



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

FROM CONCEPT TO CONSTRUCTION

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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** May 6, 2014  
**To:** Interested Person  
**From:** Kathleen Stokes, Land Use Services  
503-823-7843 / [Kathleen.Stokes@portlandoregon.gov](mailto: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 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 14-112341 AD**

#### **GENERAL INFORMATION**

**Applicants:** Donna Keogh  
508 W 44th Street / Vancouver, WA 98660  
  
Dan Grunewald  
PO Box 1100 / Wilsonville OR 97070

**Owner:** Brenda J Sears  
4159 SE 37th Avenue / Portland, OR 97202

**Site Address:** 4159 SE 37TH AVE

**Legal Description:** BLOCK 1 S 45' OF N 90' OF W 100' OF E 200' OF LOT 6 N 45' OF E 200' OF LOT 6, WILLIAMS ADD 2

**Tax Account No.:** R916100310

**State ID No.:** 1S1E12DD 17900

**Quarter Section:** 3434

**Neighborhood:** Creston-Kenilworth, contact Tyler King at 503-735-5818.

**Business District:** Greater Brooklyn, contact David Weislogel at 503-872-9320.

**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.

**Zoning:** R2 (R2000, Low Density Multi-Dwelling Residential)

**Case Type:** Adjustment Review

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

**Proposal:** The applicants are proposing the development of six residential units on this site. Each unit would be housed in a separate detached structure. One on-site parking space would be provided for each unit. A common access drive and pedestrian walkway would be finished with paving blocks or bricks. The Zoning Code requires landscaping within the building setbacks and along the perimeter of the driveway and parking area. The plan calls for the required five feet of landscaping along the north and the west edges of the site. On the south edge of the property, there would be five feet of landscaping on the western portion and along the jog where the property turns to the north. On the eastern portion of the south property line, at the perimeter adjacent to the combined driveway and pedestrian pathway, there would be a landscaped setback area that is three feet wide. Exceptions to the Code Standards are approved through Adjustment Reviews, in accordance with state law, when all of the relevant Approval criteria are met, or if the criteria can be met through conditions of approval.

Therefore, the applicants are requesting approval of an Adjustment to Code Section 33.266.130 G.2, to reduce the width of the perimeter landscaped setback, adjacent to the south side of the driveway, from five feet to three feet.

**Relevant Approval Criteria:** To be approved, this proposal must comply with the approval criteria of threethree.805.040 A.-F., Adjustments, cited below.

## ANALYSIS

**Site and Vicinity:** The site is a 13,500 square-foot, L-shaped property that is located on the west side of SE 37<sup>th</sup>, approximately midway between the intersections with SE Gladstone and SE Cora Streets. The site is developed with a single-dwelling residence that is located some distance back from the street, at the top of a slope that is situated on the narrow portion of the property that connects to the street frontage. An accessory structure behind the house served as a garage for the residence. The area around the site is developed with a variety of structures, including vintage single-dwelling residences and several multi-dwelling complexes.

**Zoning:** This site is zoned R2, Low Density Multi-dwelling Residential. This zone allows approximately 21.8 dwelling units per acre. The major type of new development will be duplexes, townhouses, rowhouses and garden apartments. These housing types are intended to be compatible with adjacent houses. Generally, R2 zoning will be applied near neighborhood collector and district collector streets, and local streets adjacent to commercial areas or major streets.

**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 **March 4, 2014**. The following Bureaus have responded with no issues or concerns:

- Environmental Services originally sent a recommendation of denial, based on the concern that they did not have sufficient information to determine that the reduced landscaped area would be sufficient to handle the runoff of storm water from the driveway. After working with the applicant's engineer, BES staff sent an addendum that reversed their position and stated that, with a condition that requires use of pervious pavers in the driveway, storm water runoff would be adequately managed and so the reduced landscaped area would still meet that portion of its purpose and the adjustment request could be approved (Exhibits E-1 and E-2).
- Transportation Engineering indicated that there were no concerns and provided informal comments that described the street classifications and the state of the street improvements (Exhibit E-3).
- Water Bureau gave information on the existing water service to the site and described requirements for any upgrades to the service (Exhibit E-4).
- Fire Bureau noted that Fire Code requirements apply and must be met at the time of building permit review (Exhibit E-5).
- Life Safety Plan Review Section of BDS noted that a complete life safety plan review will be provided at the time of building permit submittal (Exhibit E-6).
- Parks-Forestry Division provided a response of "no concerns" (Exhibit E-7).

**Neighborhood Review:** A total of two written responses have been received from notified property owners in response to the proposal. One of the letters, from the neighbor that owns the property that is two lots to the north of the site, asked questions regarding the proposed design and number of residential units that were depicted on the western portion of the site (Exhibit F-1). *(Staff informed this neighbor that the western units were proposed to be five individual residences, for a total of six residences on one property, making them a multi-dwelling development, under the definitions of Title 33).*

The second letter was from the neighbor who is the owner of the property immediately to the north of the site. This neighbor discussed various impacts that he was concerned might occur from the proposal. He said that he was opposed to reducing the width of the sidewalk, that he was concerned that the two story residential structure that is proposed for the eastern portion of the site would block light to his property and also that he was concerned about storm water

runoff to the north, onto his property (Exhibit F-2). *(Staff notes that there is no proposal to reduce the width of the sidewalk. The two-story structure that is proposed on the eastern portion of the site meets the minimum required setback from the north property line and is within the maximum allowed height, so staff has no authority to address concerns about that structure. As noted above, BES took a very close look at the storm water management plans for this proposal and worked with the applicant's engineer to ensure that there would be no runoff onto adjacent properties. Further, the reduced width of landscaping is on the south side of the driveway. The full five-foot width of landscaping is proposed on the north side, abutting this neighbor's property).*

## ZONING CODE APPROVAL CRITERIA

**three.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.

### **three.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 request is for an Adjustment to Code Section three.266.1three0 G.2, to reduce the width of the required perimeter landscaped setback on the south side of the driveway and parking area, from five feet to three feet.

The parking setback and landscaping requirements are intended to

- Improve and soften the appearance of parking areas;
- Reduce the visual impact of parking areas from sidewalks, streets, and especially from adjacent residential zones;
- Direct traffic in parking areas;
- Shade and cool parking areas;
- Reduce the amount and rate of stormwater runoff from vehicle areas;
- Reduce pollution and temperature of stormwater runoff from vehicle areas; and
- Decrease airborne and waterborne pollution.

The proposed landscaping is being provided, in accordance with the requirements of Title 33, with one small exception. Along the southern edge of the driveway, the proposal calls for the landscaped area to be reduced in width from five feet to three feet. All required shrubs and trees will still be provided within this area. The only reduction in plant materials will be having less living ground cover provided. A condition will require that the adjacent drive that provides access for both motor vehicle and pedestrians will be paved with pervious pavers that allow percolation of storm water runoff. Therefore, the proposed landscaped area will serve to improve and soften the appearance of the parking area and will reduce the visual impact from the sidewalk, the street and the adjacent residential property to the south. There is not any need to direct traffic in this small vehicle area. The landscaping, consisting of trees and shrubs, will shade and cool the parking area and the amount and rate of stormwater runoff will be reduced through the combined effects of the landscaping and the pervious pavers. The proposed landscaped area will aqually reduce pollution and the temperature of stormwater runoff and decrease airborne and waterborne pollution, as would a five-foot-wide landscaped area. Therefore the purposes of the regulation are 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:** Approval of the request to reduce the width of the required landscaping along the south edge of the parking area, from five feet to three feet will not significantly detract from the appearance or the livability of the residential area. The required plants will still be installed and will buffer and screen the parking area from the adjacent property to the south and also will soften the edge of the parking area and reduce the visual impact from the street. Therefore, no potential impacts on livability or appearance, based on the reduced width of the landscaped setback, have been noted and this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

**Findings:** Only one adjustment is being requested. Therefore, this criterion does not apply.

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

**Findings:** There are no City-designated scenic or historic resources on the site. Therefore, this criterion does not apply.

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

**Findings:** No impacts from the requested Adjustment have been identified by staff. Therefore, no mitigation is needed and 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:** The site is not located in an environmental zone. Therefore, this criterion does not apply.

## DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title threethree 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

All of the relevant approval criteria have been met for the requested Adjustment to reduce the minimum width of the perimeter landscaped setback at the south edge of the driveway. The purpose for landscaped setbacks will be equally met because the plants will serve to soften and screen the edge of the parking area and will reduce storm water runoff. The proposal to reduce the width of the landscaped area will not significantly detract from the appearance or the livability of the surrounding area. The proposal can be approved in general compliance with the site plan.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.266.130 G.2, to reduce the width of the perimeter landscaped setback, adjacent to the south side of the driveway, from five feet to three feet, in general compliance with the approved site plan, Exhibit C-1, signed and dated May 2, 2014, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B) must be noted on each of the 4 required site plans or included as a sheet in

the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 14-112341 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. In order to provide adequate management of storm water runoff, pervious pavers must be used for the combined driveway and pedestrian access. These pavers must meet with the approval of the Bureau of Environmental Services.

**Staff Planner: Kathleen Stokes**

**Decision rendered by:**  **on May 2, 2014**

By authority of the Director of the Bureau of Development Services

**Decision mailed: May 6, 2014**

**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 five0three-82three-7three10 for information about permits.

**Procedural Information.** The application for this land use review was submitted on January 31, 2014, and was determined to be complete on **February 28, 2014**.

*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 January 31, 2014.

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 extended the 120-day review period by 35 days, as stated in Exhibit A-4. Unless further extended by the applicant, **the 120 days will expire on: August 3, 2014**.

**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 20, 2014** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 2:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 2:00 pm on Thursdays, appeals must be submitted at the reception desk on the five<sup>th</sup> 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 five0three-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](http://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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 21, 2014– (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit,

permittees must demonstrate compliance with:

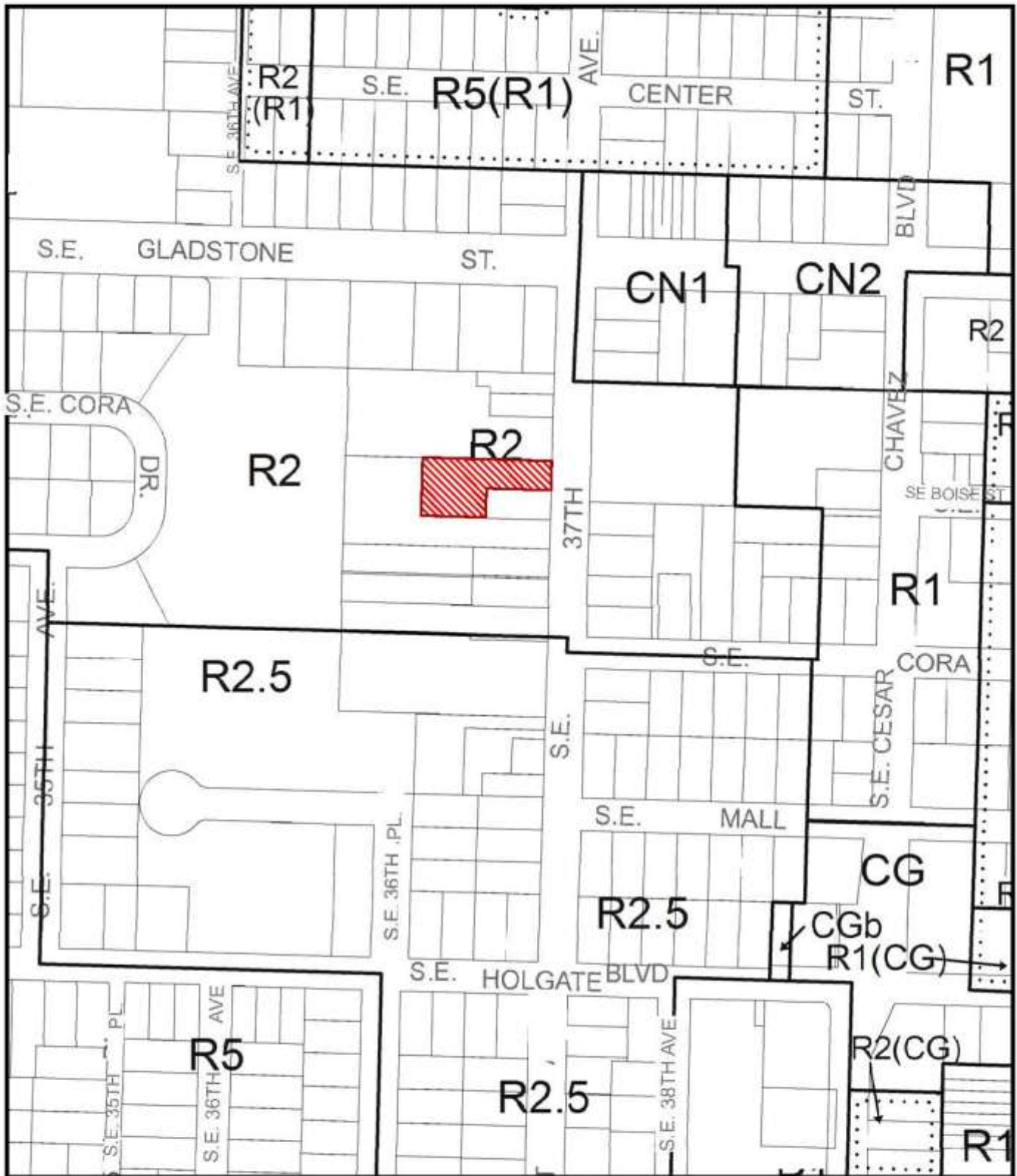
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Application and original submittal
  - 2. Supplemental information, in response to incomplete letter (undated)
  - 3. Supplemental information, sent February 27, 2014
  - 4. Request to extend 120 deadline for final local decision
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation Drawings
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Environmental Services Addendum
  - 3. Bureau of Transportation Engineering and Development Review
  - 4. Water Bureau
  - 5. Fire Bureau
  - 6. Life Safety Plan Review Section of BDS
  - 7. Summary of responses from City service agencies, including Bureau of Parks, Forestry Division response
- F. Correspondence:
  - 1. David Hackney
  - 2. Dennis Ladick
- G. Other:
  - 1. Letter from Kathleen Stokes to Donna Keough, February 14, 2014

**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

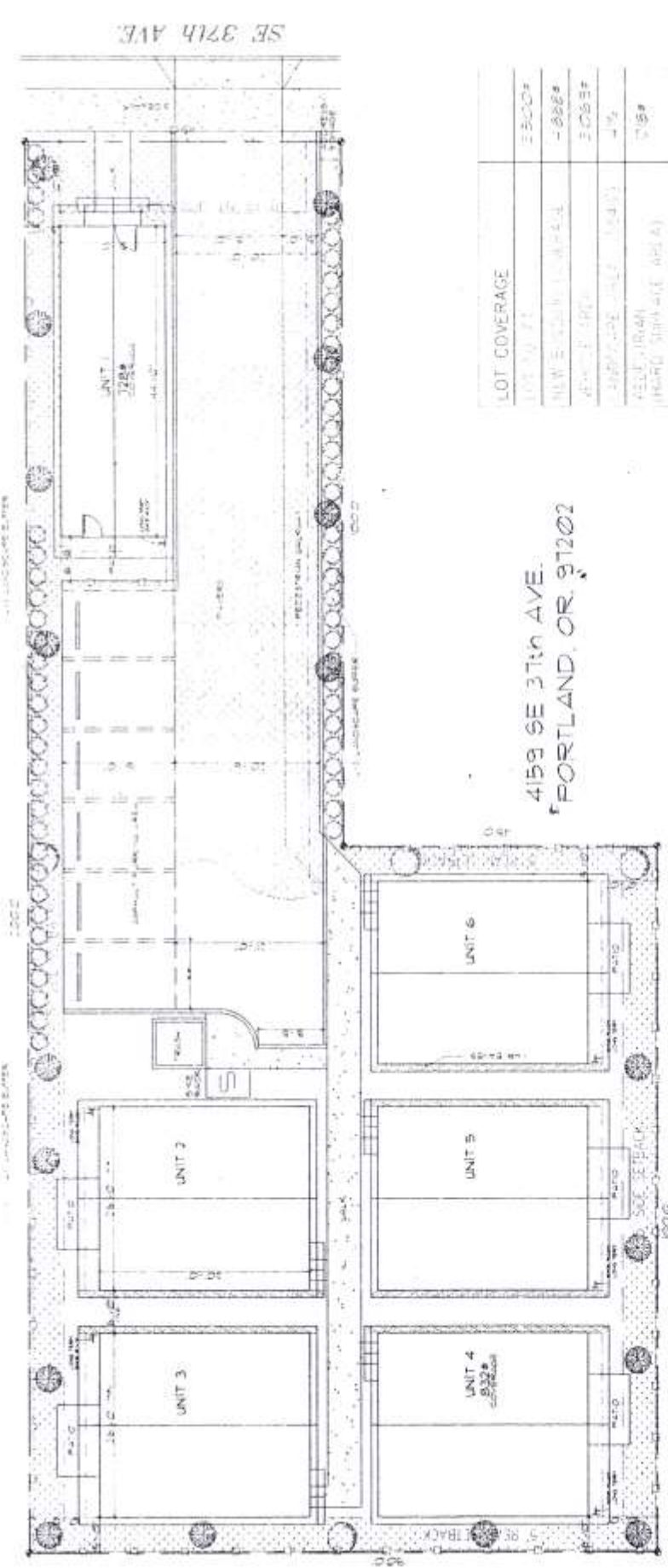


NORTH

This site lies within the:  
 SOUTHEAST UPLIFT NEIGHBORHOOD  
 CRESTON-KENILWORTH  
 GREATER BROOKLN

File No. LU 14-112341 AD  
 1/4 Section 3434  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E12DD 17900  
 Exhibit B (Feb 05, 2014)





4159 SE 37th AVE.  
 PORTLAND, OR, 97202

**LEGAL DESCRIPTION:**

151E12DD 17900  
 City of Portland - Bureau of Development Services  
 Planner *Kathleen A. Stokes* Date *May 2, 2004*  
 \*Approved\*  
 This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

**OWNER:**  
 C/O DAN GRUNEWALD  
 PO Box 1100  
 WILSONVILLE, OR 97070  
 Cell: 503-705-0708  
 Fax: 503-658-0425

LU 14-112341AD  
 Exhibit C-1

project

SE 37th AVE

plan

**SITE**

1/7/14

**DAN GRUNEWALD**

WILSONVILLE, ORE. CELL: 503-209-0442

NO.	DATE	REVISIONS / DESCRIPTION	BY
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