



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: October 4, 2012
To: Interested Person
From: Douglas Hardy, Land Use Services
503-823-7816 / Douglas.Hardy@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved with conditions** a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 12-155958 AD

GENERAL INFORMATION

Applicant: Corner Stone Community / c/o Pastor Johnson
2216 NE Killingsworth Street / Portland, OR 97211

Representative: Dave Spitzer / DMS Architects
2106 NE Martin Luther King Boulevard / Portland OR 97212

Site Address: 2216 NE Killingsworth Street

Legal Description: Block 10, Lot 1 Exc. Pt in St., Lot 2, N 18' of Lot 3, Vernon
Tax Account No.: R860702010
State ID No.: 1N1E23AA 02800
Quarter Section: 2532
Neighborhood: Concordia, contact George Bruender at 503-287-4787
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321
District Coalition: Northeast Coalition of Neighborhoods, Chris Lopez at 503-823-4575.
Zoning: R2 Multi-Dwelling Residential
R2.5 Single-Dwelling Residential
Alternative Design Density ("a") overlay zone
Aircraft Landing Zone ("h") overlay zone

Case Type: Adjustment Review (AD)
Procedure: Type II, Administrative decision with appeal to Adjustment Committee

PROPOSAL

The applicant proposes constructing a one-story, 300 square foot addition on the south side of the existing church building on the site. The addition will be located within two feet of the south property line, and be set back approximately five feet from the six foot high masonry wall located on the adjacent property to the south. The owner of the adjacent property has signed and recorded a no-build easement stating that no development will occur on their lot within seven feet of the property line.

The portion of the site where the addition is proposed is located in an R2.5 Single-Dwelling zone. In the Single-Dwelling zones, an institutional building addition of the size proposed is required to be set back a minimum of 15 feet from all property lines. The applicant is therefore

requesting an Adjustment to reduce the minimum required setback from the south property line from 15 feet to two feet for the proposed addition.

RELEVANT APPROVAL CRITERIA

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The 7,171 square foot site is located at the southeast corner of NE 22nd Avenue and NE Killingsworth Street. The site is developed with an existing church on the east side of the lot, with a parking lot (accommodating approximately 10 spaces) located west of the building. The parking spaces appear to be nonconforming in their dimensions, as does the aisle width and parking lot landscaping. A small one-story addition to the building extends westward into the parking area, and is located within five feet of the south property line.

The surrounding area is developed predominantly with one to two-story single-dwelling homes, interspersed with some low-density, multi-dwelling residences. The property closest to the south lot line where the setback adjustment is requested is developed with a one-story, single-dwelling residence. A one-car detached garage, located close to the public sidewalk, is built at or near the applicant's south lot line. A masonry wall, approximately six feet in height is located along the remainder of this lot line (on the adjacent site).

Non residential development in the surrounding area includes the Vernon Elementary School located immediately west of the site, across NE 22nd Avenue; a church located farther to the west, on the south side of NE Killingsworth Street; and a fire station and a public park to the north across NE Killingsworth Street.

Zoning: This site has split zoning: R2 (Multi-Dwelling Residential 2,000) on the northern portion of the property; and R2.5 (Single-Dwelling Residential 2,500) on the southerly 20 feet of the property. The entire site is also mapped with an Alternative Design Density ("a") overlay, and an Aircraft Landing Zone ("h") overlay.

The use regulations of the Multi-Dwelling Residential zones are intended to create and maintain higher density residential neighborhoods. At the same time, they allow for large scale institutional campuses and other nonresidential uses but not to such an extent as to sacrifice the overall residential neighborhood image and character. Religious Institutions are allowed in the Multi-Dwelling zones only if approved as a Conditional Use. The development standards of the Multi-Dwelling zones work together to create desirable residential areas by promoting aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. Institutional development in the Multi-Dwelling zones is subject to the institutional development standards found in Table 120-5 of the Zoning Code.

The use regulations of the Single-Dwelling Residential zones are intended to create, maintain and promote single-dwelling neighborhoods. They allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood. Similar to the Multi-Dwelling Zones, Religious Institutions are allowed in the Single-Dwelling zones only if approved as a Conditional Use. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

The "a" overlay allows additional residential density opportunities in limited situations when design standards are met. The "h" overlay limits the height of structures under the paths of aircraft that are approaching or leaving Portland International Airport. The standards of these overlay zones are not relevant to this proposal.

Land Use History: City records include the following prior land use reviews for this site:

- **VZ 176-68:** Approval of a variance in 1968 to change a nonconforming use (a grocery store) to another nonconforming use (production and sale of lamp shades).
- **CU 21-72:** Approval of a Conditional Use Review in 1972 to allow the establishment of a church on the site, including construction of a new building. Approval required setbacks of 15 feet in the front, 10 feet in the rear, and 6 feet on the east side. Off-street parking and acoustic insulation were also required.
- **VZ 146-73:** Approval of a variance from 1973 to reduce the front setback from 15 feet to 12 feet. This case was voided on February 15, 1974.
- **LU 05-129848 CU AD** Approval of a 2,039 square-foot addition to the existing church to be located in the existing surface parking lot on the site. An agreement was signed for shared parking at Vernon School. This review also approved an Adjustment to reduce the minimum building setback for the disabled access ramp along NE 22nd Avenue from 10 feet to four feet, two inches, and to reduce the minimum required south setback for new stairs on the existing building from 15 feet to three feet. This addition was never built, and because it has been more than three years since the land use decision was issued, the land use review is void.

Agency Review: A Notice of Proposal was mailed July 12, 2012. The following City bureaus have responded with no issues or concerns:

- Portland Parks & Recreation – Urban Forestry Division; and
- Bureau of Development Services – Site Development Section.

The Bureau of Environmental Services (BES) responded that since the proposed addition will create less than 500 square feet of new impervious surface, stormwater pollution reduction/detention requirements of the *Stormwater Management Manual* will not apply. However, a disposal location must be identified at time of building permit application for all new and redeveloped surfaces. The applicant will need to consider the roof line and location of this structure on the site and structures on adjacent properties when determining a disposal location. If disposal to an existing system is proposed, design and capacity of the existing system will need to be evaluated at the time of building permit review. The applicant may coordinate with BES permit review staff as needed to determine an acceptable disposal location.

The Portland Bureau of Transportation (PBOT) responded that curb cuts and driveway construction must meet the requirements in Title 17. The Title 17 driveway requirements will be enforced during the review of building permits. The existing curb cut/driveway located along the site's NE 22nd Avenue frontage may satisfy current City design standards. However, the applicant is advised that said curb cut/driveway may need to be reconstructed to satisfy current City design standards as a condition of Building Permit review/approval.

PBOT also noted that the City's Pedestrian Design Guide recommends an 11 foot wide sidewalk corridor (0.5 foot curb/ 4 foot wide furnishing zone / 6 foot wide sidewalk / 0.5 foot wide frontage zone) along the site's NE 22nd Avenue frontage. The site's existing 10 foot wide sidewalk corridor along NE 22nd Avenue does not satisfy the 11 foot wide standard. The applicant is advised that if any of PBOT's Title 17 thresholds are triggered by the proposed addition (17.88.020.A-C), the existing insufficient sidewalk corridor along the site's NE 22nd Avenue frontage will need to be reconstructed to satisfy the 11 foot wide standard. To accommodate the standard 11 foot wide sidewalk corridor, a one foot dedication of property will also be required. If said requirements are identified during the Building Permit process, the applicant may elect to challenge the frontage improvement requirements via the City's Public Works Appeal process.

The Water Bureau has no concerns with the requested land use review, but noted that City Code 21.12.010 requires any new building construction, additions to or modifications of existing structures to have a water service and meter of appropriate size installed within the public right-of-way and within the specific property boundary/frontage for which it will serve. A Water Bureau review for fixture count will need to be submitted by the applicant at the time of submittal of the building permit to appropriately size the water service and meter for this location.

The Fire Bureau responded that all applicable Fire Code requirements will apply at time of building permit review.

The Life Safety Plans Examiner with the Bureau of Development Services noted that exterior walls located less than five feet from a property line must be one-hour fire-rated for exposure to fire from both sides. Additionally, openings in exterior walls less than three feet from a property line are not allowed. Unprotected openings in exterior walls less than five feet to a property line are not allowed in an unsprinklered building. The applicant was informed that as a building wall containing a window opening is proposed within two feet of the south property line, a Building Code Appeal will be required. The applicant was advised that he can resolve the Building Code Appeal prior to issuance of a decision on the land use review, or proceed with the land use review, absent approval of a Building Code Appeal. The latter option may result in modifications to the building design, which may necessitate an additional land use review if exterior modifications are made. The applicant has opted to proceed with the land use review prior to resolving the Building Code Appeal. Because a window is proposed on the building wall that is located within two feet of the south property line, and absent a resolution whether this will be allowed through the Building Code appeal, a condition will be included as part of this land use decision that states the window is allowed but not required, pending resolution of the Building Code Appeal.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on July 12, 2012. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

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. 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 applicant has requested approval of an Adjustment to the reduce the minimum building setback for a proposed addition from 15 feet to two feet. The purpose for required building setbacks for institutional uses, as stated in Zoning Code Section 33.110.245.A, is to maintain compatibility with and limit negative impacts on surrounding residential areas. Generally, as stated in Zoning Code Section 33.110.220.A, building setbacks are intended to maintain light, air, separation for fire protection, and access for fire fighting. Setback standards also reflect the general building scale and placement of development in the City's neighborhoods and promote options for privacy.

The requested Adjustment equally meets the stated intent of the minimum building setback regulation based on the following findings:

- The reduced setback for the proposed addition will scarcely be visible from either of the adjacent streets on this corner site. The view from NE 22nd Avenue will be largely screened by the existing one-story addition on the subject site that is located between the new addition and the street. A one-car detached garage located on the adjacent site

and built near the south lot line (close to the street) further screens views of the addition. Because the majority of the addition will be set back from the east-facing facade of the existing building, its visibility from NE Killingsworth Street will be minimal.

- Because the setback reduction is proposed within the south setback, the single-dwelling residence to the south is the property most likely to be impacted by the Adjustment request. However, a six foot high masonry wall that extends across nearly the entire length of the south property line will screen most of the addition as viewed from the adjacent residence. The tall mature shrubs and evergreen trees along this property line provide further screening.
- Additionally, because the property-owner of the adjacent site to the south has agreed to a seven foot deep no-build easement on their lot (evidenced by a signed, recorded document), there will be at least nine feet (two feet on the subject site plus seven feet on the adjacent site) between the addition and any future development that may occur on the adjacent site. This no-build easement not only ensures adequate separation for fire protection, but also maintains an appropriate visual separation between structures.
- While the setback for the addition from the south property line will be only two feet, adequate access for fire fighting will be maintained. The addition will still be accessible from the five foot setback just west of the proposed structure, and via the five foot separation between the south wall of the addition and the masonry wall on the neighboring property.
- The remaining setbacks surrounding the addition (in combination with the no build-easement) ensure that light and air will reach adjacent properties.

Based on these findings, the Adjustment request equally meets the intent of the setback regulation, 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: The proposed addition will be located in the rear corner of the site, and its visibility from the street and adjacent properties will be limited. As noted above, the addition will not be readily visible from either NE 22nd Avenue or NE Killingsworth Street due to existing development on the site and existing mature landscaping along the south lot line. The landscaping, in combination with the six foot high masonry wall at or near the south lot line, substantially screens views at least of the lower portion of the addition from adjacent neighbors. To help blend the addition with existing development on the site, a condition of approval will require that the exterior cladding of the addition visually match in color and material the exterior cladding of the main building on the site.

Also, while the base zone requires a minimum setback of 15 feet and the applicant is only proposing a two foot setback for the addition, existing development on the site is already set back only five to six feet from the south and east property lines. Additionally, while the main building on the site is the equivalent of two-stories in height, the proposed addition is limited to a single story. As such, the two foot setback proposed for the addition will not appear substantially different in its location relative to the lot line when compared to existing development on the site, particularly given the scale of the addition will be much smaller than existing development on the site.

As proposed and with the condition of approval, 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: As only one Adjustment is requested, this criterion is not applicable

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

Findings: City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. Because there is neither a scenic nor historic resource designation on the site, this criterion is not applicable.

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

As indicated above in response to Approval Criteria A and B, because the request equally meets the intent of the setback regulations, and will not significantly detract from the appearance or livability of the surrounding residential area, there are no adverse impacts for which mitigation is required, with one exception. The addition will extend above the height of the six foot height masonry wall located at or near the south lot line. To help blend the new addition with the existing building on the site, a condition of approval will require that the exterior cladding on the addition visually match the color and exterior cladding on the existing main building on the site.

As proposed and with the condition of approval, this criterion is 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: As the site is not located in an environmental zone, this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant has demonstrated the applicable criteria have been met. The request to reduce the minimum required building setback for a one-story addition is determined to equally meet the intent of the regulation. The addition, with a condition that the exterior cladding visually match the material and color of the existing building on the site, will not detract from the appearance or livability of the surrounding residential area. Because a window opening is proposed on the wall of the addition that is within two feet of a property line, a Building Code Appeal is required. The applicant has opted to pursue the land use review in advance of receiving approval of the Building Code appeal. Because of this, a condition is required of the land use review that allows, but does not require, a window opening on the south-facing facade of the addition, if approved through the Building Code Appeal.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum required south building setback [Zoning Code Section 33.110.245, Table 110-5) from 15 feet to two feet, per the approved site plan and building elevations (Exhibits C.1 and C.2), signed and dated October 3, 2012, and subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B and C) must be noted on each of the four 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 12-155958 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The window located on the south-facing wall of the proposed addition is allowed, but not required, pending resolution of a Building Code Appeal.
- C. The exterior cladding of the addition shall visually match in color and material the exterior cladding of the main building on the site.

Staff Planner: Douglas Hardy

Decision rendered by:  **on October 3, 2012**

By authority of the Director of the Bureau of Development Services

Decision mailed: October 4, 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 June 28, 2012, and was determined to be complete on **July 12, 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 June 28, 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 requested that the 120-day review period be extended 14 days. Unless further extended by the applicant, **the 120 days will expire on November 23, 2012**.

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 October 18, 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 **October 19, 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:

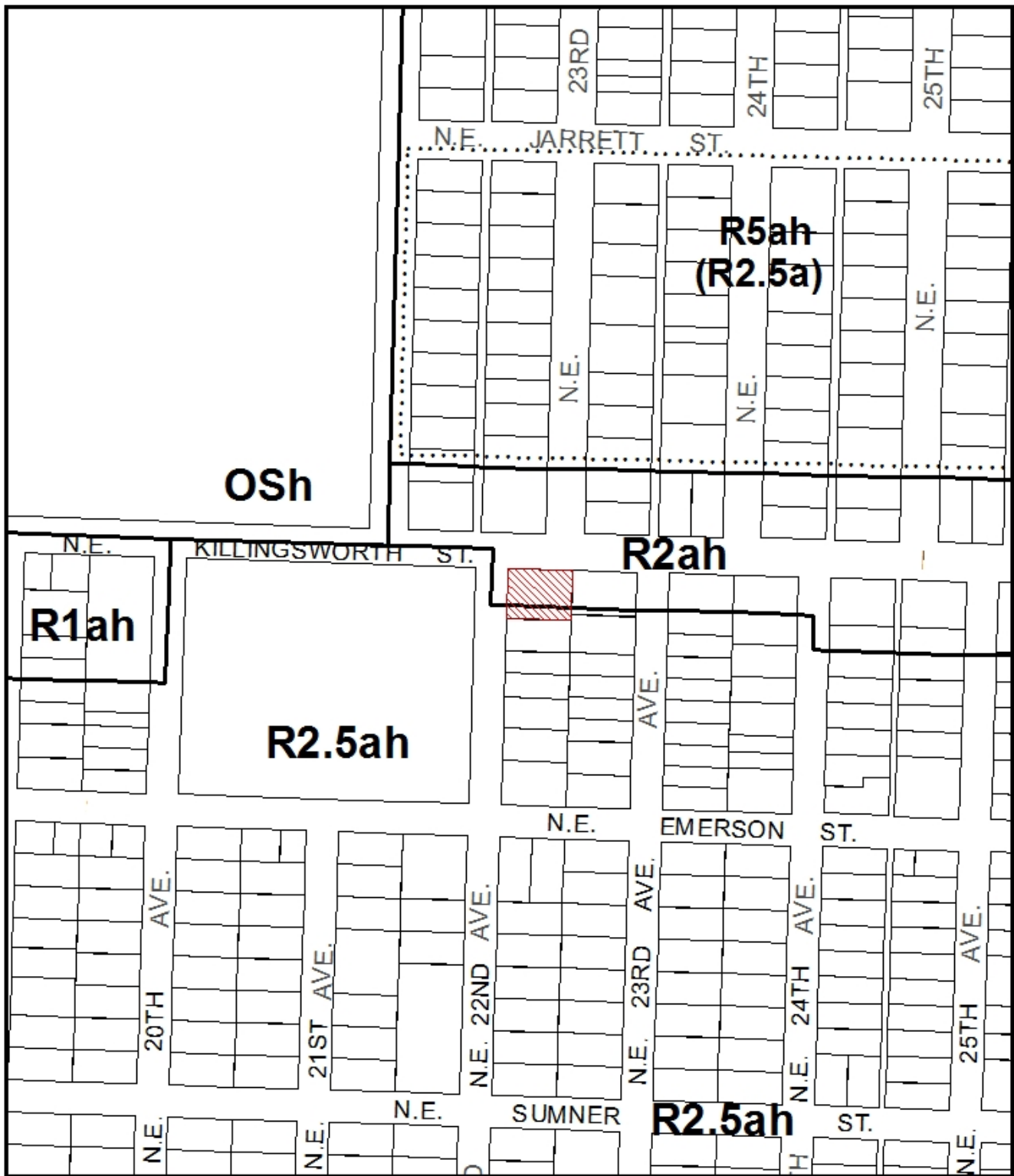
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Written Statement
 - 2. Recorded No-Build Easement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Building Elevations (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Bureau of Transportation
 - 3. Water Bureau
 - 4. Portland Fire & Rescue Bureau
 - 5. Bureau of Development Services - Site Development Review Section
 - 6. Portland Parks & Recreation - Forestry Division
 - 7. Bureau of Development Services – Life Safety Plans Examiner
- F. Correspondence (none)
- G. Other:
 - 1. Original LU Application
 - 2. E-mail from Dave Spitzer requesting extension of 120-day review period

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



File No. LU 12-155958 AD
 1/4 Section 2532
 Scale 1 inch = 200 feet
 State_Id 1N1E23AA 2800
 Exhibit B (Jun 29, 2012)

