



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

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
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www.portlandoregon.gov/bds

Date: December 15, 2016
To: Interested Person
From: Jason P. McNeil, Land Use Services
503-823-5398 / Jason.McNeil@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 16-246883 AD

GENERAL INFORMATION

Applicant: Vitaly Zagoruyko,
21807 SE Ankeny St
Gresham, OR 97030

Owner: Lyubov Voytsekhovskaya,
5738 SE Knight St
Portland, OR 97206

Site Address: 5744 SE KNIGHT ST

Legal Description: LOT 1, PARTITION PLAT 2006-182
Tax Account No.: R649867250
State ID No.: 1S2E18DA 12701
Quarter Section: 3636

Neighborhood: Woodstock, contact Terry Griffiths at 503-771-0011.
Business District: Woodstock Community Business Association, contact Ann Sanderson at anndango@gmail.com.
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010.

Plan District: None
Zoning: R5 – Single Dwelling Residential 5,000
Case Type: AD – Adjustment
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

PROPOSAL:

The applicant is proposing to remove the required parking space on the site (Parcel 1 on the attached site plan). They would like to extinguish the easement over the neighboring property that provides access from the alley to the parking space on the rear of Parcel 1. This easement was put in place by a previous land division review, LU 06-106694 ZC LDP. The Portland

Zoning Code states that one parking space is required per residential unit (Section 33.266.110.B). An Adjustment is therefore necessary to reduce the required parking space from one space to zero spaces. No new residential development or construction is proposed.

RELEVANT APPROVAL CRITERIA:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The site is a 2,644 square foot parcel that is developed with a one-story, single dwelling unit. SE Knight Street is designated as a local service street in the Transportation System Plan and is developed with sidewalks, curbs, and a 28-foot paved roadway within a 60-foot right-of-way. Off-street parking is allowed along the north side of SE Knight, opposite the subject property. Parking is not allowed on the south side of the street. There is an unpaved alley in this block that runs parallel to SE Knight. The subject property does not have frontage on the alley; however an easement over the adjacent property to the south provides access to a parking space on the rear of the site. Currently, that parking space is not in use and a covered patio has been built on the adjacent property over the area of the easement.

Though the site is zoned R2.5, it is entirely surrounded by properties zoned R5. This is the result of a Zoning Map Amendment approved in 2006 (LU 06-106694 ZC LDP) allowing for the upzoning of the site to match the Comprehensive Plan Map designation.

The surrounding area to the north, east, and west is primarily developed with one and two story single family dwellings in the R5 zone. The area to the south and southeast along SE Woodstock Boulevard is zoned R2/R2a and is also mainly comprised of single dwelling units with some multidwelling development mixed in. To the southwest, in an area zoned CN2, is the eastern fringe of the Woodstock commercial area.

Zoning: The R2.5 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.

Land Use History: City records indicate that prior land use reviews include the following:

- **LU 06-106694 ZC LDP** – Approval of a zone change from R5 to R2.5 to conform with the site's Comprehensive Plan designation and approval of a two-lot partition for the subject property and the adjacent flag-like lot. A condition of approval of that land division required an on-site parking space on the rear of the site that accesses the alley over an easement on the adjacent property, or for an Adjustment to waive or modify the parking requirement.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **October 14, 2016**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Life Safety Plans Examiners Section of BDS

The Bureau of Transportation (PBOT) responded with no objections and an analysis of the applicant's Parking Study. The analysis can be found below, in this decision under Criterion B. The full response is contained in Exhibit E-2.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on October 14, 2016. A total of two written responses have been received from notified property owners in response to the proposal. The issues raised in these letters include:

- Parking is only allowed on one side of SE Knight and therefore parking is in high demand on this block.
- Claims that residents often park in the "No Parking" zone on the south side the street in front of the subject property and approval of the application would exacerbate the issue.
- The property owner built an unpermitted structure over the easement that is supposed to provide access to parking on the site. They have shown disregard for the zoning regulations and should therefore not be granted any leniency.

Staff Response: In regards to the parking concerns, the applicant submitted a parking study from a certified traffic engineer that showed ample parking in the vicinity of the subject property. PBOT submitted comments that provide an analysis of the parking study below.

Regarding concerns about the covered patio located within the easement area on the adjacent property, concerns pertaining to unpermitted structures should be directed to BDS Compliance Services at (503) 823-CODE (2633).

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.805.040 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 regulation to be adjusted is found at 33.266.110.A, which states the purpose for minimum required parking spaces. The relevant purpose is:

***Purpose.** The purpose of required parking spaces is to provide enough on-site parking to accommodate the majority of traffic generated by the range of uses which might locate at the site over time. Sites that are located in close proximity to transit, have good street connectivity, and good pedestrian facilities may need little or no off-street parking.*

As mentioned above, a condition of approval from the land division approved in 2006 (LU 06-106694 ZC LDP) required a parking space on the rear of the site behind the dwelling. The parking space on this site was to be accessed from the public alley to the south over the adjacent property. Both properties are under the same ownership, and in the intervening years, the property owner has not utilized the parking space on the rear of the property. Today there is a covered patio over the area of the access easement.

The applicant is requesting an adjustment to parking requirements that are intended to ensure the provision of on-site parking generated by uses on the site. In this case the use is single family residential, for which the City presumes demand of one parking space per dwelling unit. Therefore, the loss of one on-site parking space on the subject property would result in the loss of one unit of on-street parking.

The applicant states that the residents of the house on the site have utilized on-street parking since the completion of the 2006 land division; therefore the demand for on-street parking would not be affected by this proposal. However, staff uncovered evidence, using Google Street View, that a concrete pad located in the front setback of the house on the subject site has been used as off-street parking (see photo from August of 2014, Exhibit G.3). Per section 33.266.120, required parking spaces are not allowed within the front setback (10 feet), therefore this is not an allowed parking space. Existing development on the site precludes a parking space that could be located outside of the front setback (originally, this application was for an Adjustment to the front setback requirements to allow a parking space within the setback; however, PBOT would not support that proposal due to the presence of the alley and a policy preference for alley access when possible). In light of the evidence that the residents of the property use the front yard for off-street parking, the applicant's claim that on-street parking demand will be unchanged seems unfounded. Nevertheless, PBOT found that adequate on-street parking is available in the area as discussed further in the findings below.

The on-site parking is accessed by a paved area approximately 8-9 feet in width that is located between the curb and the property line. There is no curb cut present. As a condition of approval of this proposal, the applicant will be required to obtain a finalized Zoning Permit within 6 months to modify the paved area used for vehicle access to no more than 5-feet on width, which is an appropriate width for pedestrians but not wide enough for vehicle use. This area extends from the curb to the point at which the "driveway" opens up to the area that could be used as a patio, as shown on Exhibit C.2.

In addition to parking demand, the purpose statement for parking requirements takes into account transit access, street connectivity, and pedestrian facilities. In this case, the area is served by three bus lines located approximately 1,100 to 1,200 feet from the site: TriMet Line 10 on SE Harold Street and Lines 19 and 71 on SE 52nd Avenue. Line 19 is a frequent service bus. Staff notes that on-site parking is not required for single dwelling residential uses located within 500 feet of a frequent service bus line; therefore no on-site parking would be required were the property located 700 feet closer to the Line 19 bus. Street connectivity in the area is regular and most streets have paved sidewalks for pedestrians. The area is also located approximately one-third (1/3) of a mile from the edge of the Woodstock commercial district with a variety of shops and services.

Given these facts and circumstances, the presence of good pedestrian facilities, and the proximity to transit services, with the condition of approval noted above, 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: This site is in a residential zone. The residential area considered for analysis encompasses the area included for the Parking Study area (see below for description). This proposal does not include any new development or physical alterations to the

property; therefore it will not detract from the appearance of the residential area. This criterion also requires an analysis as to whether the proposal will detract from the livability of the surrounding residential area. In this case, proposing to eliminate one on-site parking space could have potential impacts on the availability of on-street parking. To address this issue, to which there were two written comments from a concerned neighbor and a property owner, the applicant submitted a parking study from a certified traffic engineer to PBOT for review (Exhibit A.2). The study provides an inventory of parking occupancy in the area at peak parking time (overnight when most residents are home) and an analysis of current and projected parking demand. The study area included SE Knight Street between SE 54th and SE 62nd Avenues as well as the blocks of SE 57th and SE 60th Avenues between SE Woodstock Boulevard and SE Ramona Street.

The inventory found a 66% occupancy rate along the SE Knight segment with lower occupancy on the SE 57th and SE 60th segments (26% and 18%, respectively). The nighttime parking demand within the study area fell below the 85th Percentile Demand, the point above which traffic engineers consider a parking shortage (85% occupancy). The traffic engineer found that:

Ample on-street parking is available in the vicinity of the site to support all existing uses in addition to the anticipated future parking demands associated with the subject property...The parking supply is sufficient to safely accommodate the peak parking demands, and no parking mitigations are recommended.

PBOT responded with no objections and provides the following comments regarding impacts to on-street parking:

*The applicant provided a parking study that was conducted by Lancaster Engineering (November 2016). The study asserts that ample on-street parking currently exists and will exist following the anticipated completion of nearby development at 6009 SE Woodstock. Based on the parking study, it appears as if sufficient parking exists on-site in the vicinity to provide for parking for the existing development. **PBOT has no objection to the requested adjustment.***

The current on-street parking supply is sufficient to accommodate the majority of traffic generated by the type of uses that might locate at the site and in the surrounding residential area. The site is located in close proximity to transit, has excellent street connectivity, and a robust sidewalk network; therefore, the infrastructure present strikes a balance between transportation modes.

PBOT concludes that the proposed Adjustment to eliminate the required off-street parking space from the subject site will not adversely impact the surrounding area and equally or better meets the purpose of the off-street parking requirement.

Based on this analysis, the proposal will not have impacts on the livability of the immediate residential area. 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. This criterion is not applicable.

- 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 adjustment. 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 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 requests approval of an Adjustment to the parking requirements for single dwelling residential development, which requires one on-site parking space per dwelling unit on sites that are not located within 500 feet of frequent transit. A parking space on the subject property, accessed from a nearby alley over a private easement on the neighboring property, was a requirement of a 2006 Land Division approval on the site. The applicant would like to extinguish that easement to allow for the use of the land under the easement as an outdoor area on the neighboring property. Though the proposal would result in the loss of an approved parking space on the site, the applicant provided a traffic study showing ample off-street parking in the area, which was supported. PBOT finds that the proposal would not significantly impact on-street parking nearby. The proposal satisfies all of the applicable approval criteria and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to 33.266.110, *Minimum Required Parking Spaces*, to reduce on-site parking from one space to zero, per the approved site plan, Exhibits C-1, signed and dated December 13, 2016, subject to the following conditions:

- A. As part of any future building permit application submittal, each of the four (4) 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. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-246883 AD."
- B. Within six (6) months of approval, the applicant must obtain a finalized Zoning Permit to modify the paved area used for vehicle access in the front yard (from the curb to the edge of the paved patio area in front of the house, as shown on Exhibit C.2) to a width of five (5) feet or less.

Staff Planner: Jason P. McNeil

Decision rendered by:  **on December 13, 2016**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 15, 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 September 21, 2016, and was determined to be complete on October 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 September 21, 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 requested that the 120-day review period be extended by 60 days, as stated with Exhibit (Exhibit G.2) Unless further extended by the applicant, **the 120 days will expire on: April 8, 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 December 29, 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 **December 30, 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;

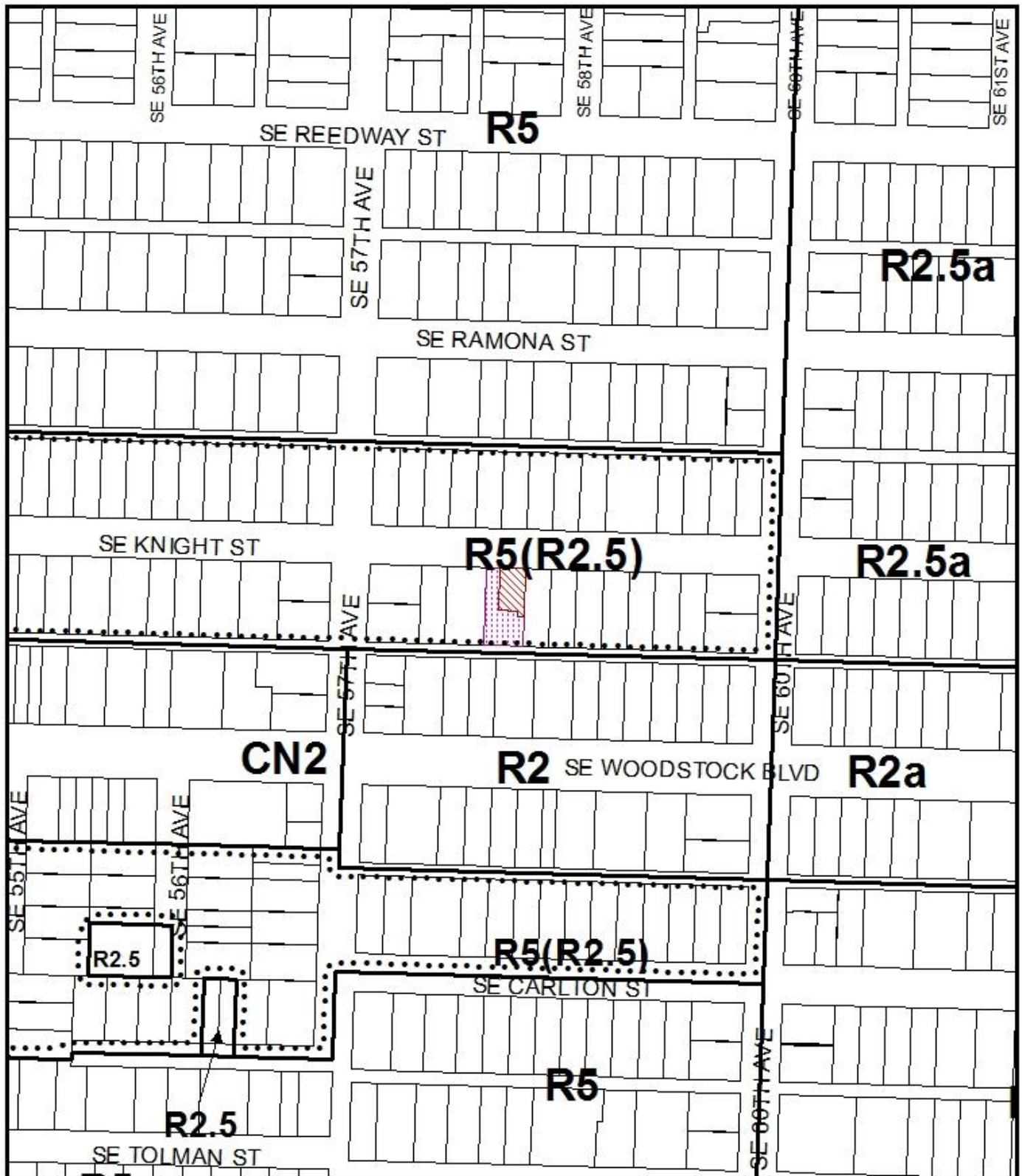
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant Submittal
 - 1. Applicant's Statement, September 21, 2016
 - 2. Applicant's Statement, September 28, 2016
 - 3. Applicant's Statement, October 10, 2016
 - 4. Parking Study
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Driveway removal area
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Section of BDS
- F. Correspondence:
 - 1. Renee Boyd, October 20, 2016, Letter in opposition due to parking availability and current property owner's disregard for zoning regulations
 - 2. Dennis Campagna, October 21, 2016, Letter in opposition due to parking availability
- G. Other:
 - 1. Original LU Application
 - 2. Extension to 120-Day Review Period Form
 - 3. Photo of front yard parking

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
-  Also Owned Parcels



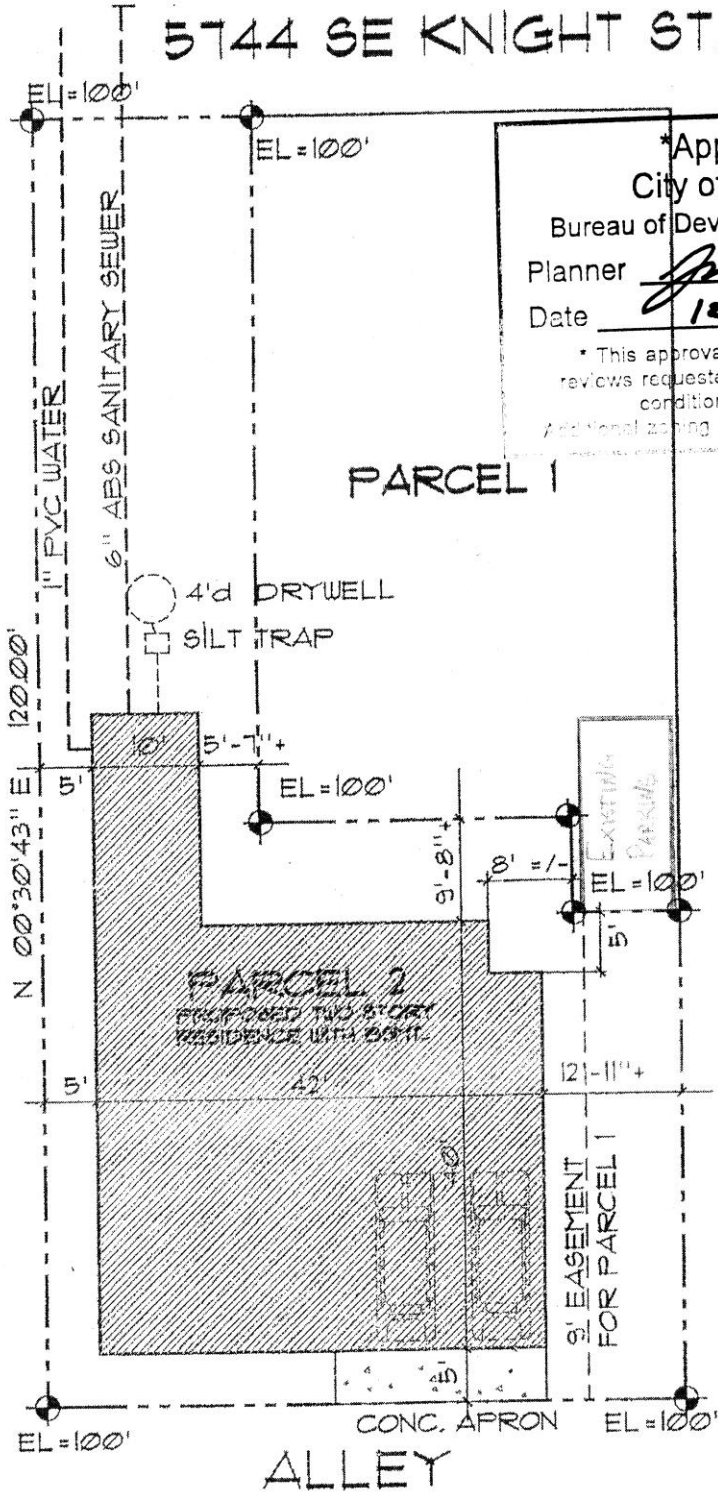
File No. LU 16-246883 AD
 1/4 Section 3636
 Scale 1 inch = 200 feet
 State_Id 1S2E18DA 12701
 Exhibit B (Sep 27, 2016)

5744 SE KNIGHT ST.

Approved
 City of Portland
 Bureau of Development Services
 Planner J.P. 22:
 Date 12/13/16

* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

PARCEL 1



LEGAL
 PARCEL 2
 OF LOTS 25,26
 BLOCK 5
 'TREMONT PLACE'
 CITY OF PORTLAND
 MULTNOMAH COUNTY
 OREGON
 5744 SE KNIGHT

Use as elevation plan

SITE PLAN
 SCALE: 1" = 10'



CASE NO. LU 14-241893AD
 EXHIBIT C.1