

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

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Date: September 13, 2010

To: Interested Person

From: Sheila Frugoli, Land Use Services

503-823-7817

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 10-149778 AD

GENERAL INFORMATION

Representative: Bill Lambert, Consultant

VLMK Consulting Engineers

3933 SW Kelly Ave Portland OR 97201

Applicant/Owner: Robert E Bolt

40 SE 16th Ct

Gresham, OR 97080

Site Address: 8705 SE FOSTER RD

Legal Description: BLOCK 2 LOT 1&2, ORPHA PK

Tax Account No.: R631900160 **State ID No.:** R631900160 1S2E16CA 03800

Quarter Section: 3639

Neighborhood: Lents, contact David Hyde at 503-772-1376.

Business District: Foster Area, contact Nancy Chapin at 503-313-1665.

District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-

4550.

Plan District: None

Zoning: CG, General Commercial

Case Type: AD, Adjustment

Procedure: Type II, an administrative decision with appeal to the Adjustment

Committee.

Proposal: The applicant intends to use 20 percent of the site for exterior storage. Exterior storage areas must be set back at least 10 feet from property lines that abut a street and must be landscaped to meet the L3, high-screen landscaping standard. The applicant is requesting

an Adjustment to reduce the required setback from 10 feet to 3 feet. The proposed 3-foot deep landscape area will include shrubs, trees and groundcover.

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 have been met.

ANALYSIS

Site and Vicinity: The site contains two buildings. A small, approximately 1,200 square foot building with storefront windows faces SE Foster Rd and a covered storage building with a large opening faces the interior portion of the site and SE 87th Avenue. The buildings are located near the east property line. The remaining western half of the site is undeveloped. There is currently no exterior storage activity occurring on the site. A tall chain link fence with gates on the north and south sides enclose the site. Residential development is located on the eastern abutting lot and across both SE 87th Avenue and SE Reedway Street and directly across SE Foster Rd. There are other nearby commercial uses and a school use—the Village Free School is located at the intersection of SE 87th and Foster Rd.

Zoning: The CG, General Commercial zone allows auto-accommodating commercial uses and limits the size of industrial uses.

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 26, 2010** The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering (Exhibit E.2)
- Water Bureau (Exhibit E.3)
- Fire Bureau (Exhibit E.3)
- Site Development Section of BDS (Exhibit E.3)
- Bureau of Parks-Forestry Division (Exhibit E.3)

The **Bureau of Environmental Services** responded with the following comment: BES does not object to the proposed adjustment to the required landscape buffer, however, in general, BES does not support waiving landscaping requirements. Landscaping plays an important role in mitigating the negative impacts of streets and parking areas. A disposal location for stormwater must be identified for any size development and redevelopment at the time of building permit application. Area calculations are based on total developed and redeveloped area, not net change in area. Infiltration testing may be required

If the new impervious area is determined to be <u>more than 500 square feet</u>, the development will be required to follow the Stormwater Infiltration Discharge Hierarchy which states that onsite stormwater discharge is required where feasible. Pollution reduction and flow control is required for all non-rooftop runoff, and all runoff that is not infiltrated on site. Stormwater runoff from ground-level impervious surface must be treated by means of vegetated surface facilities with overflow directed to an appropriate disposal location. (Exhibit E.1)

Neighborhood Review: A "Notice of Proposal in Your Neighborhood" was mailed on July 26, 2010. One written response has been received from a nearby property owner, Mr. David Hyde in response to the proposal. Mr. Hyde raised concerns about the proposal. He provided web links to the Google map site which provides previous photos of the site showing numerous used appliances being stored on the site. Mr. Hyde is concerned that if approved, the site will be returned to the use/appearance it recently had. Rather than approving the request, Mr. Hyde recommends allowing the applicant to keep the fence on SE 87th Avenue but relocate the fence

back 10 feet from SE Foster Rd. He prefers a fence with slats, similar to the screening achieved at Lents Auto Body site (at 9038 SE Foster Rd.).

Further, Mr. Hyde notes that there is a signalized mid-block pedestrian crossing, east of the SE 87th and Foster Rd. intersection. The signal gives indication for pedestrians to enter the intersection but not for motor vehicle drivers. This creates a challenge for drivers who at peak traffic times may need to take advantage of the traffic stopping for a pedestrian but can't be certain the timing of the pedestrian signal will be adequate to get them across the street. This safety issue for drivers would be further exacerbated by the absence of a planting strip on SE Foster. The absence of addition distance between the fencing and the curb, with fencing on the property line, impairs visibility for drivers looking east on Foster before entering the intersection. The challenge at this intersection may necessitate the selection and maintenance of plants that improve sight lines. (Exhibit F.1)

ZONING CODE APPROVAL CRITERIA

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., below, have been met.

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

Findings: The purpose of the setback and landscaping requirement for exterior storage in the CG zone, per Zoning Code Section 33.130.245.A, is as follows:

33.130.245.A.

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

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

The first bulleted purpose of the regulation refers to the desired character of the zone. Section 33.130.030.G describes the characteristics of the CG zone as follows:

The General Commercial zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market. Industrial uses are allowed but are limited in size to avoid adverse effects different in kind or amount than commercial uses and to ensure that they do not dominate the character of the commercial area. Development is expected to be generally auto accommodating, except where the site is adjacent to a transit street or in a Pedestrian District. The zone's development standards promote attractive development, an open and pleasant street appearance, and compatibility with adjacent residential areas. Development is intended to be aesthetically pleasing for motorists, transit users, pedestrians, and the businesses themselves.

The site contains two buildings, a metal "Quonset hut" type commercial building and a covered storage building with a large opening facing the interior portion of the site. The buildings are located near the east property line. The remaining western half of the site is open. A tall chain link fence with gates on the north and south sides enclose the site. Residential development is located on the eastern abutting lot and across both SE 87th Avenue and SE Reedway Street and directly across SE Foster Rd. There are other nearby commercial uses and a school use on the other side of SE Foster Rd.

According to the applicant, the owner intends to market the property to future lessees as a site with an allowed exterior storage area. For CG zoned sites, up to 1,711 square feet (20 percent of the site) may be used for exterior storage activities. Rather than set the exterior storage area back 10 feet the applicant proposes a 3-foot setback and the installation of a tall arborvitae hedge along the perimeter of the site, along the interior side of the existing chain link fence. In most instances, a landscape screen provides excellent visual screening and separation. However, in a letter sent by a nearby resident, the proposal may create impacts to the nearby residents, specifically pedestrians and motorists who are attempting to cross or merge into SE Foster Rd from SE 87th Avenue.

Rather than installing a tall hedge along most of the property boundary, which would create possible safety conflicts and would not create immediate sight-obscuring screening, a modified approach would also satisfy this criterion. The exterior storage area may be reduced from 10 feet to 3 feet along the west and north property lines. Accordingly, the landscaping requirement may be waived along the west and north property lines. In place of landscaping, new dark-color slats, at least 6 feet tall must be installed on the chain link fence. The 10 foot setback along the south (SE Foster Rd frontage) property line should however remain applicable. The required 10 foot setback along SE Foster Rd. must be planted to meet L2, low screen standard. The required continuous low screen will provide adequate sight lines and still create an attractive "face" to the commercial street.

For these reasons, the proposal will be consistent with the desired character of the zone, will not be a detriment to the overall appearance of the commercial area, will not have adverse impacts on adjacent properties, and will not have an adverse impact on the environment.

With conditions, 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: As stated above, the site is located within the CG zone. The streets adjacent to the site are SE 87th Avenue to the west, SE Foster Road to the south, and SE Reedway Street to the north. SE 78th Avenue and Reedway are local service streets. There is an entrance/exit driveway for the site onto both SE Foster and SE Reedway. No changes to driveway or the entrance off SE Foster are proposed. SE Foster Road is a Major Traffic and Transit Priority Street. Portland Transportation (PDOT) has no concerns about the proposal. Therefore, the adjacent streets are adequate to support the site and the associated exterior storage area. If set back at least 10 feet from the south property line, the proposal will have no adverse impacts on adjacent streets. Therefore, the proposal will be consistent with the classifications of the adjacent streets.

Retail sales and service and small (10,000 square feet or less) industrial uses are allowed in the CG zone. The existing development pattern and the desired character of the CG zone is described above under criterion A. The adopted Lents Neighborhood Plan (adopted March 1996). The "Vision" for the neighborhood includes the following relevant descriptions:

In 20 years Lents will be a major employment center in the region. As a major employment center, Lents will ideally draw from the neighborhood as well as the metropolitan area for their work force. In addition, new industries will invest a portion of their profits back into the neighborhood.

A pedestrian-friendly environment will be developed in Lents. Increased pedestrian accommodation will include more pedestrian crossings, increased connectivity

between east, west, north and south, and improved signal timing at cross walks to help reduce automobile and pedestrian conflict.

A reduced setback from 10 feet to 3 feet, along the north and west property lines, for exterior storage on the site will remain consistent with the classification of the abutting streets and the desired character of the area, as long as the exterior storage activities are adequately screened. A condition to install sight-obscuring fence slats on all three sides of the existing fence, as well as the entrance gates, will improve the appearance of the site while addressing pedestrian safety. A 10 foot setback, landscaped to meet the L2 standard will provide additional greenery and softening in an area that is presently dominated by buildings and hard surfaces.

With compliance with conditions, 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 is being requested, therefore this criterion is not applicable.

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

Findings: The site does not contain a city-designated scenic or historic 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 setback adjustment on the west and north property lines, a condition will require the installation of privacy slats onto the existing fence to provide at least 50 percent sight-obstruction along all three sides of the fence. The fence screening will mitigate impacts. To address pedestrian and motorist sight-line concerns, the required setback on the south property line must be met. To maintain open views, the landscaping standard is adjusted from the L3 standard to the L2. A low hedge screen will provide adequate visual improvement but will not create a visual obstruction for pedestrians and motorists.

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: The proposal is not within an environmental 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 property lines will minimize the adverse visual impacts of the exterior storage activities on nearby uses. A 10-foot deep setback and landscaping on the south edge of the exterior storage area will further enhance the appearance of the site and reduce impacts. Through compliance with conditions, the approval criterion will be met

ADMINISTRATIVE DECISION

Approval of the following Adjustments for exterior storage area:

- Reduce the required setback for exterior storage from 10 feet to 3 feet along the west and north property lines (33.130.245.C.2);
- Waive the L3 high-screen landscaping standard along the west and north property line (33.130.245.C.2);
- Modify the required landscaping along the south property line from the L3, high screen to the L2, low screen standard (33.248.020.C),

per the approved site plan, Exhibits C.1, signed and dated September 9, 2010, subject to the following conditions:

- A. A Zoning Permit is required to verify compliance with conditions. 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 LU 10-149778 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Privacy slats must be added to the existing chain-link fence and entrance gates along all three sides of the site. The slats must be at least 6 feet tall, a dark color and achieve at least a 50 percent sight-obscuring visual barrier along the street-facing property lines.
- C. The fence must be moved back at least 10 feet from the south property line.
- D. The 10 foot setback area along the fenced area along the south property line must be landscaped to meet the L2 landscaping standard (33.248.020.E).

Note: Except for lumber yards and building material stores, exterior storage area is limited to 20 percent of the site area. Up to 1,711 square feet of exterior storage area is allowed on this site. The Zoning Code requires the area be paved. If not currently paved, a separate building permit is required to install paving. Stormwater management requirements will apply at Building Permit review.

Staff Planner: Sheila Frugoli

Decision rendered by: ______ on September 9, 2010

By authority of the Director of the Bureau of Development Services

Decision mailed: September 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 June 24, 2010, and was determined to be complete on July 21, 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 24, 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.

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 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. Lowincome 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 28, 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;

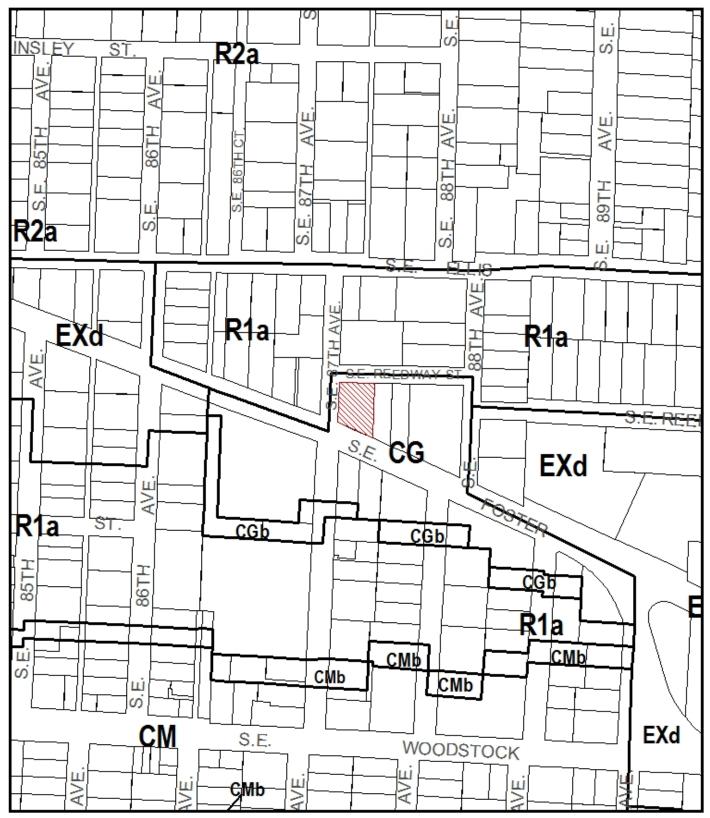
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Revised proposal description, dated July 19, 2010
 - 2. Revised response to approval criteria, dated July 19, 2010
 - 3. Original submittal, dated June 9, 2010
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Revised Site Plan, submitted July 20, 2010 (attached)
 - 2. Original Submittal
 - 3. Photos of Site
- 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. TRACS Print-out showing no concerns from Water Bureau, Fire Bureau, Site Development Review Section of BDS and Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. David Hyde, August 16, 2010, raised concerns regarding proposal
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Application Letter to Applicant

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



LU 10-149778 AD File No. 3639 1/4 Section _ 1 inch = 200 feet Scale. 1S2E16CA 3800 State_Id . Exhibit. (Jun 28,2010)



