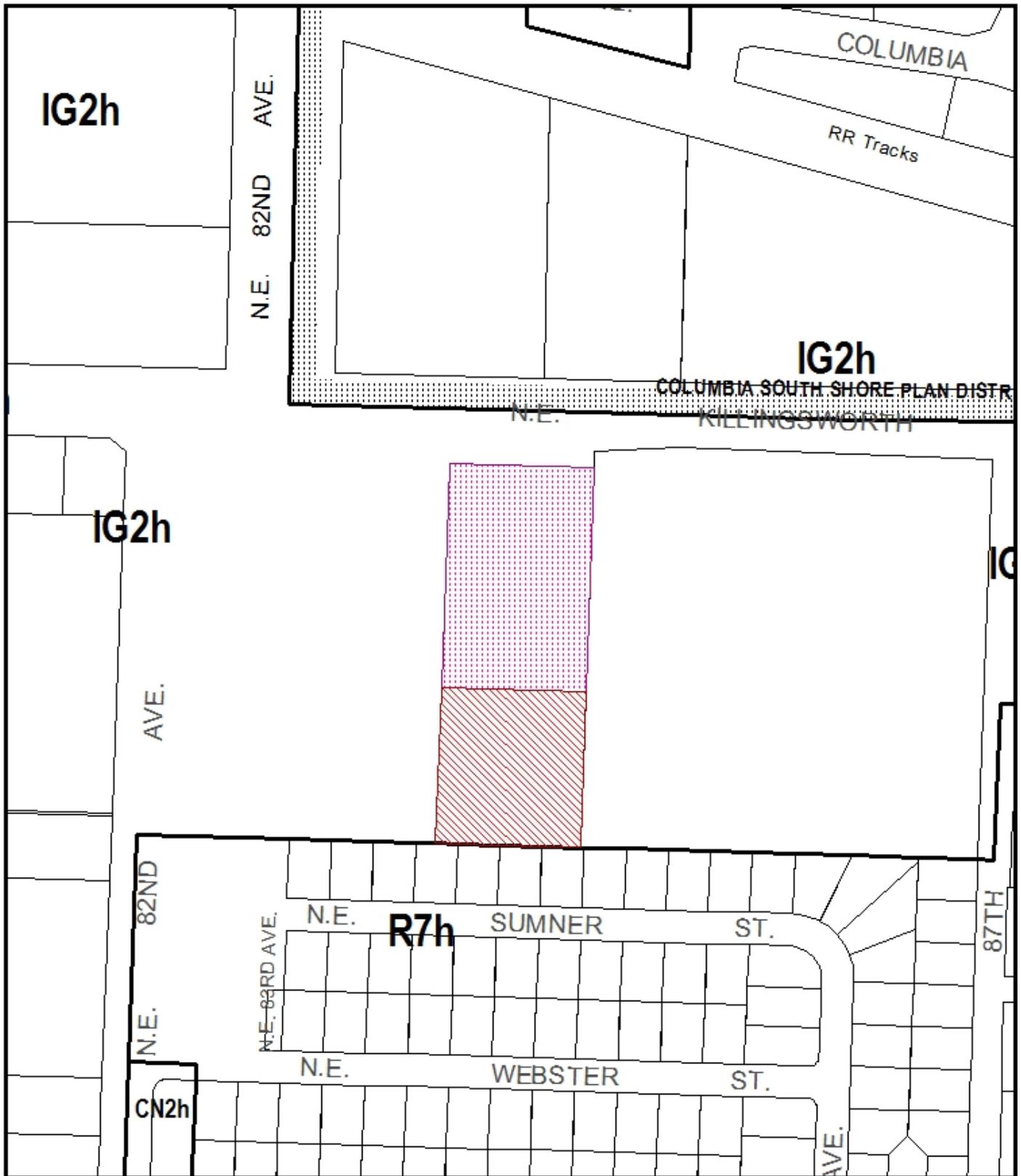
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Site Development Review Section of BDS
 - 3. TRACS printout showing "no concerns" from Bureau of Transportation Engineering and Development Review, Water Bureau, Fire Bureau and Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. Bill Barber, Central NE Neighbors, January 28, 2010, conveyed comments from nearby resident.
- 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. 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
-  Also Owned



File No. LU 09-181078 AD
 1/4 Section 2539
 Scale 1 inch = 200 feet
 State_Id 1N2E21BB 300
 Exhibit B (Dec 30, 2009)

