



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

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Date: July 16, 2010
To: Interested Person
From: Sue Donaldson, Land Use Services
503-823-7618 sue.donaldson@portlandoregon.gov

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 10-131179 AD

GENERAL INFORMATION

Applicant: Joseph S Elkhall,
11320 SE Flavel St
Portland, OR 97266-5917

Site Address: 451 SE 160TH AVE

Legal Description: LOT 1, PARTITION PLAT 2002-56
Tax Account No.: R649822210
State ID No.: 1N2E36DD 03201
Quarter Section: 3046

Neighborhood: Glenfair, contact Frank Rinella at 503-256-5399.
Business District: Gateway Area Business Association, contact Fred Sanchez at 503-256-3910.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Plan District: East Corridor
Other Designations: none

Zoning: CS – Storefront Commercial

Case Type: AD - Adjustment
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

In January, 2010, the City of Portland approved a land division to create two parcels at this location (LUR 09-147026 LDP). The purpose of that land division was to create separate parcels for the multi-dwelling development and dental office, respectively. When new parcels are created for existing development the resulting relationship between lot and development must comply with the applicable development standards. At the time of the land division, it was determined that the development on this site did not comply with the building coverage and floor area ratio (FAR) regulations. The applicant was given a choice of either complying with those requirements through revisions to existing development or applying for adjustments

(Condition C.1) and this requirement must be satisfied prior to final plat approval for the land division. The applicant must resolve this before the final plat process for the land division can be approved. This application applies only to Parcel 2, the parcel occupied by the dental office.

Specifically, the applicant is seeking adjustments to two development standards.

- In the Storefront Commercial (CS) zone, all development must cover no less than 50 percent of the site area. The applicant seeks an adjustment, therefore, to reduce the building coverage from 50 percent of the site area, to 21.7 percent, which is what the dental office covers. This adjustment applies to the development on Parcel 1 only.
- In the East Corridor Plan District, as it applies to this location, the minimum floor area ratio (FAR) is 0.5 to 1. The applicant seeks an adjustment to reduce the minimum FAR from the required 0.5:1 to 0.21:1.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of *Title 33.805.040 Adjustment Approval Criteria*.

ANALYSIS

Site and Vicinity: The site is at the northwest corner of SE 160th Avenue and SE Stark Street. It is now developed with a dental clinic. The property adjacent to the site on the north side is the second parcel created through the previous land division (LU 09-147026 LDP) is developed with a 10 unit apartment building. Adjacent to the site, on the west and north, there are a variety of multi-dwelling structures, most of which have ample surface parking lots in the front setback area. Commercial development in the vicinity is mixed and includes convenience stores, personal and business services storefronts, restaurants, pubs and a gas station. The existing dental office is 1,789 square feet, which occupies 21.7 percent of the property. Given the square footage of the building, the floor area ratio (that is, the square footage of the building relative to the total square footage of the property) is 0.21:1.

Zoning: The Storefront Commercial (CS) zone is intended to preserve and enhance older commercial areas that have a storefront character and ensures that new development will be compatible with this desired character. The zone allows a full range of retail, service and business uses with a local and regional market area. The desired character includes areas which are predominantly built-up, with buildings close to and oriented towards the sidewalk especially at corners. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged. CS Zoning extends east and south of the site across 160th Avenue and across SE Stark Street.

The site is within the *East Corridor Plan District*. Regulations of the Plan District include development standards that are intended to ensure that development maximizes the public's investment in transit and fosters intense mixed-use development. Street classifications: The site is at the corner of SE Stark Street and SE 160th Avenue. It has approximately 65 feet of frontage on SE Stark Street, which is classified as a Major City Traffic Street, Transit Access Street, City Bikeway, City Walkway and a Regional Corridor in the Transportation Element of the Comprehensive Plan. At this location, SE 160th Avenue is classified as a Local Service Street for all modes in the *TSP (Transportation System Plan)*. The site is also across the street from the western boundary of the SE 162nd LRT Station Pedestrian District.

Land Use History: City records indicate that prior land use reviews include the following:

- | | |
|---------------|---|
| 98-00474 MP | Approval of a minor partition to create two lots. Parcel 1 was later partitioned (see 09 case below) to create the subject site of this land use review. Parcel 2 is 405 SE Stark and adjacent to the site on the west side. There are no conditions of approval that remain in effect. |
| 09—147026 LDP | Preliminary approval for a two-lot partition of a 13,704 sq. ft. site at the corner of SE 160 th Ave and SE Stark St. There is a 10-unit apartment |

building on Parcel 1 and a dental clinic on Parcel 2. Parcel 2 is the subject of this Adjustment review.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **May 19, 2010**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 19, 2010. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

The applicant is requesting an adjustment for the minimum lot coverage and FAR standards Parcel 2. The CS zone standards apply to the site for building coverage and the East Corridor Plan District standards apply to the site for FAR. In the Findings below the two standards are considered together because they act jointly to control the overall scale and intensity of development on a site.

33.805.010 Purpose (*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 *Zoning Code Section 33.130.220 (Commercial zones)* describes the purpose of the building coverage standard as follows:

The building coverage standards limit the footprint of buildings and work with the FAR, height, and setback standards to control the overall scale of development. The standards promote development consistent with the desired character of the zone. In the CM and CS zones, the required minimum building coverage standards promote development which will support the built-up, urban character of these zones.

The *Zoning Code Section 33.130.205* describes the purpose of the floor area ratio (FAR) standard as follows:

Floor area ratios regulate the amount of use (the intensity) allowed on a site. FAR's provide a means to match the potential amount of uses with the desired character of the area and the provision of public services. FAR's also work with the height, setback, and building coverage standards to control the overall bulk of development.

The *East Corridor Plan District* contains a more specific purpose statement for Floor Area Ratios (33.512.220.A) as follows:

These regulations encourage more intense development near light rail stations. This increased development opportunity promotes higher density development at the station communities along the East Burnside light rail alignment. In addition the standards also include a minimum density on some sites in order to ensure a minimum level of development.

The CS zone standard (33.130.220 and Table 130-2) would require the building coverage on this 8,231 square-foot site to be a minimum of 4,115.5 square feet or 50%. The existing building on the site is 1,789 square feet, which is 21.7 %

The minimum FAR standard in the East Corridor Plan District (33.521.220) is 0.5:1. FAR (Floor Area Ratio) is defined in the *Zoning Code* (33.910 Definitions) is the amount of floor area in relation to the amount of site area, expressed square feet. On this site, a floor area of 0.5:1 means 0.5 feet of floor area for every one square foot of site area. Therefore the minimum FAR for this single story dental clinic is 4,115.5 square feet, the same amount required to meet the building coverage standard.

The adjustment requests equally meet the purpose the requirements for the following reasons. First, the existing development did not comply with the requirements prior to the land division, and for that reason, the land division did not create a situation where the development was measurably farther out of compliance. In short, approval of the adjustments will not result in any harm greater than what existed prior to the land division. Second, if the adjustments are granted, it will not create a situation that would prevent future development, whether such a development would be a revision to the existing development or a total rebuild, from complying with the purposes of the regulations and with applicable code. For these reasons, this criterion is satisfied.

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: Development on the site has always faced SE 160th Ave, rather than SE Stark and the existing parking area for the dental clinic is adjacent to the pedestrian zone of both streets. Current development is not consistent with classifications of adjacent streets or with the desired character of the area.

The purposes statement of the *East Corridor Plan District* (33.521.010) states:

It is envisioned that future development will transform the areas surrounding the light rail stations into vibrant mixed-use areas of retail, office and housing with a high level of pedestrian amenities. Lower density residential and commercial development will continue to surround the Pedestrian Districts

As discussed in the findings above, the site is on the edge of the Plan District and the adjacent to but not within a Pedestrian District. Its development can be defined as “lower density”. It was not designed to promote light rail transit ridership because that did not exist at the time the dental clinic was established. However, in the future, the site could be redeveloped to make it more consistent with the policies, plans and standards now in place. As stated above, when new development occurs on the site, it will be required to meet the building coverage and FAR standards as well as other applicable development standards. As previously noted, the practical effect of approving the adjustments is that there is no further detriment to the purpose of the regulations after the land division as opposed to before the land division. Similarly, because there is no specific new development that can be evaluated against the street classifications or the character of the area, approval will not compromise the ability of revisions to the existing development or redevelopment of the site result in a property that is consistent with the base zone, plan district and transportation policies. For this reason, this criterion is satisfied.

- 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: The applicant is seeking an adjustment to two related standards. They both relate to the bulk and intensity of development on the site. An additional 4115.5 square feet of floor area would meet both standards. Since there are no additional cumulative effects this criterion is satisfied.

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

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

Findings: Because there will be no impacts resulting from approving the two adjustments, 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: The site is not within an environmental zone. 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

Current development on this new 8,231 square-foot lot cannot meet FAR (0.5:1) and building coverage (50%) standards. The building on the site has been used as a dental clinic since 1949 and no new development is proposed at this time. An adjustment to the standards above can be approved. Maintaining existing development and its continued use as a dental clinic serving the local population will not adversely impact the commercial character of the neighborhood. From a practical standpoint, the only way for the applicant to meet the development standards in question is to add unwanted or unneeded square footage to an existing development. A more equitable approach is to allow an exception to the rule that would not preclude compliance with all applicable regulations at a future time. Findings in this report were based on the facts as presented in Exhibit C-1, and applies to that plan only. Any future revisions to the plan and to existing development is subject to all applicable regulations.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the building coverage development standard (*Section 33.130.220.B*) to 21.7% and the FAR (*33.521.220.C*) to 0.2:1 for a 1,794 square-foot building per the approved site plan, Exhibit C-1, signed and dated July 14, 2010, subject to the following conditions:

- A. This adjustment is specific to Exhibit C-1.
- B. When the Final Plat for LU 09-147026 LDP is submitted for final approval, the Supplemental Plan must reflect the information and site plan approved by this land use review as indicated in Exhibit C.1. The sheets on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 10-131179 AD." All requirements

must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

Staff Planner: Sue Donaldson

Decision rendered by: _____ **on July 14, 2010**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 16, 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 April 23, 2010, and was determined to be complete on May 13, 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 April 23, 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 did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: September 11, 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 July 30** 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.

- *Unless appealed*, The final decision may be recorded on or after **August 2, 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;

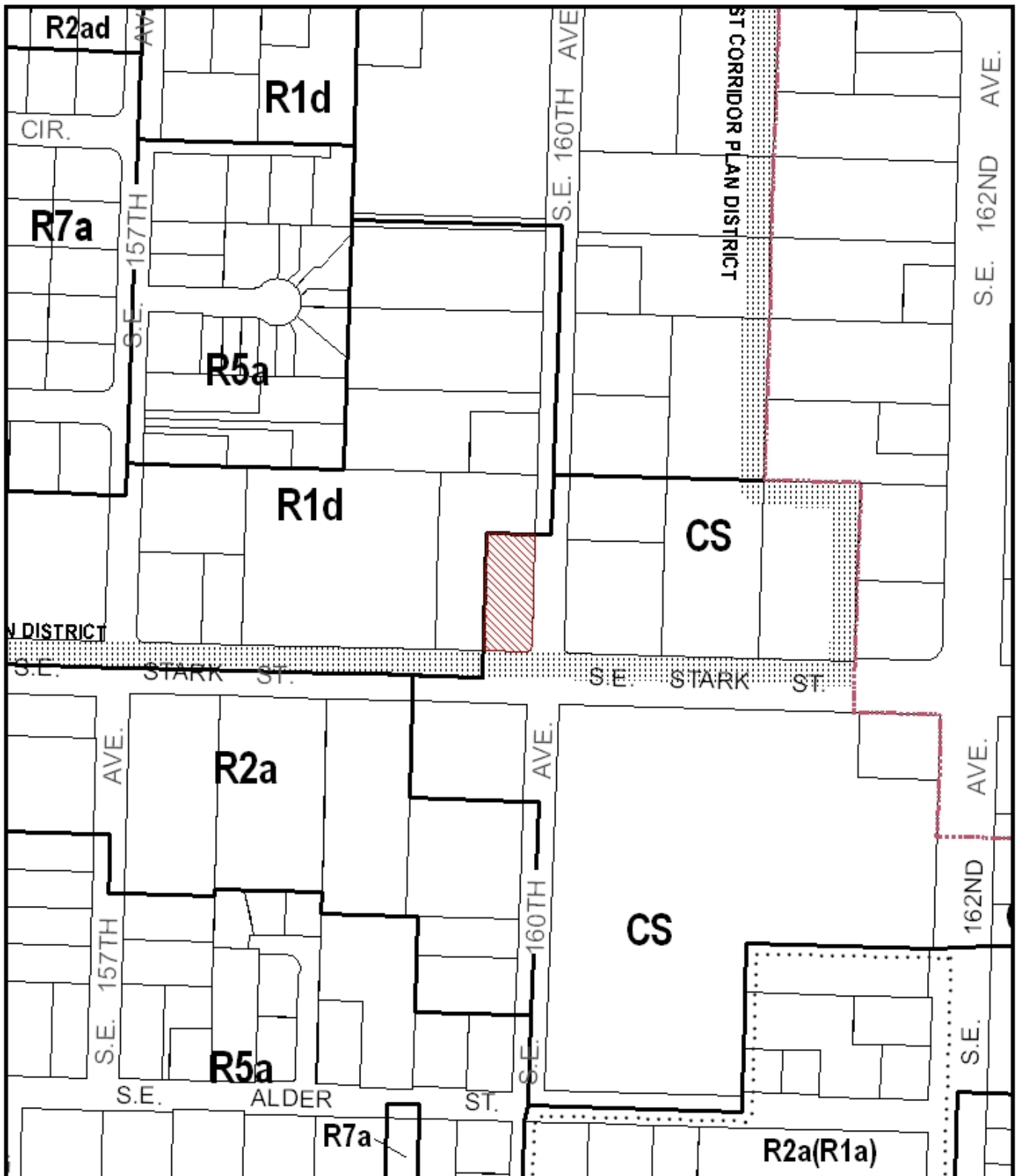
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

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 (no concerns)
 - 2. Bureau of Transportation Engineering and Development Review (no concerns)
 - 3. Water Bureau
 - 4. Fire Bureau (no concerns)
 - 5. Site Development Review Section of BDS (no concerns)
 - 6. Life Safety
- F. Correspondence: none
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. East Corridor Plan District Maps a and b

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).



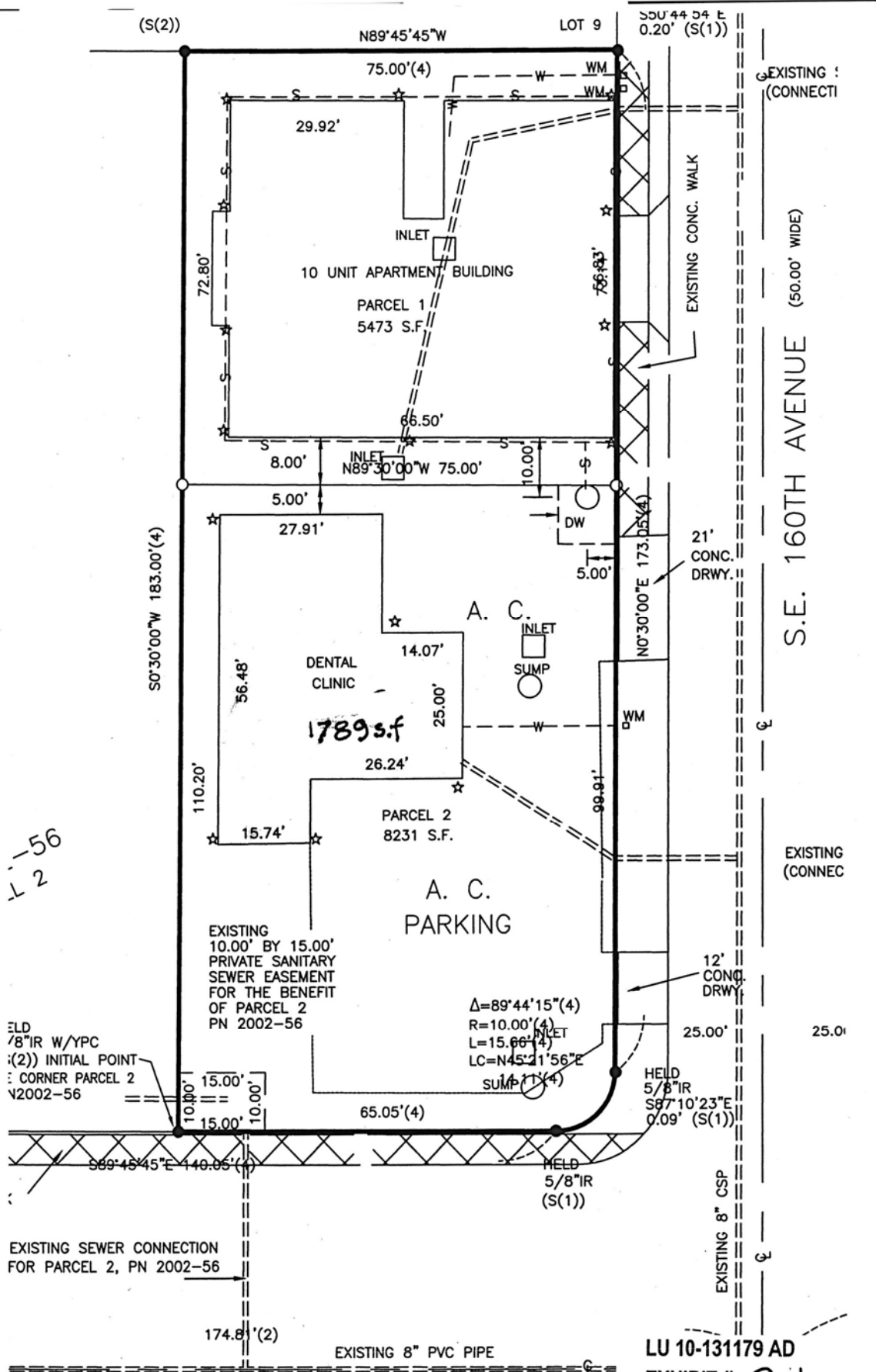
ZONING

 Site



This site lies within the:
EAST CORRIDOR PLAN DISTRICT

File No.	LU 10-131179 AD
1/4 Section	3046,3146
Scale	1 inch = 200 feet
State_Id	1N2E36DD 3201
Exhibit	B (Apr 26,2010)



S.E. 160TH AVENUE (50.00' WIDE)

-56
L 2

ELD
7/8"IR W/YPC
(2) INITIAL POINT
CORNER PARCEL 2
V2002-56

EXISTING SEWER CONNECTION FOR PARCEL 2, PN 2002-56

LU 10-131179 AD
EXHIBIT # C.1

S.E. STARK STREET (80.00' WIDE) (COUNTY RD. 2980)

LU 10 - 131179 AD