



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

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
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Date: September 27, 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 16-198884 AD

GENERAL INFORMATION

Applicant: Mildred White
BAMA Architecture and Design LLC
1631 NE Broadway #754
Portland, OR 97232

Property Owner: DUA Properties Inc.
4423 NE 10th Ave.
Portland, OR 97211

Site Address: 6430 NE Martin Luther King, Jr. Blvd.

Legal Description: BLOCK 8 N 39.22' OF W 90' OF LOT 3, AINSWORTH TR
Tax Account No.: R006400390
State ID No.: 1N1E14CB 09900
Quarter Section: 2431
Neighborhood: Woodlawn, contact Anjala Ehelebe at 503-388-5004
Business District: North-Northeast Business Assoc, contact 503-841-5032
District Coalition: Northeast Coalition of Neighborhoods, contact Zena Rockowitz at 503-388-5070

Zoning: EXdh – Central Employment base zone with Design (“d”) and Aircraft Landing (“h”) overlay zones

Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: A “change of occupancy” building permit application for this site (permit no. 16-132801 CO) triggered a requirement in Zoning Code Section 33.266.130.G.2 for new 5-foot-wide landscaping buffers on the north, west, and south perimeters of the existing parking lot. The applicant is requesting approval of an Adjustment to reduce the required landscaping buffer on the north and south perimeters of the parking lot from 5 feet wide to zero. The applicant proposes a 12-foot-wide landscaping buffer on the west perimeter of the parking lot,

which is 7 feet wider than required. New trees, shrubs, and ground cover plants are proposed within the new landscaping buffer.

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 is a 3,530-square-foot lot located on the east side of NE Martin Luther King, Jr. Blvd., just south of NE Rosa Parks Way. The site is developed with a one-story commercial building set back from the street and sidewalk behind a paved parking lot. Neighboring properties along NE Martin Luther King, Jr. Blvd. are developed with a mix of industrial and commercial uses in mostly one-story buildings. Single-dwelling residential neighborhoods are approximately one block east and west of the site.

Zoning: The EX (Central Employment) base zone allows mixed uses and is intended for areas in the center of the city that have predominantly industrial type development. The intent of the zone is to allow industrial and commercial uses which need a central location. Residential uses are allowed, but are not intended to predominate or set development standards for other uses in the area. The development standards are intended to allow new development which is similar in character to existing development.

The “d” (Design) overlay zone is intended to promote the conservation, enhancement, and continued vitality of areas of the city with special scenic, architectural, or cultural value. The associated regulations do not affect the Adjustment request.

The “h” (Aircraft Landing) overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The associated regulations do not affect the Adjustment request.

Land Use History: City records include one prior land use review for this site: In 1998, a Design Review and Adjustment application for a new sign was denied (LUR 98-00660 DZ AD).

Agency Review: A “Notice of Proposal” was mailed July 25, 2016. The following Bureaus have responded with no concerns about the proposed Adjustment:

- Portland Bureau of Transportation (Exhibit E-3);
- Water Bureau (Exhibit E-4);
- Fire Bureau (Exhibit E-5);
- Site Development Section of BDS (Exhibit E-6); and
- Life Safety Review Section of BDS (Exhibit E-7).

The Bureau of Environmental Services (BES) provided information on sewer service and suggested the applicant provide additional information on stormwater management to demonstrate the approval criteria for the Adjustment are met (Exhibit E-1). After reviewing the applicant’s revised narrative (Exhibit A-5) and stormwater plans submitted for the pending building permit, BES responded with no objections to the proposed Adjustment (Exhibit E-2).

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the mailed “Notice of Proposal.”

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated 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 applicant is requesting an Adjustment to waive the required landscaping buffers on the north and south perimeters of the existing parking lot. The purposes of the landscaping standards for parking lots are stated in Zoning Code Section 33.266.130.A (emphasis added):

Purpose. *The development standards promote vehicle areas which are safe and attractive for motorists and pedestrians. Vehicle area locations are restricted in some zones to promote the desired character of those zones. Together with the transit street building setback standards in the base zone chapters, the vehicle area restrictions for sites on transit streets and in Pedestrian Districts:*

- *Provide a pedestrian access that is protected from auto traffic; and*
- *Create an environment that is inviting to pedestrians and transit users.*
- *The parking area layout standards are intended to promote safe circulation within the parking area, provide for the effective management of stormwater runoff from vehicle areas, and provide for convenient entry and exit of vehicles. **The setback and landscaping standards:***
- ***Improve and soften the appearance of parking areas;***
- ***Reduce the visual impact of parking areas from sidewalks, streets, and especially from adjacent residential zones;***
- ***Provide flexibility to reduce the visual impacts of small residential parking lots;***
- ***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.***

A windowless building wall on the neighboring property abuts the entire length of the northern edge of the parking lot on this site. Along the southern edge of the parking lot, an existing metal fence, partially fitted with privacy slats, separates the site from an existing densely-planted, 10-foot-wide landscaping screen on the southerly abutting property. Since the parking lot is not easily visible from the abutting lots, staff finds that requiring new landscaping buffers along the northern and southern edges of the parking lot would not further any purpose to screen or soften the view of the parking lot from those properties.

The applicant has proposed an alternative plan with no landscaping buffers on the north and south sides of the parking lot, but with a 12-foot-wide landscaping buffer separating the parking lot from the street lot line (Exhibit C-1). This landscaping buffer would be 7 feet wider than required. Within the landscaping buffer on the west side of the lot, the applicant proposes to plant new trees, shrubs, and ground cover plants. The new trees would be incense cedars, which may reach heights of 100 feet at maturity according to the Portland Tree and Landscaping Manual. Staff finds this proposal would equally or better meet the purposes of the standard to provide shading and cooling (particularly during the afternoon), improve and soften the appearance of the lot, and reduce the visual impacts of the lot from public sidewalks, streets, and nearby residential areas.

However, staff finds the *Viburnum tinus* shrubs proposed to surround the new incense cedar trees (Exhibit C-1) would be too tall (at 6 to 7 feet in height) to fit well within the

landscaping buffers. Shrubs this tall are not required by the L2 (low screen) landscaping standard that the Zoning Code requires for parking lots abutting streets (Zoning Code Table 266-5), and they would likely blend with the canopies of the incense cedars to create a crowded, fortress-like appearance from the street. Since staff finds the aesthetics would be softer and more appealing with lower shrubs, a condition of approval will require the *Viburnum tinus* shrubs to be replaced with a lower shrub variety that will be between 3 and 4 feet in height at maturity.

Also, staff doesn't find the applicant's proposal to install a new F2 (fully sight-obscuring) fence along the south lot line (Exhibit C-1) to be necessary to further the purposes of the landscaping standard, since the existing fence is already partially sight-obscuring, and an existing 10-foot-wide, densely-planted landscaping screen on the neighboring property abuts the south lot line. A new fence may be installed if desired, but will not be required as a condition of the Adjustment approval.

The applicant's proposal will allow the parking lot to be striped in such a way that the parking spaces and drive aisle meet all of the dimensional standards in Zoning Code Section 33.266.130, so the traffic and circulation within the parking lot will be as anticipated by the Zoning Code.

The Bureau of Environmental Services (BES) reviewed the proposal in relation to the purposes of the landscaping standard pertaining to stormwater runoff and pollution (Exhibits E-1 and E-2). After reviewing the applicant's revised narrative (Exhibit A-5) and stormwater plans submitted for the pending building permit, BES found the proposal will reduce stormwater runoff and pollution, consistent with the purpose of the landscaping standard (Exhibit E-2).

For these reasons, and with a condition of approval requiring lower shrubs, staff finds the applicant's proposal equally meets the applicable purposes 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: Because the site is located in the EX zone, the applicant must demonstrate that the proposal will be consistent with the classifications of adjacent streets and with the desired character of the area.

Street Classifications

The site abuts NE Martin Luther King, Jr. Blvd. The classifications of this street, as identified in the Transportation Element of the Comprehensive Plan, are as follows:

Traffic	Transit	Bikeway	Pedestrianway	Freight
Major City Traffic Street	Major Transit Priority Street	City Bikeway	City Walkway	Main Truck Street

The proposed Adjustment to the parking lot landscaping standard will not affect the type or intensity of the use, and therefore will not increase traffic levels or demand for transit, bike, pedestrian, or freight facilities. The Portland Bureau of Transportation reviewed the proposal and responded with no concerns (Exhibit E-3). Staff finds the proposal is consistent with the classifications of the adjacent street.

Desired Character of Area

The "desired character" of an area is defined in Zoning Code Chapter 33.910 as the preferred or envisioned character based on the purpose statement or character statement of the base zone, overlay zone, or plan district, and any adopted area plans. The site is designated with the EX zone, and is within the boundaries of the adopted Woodlawn

Neighborhood Plan and Albina Community Plan. (The site is also designated with the “d” and “h” overlay zones, but the associated regulations do not apply to this proposal.)

The character statement for the EX zone in Zoning Code Section 33.140.030.B reads:

Central Employment. This zone implements the Central Employment map designation of the Comprehensive Plan. The zone allows mixed-uses and is intended for areas in the center of the City that have predominantly industrial type development. The intent of the zone is to allow industrial and commercial uses which need a central location. Residential uses are allowed, but are not intended to predominate or set development standards for other uses in the area. The development standards are intended to allow new development which is similar in character to existing development.

The proposed Adjustment to the parking lot landscaping standard will allow the site to retain an existing parking lot while complying with dimensional requirements for parking spaces and aisles. Staff finds this supports the existing commercial use of the site in a manner consistent with the intent of the EX zone.

While none of the policies of the Woodlawn Neighborhood Plan are found to be relevant to this Adjustment request, the following elements of the Albina Community Plan are found to be relevant:

Policy C (A Pattern of Green), Objective 1: Increase the amount of green and open space in the district.

Policy C (A Pattern of Green), Objective 6: Provide landscaping and street trees with new development and major remodeling projects.

Policy C (A Pattern of Green), Objective 7: Encourage use of native plants and low-maintenance landscape designs which reduce water and energy consumption and the application of fertilizer and pesticides in both public and private areas.

The applicant’s proposal will enhance the public view of this site with new trees and greenery along the street. The proposed incense cedar trees and *Mahonia repens* (creeping Oregon grape) ground cover plants are native to the Pacific Northwest. Staff finds the proposal is consistent with these elements of the Albina Community Plan.

Summary

As the proposal is found to be consistent with the classifications of the adjacent street, and because the proposal is consistent with the desired character of the area as described in the purpose statement of the EX zone and the Albina Community Plan, this criterion is met.

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

Findings: As only one Adjustment is being requested, this criterion is not applicable.

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

Findings: City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. 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 discussed in the findings for approval criterion A, waiving the landscaping buffers on the north and south sides of the parking lot will be mitigated by a landscaping buffer which is larger than required and located along the most visible perimeter of the parking lot (on the west, street-facing side of the lot). The proposed landscaping buffer on the west side of the lot will be 12 feet deep (7 feet wider than required), and will be planted with two new incense cedar trees along with shrubs and ground cover plants. The new landscaping will improve the appearance of the site and provide many benefits consistent with the purposes of the landscaping requirement. 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 proposal to waive the required landscaping buffers on the north and south sides of the parking lot, but install a landscaping buffer larger than required on the west side of the lot, equally meets the intent of the regulation and is consistent with the desired character of the area. The applicant has demonstrated that the applicable approval criteria have been met. Since the approval criteria are met, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.266.130.G.2 to reduce the required landscaping buffer on the north and south perimeters of the parking lot from 5 feet wide to zero per the approved site plan, Exhibits C-1 and C-2, signed and dated September 22, 2016, subject to the following conditions:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 and C-2, except as modified by Condition B, below. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-198884 AD."
- B. The *Viburnum tinus* shrubs illustrated in Exhibits C-1 and C-2 must be replaced with a lower shrub variety that will reach at least 3 feet but not more than 4 feet in height at maturity.

Staff Planner: Andrew Gulizia

Decision rendered by:  **on September 22, 2016.**
By authority of the Director of the Bureau of Development Services

Decision mailed: September 27, 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 July 1, 2016, and was determined to be complete on July 21, 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 July 1, 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 extended the 120-day review period by 30 days. Unless further extended by the applicant, **the 120 days will expire on: December 18, 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 October 11, 2016**, at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 **October 12, 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:

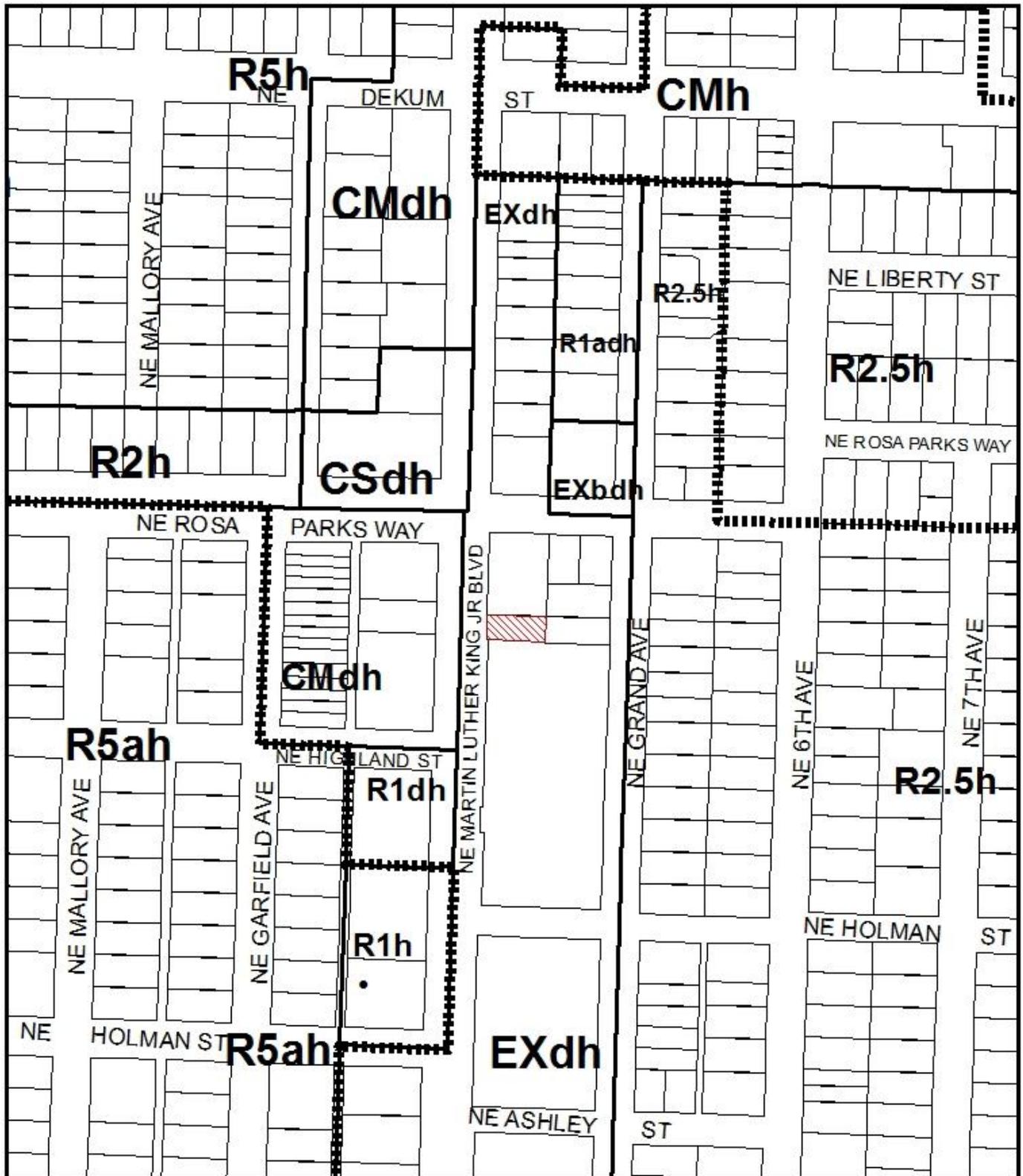
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Applicant's narrative, received July 1, 2016
 - 2. E-mail from applicant, received July 19, 2016
 - 3. Applicant's revised narrative, received July 25, 2016
 - 4. Request for extension of 120-day review period, received August 30, 2016
 - 5. Applicant's revised narrative, received September 13, 2016
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan (attached)
 - 2. Full-sized, scalable site plan
 - 3. Front building elevation
 - 4. Full-sized, scalable front building elevation
- D. Notification Information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Addendum to Bureau of Environmental Services response
 - 3. Portland Bureau of Transportation
 - 4. Water Bureau
 - 5. Fire Bureau
 - 6. Site Development Review Section of BDS
 - 7. Life Safety Review Section of BDS
- F. Correspondence – none received
- G. Other:
 - 1. Original LU application form and receipt

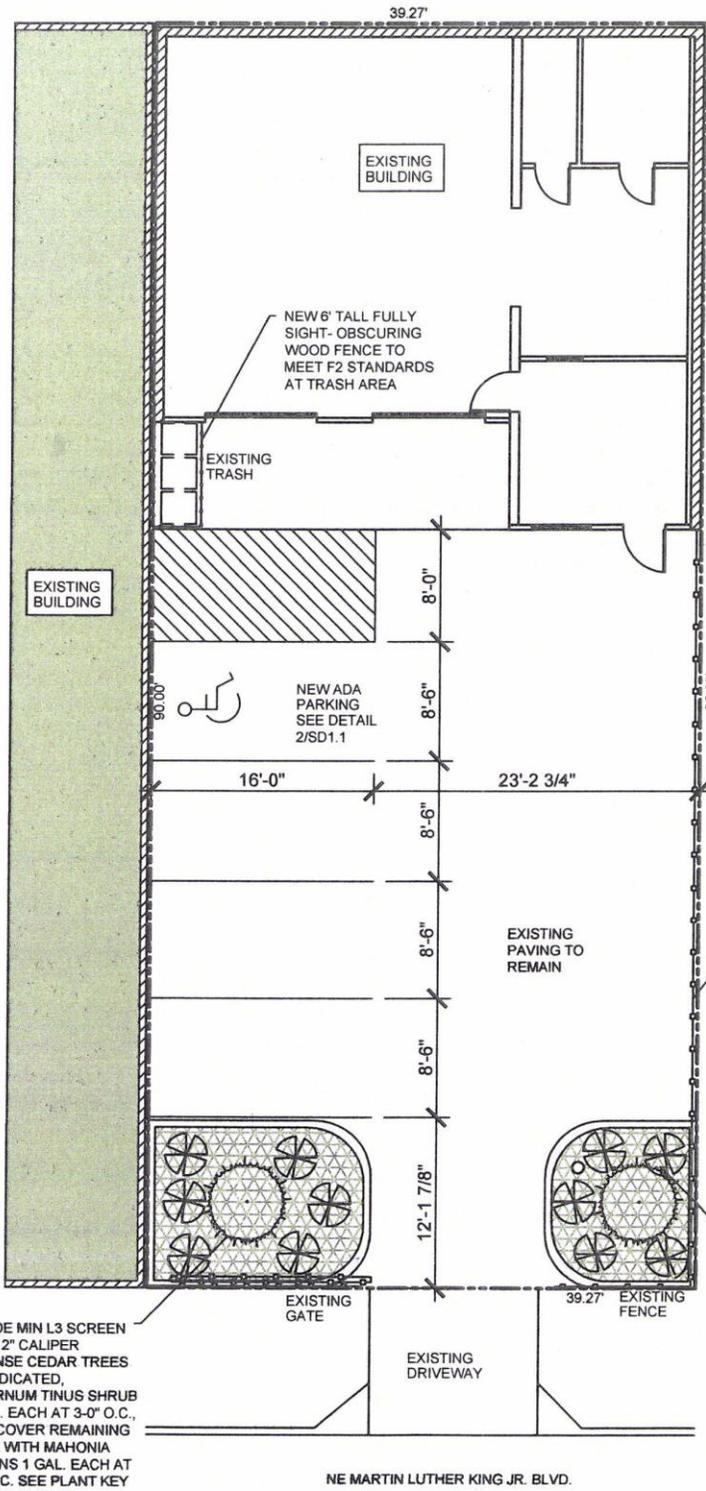
The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING ↑
NORTH

-  Site
- Historic Landmark

File No. LU 16-198884 AD
 1/4 Section 2431
 Scale 1 inch = 200 feet
 State_Id 1N1E14CB 9900
 Exhibit B (Jul 06, 2016)



Approved
 City of Portland - Bureau of Development Services
 Planner *A. Galizia*
 Date *9/22/16*
 * This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

6' TALL SIGHT-OBSCURING FENCE TO MEET F2 STANDARDS AT SOUTH PROPERTY LINE. WHERE LOCATED WITHIN 10' OF STREET PROPERTY LINE, REMOVE SIGHT-OBSCURING FOR TRAFFIC SAFETY.

(new fence is optional - existing fence may remain unchanged if desired)

5' WIDE MIN L3 SCREEN WITH 2" CALIPER INCENSE CEDAR TREES AS INDICATED, VIBURNUM TINUS SHRUB 1 GAL. EACH AT 3-0" O.C., AND COVER REMAINING AREA WITH MAHONIA REPENS 1 GAL. EACH AT 24" O.C. SEE PLANT KEY FOR ADDITIONAL INFORMATION

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(Viburnum tinus shrubs must be replaced with a lower shrub variety per condition B.)

LU 16-198884 AD

Exhibit C-1