



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

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Portland, Oregon 97201
503-823-7300
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TTY 503-823-6868
www.portlandonline.com/bds

Date: August 24, 2010
To: Interested Person
From: Kathleen Stokes, Land Use Services
503-823-7843 / kstokes@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 10-151676 AD

GENERAL INFORMATION

Applicant: Lyn M Hill
6023 SE Nehalem St
Portland, OR 97206

Site Address: 6023 SE NEHALEM ST

Legal Description: BLOCK 14 W 20' OF LOT 42 LOT 43&44, DARLINGTON
Tax Account No.: R197903455
State ID No.: 1S2E19DA 06900
Quarter Section: 3836

Neighborhood: Brentwood-Darlington, Land Use contact at
brentwood.darlington@gmail.com

Business District: Woodstock Community Business Association, contact Lori Boisen at 503-760-7968.

District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.

Zoning: R5a (R5,000, High Density Single-dwelling Residential with an Alternative Design Density Overlay)

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

Proposal: The applicant created a gravel-surfaced parking space for a utility trailer in the front yard area on this site. The Portland Zoning Code allows utility trailers to be parked on gravel on single-dwelling residential sites, but requires that the space be located behind the front building line of the residence. Exceptions to this standard may be approved through Adjustment Review, if all of the relevant approval criteria are met or can be met through conditions of approval. Therefore, the applicant is requesting approval of an Adjustment to Code Section 33.266.150 E, to allow the space for the parking and storage of the utility trailer to be located between the front lot line and the front building line.

The proposed plan for the parking space includes modifications that move the front of the space, the masonry wall around the space and the gate across the front of the space back 2.5 feet, to the location where the front property line is situated, at the edge of the street right-of-way on SE Nehalem. The gate is also proposed to be lowered to the maximum height of 3.5 feet that is allowed, within the 10-foot front building setback and a rock retaining wall that is in the right-of-way will also be relocated to the property line.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

ANALYSIS

Site and Vicinity: The applicant's site is a 7,000 square-foot parcel that is located on the north side of SE Nehalem Street, about 105 feet east of the intersection with SE 60th Avenue. The site is developed with a one-story single-dwelling residence, with an attached garage, that was constructed in 1966. Other surrounding residential properties are generally developed with other single-dwelling residences that are similar in age and architectural style.

Zoning: The site is zoned R5, High Density Single-Dwelling Residential. This zone is intended to accommodate single-dwelling development, with an average of one unit per 5,000 square feet of site area.

The site also has an "a" or Alternative Design Density Overlay. This zone provides the opportunity for additional residential density in some situations, when design standards are met. The provisions of this zone are not applicable to this proposal.

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

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **July 29, 2010**. The following Bureaus have responded with no issues or concerns regarding approval of the requested Adjustment. Agencies that provided written comments regarding permit or Code requirements are noted with exhibit numbers:

- Bureau of Environmental Services had no requirements for legalization of the gravel parking pad, but noted that there are no records of decommissioning for a cess pool that was installed in December 1964. Any further development will require that this cess pool be decommissioned. Any new impervious areas will be subject to the regulation of the City's Stormwater Management Manual (Exhibit E-1).
- Transportation Engineering provided a response that noted that the proposal does not pose any sight distance issues with the adjacent driveway and so there are no transportation-related concerns. Any future curb cuts or driveway construction will be subject to the requirements of Title 17. If the western portion of the rock wall that is adjacent to the water meter is not removed from the right-of-way and moved onto the property, the applicant will need to obtain approval of an encroachment permit (Exhibit E-2).
- Water Bureau indicated that the rock retaining wall, which is currently in the right-of-way, must be completely relocated onto the property, including the western portion which was not shown as being moved in the submitted plan. This requirement is based on Water Bureau regulations which generally state that no such construction can occur within the right-of-way, within 6 feet of a water meter (Exhibit E-3).
- Fire Bureau provided an electronic response of "no concerns."
- Site Development Section of BDS provided an electronic response of "no concerns."
- Life Safety Plan Review Section of BDS provided an electronic response of "no concerns."
- Parks-Forestry Division provided an electronic response of "no concerns."

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on July 29, 2010. One written response was received from notified property owners in response to the proposal. The neighbor expressed concerns about several issues. First, the neighbor opposed the use and activities that have occurred on the site that are related to the applicant's business

and stated that these detract from the residential character of the area. Second, the neighbor opposed the removal of the mature fir tree on the applicant's property, which occurred when the gravel parking pad was installed. The neighbor also opposed the appearance of the gravel parking pad. (Exhibit F-1).

Staff note: The applicant has been advised by the City of the regulations that govern home occupations, under Code Section 33.203. A letter from Code Compliance stated that a Type B Home Occupation permit is required and that all of the activities and equipment that are related to the business must meet the requirements for this permit. This will resolve such concerns as the outdoor storage of materials, the size and number of the trucks related to the business that have been located at the site and the activities that are related to the business, such as the number of employees that are coming to the site.

The removal of the mature tree from the site was allowed, by right, under the City's codes, because the site is a property that is developed with a single-dwelling residence and the property cannot be further divided. No permit was required for the removal of the tree.

The requested Adjustment Review is the process for considering exceptions to the development standards of Title 33, the Portland Zoning Code. This process applies both to proposed development and to development that has occurred without proper previous approval. In both situations, the proposal is considered in accordance with the approval criteria and, if met, or if the criteria can be met with conditions of approval, the exception is granted. If the approval criteria cannot be met, the request is denied and either cannot be built or must be removed. The findings for this decision, below, will consider the appearance of the gravel parking pad and discuss it as it relates to the relevant approval criteria.

ZONING CODE APPROVAL CRITERIA

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

33.805.040 Adjustment Approval Criteria

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

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

Findings: *The stated purpose of the regulations regarding vehicles in residential zones, including the parking and storage of utility trailers and accessory recreation vehicles, is that they are intended to reinforce community standards and to promote an attractive residential appearance in the City's neighborhoods. The size, number and location of parked and stored vehicles in residential zones are regulated in order to preserve the appearance of neighborhoods as predominantly residential in character. Since parking lots and outdoor storage are not intended to be primary activities in residential zones, these activities should constitute no more than a minimal intrusion on any residential area.*

The applicant has created a gravel parking pad in the front of the house that is intended to be used for parking a utility trailer. Utility trailers, which are nonmotorized vehicles may be parked on gravel, but Code Section 33.266.120.150 E states that utility trailers and accessory recreational vehicles may not be parked or stored between the front lot line and

the (front) building line. A utility trailer is defined as a nonmotorized vehicle that does not exceed 16 feet in length. The gravel parking area is below grade, which makes it less obtrusive than it might otherwise be. The parking area, as a location for a nonmotorized accessory vehicle would not, in itself create the appearance of a parking lot or detract from the residential character of the area, if modified as proposed and if some vegetative screening were added. Therefore, with a condition that requires following the plan which will move the space back from the right-of-way and lower the height of the gate, as well as a condition that requires low, spreading, evergreen shrubs to be planted to soften the edges of the parking area, the proposal can equally meet the purpose of the regulation and this criterion can be met.

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

Findings: The gravel parking area will be required to have a gate that is no more than 3.5 feet tall, above the grade of the graveled area. Conditions of approval will require evergreen shrubs that will soften the perimeter of the parking area. Storage of the utility trailer in this space, which is lower than the main grade level of the front yard will not impact the livability of the residential area and the required vegetative screening will preserve the appearance of the residential area. Therefore, approval of the requested Adjustment is not expected to significantly detract from the livability or appearance of the residential area and 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

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

Findings: Only one adjustment has been requested. There are no scenic or historic resources on the site. Therefore, these criteria do not apply.

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

Findings: The impacts that might occur from parking a utility trailer in this location have to do with the appearance of the trailer. The lower grade level of the parking area helps to mitigate this by making it less obtrusive. Further mitigation, in the form of providing evergreen vegetative screening is being required through a condition of approval. With the proposed modifications to the parking area and this condition, this criterion can be 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 located in an environmental zone. Therefore, this criterion does 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

The proposal to park a utility trailer on a gravel parking pad, as modified in accordance with the proposed plan and the conditions of approval of this review, can meet all of the relevant

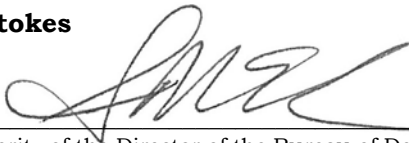
approval criteria. All of the structures at the front edge of the property will be moved back so they are not in the right-of-way (unless encroachment is approved by Portland Transportation and the Water Bureau). The height of the gate will be lowered and the east and west edges of the parking area will be screened and softened by the planting of low-growing, spreading evergreen shrubbery. With these requirements, the desired residential appearance of the property will be maintained and no significant detrimental impacts on the livability or the appearance of the residential area are expected. The proposal can be approved, in accordance with the modified plan and these conditions of approval.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.266.150 E, to allow a utility trailer to be parked on a gravel pad that was constructed between the front lot line and the front building line, in compliance with the approved site plan, Exhibit C-1, signed and dated August 20, 2010, subject to the following conditions:

- A. A zoning permit is required. As part of the zoning permit application submittal, the following development-related conditions (B through D) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 10-151676 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Because the parking pad is surfaced with gravel and is also located in the front setback area, no motorized vehicles may be parked in this location. This approval is only for parking a utility trailer which, by definition, does not exceed 16 feet in length.
- C. Unless an encroachment permit is approved by the City's Bureau of Transportation, in agreement with the Water Bureau, then, in accordance with the requirements to meet City Codes, all of the existing development that is located within the right-of-way of SE Nehalem Street must be moved back so that it is located on the applicant's property. In order to remove the rock retaining wall, arrangements must be made with the Water Bureau to relocate the water meter at the new, lower grade level.
- C. The gate at the entrance to the gravel parking pad must be lowered to 3.5 feet above the grade level of the gravel parking pad.
- D. Low-growing, spreading, evergreen shrubs (2-3 feet tall, at maturity) must be planted along the east and west sides of the top of the masonry wall that defines the gravel parking area. These shrubs must be planted to provide a continuous screen on the eastern side of the parking area, adjacent to the neighbor's property. At least two shrubs must be planted on the west side of the parking area. These shrubs must be of a variety that will spread so that they are wider than they are tall, thereby softening the view of the parking area from the street. A planting plan must be submitted with the application for the zoning permit, which shows the number, location and type of plants that are proposed to meet this condition. Information on the growing characteristics of the chosen plants must also be provided, in order to determine whether the choices are appropriate to meet these requirements.

Staff Planner: Kathleen Stokes

Decision rendered by:  **on August 20, 2010**
By authority of the Director of the Bureau of Development Services

Decision mailed: August 24, 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 June 30, 2010, and was determined to be complete on July 27, 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 June 30, 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 extended by the applicant, **the 120 days will expire on: November 24, 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 September 7, 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 **September 8, 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

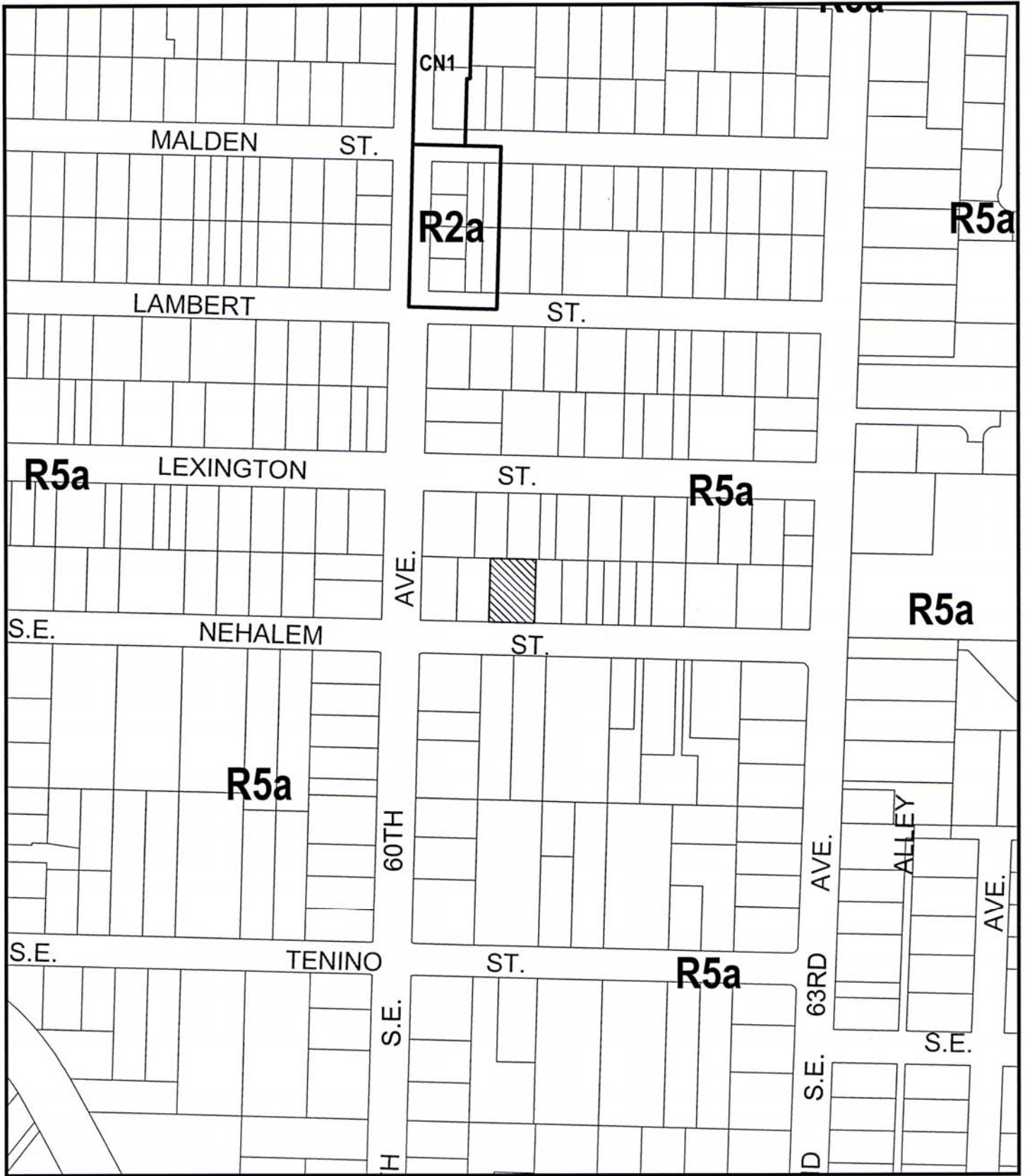
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Application and original submittal
 - 2. Photos
 - 3. Supplemental information (revised site plan)
- 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. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Summary sheet of electronic responses from City agencies
- F. Correspondence:
 - 1. Algimante Black
- G. Other:
 - 1. Copy of FAX sent with information needed for completeness, July 16, 2010

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 10-151676 AD
 1/4 Section 3836
 Scale 1 inch = 200 feet
 State_Id 1S2E19DA 6900
 Exhibit B (Jul 02,2010)

