



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

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Date: January 13, 2017
To: Interested Person
From: Don Kienholz, 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 16-250676 AD

GENERAL INFORMATION

Applicant: Shanna Doolittle
5313 N Montana Ave
Portland OR, 97217

Site Address: 5313 N MONTANA AVE

Legal Description: SUB TRACT C BLOCK 2 LOT 9, M PATTONS & SUB
Tax Account No.: R520700930
State ID No.: 1N1E22BB 06900
Quarter Section: 2529

Neighborhood: Overlook Neighborhood Association, contact Mike Shea at mcchaix59@gmail.com.

District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

Plan District: North Interstate.

Zoning: EXd – Central Employment with a Design Overlay zone.
Case Type: AD – Adjustment Review.
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The subject property is zoned EX and contains an existing house and detached garage. The applicant would like to convert the detached garage into living area at some point in the future. Converting the garage to living space would remove the on-site parking space from the garage and require it to be placed elsewhere on the property. The applicant has identified the new parking area to be in front of the garage in the existing driveway.

The area in front of the garage measures 9-feet wide and 24-feet long from the base of the building to the front property line. The EX zone has no front yard setback; however, under Zoning Code Section 33.266.120(C), parking spaces are not allowed within the first 10-feet from a front lot line. The code requires parking spaces to measure 9x18-feet [33.266.120(D)(1)] and with only 24-feet from the garage to the property line, the parking space would be within 6-feet of the front lot line. Thus, the applicant is seeking an Adjustment to allow the parking space to be within 6-feet of the front property line.

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 subject property is a 5,000 square foot lot with an existing single-family dwelling and detached garage located on site. N. Montana Avenue is located between Interstate 5 and N. Interstate Avenue and the Yellow Max Light Rail Line. While the zoning is EX, which allows high density development, development along the stretch of N Montana the property is located on generally consists of single-family dwellings and small, detached accessory structures. Corner lots contain multi-dwelling development as is common for corner lots throughout the city.

Zoning: The Central Employment (EX) 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 “d”, or Design, overlay promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development and exterior modifications to existing development are subject to design review. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review. In addition, design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **November 28, 2016**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1);
- Bureau of Transportation Engineering (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5); and
- Life Safety Plans Examiner (Exhibit E.6).

Neighborhood Review: No written responses have been received from the Neighborhood Association in response to the proposal. One comment by a notified property owner was received.

A comment email was received from Jeremy Miller on November 20, 2016 (Exhibit F.1). The email focused on Mr. Miller’s preference for the parking space to be removed from the property and the opinion that that the Adjustment shouldn’t have been necessary because there is no increase in the number of spaces required and no change in the physical building footprint.

Staff Response: It is true the zoning code does not require a parking space for household living in the EX zone for three or fewer dwelling units. If a property owner wishes to keep an existing parking space, they are entitled to do so. However, if they relocate the parking space to a location that does not meet the development standards, then an Adjustment is required, such as in this case.

ZONING CODE APPROVAL CRITERIA

Title 33.805 Adjustments

33.805.010 Purpose

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. They also allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Finding: The applicant is seeking an Adjustment to the parking area location standard in Zoning Code Standard 33.266.120(C)(2) in order to allow the newly relocated parking space to be located closer than 10-feet from the front property line. The purpose of the parking area location for houses and duplexes is outlined in 33.266.120(A):

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

To help understand the characteristics and appearance of neighborhoods the zoning code and Comprehensive Plan are trying to achieve, the description of the zone the property is in must be evaluated. Characteristics of the EX zone are found in 33.140.030:

*“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.**”* (Emphasis added).

Based on the above code sections, the purpose of the Parking Area Location standard is to enhance the visual appearance of a neighborhood, which includes safety considerations; allow residential development but not have such residential development predominate or set the development pattern of an area; and match existing residential development. Staff looked at the development pattern of the residential uses in the local neighborhood (Exhibit G.5). The applicant also conducted an analysis of the residential area in their October 24, 2016 narrative (Exhibit A.4). The entire block of N. Montana the property is on consists of single-family dwellings, some with detached garages. The applicant counted vehicles parked in the driveways, either in front of a garage or converted garage, in 11 of 19 properties. The applicant went on further to examine the area between I-5 and N. Interstate and between N. Killingsworth and N. Interstate. In that expanded area, the applicant found 41 driveways

and identified 26.8% to 46.3% of the driveways having vehicles parked within the first 10-feet of the property line.

It is unclear why the cited percentages vary so widely. It could be based upon conducting the survey multiple times. However, staff finds the range is not relevant. The applicant is requesting an encroachment of 4-feet, which leaves 6-feet between the end of the parking area and the front property line. Next, there is a 2-foot planting strip between the sidewalk and the property line. Combined, there would be 8-feet between a parked vehicle and the sidewalk. Such distance ensures a parked vehicle will not overhang the sidewalk and create a conflict with passing pedestrians. With 8-feet between a parked car and the sidewalk, there is also wide enough viewing angle for a driver to adequately see pedestrians walking and entering the area behind the vehicle as well as being able to see passing cars when backing out. As such, the 4-foot encroachment does not create a safety hazard.

Based upon analysis of air photos and Google Street View, Staff concurs with the applicant's conclusions of the neighborhood customarily having vehicles parked in driveways and within the first 10-feet from a property line. Considering that, allowing the applicant to encroach the parking area into the first 10-feet from a property line would not be breaking the development pattern of the residential uses in the local EX zone. Nor would allowing the encroachment set a new development pattern for the residential area.

Lastly, allowing a vehicle to park within the first 10-feet from the property line will not adversely affect the visual appearance of the neighborhood. As evidenced by the applicant's information, the neighborhood has an established development pattern and physical form that includes vehicles within the first 10-feet from a property line. Allowing the encroachment will maintain the current single-dwelling neighborhood character and design.

Criterion 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

Finding: The subject property is within the Central Employment zoning designation, an E zone. The site fronts only one street, N. Montana Avenue, a Local Service Traffic Street. Local Service Traffic Streets are the lowest classification of street and serve local residences and commercial uses by providing local circulation for traffic, pedestrians, and bicyclists. The subject site has a house and detached garage that will be converted to living area at some point in the future. Relocating the on-site parking area in front of the detached garage and closer to the front lot line than allowed will not increase trip generation and will have no effect on the classification, use or purpose for N. Montana Avenue.

The Adjustment request must be consistent with the desired character of the area. Desired Character is defined in Zoning Code Section 33.910.010 as follows:

Desired Character. *The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area (Emphasis added).*

The purpose of the Central Employment zone (EX) is:

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 purpose statement of the EX zone identifies allowing mixed use developments as well as using development standards to keep the character of areas in the zone consistent. The use on the subject site is residential, which adds to the mixed use nature of the EX zone. As noted in the Finding A. above, a parking area encroaching into the first 10-feet from a property line is consistent with the existing development pattern of the area and as such will keep the character of the area of N. Montana consistent.

The subject site is within the North Interstate Plan District. The purpose of the plan district is stated in Zoning Code Section 33.561.010:

“The North Interstate plan district provides for an urban level of mixed-use development to support the MAX line and the surrounding neighborhoods by encouraging development that increases neighborhood economic vitality, amenities, and services and successfully accommodates additional density. These standards:

- *Implement urban design concepts of the North Interstate Corridor Plan;*
- *Help ease transitions between new high-density development and the existing, low-density neighborhoods; and*
- *Enhance the pedestrian experience.”*

North Montana Avenue is identified as a significant residential street that will support the growing neighborhood with a series of north-south pedestrian and bicycle connections while maintaining its residential character. As noted earlier, the encroachment into the 10-foot setback will not adversely impact pedestrians or travel along the street. The plan district also incorporates community design standards to help achieve an area character. Those design standards include standards prohibiting access onto N. Interstate Avenue unless there is no other road frontage and not allowing parking in the front setback. In the current case, the property is along N. Montana Avenue and has an existing driveway and parking space. As discussed in Finding A above, N. Montana Avenue has a built form and character that includes parking associated with household living to be within the front setback. Allowing a parking space within 6-feet of the front property line will not adversely impact that character.

The Overlook Neighborhood does not have an adopted neighborhood plan. However, the subject site is located within the boundary of the Albina Community Plan.

Policy IX of the Albina Community Plan focuses on Community Image and Character and includes Policy B: Urban Design. Nothing in Policy B directly addresses parking areas. However, Objective 7 of Policy B does address the goal of creating a network of safe pedestrian pathways. Considering the North Interstate Plan’s identification of N. Montana as a residential street that will support pedestrian and bicycle movement, it is fair to say that Objective 7 relates to N. Montana Street. Again, allowing a parking area to encroach 4-feet into the setback will still provide 8-feet between a vehicle and the sidewalk. The distance is more than enough to provide a safe and free flowing sidewalk free of vehicle overhang.

Criterion 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

Finding: Only one Adjustment has been requested.

Not applicable.

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

Finding: City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” while historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. The subject property is not within a City-designated ‘s’ overlay zone. However, the property is two blocks away from the Interstate Firehouse, a local historic landmark. Considering the lack of proximity to city-designated scenic and historic resources, staff finds development will not adversely impact scenic or historic resources and they will be preserved.

Criterion met.

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

Finding: As found in staff responses to criteria A and B, the requested adjustment equally meets the purpose of the parking space location standards and does not adversely impact the livability or appearance of the residential neighborhood. Furthermore, the Adjustment request has no impact on historic resources. Staff finds there are no adverse impacts resulting from the Adjustment and as such no mitigation is required.

Criterion 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;

Finding: The subject property is roughly 4,500-feet from the nearest environmental zone. The proposed Adjustment will have no detrimental impacts on the protected resource.

Criterion 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. The plans submitted must also demonstrate the standards of title 17 can be met or a Minor Improvement Permit has been obtained prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant has demonstrated that the applicable approval criteria have been met for the requested Adjustment. The Adjustment equally meets the purpose of the Parking Area Location standards found in the Development Standards for Houses and Duplexes, will not significantly detract from the livability or appearance of the residential area, and has no impact on historic resources.

ADMINISTRATIVE DECISION

Approval of the Adjustment to allow a 9x18-square foot parking area to encroach 4-feet into the required 10-foot setback from a front property line [33.266.120(C)(1)] seen as seen in Exhibit C.2.

- A. As part of the building permit/zoning permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit C.2. The sheets on which this information

appears must be labeled, "Proposal and design as approved in Case File # LU 16-250676 AD. No field changes allowed."

Staff Planner: Don Kienholz

Decision rendered by:  **on January 10, 2017**

By authority of the Director of the Bureau of Development Services

Decision mailed: January 13, 2017

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 28, 2016, and was determined to be complete on November 18, 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 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: March 18, 2017.**

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 January 27, 2017** 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 **January 30, 2017 – the day following the last day to appeal**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

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

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

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

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

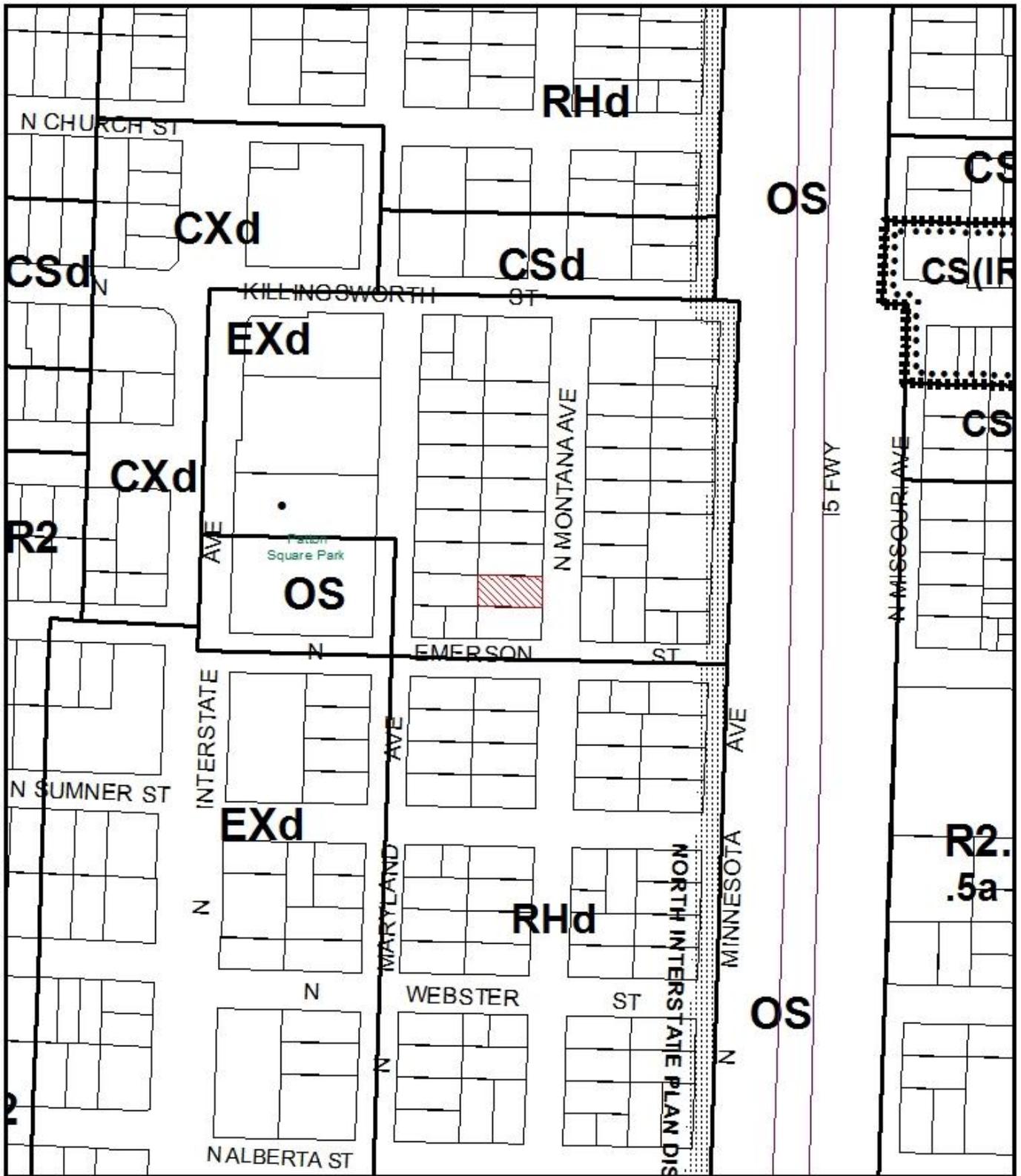
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Materials.
 - 1. Applicant's September 28, 2016 Narrative;
 - 2. Applicant's September 28, 2016 Summary of Application Materials;
 - 3. Applicant's September 28, 2016 Photos of Driveway;
 - 4. Applicant's October 24, 2016 Supplemental Narrative;
 - 5. Applicant's November 14, 2016 Email with Sidewalk Profile Information;
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Applicant's September 28, 2016 Site Plan;
 - 2. Applicant's November 18, 2016 Revised Site Plan (Attached);
 - 3. Applicant's November 14, 2016 garage Floor Plan
 - 4. Applicant's November 14, 2016 Framing Plan;
- D. Notification information:
 - 1. Mailing List;
 - 2. Mailed Notice;
- E. Agency Responses:
 - 1. Bureau of Environmental Services;
 - 2. Bureau of Transportation Engineering and Development Review;
 - 3. Water Bureau;
 - 4. Fire Bureau;
 - 5. Site Development Review Section of BDS;
 - 6. Life Safety Plans Examiner;
- F. Correspondence:
 - 1. Jeremy Miller's November 20, 2016 Email in opposition.
- G. Other:
 - 1. Original LU Application;
 - 2. Receipt for Fees Paid;
 - 3. October 11, 2016 Incomplete Letter;
 - 4. Air Photo of Site and N. Montana Ave.;
 - 5. Historic Google Street View Photos of Driveway Area.

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
-  Historic Landmark



This site lies within the:
NORTH INTERSTATE PLAN DISTRICT

File No. LU 16-250676 AD

1/4 Section 2529

Scale 1 inch = 200 feet

State_Id 1N1E22BB 6900

Exhibit B (Oct 02, 2016)

