



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

FROM CONCEPT TO CONSTRUCTION

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Date: June 14, 2016
To: Interested Person
From: Brandon Rogers, Land Use Services
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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 16-162909 TV

GENERAL INFORMATION

Applicant: Kym Nguyen/Concept Design & Associates
Po Box 8464
Portland OR 97207

Owner: Damir Karin/DK Homes LLC
Po Box 90277
Portland, OR 97290

Site Address: 12716 SE STEPHENS ST
Legal Description: LOT 1, PARTITION PLAT 2007-176
Tax Account No.: R611035
State ID No.: 1S2E02CA 11701
Quarter Section: 3243
Neighborhood: Mill Park, contact Doug Reed at dougrhomes@aol.com.
Business District: Midway, contact David Day at 503-760-7572.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Zoning: Residential 5,000 (R5) with the "a" Alternative Design Density overlay zone.

Case Type: Tree Violation (TV).
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The proposal consists of mitigation for removing a 10.5 caliper inch Plum tree on the site that was required to be preserved through an approved tree preservation plan. The tree preservation plan was approved through the partition review that created the lots, Land Use Review case file LU 05-163307 LDP. To mitigate for the tree removal, the applicant proposes to plant 6 trees on the site. The mitigation trees will be planted at the time of development of the individual lot. Each tree will be native species chosen from the Portland Plant List.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are 33.853.040.C – Correction to Violations. 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. This application was submitted on April 28, 2016 and determined to be complete on May 10, 2016.

ANALYSIS

Site and Vicinity: The site is a vacant lot located on the south side of SE Stephens street, east of SE 122nd Avenue. The surrounding neighborhood is developed with single family residences. David Douglas High School and Lincoln Park Elementary School are located approximately 1,200 feet east of the site.

Zoning: The R5 designation is one of the City’s single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The “a” overlay is intended to allow increased density that meets design compatibility requirements. It fosters owner-occupancy, focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood.

Land Use History: City records indicate that prior land use reviews include the following: LU 05-163307 LDP; approval of a Preliminary Plan for a two lot partition. The approved final plat for this minor partition was recorded on November 30, 2007 (Partition Plat 2007-176). Additionally, a previous Tree Violation review case, LU 07-133557 TV, was approved on July 9, 2007; however this land use case expired because a building permit was not issued within three years of issuance of the final land use decision. Therefore, the approval expired on July 9, 2010.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **May 12, 2016**. The following Bureaus have responded with no issues or concerns:

- The Bureau of Parks-Forestry Division responded with no concerns (Exhibit E.1).
- The Site Development section of BDS responded with no concerns (Exhibit E.2).

Neighborhood Review: One written response has been received from a notified property owner in response to the proposal (Exhibit F.1). No response was received from the Mill Park Neighborhood Association.

Staff Response: The neighbor’s concern is about land divisions happening in the area. However, the proposal is not for a land division and the site is not further dividable. The final plat has been recorded and the lots have been platted.

ZONING CODE APPROVAL CRITERIA**33.853.040 Approval Criteria**

33.853.040.C Corrections to Violations. For corrections to violations of tree protection and tree preservation regulations of this Title, or violations of tree preservation requirements of a land use review, the applicant must show the review body that all of the following approval criteria are met:

1. Mitigation Plan;
 - a. The applicant’s mitigation plan meets the purpose of the regulation that was violated. Where the violation is of a tree preservation requirement of a land use

review, the mitigation plan meets the purpose of the regulation that required the preservation plan; and

- b. The mitigation plan includes replacement of trees cut, or the preservation and protection of additional trees on the site not originally proposed for preservation. If replacement of trees is proposed, the plan must at a minimum meet the requirements of Table 853-1. If additional trees on the site are proposed for preservation and protection, the applicant must submit an arborist's assessment indicating the suitability of the trees for preservation, recommendations for protection methods, and any remedial treatment that may be necessary to ensure the long term viability of the trees. The total diameter of additional trees preserved must exceed the total diameter of trees cut.

Size of tree removed (inches in diameter)	Number of Trees to be Planted
Up to 12	3 trees
More than 12 up to 20	5 trees
More than 20 to up to 25	7 trees
More than 25 to up to 30	10 trees
More than 30	15 trees

Findings: The violated regulations are those of Chapter 33.630 *Tree Preservation*, which contains the tree preservation requirements for new land divisions. The purposes of these regulations are:

33.630.010 Purpose

The land division process provides the flexibility and opportunity to promote creative site design that considers multiple objectives, including integration of trees. The regulations of this chapter require that trees be considered early in the design process with the goal of preserving high value trees and mitigating for the loss of trees. Desired benefits of trees include:

- *Protecting public health through the absorption of air pollutants, contamination, and capturing carbon dioxide;*
- *Buffering from noise, wind, and storms;*
- *Providing visual screening and summer cooling;*
- *Reducing energy demand and urban heat island impacts;*
- *Filtering stormwater and reducing stormwater runoff;*
- *Reducing erosion, siltation, and flooding;*
- *Stabilizing slopes;*
- *Enhancing property values;*
- *Providing fish and wildlife habitat, including support for native species biodiversity through the preservation and planting of native trees;*
- *Providing food for people and wildlife; and*
- *Contributing to the beauty of the City, its natural heritage, and the character of its neighborhoods.*

The above listed purpose statement is supported by the standards of the Tree Preservation chapter (33.630.100). These standards require preservation of a certain percentage of existing tree diameter of a land division site. The parcel comprising the site was approved to be created under land division case number LU 05-163307 LDP. As part of the preliminary plan land division approval, a tree preservation plan was approved to meet these standards (Exhibit C-2). The tree designated to be preserved on Parcel 1 was a 10.5-caliper inch wild plum tree.

The 10.5 caliper inch wild plum tree required to be preserved on Parcel 1 was removed. The applicant has requested this Tree Violation Land Use Review to rectify the tree removal.

The approved tree preservation plan from the approved land division was in compliance with Option 1 of the tree preservation standards, which requires preservation of at least 35 percent of total tree diameter on the site. Condition of approval C.1 of the land use decision requires the following:

“Development on Parcel 1 shall be in conformance with the Tree Preservation Plan (Exhibit C.7) and the applicant's arborist report (Exhibit A.2). Specifically, the tree #1 is required to be preserved, with the root protection zones indicated on Exhibit C.2. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.”

The applicant proposes to plant replacement trees at the site as mitigation. Subparagraph 33.853.400.C *Corrections for Violations* details the requirements for corrections to tree violations, including the number and location of mitigation trees to be planted. Chapter 33.853 Tree Review, Table 853-1 (above) lists *minimum* tree replacement required for violations. Based on these standards, a minimum of three trees would be required to be planted as mitigation. However, the applicant proposes to plant more than the minimum number of mitigation trees.

The applicant has proposed to mitigate for the tree removal by planting six (6), medium size broadleaf trees on Parcel 1. The applicant proposes to plant a single species, Oregon ash (*Fraxinus latifolia*), which is designated as a native tree on the Portland Plant List (PPL). However, in order to provide flexibility to the applicant at the time of planting and to meet the purposes statement for Chapter 33.630 *Tree Preservation*, a mix of native trees will be required to be planted. The PPL states that native plant communities provide habitat and food for native wildlife, enhance air and water quality, and reduce water and energy needs. Further, the PPL states that a diversity of plants provides a diversity of root structures and depths to improve water quality. Therefore, planting a mix of native trees will better meet the purpose statement of 33.630.010. A condition of approval will require a mix of three different native tree species to be chosen from the PPL, which shall be two small, two medium and two large trees as classified by the Portland Tree and Landscaping Manual. Species are to be chosen at the time of zoning permit application. Therefore, with conditions of approval listed above, these criteria can be met.

The following applicable approval criteria of chapter 33.853 *Tree Review* must also be met:

33.853.040.C.2 Replacement trees must be planted as follows:

- a. On the site where the violation occurred;
- b. If it is not possible to plant the trees on the site where the violation occurred, then the trees must be planted on other property owned by the applicant within the City of Portland, this includes property owned by a Homeowners' Association to which the applicant belongs;
- c. If it is not possible to plant the trees as described in 2.a or b, then a payment in lieu of planting may be made to the Tree Planting and Preservation Fund.

Findings: The applicant proposes to plant replacement trees on the site where the violation occurred (Lot 1 of partition Plat 2007-176). A condition of approval requires tree planting to occur at the time of development. To ensure the site is suitable for on-site planting, staff conducted an analysis of site constraints and tree planting requirements. The maximum allowed building coverage was calculated, the required Title 11 development-related tree planting for the site was tallied and the site plan for the proposed dwelling was reviewed. A building permit has been submitted for development of a single dwelling on this lot (permit 16-160605 RS).

The site has a possible maximum building coverage of approximately 2,334 square feet. The proposed 444 square foot driveway and the location of utilities were also considered. Approximately 2,784 square feet of open area would remain at the site in order to plant trees.

Title 11 *Trees* sets standards for development-related tree planting, including a minimum required planting area, based upon canopy sizes of large, medium and small trees as classified in the Portland Tree and Landscaping Manual (On-site tree density standards of Chapter 11.50.050). Based on the lot size of 5,565 square feet, 2,226 square feet of “tree area” will be required to be planted at the site at the time of development. Tree area is defined by Title 11 as the amount of area on a development site that is used to calculate the required number of trees to be planted to meet tree density standards. To satisfy the tree area required by Title 11, any combination of large, medium and small trees may be planted. Based on a scenario where the applicant proposed two large trees (150 square feet of planting area per Table 50-3, Title 11) and one small tree (50 square feet of planting area per Table 50-3, Title 11), 350 square feet of minimum required planting area would be required. Planting area is the minimum required planting area per tree dimension (small, medium, large trees).

Based on the mitigation plan of two large, two medium and two small trees, 550 square feet of minimum planting area would be required at the site. Taken together with the planting area required for the development-related tree planting, a total area of 925 square feet would be required at the site. Based on the analysis of the site constraints, development-related tree planting and the required tree mitigation plan, a conclusion can be made that it is practicable to plant both tree density and mitigation trees on the site where the violation occurred.

Therefore, with conditions of approval listed above, these criteria can be met.

33.853.040.C.3. Replacement trees must meet the requirements of Section 33.248.030, Plant Materials.

Findings: The applicable requirements are found in Section 33.248.030.C, which requires broadleaf trees to be at least 1.5 inches in trunk diameter and conifer trees to be fully branched and at least 5-feet tall. A condition of approval requires compliance with this section. Therefore, with a condition of approval, this criterion can 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 proposal consists of mitigation measures for violating an approved tree preservation plan of land division case file LU 05-163307 LDP. The tree to be preserved, a wild plum tree of 10.5 caliper inches, was removed from the site. As mitigation, the applicant has proposed to plant six trees at the site. The mitigation trees are required to be native trees. With conditions, the proposal meets the approval criteria for correcting tree violations, and is approved.

ADMINISTRATIVE DECISION

Approval of a Tree Violation Review to correct a tree violation resulting from the removal of a 10.5 inch diameter tree which was required to be preserved as a condition of approval of LU 05-163307 LDP per Exhibit C.1, subject to the following conditions:

- A. At the time of development, the applicant shall plant six trees on the Parcel 1 of Partition Plat 2007-176. The mitigation trees to be planted shall be native trees chosen from Portland Plant List, consisting of two small, two medium and two large trees as determined by the Portland Tree and Landscape Manual. The trees must be at least 1.5-inches in diameter for broadleaf trees or at least 5 feet in height and fully branched for conifer trees. The size and species of the trees shall be shown and labeled on the building permit site plan. The location of the trees shall be generally consistent with Exhibit C.1. The mitigation trees shall not be counted toward meeting the Title 11 Tree Density standards of 11.50.050.
- B. As part of the building permit application submittal, all site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit C.2. The sheet on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-162909 TV. No field changes allowed."
- C. All tree planting must meet the requirements of Section 33.248.030, including providing irrigation for the newly planted trees must be provided through Irrigation Options 1, 2, or 3. The irrigation option chosen by the applicant shall be stated on the building permit site plan.

Staff Planner: Brandon Rogers

Decision rendered by:  **on June 10, 2016**
By authority of the Director of the Bureau of Development Services

Decision mailed: June 14, 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 April 28, 2016, and was determined to be complete on May 10, 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 April 28, 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: September 7, 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 Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on June 28, 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 Hearings Officer 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 Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed,* The final decision may be recorded on or after **June 29, 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. 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:

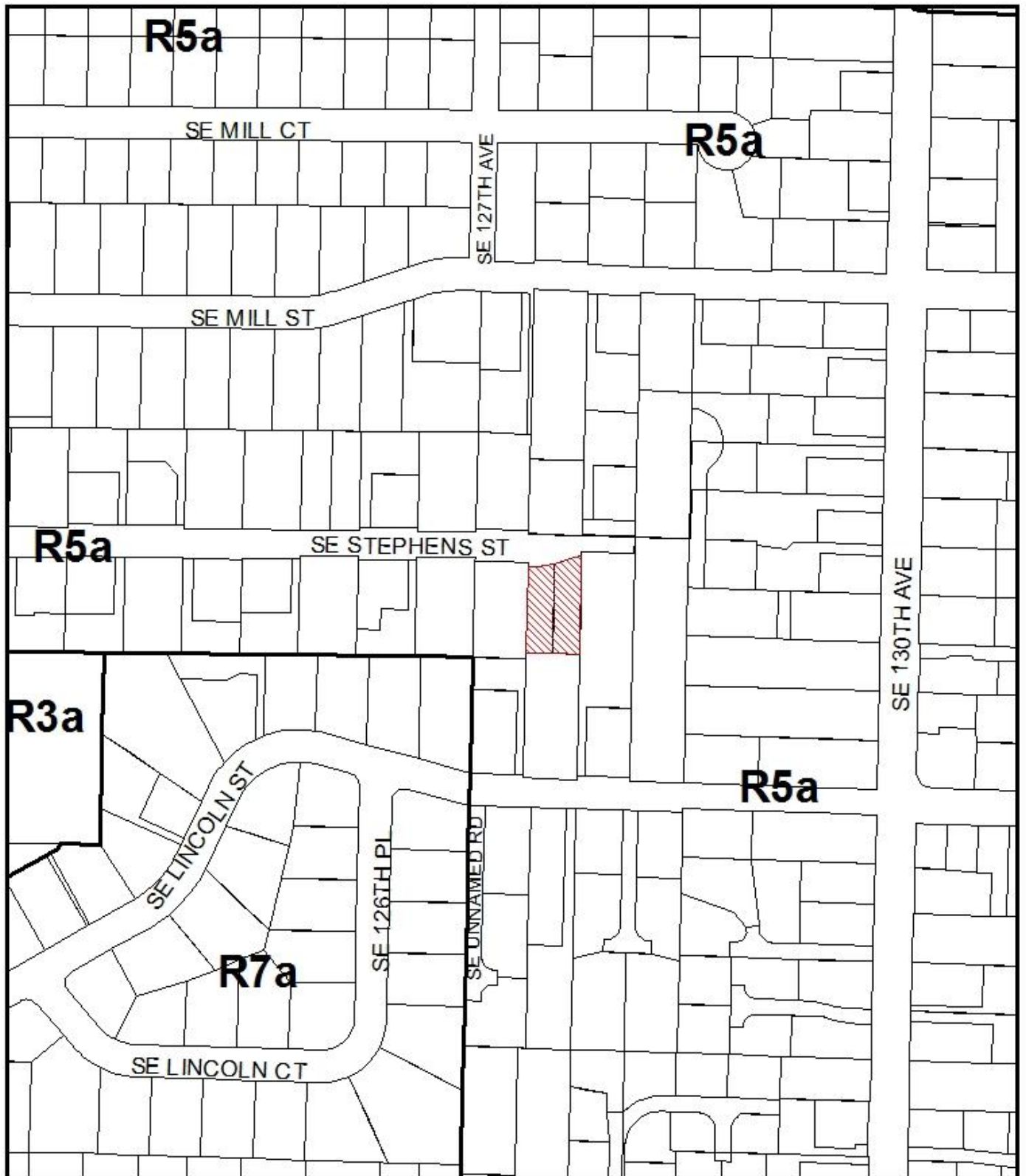
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED


- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Tree Mitigation Site Plan (attached)
 - 2. Original Tree Preservation Plan from LU 05-163307 LDP
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Parks, Forestry Division (TRACS database screen shot)
 - 2. Site Development section of BDS (TRACS database screen shot)
- F. Correspondence:
 - 1. Nancy Kassebaum, May 17, 2016
- G. Other:
 - 1. Original LU Application

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).

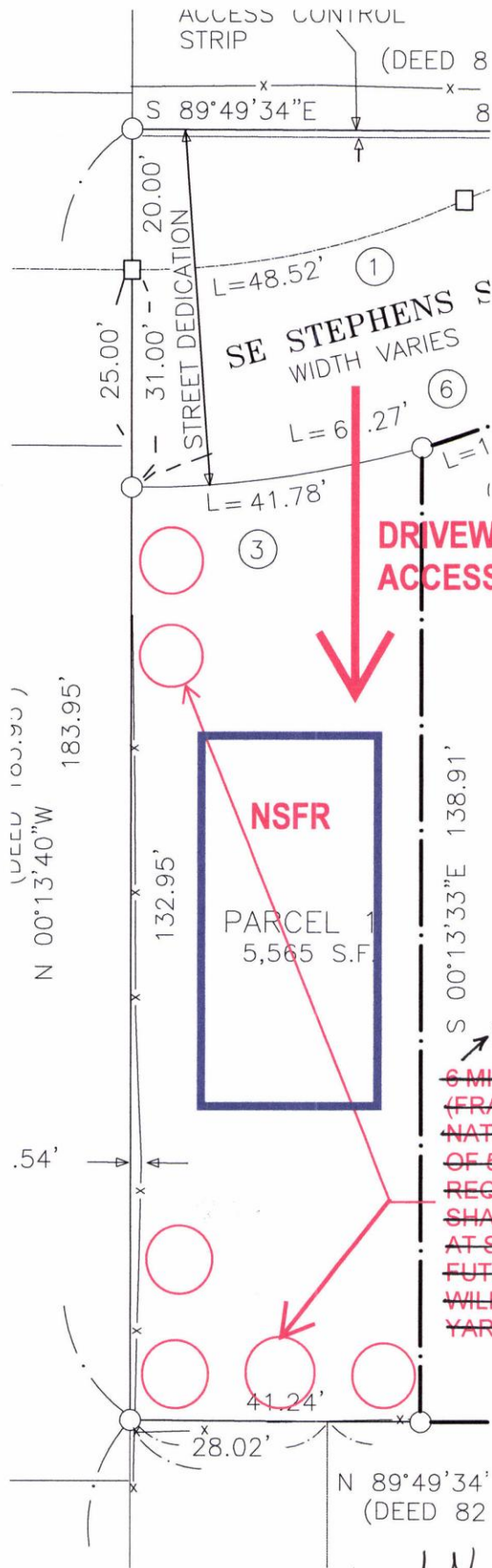


ZONING



 Site

File No. LU 16-162909 TV
 1/4 Section 3243
 Scale 1 inch = 200 feet
 State_Id 1S2E02CA 11701
 Exhibit B (Apr 29, 2016)



SE STEPHENS ST
WIDTH VARIES

DRIVEWAY ACCESS

NSFR
PARCEL 1
5,565 S.F.

SEE CONDITIONS OF APPROVAL FOR SIZE, SPECIES.
6 MEDIUM ASH, OREGON TREES (FRAXINUS LATIFOLIA), PDX NATIVE WITHIN PLANTING AREA OF 5 FOOT X 5 FOOT AS REQUIRED. 3 TREES SHALL BE AT FIVE FOOT AREA AT SIDE BUILDING SET BACK OF FUTURE NSFR ON SITE AND 4 WILL BE LOCATED AT REAR YARD

CASE NO. LW 16-162909 TV
EXHIBIT C.1

LW 16-162909 TV