



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: April 29, 2016
To: Interested Person
From: Mark Walhood, City Planner
503-823-7806 / Mark.Walhood@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 mailed copy of this document is only a summary of the decision. 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 16-129166 AD

GENERAL INFORMATION

Applicant: Dan Williams
Faster Permits
14334 NW Eagleridge Lane
Portland, OR 97229

Property Owner: Eden Enterprises LLC
5505 SW Delker Rd
Tualatin, OR 97062-9710

Site Address: 305 and 313 NE 74TH AVE

Legal Description: BLOCK 21 LOTS 21 & 22 & 23, MT TABOR VILLA
Tax Account No.: R589403980, R589403970
State ID No.: 1N2E32DB 04700, 1N2E32DB 04701
Quarter Section: 3038

Neighborhood: Montavilla, contact Lewis Scholl at 503-258-0312.
Business District: Eighty-Second Ave of Roses Business Association, contact Richard Kiely at 503-504-2273.
District Coalition: Southeast Uplift, contact Anne Dufay at 503-232-0010.

Zoning: **R2.5a** (Single-Dwelling Residential 2,500 base zone with “a” or Alternative Design Density overlay zone)

Case Type: **AD** (Adjustment Review)
Procedure: **Type II**, an administrative decision with appeal to the Adjustment Committee.

PROPOSAL: The applicant is in the process of dividing and redeveloping the large corner parcel originally belonging to the house at 305 NE 74th Avenue. A lot confirmation has been approved to allow re-establishment of Lot 21, the 25’ by 100’ lot located north of the house, where a

driveway and detached garage for the existing house were previously located until being demolished and removed in the past year. A Zoning Permit was also recently approved to provide replacement parking for the existing house at 305 NE 74th Avenue immediately north of the house in the side setback, with the northernmost edge (1'-3") of the new driveway and parking area encroaching into the abutting and newly confirmed Lot 21. At the current time, a building permit has been submitted for the new house on Lot 21, to be addressed as 313 NE 74th Avenue.

Parking-related regulations require that parking for a residential use be located on the site of the use (33.266.100.E). As proposed, the northernmost 1'-3" of the 9'-0"-wide replacement parking space for the existing house encroaches across the property line into an access easement on Lot 21. Therefore, the applicant has requested an Adjustment to allow the northernmost 1'-3" of the replacement parking space for the house at 305 NE 74th Avenue to be located on Lot 21.

Parking-related regulations for houses require that no more than 40% of the area between the front lot line and the front building line on any individual lot be paved for parking or driveway purposes (33.266.120.C.3). On Lot 21, the future house will have the minimum-required 9'-0"-wide driveway to the new garage, which would amount to only 36% paving in the front yard area. However, with the addition of the 1'-3" of driveway and replacement parking along the southern edge of Lot 21 in an easement, 41% of the front yard area on Lot 21 will be paved. Therefore, the applicant has requested an Adjustment to increase the maximum allowed front yard paving on Lot 21 from 40% to 41%.

RELEVANT APPROVAL CRITERIA: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found at **33.805.040.A-F**, Adjustment Approval Criteria.

ANALYSIS

Site and Vicinity: The site is a combination of three previously-platted lots of record, all of which for many years were kept together as a single piece of land upon which the existing 1925 home and detached garage were located. More recently, the property owner has pursued the re-establishment of the two separate buildable parcels, which required the demolition of the existing detached garage and driveway. New lots for future homes are being created out of what was the side and rear yard of the existing home. The existing house faces east towards NE 74th Avenue with a covered front porch.

The surrounding neighborhood has a mix of older, detached homes from the 1920's and earlier alongside newer infill homes of more recent vintage. Both sides of the abutting block frontage on NE 74th include newer infill townhomes, a 15'-0"-wide 'skinny' house, a standard-sized infill home, and several older homes similar to the original 1925 house on the subject site. Commercial and institutional uses are located nearby to the north, fronting onto NE Glisan Street.

Both abutting streets are improved with paved two-way roadways with on-street parking on both sides of the street. Northeast 74th Avenue is the only street abutting the site that includes curbing, a planter strip, and a concrete public sidewalk: the frontage in NE Everett Street has no curbing, planting strip or sidewalks beyond the vehicular roadway. Both abutting streets have a local service transit designation in the City of Portland Transportation System Plan (TSP). Northeast 74th Avenue is classified as a City Walkway in the TSP.

Zoning: The Residential 2,500 (R2.5) is a single-dwelling zone that is intended to preserve and enhance the character of single-family neighborhoods, and to provide housing opportunities for individual households. The development standards are generally written for flat, standard-sized lots, and exceptions to compliance with most development standards requires approval of a separate Adjustment Review. Development standards for parking associated with houses and duplexes is the same regardless of the base zone in question.

The Alternative Design Density (a) overlay zone is an optional overlay zone that provides opportunities for increased density in limited situations, provided that additional design compatibility requirements are met for the project. The a overlay zone has no bearing or impact on the current proposal.

Land Use History: City records indicate no prior land use reviews at the site. However, a Lot Confirmation was recently approved establishing the northernmost Lot 21 as a separate lot of record (15-208491 PR), and Lots 22 & 23 on the southern portion of the site are currently undergoing a Lot Confirmation/Property Line Adjustment (15-240038 PR), which is waiting for the outcome of this Adjustment Review to proceed.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **March 22, 2016**. The following Bureaus have responded:

The *Bureau of Environmental Services* (BES) has reviewed the proposal and provided technical details and other information, but no objections or concerns regarding the requested Adjustments. Approval of this Adjustment does not alter BES requirements and other technical issues which have already been communicated to the applicant on their building permit application for the new house on Lot 21. Exhibit E.1 contains staff contact and additional technical information.

The *Development Review Section of Portland Transportation* (PBOT) has reviewed the proposal and responded without comment or concern on the requested Adjustments (Exhibit E.2).

The *Water Bureau* has reviewed the proposal and responded with comments regarding available water services, but no objections or concerns regarding the requested Adjustments. Exhibit E.3 contains staff contact and additional technical details.

The *Fire Bureau* has reviewed the proposal and responded without comment or concern on the requested Adjustments (Exhibit E.4).

The *Site Development Section of the Bureau of Development Services* has reviewed the proposal and responded with information about site topography, and verifying that the site is not within the City of Portland Potential Landslide Hazard area, nor is it within the 100-year floodplain. Exhibit E.5 contains staff contact and additional information.

The *Life Safety Section of the Bureau of Development Services* has reviewed the proposal and provided building code-related comments, but no objections or concerns with regards to the requested Adjustments. A separate building permit is required for the project, and in this case a Life Safety Plans Examiner has already been working with the applicant on their permit request. Exhibit E.6 contains staff contact and additional information.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on March 22, 2016. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of Adjustment Reviews

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 providing 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. 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 parking-related development standards for houses is found at 33.266.120.A:

“The size and placement of vehicle parking areas are regulated in order to enhance the appearance of neighborhoods.”

The purpose of the requirement to maintain parking for residential uses on the site of the use is not preceded by a formal purpose statement as found elsewhere in the code. The implied purpose is to ensure close proximity between the dwelling units and accessory parking for those dwellings, whereas nonresidential uses are allowed in the same paragraph to have parking on a separate site, provided the location is within 500 feet of the nonresidential use (33.266.100.E).

Both Adjustments being requested are related to a slight misalignment between the re-located driveway for the existing house and the re-established lot line between Lot 21 (north of original house) and Lots 22 & 23 (original house and future adjusted lot west of house). The proposed replacement driveway will have two paved wheel strips with a center strip of grass or groundcover, and a parking space aside and next to the house, both of which project 1'-3" across the re-established lot line. The future home next door, onto which the replacement driveway and parking pad are located, will have a standard 9'-0" driveway and the appearance of a fully detached infill home on a 25'-0"-wide lot, as found diagonally across the street to the northeast and elsewhere in the neighborhood. The slight encroachment of a paved driveway and parking pad in the otherwise open side yard with groundcover plantings will not significantly impact the appearance of character of the neighborhood. The provision of a landscaped wheel strip on the replacement driveway does visually reduce the amount of hardscape vehicle area in the 'front yard' of the new infill home, further enhancing the appearance of the site.

Therefore, for the reasons noted above, the additional front yard paving and partial encroachment of a parking space across the new lot line can at least equally meet the relevant purpose of the regulation. 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: For the reasons noted above under findings for criterion A, the proposed Adjustments will not significantly detract from the livability or appearance of the residential area. Therefore, 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: The overall purpose of the R2.5 zone is to provide housing opportunities for individual households, and to preserve and enhance the character of single-dwelling

neighborhoods. By providing for new infill housing with off-street parking on legal lots of record within an established neighborhood, by minimizing the width of the new infill house driveway to the 9'-0" minimum, and by installing a landscape strip down the middle of the replacement driveway for the existing house, the proposal is consistent with this overall purpose. This criterion is met.

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

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

Findings: There are no discernible impacts that would result from granting the requested adjustment, given the minimal encroachment over the property line of the replacement parking space, the appearance-enhancing landscape strip down the middle of the replacement driveway, and the minimal width of the driveway for the new infill house. Therefore, with approval granted based on the submitted site plan, 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: Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase "p" (Environmental Protection overlay zone) or a "c" (Environmental Conservation overlay zone). As the site is not within 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 or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant has proposed two Adjustments related to providing replacement parking for the existing home at 305 NE 74th Avenue. As part of constructing the new homes to the north and west of the original house, replacement off-street parking was preferable to the owner versus a request to eliminate off-street parking. Given the precise placement of the original house versus the original platted lot lines, it was impossible to physically contain the replacement parking entirely on the site anywhere outside the front yard area. As proposed, the landscape strip down the center of the replacement driveway and the minimal width of the new infill house driveway serve to mitigate for the modest impacts associated with a 1'-3"-deep encroachment. The proposal meets the approval criteria and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to allow the northernmost 1'-3" of the replacement parking space for the house at 305 NE 74th Avenue to be located on vacant Lot 21 to the north (33.266.100.E).

Approval of an Adjustment to increase the maximum front yard paving on Lot 21, Block 21, Mt. Tabor Villa Addition from 40% to 41% (33.266.120.C.3).

The above approvals are granted based on the approved site plan, Exhibit C.1, signed and dated April 25, 2016, and subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-129166 AD."

Staff Planner: Mark Walhood

Decision rendered by: MARK WALHOOD **on April 25, 2016.**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 29, 2016.

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, 2016, and was determined to be complete on March 17, 2016.

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, 2016.

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. Unless further extended by the applicant, **the 120 days will expire on July 14, 2016.**

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 13, 2016** 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 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th 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 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 16, 2016 – (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.

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:

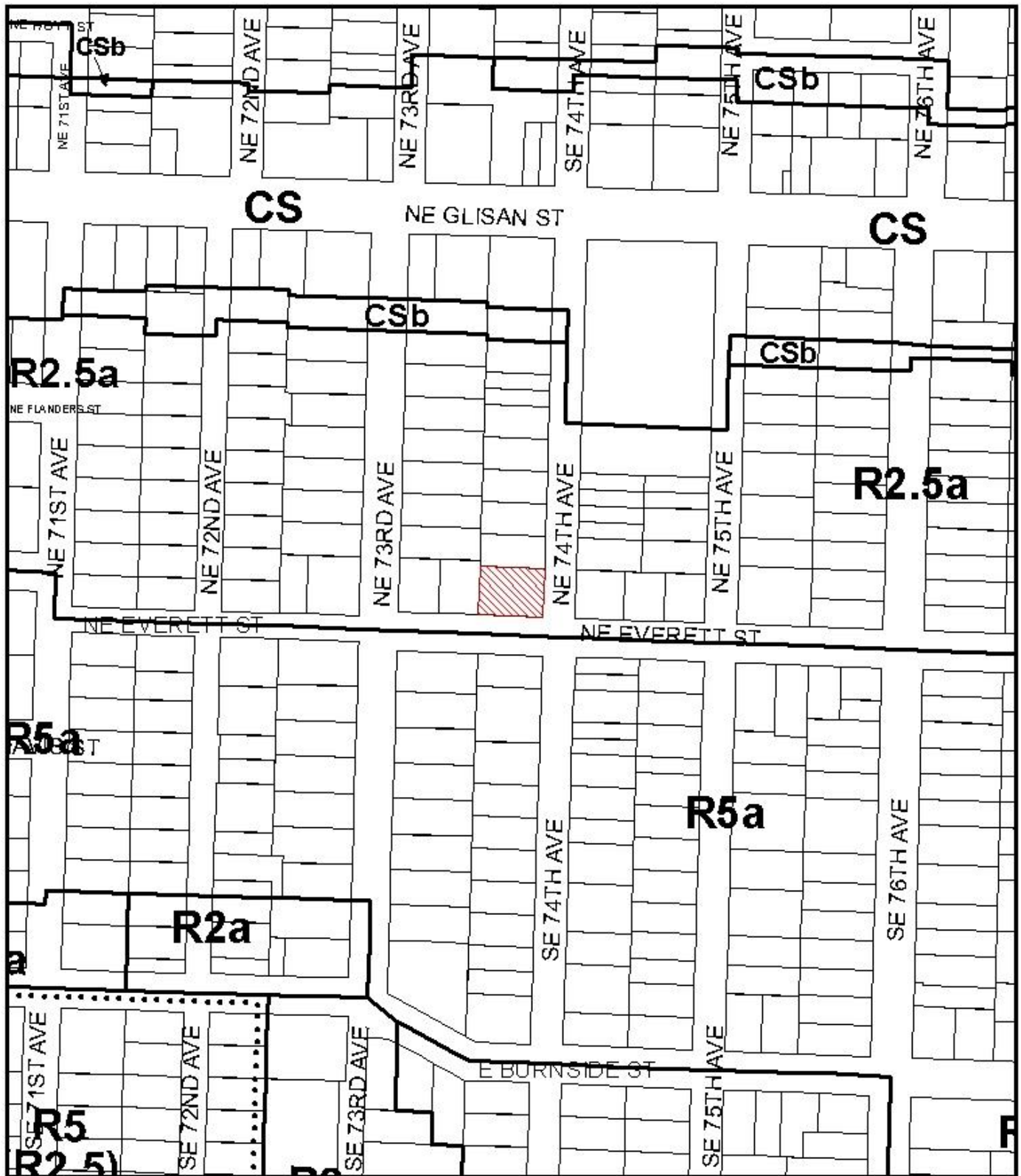
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS


NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original narrative
- 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. Development Review Section of Portland Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Section of the Bureau of Development Services
 - 6. Life Safety Section of the Bureau of Development Services
- F. Correspondence (*none received at time of decision mailing*)
- G. Other:
 - 1. Original LU Application Form and Receipt
 - 2. Property Line Adjustment/Lot Confirmation Documents: 15-240039 PR

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).



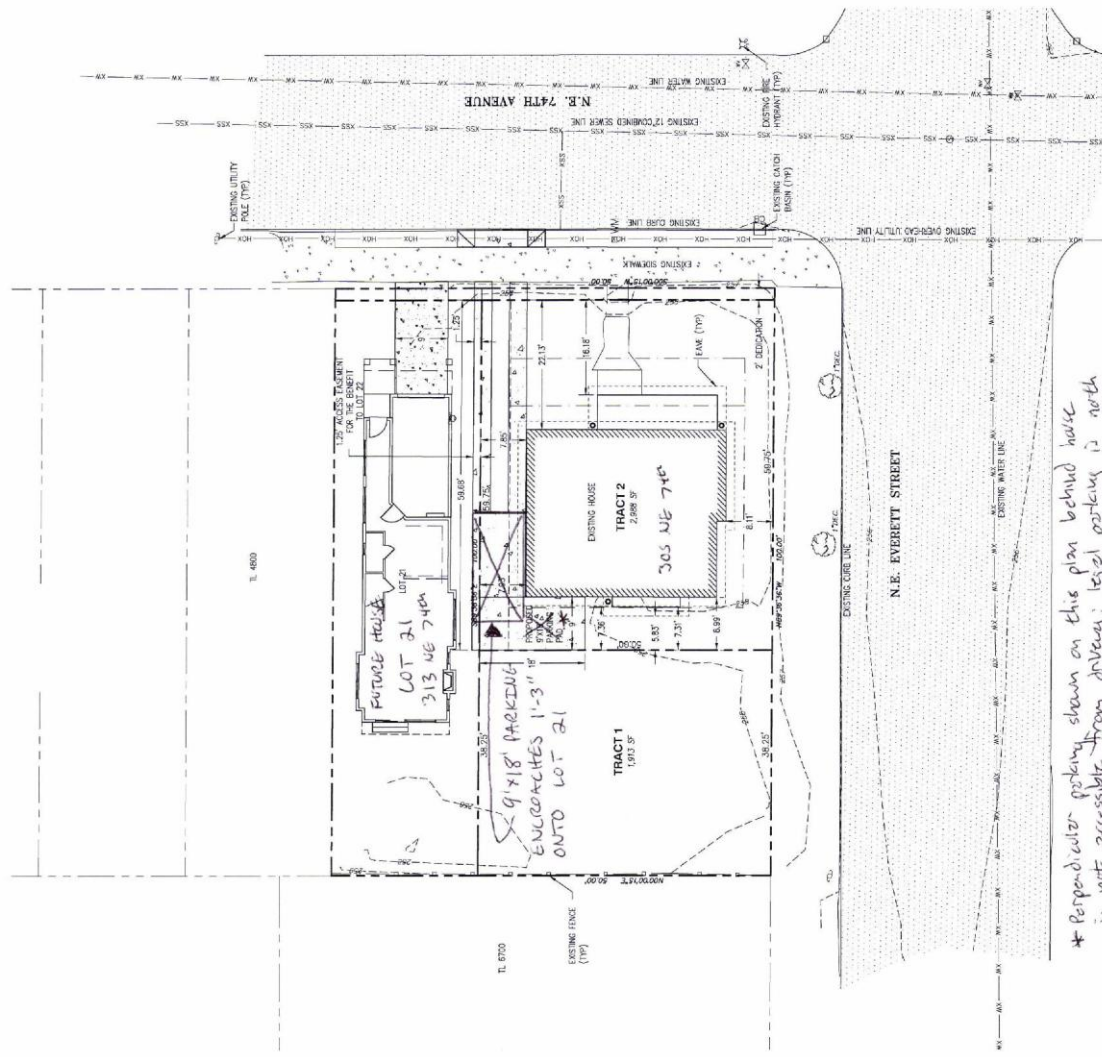
ZONING

 Site



File No. LU 16-129166 AD
 1/4 Section 3038
 Scale 1 inch = 200 feet
 State_Id 1N2E32DB 4700
 Exhibit B (Mar 03, 2016)

NO.	DATE	DESCRIPTION



- ADJUSTMENTS:
1. ALLOW 1'-3" OF PARKING SPACE FOR 305 NE 74TH TO LOCATE OFF-SITE ON LOT 21; AND
 2. INCREASE FRONT YARD VEHICLE PAVING ON LOT 21 FROM 40% TO 41% OF FRONT YARD

Exhibit C.1
L16-129166AD

* Perpendicular parking shown on this plan behind house is not accessible from driveway; legal parking is north of house

Approved
City of Portland - Bureau of Development Services
Planner MARK WALHOOD Date APRIL 23 2016
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

Exhibit C.1
L16-129166 AD