

City of Portland, Oregon

Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

Date: May 7, 2012

To: Interested Person

From: Sheila Frugoli, Land Use Services

503-823-7817 / Sheila.Frugoli@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 12-122878 AD

GENERAL INFORMATION

Applicant/Owner: Minh Cong Le

17717 SE 37th St Vancouver, WA 98683

Site Address: 9800 & 9816 NE 6TH DR

Legal Description: TL 1100 0.30 ACRES, SECTION 03 1N 1E; TL 1200 0.57 ACRES,

SECTION 03 1N 1E; TL 1300 0.21 ACRES, SECTION 03 1N 1E

Tax Account No.: R941030880, R941032120, R941032630

State ID No.: 1N1E03DD 01100, 1N1E03DD 01200, 1N1E03DD 01300

Quarter Section: 2030

Also Owns: Lot 10, The Willows, 1N1E03DD 01000, R829400340; Lot 9, The

Willows, 1N1E03DD 00900, R829400310; Lot 8, The Willows, 1N1E03DD 00800, R829400280; Lot 7, The Willows, 1N1E03DD 00700, R829400250; Lot 5 & 6, TL 600, The Willows, 1N1E03DD 00600, R829400220; and Lot 5, TL 500, The Willows, 1N1E03DD

00500, R829400160.

Neighborhood: East Columbia NA, contact Maryhelen Kincaid at 503-286-3354.

Business District: Columbia Corridor Association, contact Peter Livingston at 503-796-

2892.

District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at

503-823-4099.

Plan District: None

Zoning: IG2b c h, General Industrial 2 zone, with the b, Buffer, c,

Environmental Conservation and the h, Aircraft Landing overlay zones.

Case Type: AD, Adjustment Review

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

Committee.

Proposal: The applicant is requesting an Adjustment to waive the setback and landscaping requirement for portions of the site located within the Buffer Overlay zone. For industrially-zoned sites, the Buffer overlay requires a 20 foot setback and landscaping to the L3, high

screen landscaping standard along lot lines within the overlay zone (Section 33.410.040.A.2). The L3 standard requires a continuous row of tall shrubs or a 6-foot-high masonry wall, as well as trees and ground cover. The Buffer overlay is applied to sites that abut residentially-zoned properties and is intended to create separation and buffering between the different uses.

The applicant is currently under code enforcement for extending paving and storing materials in the buffer overlay zoned area (file 11-2041040 CC). To comply with Section 33.410.040.B, the applicant has removed exterior work activities/storage from the buffer overlay. He wishes to retain the existing paving and fencing.

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 Section 33.805.040, Adjustment Approval Criteria have been met.

ANALYSIS

Site and Vicinity: The industrially-zoned site contains two structures that were constructed as and appear to be occupied as single-dwelling residences and a large storage shed. There is an open covered structure that appears to be used as a work area. The remaining portion of the subject site is paved and has a tall chain link fence with colored slats and barbed wire on top of the fence. The site contains pallets, vehicles and other miscellaneous equipment and containers. Immediately south, and west of the site are industrial uses. Specifically, most of the nearby sites that are west and north of the residentially-zoned lots have large exterior work and storage areas. Immediately north of the subject site are 10 lots zoned R10, a single-dwelling residential zone and are developed with houses. Six of the 10 lots, those that abut the subject site, are owned by the applicant. East of the residential lots is a City of Portland owned, 28.8 acre park—the Columbia Children's Arboretum.

A drainage channel is located near the subject site, on the southern abutting lots. The proposed paving and exterior activities appear to be outside of the portion of the site that is designated with the Environmental Conservation overlay zone.

Zoning: The subject site is within the IG2, General Industrial 2 base zone. Portions of the site are within the b, Buffer and c, Environmental Conservation overlay zones. The entire site is within the h, Aircraft Landing overlay zone.

The General Industrial zones are two of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zones provide areas where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry. The development standards for each zone are intended to allow new development which is similar in character to existing development. The intent is to promote viable and attractive industrial areas. The <u>IG2</u> areas generally have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street.

<u>Environmental overlay zones</u> protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less sensitive. Note that these regulations apply only to areas within the Environmental Conservation ("c") zoning designation. The proposal is not located within an Environmental overlay zone.

The <u>Buffer overlay zone</u> requires additional buffering between nonresidential and residential zones. It is applied to provide adequate separation between residential and nonresidential uses. The separation is achieved by restricting motor vehicle access, increasing setbacks,

requiring additional landscaping, restricting signs, and in some cases by requiring additional information and proof of mitigation for uses that may cause off-site impacts and nuisances.

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 **April 5, 2012**. The following Bureaus have responded with no issues or concerns:

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

The Multnomah County Drainage District #1 noted that the fencing and/or landscaping must be located 25 feet from the drainage ditch that is maintained by the Drainage District. (Exhibit E.4)

The Bureau of Environmental Services responded with the following comments:

BES does not support the requested Adjustment to waive the landscaping requirement for portions of the site located within the Buffer Overlay zone, as new landscaping provides many benefits that support the BES mission.

General Stormwater Management Requirements: All development and redevelopment proposals are subject to the requirements of the City of Portland Stormwater Management Manual (SWMM). The SWMM is periodically updated; projects must comply with the version that is adopted when permit applications are submitted. The 2008 SWMM may be obtained at the City of Portland Development Services Center (1900 SW 4th Ave) and from the BES website.

BES Mission: BES's mission includes the protection of public health, water quality and the environment by providing sewage and stormwater collection and treatment services, and by protecting the quality of surface and ground waters. Landscaping is needed to mitigate some of the negative impacts of paved areas in the Columbia Slough watershed.

Landscaping will help by lowering the temperature of runoff, facilitating infiltration of stormwater which recharges groundwater and increases base flows that also reduce the temperature of water that will eventually flow into the Columbia Slough.

TMDL Requirements: The project site is located in the Columbia Slough Watershed. Total Maximum Daily Load (TMDL) water quality requirements apply in the Columbia Slough Watershed, as required by Oregon DEQ. The Stormwater Management Manual (SWMM) requires that applicants use pollution reduction facilities that are capable of reducing TMDL pollutants. Vegetated facilities sized according to the Simplified or Presumptive Approaches meet these requirements.

The site is located in the Lower Columbia Slough basin. The Lower Columbia Slough is tidally influenced for its entire nine-mile length and has been designated as Critical Habitat for ESA-listed Chinook salmon and steelhead trout by NOAA Fisheries. Juvenile salmon use the Lower Slough during the winter months as they seek food, cover, and off-channel habitat areas away from the Willamette and Columbia rivers. There is a surface water channel located on the site near the southern property line. The channel is part of a complex web of waterways that eventually drain to the Columbia Slough. This web of surface water channels and their riparian areas provide habitat for wildlife such as frogs, turtles, and birds.

Native trees and shrubs along the banks of our waterways provide shade and shelter for aquatic and terrestrial fauna. Trees, shrubs, and groundcover plants absorb some runoff, reducing flow and help filter sediments, nutrients, and pollutants from runoff before they enter our waterways. By acting as a buffer in this way, vegetation helps maintain good quality water in our streams. (Exhibit E.1)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 5, 2012. Four nearby neighbors submitted written comments and photos, in response to the proposal (Exhibits F.1-F.3). Their comments are summarized as follows:

- The property owner has purchased several properties and turned them into rental properties and brought trouble to the quiet little neighborhood.
- The pallet manufacturing business, with at least 3 employees start grinding and shredding wood, using a nail gun and/or a radial arm saw as early as 5:00 am and often continue until 10:00 pm.
- One of the owner's rental houses is used for illegal activities.
- The pallet factory should not be allowed.
- Semi-trucks park in the roadway of NE 6th Drive for loading and unloading. People drive 45 to 60 miles an hour around this corner.
- The pallets are a potential fire hazard.
- The scraps are burned at the site.

Staff Comments: The purpose of this land use review is to consider waiving or modifying applicable zoning code requirements, specifically a setback and landscaping requirement on a portion of the site. Because the site is zoned for industrial use, the pallet business and exterior work activities and storage are allowed. The pallet business can be classified as either a Manufacturing and Production use or an Industrial Service Use that allows the salvage of building materials and recycling operation. Both uses are allowed outright in the IG2 zone. However, the Zoning Code regulates off-site impacts, such as noise and odor. This will be discussed below under applicable findings.

All Portland residents and business owners deserve considerate, law-abiding neighbors who maintain their properties. Unfortunately, many of the neighbors concerns do not relate to the proposal—to waive the landscaping requirement. Therefore, they cannot be considered as part of this Adjustment review. If violations to other City Codes are occurring, separate enforcement actions can be taken. Neighbors should contact the Fire Bureau to report the fire hazard concern. And, they should report to the Police Bureau both the illegal activities at the nearby home and the truck loading that is occurring within the NE 6th Drive roadway.

ZONING CODE APPROVAL CRITERIA

33.805.040 Adjustments Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. 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 Buffer overlay zone is described under Zoning Code section 33.410.010, as follows:

The Buffer overlay zone requires additional buffering between nonresidential and residential zones. It is used when the base zone standards do not provide adequate separation between residential and nonresidential uses. The separation is achieved by restricting motor vehicle access, increasing setbacks, requiring additional landscaping, restricting signs, and in some cases by requiring additional information and proof of mitigation for uses that may cause off-site impacts and nuisances.

Except for nine residentially-zoned lots that are clustered along NE Walker Court, of which six are owned by the applicant, most of the area is industrially zoned and developed with heavy industrial uses. The undesirable appearance and nuisance impacts are generally not an issue for most of the industrial properties. However, based upon the issues raised by nearby residents, additional buffering is needed to reduce impacts. A 20-foot deep landscaped area would soften the appearance of the exterior storage activities on the site. However, noise and odor (smoke) impacts rather than visual impacts are the primary concern. To minimize impacts, a required 5-foot deep landscaped edge will serve to define the separation between the residentially and industrially zoned properties. The landscaping, planted to meet the L3, high screen landscaping standard, will provide functional benefits to the Lower Columbia Slough basin and the adjacent channel that drains to the slough (BES response, Exhibit E.1). So that the landscaping is compatible with the adjacent environmentally-zoned channel, the plants must be selected from the Portland Plant List. To minimize noise and odor impacts, the required 20-foot setback to exterior activities cannot be waived. A condition will require an additional 15-foot deep setback. Specifically, the condition will require the paying area be barricaded off or be painted with contrasting color, either white or yellow, that serves to restrict exterior work activities within the 20-foot deep setback area. Further, a condition will require a noise analysis of the equipment used at the pallet business be conducted by the City's Noise Control Officer. The noise analysis will help determine if violations are occurring and if additional restrictions or actions must be taken to conform to Title 18, Noise Control.

With compliance with condition, this approval criterion will 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 this site is industrially-zoned and has frontage on NE 6th Drive. The street is classified as a local service street. The site and surrounding area is within a designated Freight District. This request raised no concerns or objections by PDOT staff. Therefore, staff can conclude that the Adjustment to the landscaping and setback requirement will not impact the operation of the street. As noted on page 4 of this report, the concerns raised by loading activities occurring within the public right-of-way cannot be addressed via the Zoning Code. Complaints about traffic violations must be directed to the Portland Police Bureau.

The Zoning Code defines the term "desired character" as being based on the purpose statement of the base zone, overlay zone and plan district and the preferred and envisioned character included in adopted area plans (Section 33.910.030). As noted on page 2 and 3, the site is within the IG2, General Industrial 2 zone and a portion of the site is within the b, Buffer overlay zone. The purpose of these two zones is relevant to this approval criterion. The other overlay zones on the site—the c, Environmental Conservation and the h, Aircraft Landing zones are not relevant to this proposal. Further, the site is within the Albina Community Plan boundary (adopted July 28, 1993, effective October 1993).

Land Use Policy Objective B.1, of the **Albina Community Plan** is relevant to this proposal. It states, "Buffer residential areas from the negative impacts of nearby large scale commercial, employment, industrial and institutional developments."

Although the current use of the site cannot be considered "large scale" the purpose of the Buffer Overlay, reinforces this Community Plan policy. Given the need to buffer the residentially-zoned area from industrial impacts, the landscaping and setback requirement cannot be entirely waived. As explained under criterion A, a lesser amount of landscaping is appropriate, but a reduced setback or separation is not. Through compliance with the

conditions of approval, the desired character of the sites will be achieved and therefore this approval criterion will 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

Findings: Only one adjustment has been requested. Therefore, this criterion does not apply.

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

Findings: This site is not located within the scenic overlay zone nor is it designated as a historic landmark or resource. Therefore, this criterion is not applicable.

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

Findings: The reduction in landscaped area will not create significant impacts. This decision requires separation via the required 20 foot deep setback. No mitigation is required. 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: According to the BDS code compliance inspector, the fencing, paving and work activities are located outside of the designated resource. Therefore, an Environmental Review is not required. A 5-foot deep landscaped area, planted with native species, will enhance rather than create detrimental impacts to the environmentally-zoned drainage channel, located near the southern edge of the site. Through compliance with the condition that requires the landscaping, this approval criteria will be met.

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 5-foot deep landscaping, planted with native species, will achieve a tall visual screen. The landscape area will provide shading and infiltration which will enhance the functional value of the environmentally-zoned drainage channel. The required 20-foot setback and required noise testing will serve to reduce impacts to the adjacent residential development. Through compliance with conditions, the approval criterion will be met.

ADMINISTRATIVE DECISION

Approval of the Adjustment to reduce the required depth of the landscaped buffer from 20 feet to 5 feet (33.410.040.A.2), per the approved site plan, Exhibit C.1, signed and dated May 3, 2012, subject to the following conditions:

A. Within the Buffer overlay zone, on the inside of the existing fence, at least a 5-foot deep area of paving must be removed and planted with trees, shrubs and ground cover to comply with the L3, high screen standard (33.248.020.C). The plants must be selected from the Portland Plant List.

- B. Within the Buffer overlay zone, on the inside of the required 5-foot deep landscape area, a 15-foot setback must be delineated in the paved area via fencing to preclude use and/or access. Or the 15-foot wide paved area must be painted with a contrasting color, either white or yellow, to designate where buildings, structures, work activities, exterior display and/or exterior storage are <u>prohibited</u>.
- C. The applicant (property owner) and tenant must request a noise test be conducted by the Portland Noise Control Officer. The applicant must coordinate a site visit and cooperate with the Noise Officer to determine if the operations at the site—which include the grinding and shredding of wood materials and the construction of pallets—all comply with noise restrictions.
- D. To verify compliance, a Zoning Permit is required. The Zoning Permit application submittal must include plans that graphically represent the location of the landscaping and designated setback area. The plans must be labeled "REQUIRED per Case File LU 12-122878 AD." The noise analysis must be completed to the satisfaction of the Noise Control Officer before inspection and final approval.

Staff Planner: Sheila Frugoli

Decision rendered by: on May 3, 2012

By authority of the Director of the Bureau of Development Services

Decision mailed: May 7, 2012

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 22, 2012, and was determined to be complete on **March 30, 2012**.

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 22, 2012.

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 May 21, 2012** 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 May 22, 2012
- 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.

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:

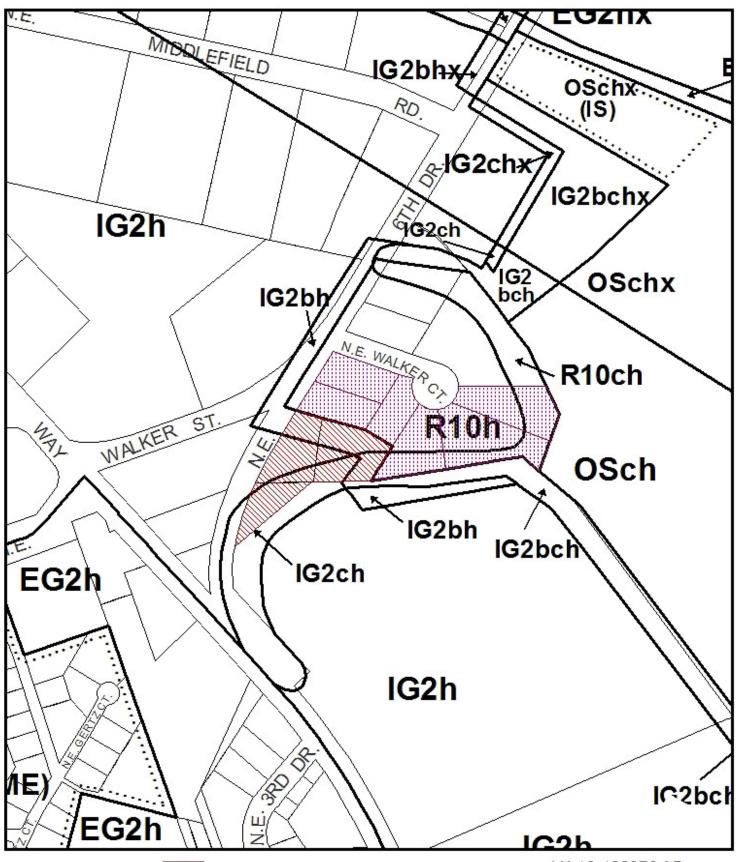
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations 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
 - 2. Water Bureau
 - 3. TRACS Print-Out- "No Concerns" from Portland Bureau of Transportation, Fire Bureau, Site Development Review Section of BDS, and Bureau of Parks, Forestry Division
 - 4. Multnomah County Drainage District #1
- F. Correspondence:
 - 1. Anthony Johnston and Archie Rischiottio, April 23, 2012, letter with attached photos, opposes the Adjustment
 - 2. James Bowers, April 23, 2012, opposes Adjustment
 - 3. Pam Lee, April 23, 2012, raises concerns
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Enforcement Letter from Code Compliance to Owner 11-204140 CC.

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 Also Owned



LU 12-122878 AD File No. 2030 1/4 Section _ 1 inch = 200 feet Scale_ 1N1E03DD 1100 State Id В (Mar 30,2012) Exhibit.



