



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

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Date: May 13, 2010
To: Interested Person
From: Mark Bello, Land Use Services
 503-823-7810 / mark.bello@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 10-102172 AP AD

GENERAL INFORMATION

Applicant:

Mike Coyle Faster Permits PO Box 42597 Portland OR 97242	Bruce Howard RP & Associates LIC 211 NE Weidler St Portland, OR 97232-1155	Joe Ferguson Ferguson Land Surveying 646 SE 106th Ave Portland, OR 97216
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Site Address: 6836 SE HENRY ST

Legal Description: LOT 21&22 TL 15600, SUNSHINE PK
Tax Account No.: R813100530
State ID No.: 1S2E17CD 15600
Quarter Section: 3637

Neighborhood: Mt. Scott-Arleta, contact Marla Tunner at 503-887-9075.
Business District: Eighty-Second Avenue, contact Ken Turner at 503-484-6225.
District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.
Zoning: R2.5a – Single Dwelling Residential 2,500, with an Alternative Design Density overlay zone
Case Type: AP, Land Division/Partition (removal of condition) and AD, Adjustment
Procedure: Type II, an administrative decision with appeal to the Hearings Officer. (Sections 33.660.310 and 33.805.020)

Proposal:

The applicant is partitioning this site and creating a flag lot behind the house. The applicant has received preliminary plan approval and is in the Final Plat process (FP 09-127027). However, architectural features of the house such as roof overhang, bay window and its eave/gutter, and fireplace bump-out do not meet minimum setback requirements. To allow this encroachment within the 3' zoning code required setback area along the proposed drive of the flag lot, an adjustment is required to retain the roof overhang (within 1'-5"), existing bay window (within 1'-10"), bay window eave/gutter (close to zero setback), fireplace bump-out (within 2'-3"). *And*, the following condition of the previous preliminary plan approval must be removed:

Condition C.4 Existing Development

4. The applicant must obtain a finalized building permit for modifications to the existing house that will remain on proposed Parcel 1 that demonstrate compliance with the following standards in relation to the proposed new lot lines:
 - 33.110.220, Setbacks - Specifically, the permit must show removal of sufficient portions of the eave and bump-outs to meet the side setback requirement of 3 feet for the building and 2 feet for the eaves in the R2.5 zone.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Title 33, Section 33.660.320, [Changes to an approved Preliminary Plan] Approval Criteria *and* Section 33.805.040, Adjustment Approval Criteria.

ANALYSIS

Site and Vicinity: This relatively flat, center block site is developed with an existing two-story single family home. The house is a traditional Portland design, a Portland Foursquare built in 1910. The design features a full-width front porch on the north elevation and on the west elevation a fireplace bumpout and bay window. The two-story house has a hip roof with knee braces supporting the eaves.

The adjacent right-of-way is developed with a new curb-tight sidewalk. The surrounding area is developed with single family homes. There is a new home to the east of this site that was developed on a lot that – until the recent past - was associated with the house currently on this site.

Zoning: This site is zoned R2.5a, Single Dwelling Residential 2,500 with an Alternative (“a”) Design Density Overlay zone. The R2.5 designation is one of the City’s single-dwelling zones that are intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The proposal does not use the provisions of the Alternative Design Density Overlay zone, nor are there any requirements per this overlay zone.

Land Use History: In 2008 City records show a request for a Lot Confirmation – an Administrative Review - (asserting this site as a separate legal lot), and a Property Line Adjustment - an Administrative Review - to relocate and shape the eastern lot line. In 2009, the City approved a Preliminary Plan application to create a flag lot behind the existing house (LU 09-127027).

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **April 9, 2010**. The following Bureaus have responded with no issues or concerns:

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

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 9, 2010. Mt. Scott-Arleta did not respond. A neighbor wrote in response but objects to transportation issues that were addressed by the 2009 review. (That application was approved

and not appealed. This application only addresses setbacks of architectural features of the house.)

ZONING CODE APPROVAL CRITERIA

REVIEW OF CHANGES TO AN APPROVED PRELIMINARY PLAN

33.660.320 Approval Criteria

Changes to an approved Preliminary Plan will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met:

- A. Approval criteria for changes listed in Subsection 33.660.310.B. Changes to the Preliminary Plan that are listed in subsection 33.660.310.B must meet the approval criteria of Section 33.660.120, Approval Criteria.**
- B. Approval criteria for other changes. All other changes to the Preliminary Plan must meet the following approval criteria:**
 - 1. The proposed changes are not substantial enough, singly or in combination, to warrant a new review of the entire Preliminary Plan;**
 - 2. The approval criteria addressed by the approval of the Preliminary Plan can still be met, with appropriate conditions of approval.**

Findings: Land divisions are approved in two steps: preliminary plan approval and final plat approval. Preliminary Plan approval was granted on August 27, 2007 with the condition of approval stated above regarding the setback of house eaves. Section 33.110.220 C allows houses to be within three feet and eaves to be within 2 feet of a flag pole. The preliminary plan approval noted this standard and imposed a condition of approval to this effect.

Deleting a condition of Preliminary Plan approval is listed in Section 33.660.310B. So, the proposal to eliminate the conditions must be met by reviewing and finding that the criteria in 33.660.120 Approval Criteria are met. The proposal to retain or not retain the architectural elements is not logically tied to any of the approval criteria. These criteria relate to lot dimensions, trees, hazards, recreation areas, site clearance etc.

The proposed change is not substantial in that the roof eave extension is proposed on the regular lot with the pole of the flag lot creating a substantial space between the eave and the next property to the west. Also, no approval criterion is affected by this change. The applicant has applied for an adjustment (as part of this review) to allow not only the eaves, but also other architectural features to encroach into the setback area. The applicant has successfully appealed related building code setback requirements.

Therefore, these approval criteria are met and Condition C.4 can be eliminated by this administrative decision.

ADJUSTMENT

33.805.010 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 providing certainty and rapid processing for land use applications.

33.805.40 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**
- 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**
- C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and**
- D. City-designated scenic resources and historic resources are preserved; and**
- E. Any impacts resulting from the adjustments are mitigated to the extent practical; and**
- F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;**

The purposes of the setback standards per Section 33.110.220.A are:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

Findings: The applicant requests an Adjustment to Section 33.110.220 Setbacks for several architectural features of the house such as bay window or fireplace that extend closer than three feet to the future driveway ("pole") of the flag lot. For eaves, the allowed distance is two feet.

Granting the adjustment will allow the existing house to remain with the design intact. The preliminary plan approved in 2009 would have required the eaves to be sheared off on the west elevation and the applicant still would need to remove the bay window and fireplace on the western façade or apply for an adjustment.

The house and these architectural features will be separated from the closest structure to the west by the flag lot driveway ("pole"). There will be no future development or building within the 12 feet wide by 76 feet long drive and the closest neighboring structure will be at least 17 feet away. The applicant has received an approval to waive building code setbacks (see Exhibit G.4). The Fire Bureau has no objection.

As this setback area is between the house and the drive, and is not within a rear yard, those neighbors are not negatively impacted. The adjustment does not affect front yards or the physical relationship of house to street. By granting this adjustment, the physical integrity of the house and its contribution to the neighborhood will remain.

Since only one adjustment, side setback, is requested, and the site is neither within an environmental zone, nor does it have a city designated scenic or historic resource on or near the site, Criteria C, D, and F do not apply.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

Final plat review will follow after consideration of this proposal to retain architectural features such as the bay window, fireplace and eaves. To do so, requires an amendment to the preliminary plan to remove a condition of approval related to the house eaves.

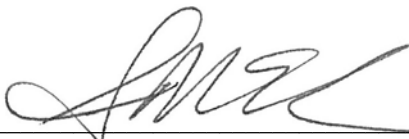
The 2009 approval included a condition of approval that resulted from staff review of future development standards rather than land division approval criteria. The Zoning Code establishes a process for revising the 2009 condition of preliminary plan approval which this report addresses and finds suitable. This report also addresses the setback encroachment of the bay window and fireplace and finds those approval criteria met also.

ADMINISTRATIVE DECISION

Approval of deletion of Condition C.4 of Preliminary Plan Approval (LU 09-127027) and approval of an Adjustment to Section 33.110.220 to waive the required setback from the west property line for the architectural features of the west façade of the house -- roof overhang, bay window, bay window eave/gutter, fireplace, in general compliance with the approved site plan, Exhibit C.1, signed and dated May 11, 2010, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 10-102172 AD AP. No field changes allowed."

Staff Planner: Mark Bello

Decision rendered by:  **on May 11, 2010**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 13, 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 January 12, 2010, and was determined to be complete on March 11, 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 January 12, 2010.

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 waived the 120-day review period, as stated with Exhibit G-4. Unless further extended by the applicant, **the 120 days will expire on: July 9, 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 Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 27, 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 Hearings Officer 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 Hearings Officer 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.

- 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.

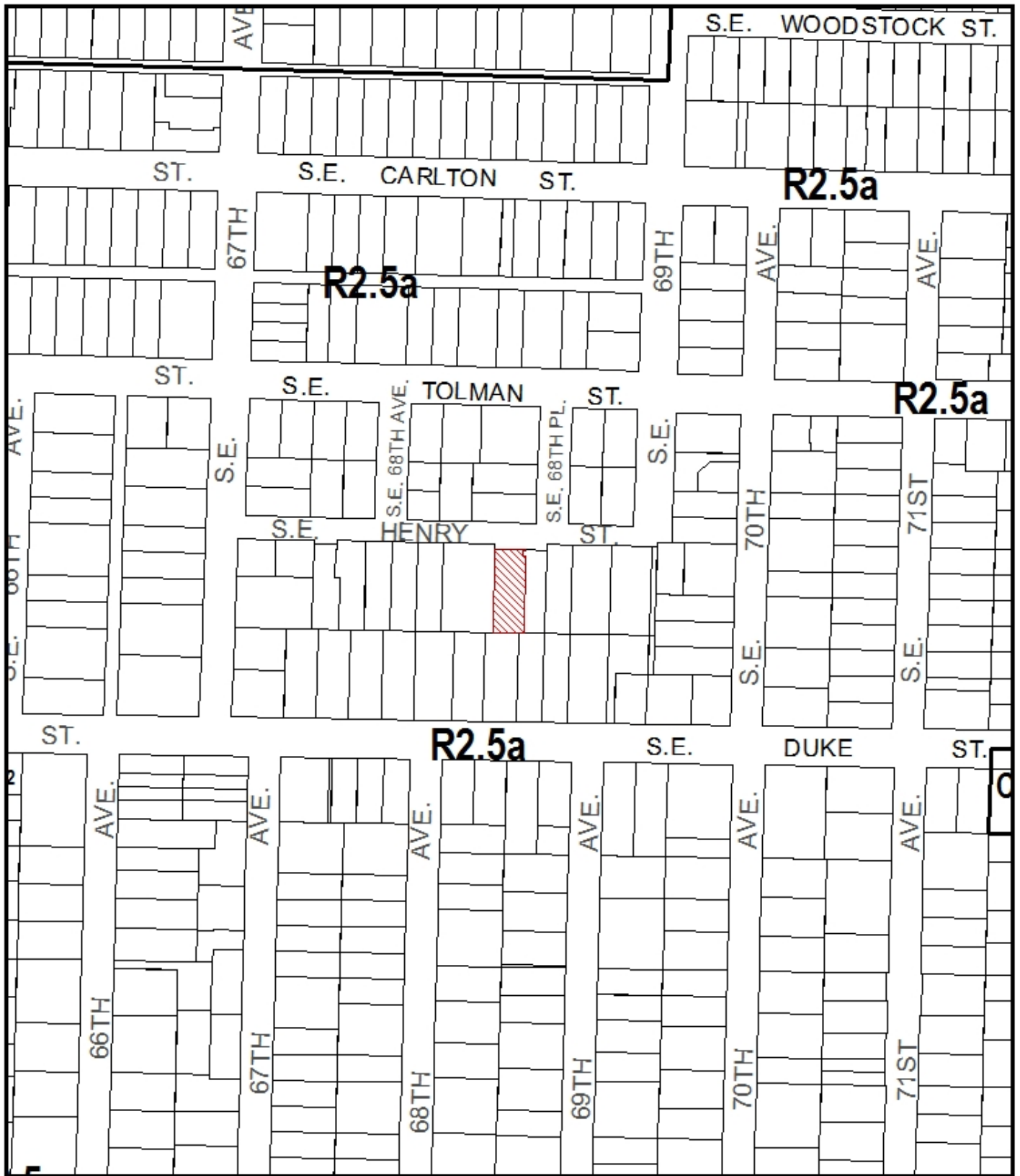
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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, West Elevation, and Sections (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. The Britzes, received April 26, 2010, opposition to 2009 preliminary plan approval
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete Letter to Applicant, January 29, 2010
 - 4. Building Code Setback Appeal, February 22, 2010
 - 5. Administrative Approval of Preliminary Plan,

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 10-102172 AP AD
 1/4 Section 3637
 Scale 1 inch = 200 feet
 State_Id 1S2E17CD 15600
 Exhibit B (Apr 06,2010)

