



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

FROM CONCEPT TO CONSTRUCTION

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Date: July 25, 2016
To: Interested Person
From: Andrew Gulizia, 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 16-188630 AD

GENERAL INFORMATION

Applicant: Jennifer Kimura
VLMK Engineering + Design
3933 SW Kelly Ave.
Portland, OR 97239

Property Owner: Robert E. Bolt
40 SE 16th Ct.
Gresham, OR 97080

Site Address: 8705 SE Foster Rd.

Legal Description: BLOCK 2 LOT 1&2, ORPHA PK
Tax Account No.: R631900160
State ID No.: 1S2E16CA 03800
Quarter Section: 3639
Neighborhood: Lents, contact Cora Potter at 503-823-4550
Business District: Eighty-Second Ave of Roses Business Association, contact Richard Kiely at 503-504-2273
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550
Zoning: CG – General Commercial
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The applicant proposes to install new paving on the site and use up to 20% of the site area as exterior storage, as permitted by Zoning Code Section 33.130.245.C.2. Exterior storage is required to be set back 10 feet from street lot lines, and the setbacks are required to be landscaped to the L3 (high screen) standard. The applicant is requesting an Adjustment to Zoning Code Section 33.130.245.C.2 to reduce the required setback for exterior storage from 10 feet to 3 feet on the west and north lot lines, waive the L3 landscaping requirement along the

west and north lot lines (with a slatted privacy fence providing screening instead), and modify the required landscaping in the 10-foot setback from the south lot line from the L3 (high screen) to the L2 (low screen) standard.

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

ANALYSIS

Site and Vicinity: The site contains two buildings. A small, approximately 1,200-square-foot building with storefront windows faces SE Foster Road and a covered storage building with a large opening faces the interior portion of the site and SE 87th Avenue. The buildings are located near the east property line. A tall chain link fence with gates on the north and south sides encloses the site. Neighboring properties are developed with a mix of residential, commercial, and institutional uses.

Zoning: The site is designated with the CG (General Commercial) zone. Commercial zones generally seek to promote uses and developments that will enhance the economic viability of both the City and neighborhood. The CG zone in particular is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market.

Land Use History: City records indicate one prior land use review for this site. A previous Adjustment Review (LU 10-149778 AD) was approved for this same proposal in 2010, but that approval expired before all of the required improvements were completed. A new Adjustment Review is required, but the applicant is not proposing any changes to the proposal or conditions of approval from the previous Adjustment Review.

Agency Review: A “Notice of Proposal” was mailed June 28, 2016. The following Bureaus have responded with no concerns about the proposed Adjustment:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4);
- Site Development Section of BDS (Exhibit E-5);
- Life Safety Review Section of BDS (Exhibit E-6); and
- Bureau of Parks-Forestry Division (Exhibit E-7).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 28, 2016. No written responses from notified property owners were received. The Lents Neighborhood Association commented that the fencing with privacy slats is acceptable, but that landscaping along SE Foster Road should still be required (Exhibit F-1).

Staff response: New landscaping along the SE Foster Road frontage will be required, as discussed below.

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., 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 setback and landscaping requirement for exterior storage in the CG zone, per Zoning Code Section 33.130.245.A, is as follows:

33.130.245.A.

Purpose. *The standards of this section are intended to assure that exterior display, storage, and work activities:*

- *Will be consistent with the desired character of the zone;*
- *Will not be a detriment to the overall appearance of a commercial area;*
- *Will not have adverse impacts on adjacent properties, especially those zoned residential; and*
- *Will not have an adverse impact on the environment.*

The first bulleted purpose of the regulation refers to the desired character of the zone. Section 33.130.030.G describes the characteristics of the CG zone as follows:

The General Commercial zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market. Industrial uses are allowed but are limited in size to avoid adverse effects different in kind or amount than commercial uses and to ensure that they do not dominate the character of the commercial area. Development is expected to be generally auto accommodating, except where the site is adjacent to a transit street or in a Pedestrian District. The zone's development standards promote attractive development, an open and pleasant street appearance, and compatibility with adjacent residential areas. Development is intended to be aesthetically pleasing for motorists, transit users, pedestrians, and the businesses themselves.

The previous Adjustment Review for this site (LU 10-149778 AD) approved reduced setbacks from the north and west lot lines for exterior storage, a waiver of the required landscaping buffer on the north and west lot lines, and a change to the required landscaping along the south lot line from the L3 (high screen) to L2 (low screen) standard. Although this approval has now expired, the applicant's proposal in the current application is the same as what was approved in the previous Adjustment Review. This plan was previously approved because adding privacy slats to the existing fence enclosing the site would achieve effective screening of the exterior storage area even if the landscaping requirements were waived and the setbacks were reduced on the north and west sides. The privacy fence was required to be set back at least 10 feet from the south lot line to comply with the setback requirement for exterior storage and to prevent vision clearance problems at the intersection. Landscaping was required to be installed along the south lot line, but the L2 (low screen) standard was applied instead of the L3 (high screen) standard in order to prevent vision clearance problems at the intersection while still creating an attractive street presence for the property along SE Foster Road.

Staff finds the proposal will be consistent with the desired character of the zone and will not have detrimental impacts to adjacent properties, the commercial area generally, or the environment. The privacy fence will provide effective screening while the required landscaping at the south end of the property will improve the street presence along SE Foster Road. Compliance with stormwater regulations for the exterior storage area will be reviewed and inspected with the pending Development Review permit (16-140190 DR) which the applicant has submitted for this site. The Bureau of Environmental Services responded to this Adjustment proposal with no concerns (Exhibit E-1).

With conditions of approval for privacy slats in the fence and new landscaping along the south lot line, staff finds 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: As stated above, the site is located within the CG zone. The streets adjacent to the site are SE 87th Avenue to the west, SE Foster Road to the south, and SE Reedway Street to the north. SE 87th Avenue and SE Reedway Street are local service streets. There is an existing entrance/exit driveway for the site onto both SE Foster Road and SE Reedway Street. SE Foster Road is a Major Traffic and Transit Priority Street. The Portland Bureau of Transportation (PBOT) has responded to this Adjustment proposal with no objections (Exhibit E-2). Therefore, the adjacent streets are adequate to support the site and the associated exterior storage area. If the privacy fence is set back at least 10 feet from the south property line to prevent vision clearance problems at the intersection, the proposal will have no adverse impacts on adjacent streets. Therefore, the proposal will be consistent with the classifications of the adjacent streets.

Retail sales and service and small (10,000 square feet or less) industrial uses are allowed in the CG zone. The existing development pattern and the desired character of the CG zone is described above under criterion A. The adopted Lents Neighborhood Plan (adopted March 1996) is also applicable to this site. The "Vision" for the neighborhood includes the following relevant descriptions:

In 20 years Lents will be a major employment center in the region. As a major employment center, Lents will ideally draw from the neighborhood as well as the metropolitan area for their work force. In addition, new industries will invest a portion of their profits back into the neighborhood.

A pedestrian-friendly environment will be developed in Lents. Increased pedestrian accommodation will include more pedestrian crossings, increased connectivity between east, west, north and south, and improved signal timing at cross walks to help reduce automobile and pedestrian conflict.

A reduced setback for exterior storage from 10 feet to 3 feet along the north and west property lines will remain consistent with the classification of the abutting streets and the desired character of the area, as long as the exterior storage activities are adequately screened. A condition of approval for sight-obscuring fence slats on all three sides of the existing fence, as well as the entrance gates, will improve the appearance of the site for pedestrians and others. A minimum 10-foot setback from the south property line, landscaped to meet the L2 (low screen) standard, will provide additional greenery and softening in an area that is presently dominated by buildings and hard surfaces. This will help promote a pedestrian-friendly environment along SE Foster Road.

With conditions of approval for privacy slats in the fence and new landscaping along the south lot line, staff finds 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 requested to the setback and landscaping requirements for exterior storage. Therefore, 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. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

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

Findings: As mitigation for the requested setback adjustment on the west and north property lines, a condition of approval will require privacy slats on the existing fence to provide at least 50% sight obstruction along all three sides of the fence. The fence screening will mitigate impacts. To address pedestrian and motorist sight-line concerns, the required setback on the south property line must be met. To maintain open views, the landscaping standard is adjusted from the L3 (high screen) standard to the L2 (low screen) standard. A low hedge screen will provide adequate visual improvement but will not create a visual obstruction for pedestrians and motorists.

With conditions of approval for privacy slats in the fence and new landscaping along the south lot line, staff finds 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: 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 there are no environmental overlay zones mapped on site, 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 required sight-obscuring fencing along the property lines will minimize the adverse visual impacts of the exterior storage activities on nearby uses. A minimum 10-foot deep setback and landscaped area on the south edge of the exterior storage area will further enhance the appearance of the site and reduce impacts. Through compliance with conditions of approval, the approval criteria will be met.

ADMINISTRATIVE DECISION

Approval of an Adjustment for an exterior storage area to:

- Reduce the required setback for exterior storage from 10 feet to 3 feet along the west and north property lines (Zoning Code Section 33.130.245.C.2);
- Waive the L3 high screen landscaping standard along the west and north property line (Zoning Code Section 33.130.245.C.2); and
- Modify the required landscaping along the south property line from the L3, high screen to the L2, low screen standard (Zoning Code Section 33.248.020.C).

per the approved site plan, Exhibit C-1, signed and dated July 20, 2016, subject to the following conditions:

- A. A Zoning Permit or Development Review Permit is required to verify compliance with conditions. In the permit application submittal, the following development-related

conditions (B through D) must be noted on each of the 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 – LU 16-188630 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. The existing chain-link fence and entry gates along the south, west, and north sides of the property must have privacy slats. The slats must be at least 6 feet tall, a dark color and achieve at least a 50% sight-obscuring visual barrier along the street-facing property lines.
- C. The fence must be at least 10 feet from the south property line.
- D. The area between the south property line and the fence must be landscaped to meet the L2 landscaping standard in Zoning Code Section 33.248.020.B.

Note: Except for lumber yards and building material stores, exterior storage area is limited to 20% of the site area. Up to 1,711 square feet of exterior storage area is allowed on this site. The Zoning Code requires the area to be paved. The applicant has submitted a separate Development Review permit (16-140190 DR) to install the required paving.

Staff Planner: Andrew Gulizia

Decision rendered by:  **on July 20, 2016.**
By authority of the Director of the Bureau of Development Services

Decision mailed: July 25, 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 June 15, 2016, and was determined to be complete on June 23, 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 June 15, 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 extended by the applicant, **the 120 days will expire on October 21, 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 August 8, 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 **August 9, 2016**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

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

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

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

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

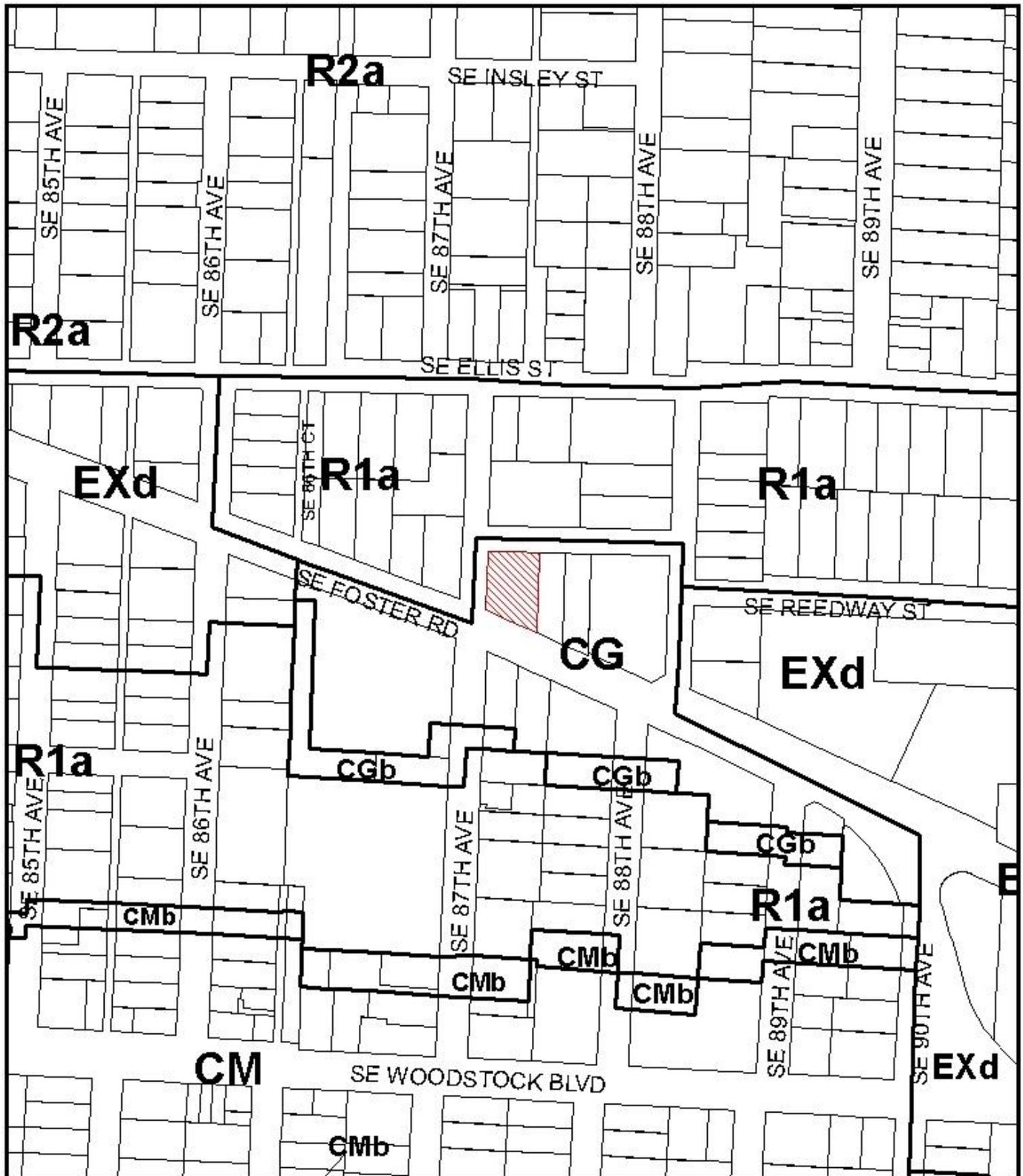
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan (attached)
- D. Notification Information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Review Section of BDS
 - 7. Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. E-mail from Lents Neighborhood Association, received June 21, 2016
- G. Other:
 - 1. Original LU application form and receipt
 - 2. Previous Adjustment approval (LU 10-149778 AD)

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).



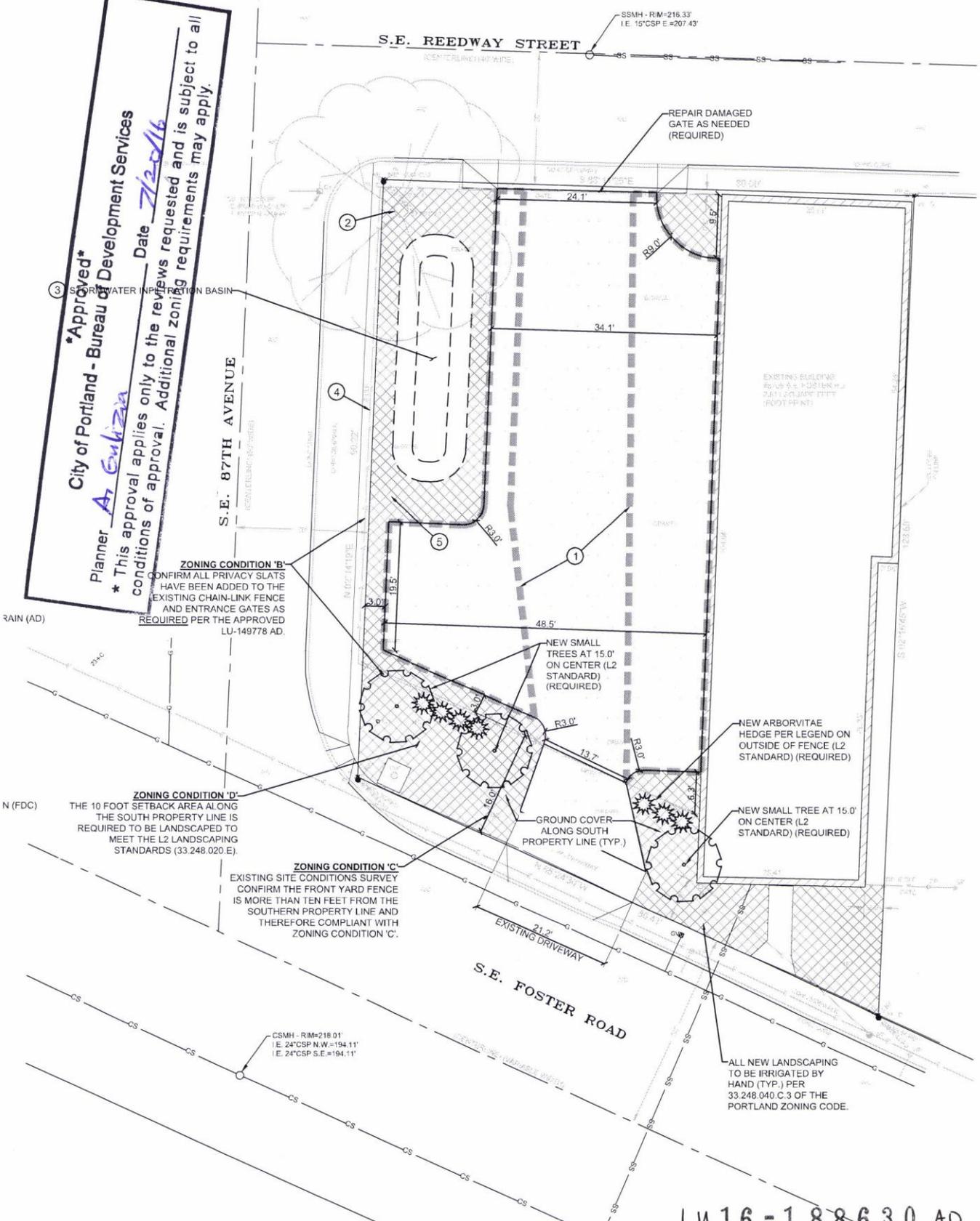
ZONING



 Site

File No.	LU 16-188630 AD
1/4 Section	3639
Scale	1 inch = 200 feet
State_Id	1S2E16CA 3800
Exhibit	B (Jun 20, 2016)

Approved
City of Portland - Bureau of Development Services
 Planner *An Gukiza* Date *7/25/16*
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



SURVEYOR'S NOTES

1. THE BASIS OF BEARINGS FOR THIS SURVEY IS SURVEY NUMBER 64548, MULTNOMAH COUNTY SURVEY RECORDS.
2. ELEVATION DATUM - THE ELEVATIONS SHOWN ON THIS MAP ARE TRACEABLE TO CITY OF PORTLAND BENCH MARK NO. 2045, A BRASS DISK SET IN CONCRETE. ELEVATION = 220.125 FEET (CITY OF PORTLAND DATUM.)
3. THIS IS NOT A COMPLETE BOUNDARY SURVEY AND IS NOT RECORDABLE. THE BOUNDARY DIMENSIONS WERE CALCULATED FROM



LU 16-188630 AD

ZONING COMPLIANCE PLAN
LU 10-149778 AD

Exhibit C-1

1" = 10'