



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

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Date: May 16, 2011
To: Interested Person
From: Kathleen Stokes, Land Use Services
503-823-7843 / Kathleen.Stokes@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 11-117368 AD

GENERAL INFORMATION

Applicant: Lisa Bersani, Interstate Farmers Market
2209 N Schofield
Portland, OR 97217

Chris Shine, De La Salle North Catholic High School
7528 N Fenwick Ave
Portland OR 97217

School District No 1(property owner)
PO Box 3107
Portland, OR 97208-3107

Site Address: 7528 N FENWICK AVE

Legal Description: INC VAC ST BLOCK 13&14 EXC PT IN ST, KENTON
Tax Account No.: R445905190
State ID No.: 1N1E09DD 15900
Quarter Section: 2228

Neighborhood: Kenton, Steve Rupert at 503-317-6573.
Business District: Kenton Business Association, Echo Leighton at 503-285-7234.
District Coalition: North Portland Neighborhood Services, Mary Jaron Kelley at 503-823-4099.

Plan District: North Interstate Plan District
Other Designations: Kenton Conservation District

Zoning: R1 (R1,000, Medium Density Multi-Dwelling Residential)

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

Proposal: The applicants are proposing to locate a farmer's market in a portion of the parking lot at the Kenton School building. The site, which is owned by Portland Public Schools and leased to De La Salle North Catholic High School, is situated on the northwest corner of North

Interstate and Lombard. The proposed market would operate on Saturdays, from 9 AM to 1:30 PM, early spring through late fall (April through November). If approved, the proposed dates for this first year would be May 21 through September 24, 2011. Setup would begin 2 hours prior to the market's opening time and tear down would take about 2 hours after closing. There would be between 24 and 40 stalls, including an information tent and a music tent, as shown on the attached site plan.

The Portland Zoning Code, Title 33, Section 33.296 allows farmer's markets and other similar uses as "temporary activities." In residentially zoned properties such as this site, seasonal outdoor sales of plant and produce are allowed twice a year, for up to five consecutive weeks each time. The Code also requires that there be a time between temporary activities that is four times as long as the duration of the last event. The regulations would allow the events for a cumulative total of 70 days per year, with at least 20 weeks between each continuous 5 week or 35 day event.

Exceptions to the regulations for temporary activities are approved through Adjustment Reviews when all of the relevant approval criteria are met or can be met through conditions of approval. Therefore, the applicants are requesting approval of an Adjustment to Code Section 33.296.030 A.3.b to allow the proposed farmer's market to operate each Saturday, from April through November. (This is up to approximately 35 to 36 days per year, depending on the how the calendar varies from year to year).

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 property is a 4-acre parcel fronting North Lombard. School buildings are clustered at the western portion of the property, with the main entrance of the school building facing North Fenwick. The eastern portion of the property is developed for outdoor play areas and play fields. The parking areas, that are proposed for use for the farmer's market, are located between the school buildings and the play areas.

The area around the site, to the north and northwest is developed predominantly with single-dwelling residences. The areas adjacent to North Lombard and North Interstate consist of development that is devoted to a variety of commercial uses. The MAX Interstate line runs along the east side of the property.

Zoning: The R1, Multi-Dwelling Zone allows residences at a density of up to one unit per 1,000 square feet of site area. Institutions such as schools may be allowed if approved through Conditional Use Review. The site is also within the Kenton Conservation District, which is intended to enhance the identity of the district by reinforcing the area's historic significance.

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

LUR 00-00044 HDZ approved a Historic Design Review for a shear wall covered with brick for the south wall.

LU 03-108317 HDZ approved a Historic Design Review for a new concrete ramp and stairs to the eastern side of the main school building and also approved a wood ramp system with stairs to serve the two portable classrooms to the south of the main building.

LU 06-174156 CU AD approved a Conditional Use Review:

- To reduce the size of the existing school site, from 3.98 acres to 1.98 acres,
- To relocate the De La Salle North Catholic High School program to the lease hold on the western portion of the property (7528 North Fenwick),
- To allow conceptual approval of a proposed gymnasium structure, to the southeast of the existing building (pending future approval through Historic Design Review),

- To allow other improvements, including the addition of a 30-space parking lot and an outdoor plaza and the removal of one existing modular structure.

Also approved were Adjustment Reviews:

- To reduce the required minimum setback from the east and south (Lombard Street) property lines from 18 feet to 10 feet for the proposed gymnasium,
- To reduce the required minimum amount of overall landscaping for the site from 20% to 17%,
- To reduce the minimum number of required loading spaces from two spaces to one space and reduce the size of the loading space from 35 feet to 31 feet in length.

Approvals were subject to the conditions that required that

- the TDM plan that was previously approved for the school remain in effect at the new location,
- that an up-to-date floor plan of all buildings on the site must be filed with the North Precinct Commander of the Portland Police Bureau
- that landscape plans be submitted for building permits that are in accordance with the landscaped setbacks that were reviewed and approved through the Adjustment Review.

LU 10-118484 HDZ Approval of Historic Design Review for exterior alteration that included two new signs, not meeting the Community Design Standards, in the Kenton Conservation District. Approval was in accordance with the approved exhibits and a requirement that sign connections to brick masonry will penetrate the wall surface only at mortar joints.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **March 22, 2011**. The following Bureaus have responded with no issues or concerns. Agencies that provided written comments are noted with exhibit numbers:

- Environmental Services
- Transportation Engineering provided an analysis of potential impacts on the neighborhood transportation system and noted that, with the provision of the signed agreement to allow the vendors to park in the Kaiser property parking lot, in the block to the south of the site, impacts should be minimal. An ongoing agreement for vendor parking was requested as a condition of approval for the requested Adjustment (Exhibit E-1).
- Water Bureau provided information on the existing water service to the site (Exhibit E-2).
- Fire Bureau noted that the applicant should verify any special Fire Marshal’s permits that may be required and obtain any of these permits that may be needed (Exhibit E-3).
- Site Development Section of BDS
- Life Safety Plan Review Section of BDS
- Parks-Forestry Division

Neighborhood Review: A total of nine letters and/or emails were received in response to the notification of the proposal. Eight of these were from notified property owners and other neighbors and one was from the Kenton Neighborhood Association. All of these responses were in support of approving the requested Adjustment, stating that they valued the opportunity to have a Farmer’s Market located in the Kenton Neighborhood (Exhibits F-1 through F-9).

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 purpose of the regulations for temporary activities is to allow short-term and minor deviations from the requirements of the zoning code for uses which are truly temporary in nature, will not adversely impact the surrounding area and land uses, and which can be terminated and removed immediately.

The proposed Farmer's Market would operate on Saturdays, between the hours of 9 AM and 1:30 PM, with two hours on either end of the event for setup and teardown of the temporary facility. The neighborhood has expressed support for the proposal, which will provide an amenity for the area without any permanent changes to the built environment. Because the event would be held in a parking lot that is not regularly used on Saturdays and because it will be adjacent to the De La Salle High School (formerly Kenton School) and is also next to the MAX station at N. Lombard and N. Interstate, it is a logical community gathering place. Parking for customers who drive to the market will be on the portion of the parking lot that is not set up for the market booths. The market vendors' vehicles will be parked in a lot that is owned by Kaiser Foundation, and is located on the west side of N. Interstate, in the block to the south of the school site. This agreement for the use of the Kaiser parking area will help to ensure that there are not any adverse impacts on the surrounding area, including the prevention of adverse impacts from loss of on street parking. The event will not be held for more total cumulative time than would be allowed by right, as a temporary activity, under current Code provisions. The adjustment is only being requested, because the configuration of the time allotted to the use is different than the time limitations defined in the Code. It is likely that having the market occur on a weekly basis, from April through November, which would generally be about 36 days per year, would create fewer impacts than having an event occur for 5 continuous weeks, twice a year, or 70 days, as the subject Code section would allow by right. Therefore, the purpose of the regulation is equally fulfilled and this criterion is met.

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

Findings: As stated in the findings above, the proposed activities of the seasonal farmer's market will not cause any negative impacts on the appearance or the livability of the residential area. Neighbors who commented stated that they had lived in the neighborhood for a number of years and that they were looking forward to the idea of having the market held in this location. Safety will be assured through compliance with the permit requirements of the Portland Fire Bureau for these types of activities. The market organizers will be required to supervise customer parking, to ensure that neighbor's driveways are not blocked. Organizers also will be required to curtail noise in the hours before the market opens and to clean up any litter that is generated by the market visitors. An offsite location for vendor parking is being provided for the 2011 season and a condition of approval will require that an agreement for offsite vendor parking be provided each year. With this requirement, the potential impacts to the transportation system in the surrounding neighborhood from this activity should be minimal. Therefore, with these conditions, this criterion can be 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: Impacts that may require mitigation include potential for parking that could block neighbors' driveways, safety issues, noise and litter. These impacts are all addressed through the conditions of approval that will require any necessary permits from the City's Fire Marshal and the oversight of parking, noise and litter by the market organizers. Therefore, with these conditions, 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, so 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 proposed Farmer's Market will provide an amenity on this site that is welcomed by the neighborhood and which will have no adverse impacts or any permanent effects on the built environment of the area. The proposed schedule, which is limited to 8.5 hours per week, including setup and teardown of the operation, will have fewer impacts on the surrounding area than an outdoor sale that could occur in this zone, under the current Zoning Code regulations, for up to a total of 70 days, in a continual period for 5 weeks (35 days), two times per year. Requirements for any required permits from the City of Portland Fire Marshal will ensure that the activities are conducted in a manner that is safe for the neighborhood. The market organizers will be required to oversee parking, noise and litter to ensure that there are no impacts on the adjacent neighbors. An offsite parking area for vendors will be required to be provided each year. Because the proposal equally meets the purpose of the regulation and will not have any significant adverse impacts on the livability or appearance of the residential area, the requested adjustment to allow an exception to the schedule for the temporary activities can be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Temporary Activities, Code Section 33.296.030 A.3.b, to allow a Farmer's Market to be held one day per week, on Saturdays from 9 AM to 1:30 PM, beginning in May, 2011. With 2 hours, each, for setup and teardown, the activity would last from 7 AM to 3:30 PM.

Approval is subject to general compliance with the approved site plan, Exhibit C-1, signed and dated May 12, 2011, and also subject to the following conditions:

- A. As part of the application submittal to the Fire Marshal for any required permits, the site plan must reflect general compliance with the information and design approved by this land use review as indicated in Exhibit C.1, Case File # LU 11-117368 AD."

- B. Organizers of the Farmer's Market are required to oversee parking along the adjacent rights-of-way, to ensure that vendors use the designated Kaiser facility parking lot and the market participants and customers do not block access to driveways on nearby properties.
- C. Organizers of the Farmer's Market are required to direct vendors and other participants to minimize noise levels during morning setup. No amplified music, including any setup and/or "sound check," is to begin prior to the opening of the market at 9 AM.
- D. Organizers of the Farmer's Market are required to maintain the market site, parking area and the adjacent sidewalks, on both N Lombard and N. Russett Streets. to the midblock area that aligns with the east wall of the Kenton School building, to ensure that these areas are free of litter each week at the end of the market.
- E. The applicant must retain the use of an off-site parking lot for use by the farmer's market's vendors. A shared parking lot agreement for use of a lot that is close enough and large enough to accommodate the market vendors must be retained each year for the market season. Lack of the annual provision of such an agreement will be considered a violation of this approval subject to the City's Code Enforcement process.

Staff Planner: Kathleen Stokes

Decision rendered by:  **on May 12, 2011**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 16, 2011

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 March 2, 2011, and was determined to be complete on **March 18, 2011**.

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 March 2, 2011.

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 requested that the 120-day review period be extended until a signed agreement for the use of a parking area for the market vendors could be obtained, as stated with Exhibit A-4. Unless further extended by the applicant, **the 120 days will expire on: July 31, 2011**.

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 May 31, 2011** 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 **June 1, 2011 – (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.

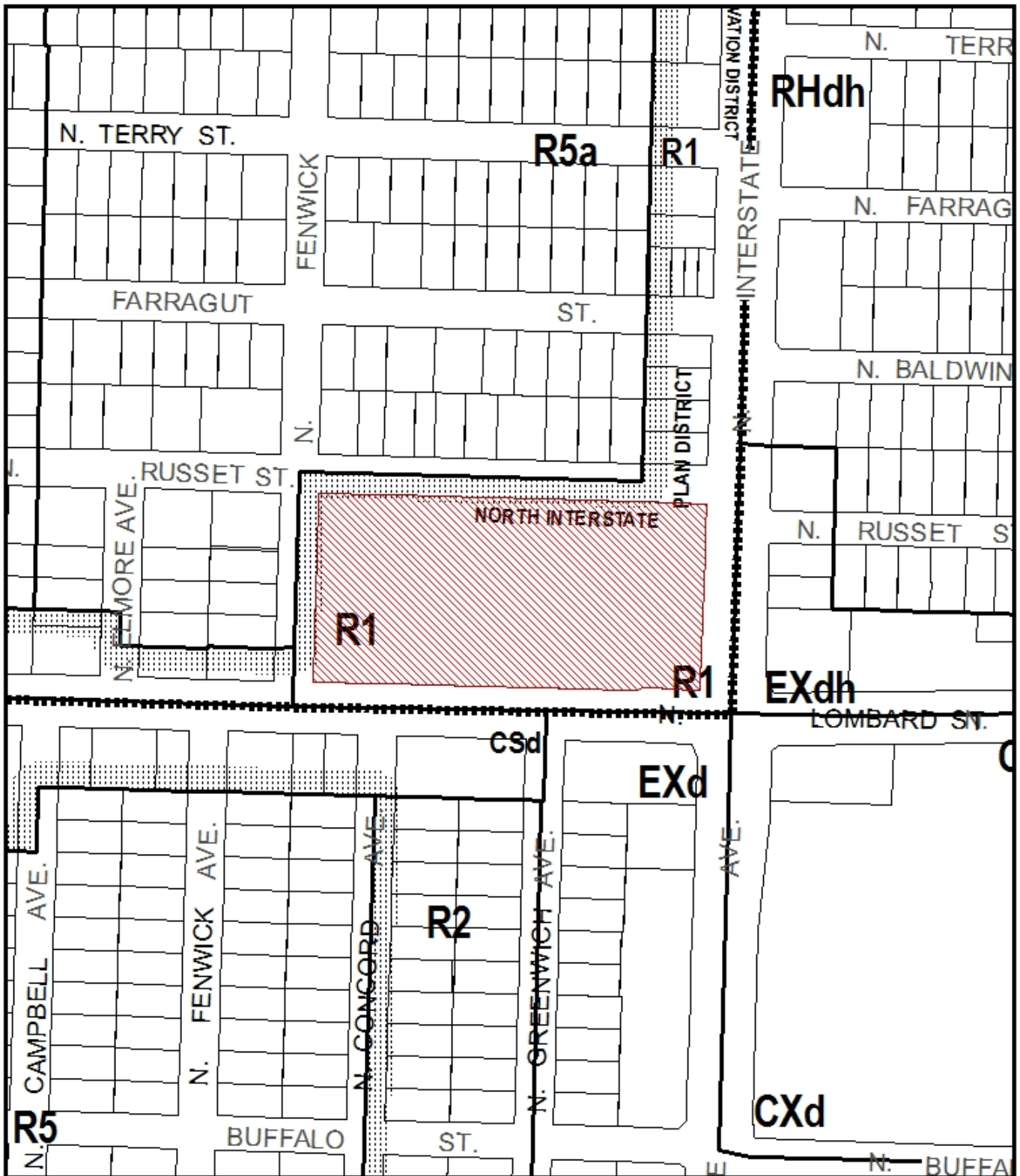
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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 plan and narrative
 2. Revised site plan, submitted March 17, 2011
 3. Clarification of proposed annual dates for market, submitted March 18, 2011
 4. Request to extend 120 days for final local decision, dated April 25, 2011
 5. Copy of signed share parking agreement with Kaiser Foundation Health Plan of the Northwest, submitted May 9, 2011
- 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 Transportation Engineering and Development Review
 2. Water Bureau
 3. Fire Bureau
 4. Summary of electronic responses from City agencies
- F. Correspondence:
 1. Kendra Ortner
 2. Theresa Hill
 3. Scott Cohen
 4. Christine M. Cruz
 5. Stephanie Michel
 6. Karen Munro
 7. Angela Moos, Chair, Kenton neighborhood Association
 8. Meggan McEvoy
 9. Patrick Kayser
- G. Other:
 1. Site History Research
 2. Letter from Kathleen Stokes to Lisa Bersani March 16, 2011



ZONING



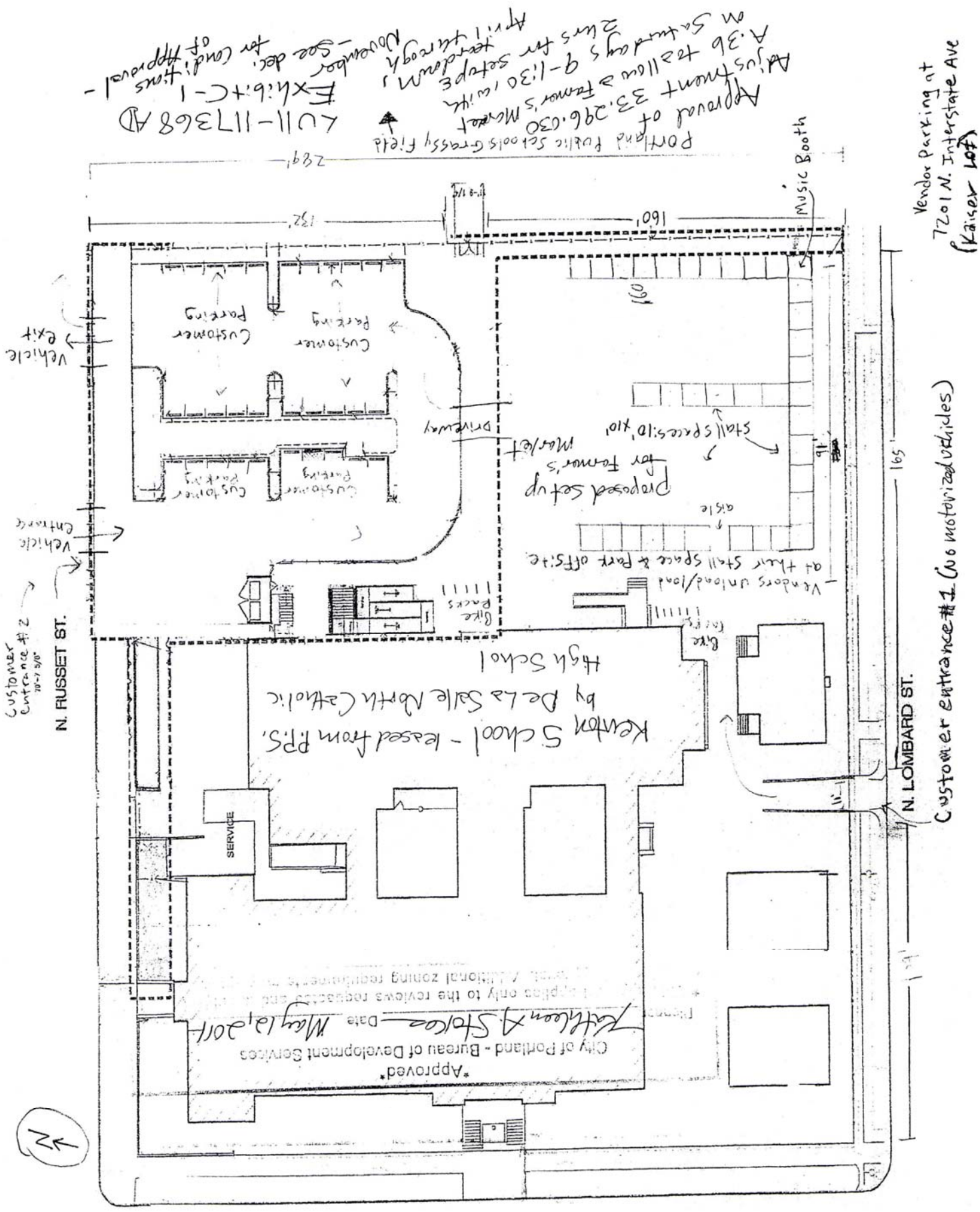
Site



NORTH

This site lies within the:
 NORTH INTERSTATE PLAN DISTRICT
 KENTON CONSERVATION DISTRICT

File No.	LU 11-117368 AD
1/4 Section	2228,2229
Scale	1 inch = 200 feet
State_Id	1N1E09DD 15900
Exhibit	B (Mar 04,2011)



Approved
 City of Portland - Bureau of Development Services
 Kathleen A Stokes Date May 12, 2011
 Applies only to the reviews requested and
 does not constitute approval of any other
 applicable zoning requirements.

Portland Public Schools Grassy Field
 Approval of 33.296.030 Market
 Adjustments 33.296.030 Market
 on Saturdays 9-11:30 with
 2 hrs for set up
 April through November
 - see dec. for cond. of approval
 Exh. b + c - 1
 KU11-117368 AD

Vendor parking at
 7201 N. Interstate Ave
 (Kaiser lot)

Customer entrance #1 (no motorized vehicles)

N. LOMBARD ST.

N. RUSSET ST.

N. FENWICK AVE.

