



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

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**Date:** February 7, 2017  
**To:** Interested Person  
**From:** Lauren Russell, Land Use Services  
503-823-7817 / [Lauren.Russell@portlandoregon.gov](mailto:Lauren.Russell@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 16-288871 AD**

**GENERAL INFORMATION**

**Applicant:** Michael Rusch  
Lever Architecture  
4713 N Albina Ave 4th Floor  
Portland, OR 97217

**Owner:** Portred I LLC  
Po Box 50447  
Pasadena, CA 91115-0447

**Party of Interest:** Mike Coyle  
Faster Permits  
14334 NW Eagleridge Lane  
Portland, OR 97229

**Site Address:** 2110 SE 82ND AVE

**Legal Description:** TL 8500 0.72 ACRES, SECTION 04 1S 2E  
**Tax Account No.:** R992044420, R992044420, R992044420, R992044420, R992044420, R992044420

**State ID No.:** 1S2E04CC 08500, 1S2E04CC 08500, 1S2E04CC 08500, 1S2E04CC 08500, 1S2E04CC 08500, 1S2E04CC 08500

**Quarter Section:** 3239  
**Neighborhood:** Montavilla, contact Nick Mira at [nick@propelstudio.com](mailto:nick@propelstudio.com)  
**Business District:** Eighty-Second Ave of Roses Business Association, contact Nancy Chapin at [nchapin@tsgpdx.com](mailto:nchapin@tsgpdx.com) & Jade District Business Association, contact Todd Struble at [todd@apano.org](mailto:todd@apano.org)

**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010.  
**Plan District:** None  
**Other Designations:** None  
**Zoning:** CS – Storefront Commercial

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

**Proposal:**

The applicant proposes to construct a new 19,260 square foot one-story with mezzanine multi-use building with an associated surface parking lot. The subject site is located within the 82<sup>nd</sup> Avenue special street setback, which is measured 45 feet from the centerline of SE 82<sup>nd</sup> Avenue. At this location, the width of the street is 82 feet so the centerline is 41 feet from the front property line and the special street setback extends 4 feet into the subject property. Per Zoning Code Section 33.288.020.C, the 4-foot setback on the subject site must be landscaped to at least the L1 standard, which requires one large tree per 30 lineal feet, one medium tree per 22 lineal feet, or one small tree per 15 lineal feet where the area to be landscaped is fewer than 30 feet deep (Zoning Code Section 33.248.020.A.2.a). The length of the subject site within the special setback is 102.5 lineal feet, which would require 4 large trees, 5 medium trees, or 7 small trees. Because the applicant proposes to plant 6 small trees, the L1 landscape standard is not met. Therefore the applicant requests an Adjustment to reduce the number of small trees along the site's frontage from 7 to 6.

**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 site is a 31,350 square foot lot located on the east side of SE 82<sup>nd</sup> Avenue between SE Harrison Street and SE Division Street and also has frontage on SE 83<sup>rd</sup> Avenue on its east side. The site is currently vacant and undeveloped. Adjacent properties along SE 82<sup>nd</sup> Avenue are developed with a variety of commercial uses including strip retail development, standalone restaurant, and auto repair shop with associated surface parking lots. Directly across from the subject site on the west side of SE 82<sup>nd</sup> Avenue is a large surface parking area for Portland Community College. The abutting property to the east is largely vacant and appears to currently be used for the storage of several vehicles and trailers. The properties to the northeast along the east side of SE 83<sup>rd</sup> Avenue are developed with single-dwelling residences.

Ordinance No. 110507 established setback lines measured 45 feet from the street center line on NE and SE 82<sup>nd</sup> Avenue.

**Zoning:** The CS designation is one of the City's commercial zones, which are intended to promote uses and development that will enhance the economic viability of the commercial district and city as a whole. The development standards work together to promote attractive development, an open and pleasant street appearance, and compatibility with adjacent residential uses.

**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 January 9, 2017. The following Bureaus have responded with no issues or concerns regarding the requested Adjustment:

- Bureau of Environmental Services responded that the proposed building and stormwater management plan were reviewed and approved under CO 16-233648 and that approval of this application does not alter the requirements as identified under the building permit (Exhibit E-1);

- Bureau of Transportation Engineering responded that there are no transportation-related approval criteria associated with the proposed land use request and that the applicant is referred to the checksheet issued for 16-233648 CO for transportation requirements (Exhibit E-2);
- Water Bureau responded with no concerns (Exhibit E-3);
- Fire Bureau responded with no concerns (Exhibit E-4);
- Site Development Section of BDS responded with no concerns (Exhibit E-5); and
- Life Safety Review Section responded that a building permit is currently under review and a life safety plans examiner has been in contact with the applicant (Exhibit E-6).

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

## 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 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 reduce the number of small trees along the site's frontage from 7 to 6.

The purpose of the special street setback standard is stated in Zoning Code Section 33.288.010.A:

**Purpose.** *Special Street setbacks may be established on City streets to regulate the location of structures and for maintaining appropriate open areas, and for adequate separation from the street. These regulations:*

- *Increase visibility and safety for pedestrians and drivers;*
- *Provide a pleasant pedestrian environment and human scale;*
- *Improve the appearance of the corridor and reduce visual clutter;*
- *Maintain adequate space for growth of large street trees; and*
- *Maintain adequate light and air.*

The applicant proposes to plant 6 out of the 7 required small trees on the site within the 82<sup>nd</sup> Avenue special street setback. Five of these trees would be located between the sidewalk and the proposed multi-use building and one tree would be located just south of the driveway entrance to the surface parking lot. The applicant has identified two potential locations for the seventh tree but there are conflicts in both locations. If the tree were located just north of the driveway, it would be in conflict with a stormwater line and sightlines and if it were located at the southern edge of the lot, it would be in conflict with utility vaults.

By conforming with the depth of the special street setback, the applicant would provide a wider pedestrian zone for increased visibility and safety, as well as added depth for landscaping to provide a pleasant pedestrian environment. The 6 proposed trees together with 2 proposed street trees would greatly improve the appearance of the corridor, which currently has no trees at the subject site. The 6 trees are proposed to be Princeton Sentry Gingkos and these small columnar trees would be located so that there is enough space for the growth of large street trees and for adequate light and air to filtrate between the trees.

Based on these reasons, the proposed Adjustment equally meets the intent of the regulation and 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 subject site is located in a commercial zone, the applicant must demonstrate that the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area. Zoning Code Section 33.910 defines desired character as 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” and “it also includes the preferred and envisioned character based on any adopted plans or design guidelines for an area.”

Street classifications: The Portland Transportation System Plan classifies SE 82d Avenue is classified as a Local Service Bikeway, Major Emergency Response Street, Main Truck Street, City Walkway, Regional Main Street, Major City Traffic Street, and Major Transit Priority Street. It classifies SE 83<sup>rd</sup> Avenue as a Local Service Bikeway, Minor Emergency Response Street, and Local Service Walkway. The proposed Adjustment to reduce the number of small trees along the site’s frontage from 7 to 6 does not affect the uses or development intended along these adjacent streets.

CS zone character statement: The character statement of the CS zone is stated in Zoning Code Section 33.130.030.F:

***Storefront Commercial Zone.*** *The Storefront Commercial (CS) zone is intended to preserve and enhance older commercial areas that have a storefront character. The zone intends that new development in these areas will be compatible with this desired character. The zone allows a full range of retail, service, and business uses with a local and regional market area. 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. The desired character includes areas which are predominantly built-up, with buildings close to and oriented towards the sidewalk especially at corners. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged.*

A reduction in the number of trees within the 82<sup>nd</sup> Avenue special setback would still allow for a full range of retail, service, and business uses with a local and regional market area; pedestrian-oriented development; and buildings with a storefront character. Therefore the proposed Adjustment to reduce the minimum number of small trees along the site’s frontage from 7 to 6 would not affect the character of the CS zone.

Montavilla Neighborhood Plan: The site is located within the boundaries of the 1996 “Montavilla Neighborhood Plan.” Staff has reviewed the adopted policies of this plan and has identified the following policies and objectives as applicable to the requested Adjustment:

***Policy 4: Economic Development.*** *Foster the opportunity for new businesses and the expansion of existing businesses in Montavilla’s commercial areas along 82<sup>nd</sup> Avenue, Stark,*

*Washington, Glisan, and Division. Reinforce Montavilla's commercial center (Stark/Washington couplet between SE 76<sup>th</sup> and 82<sup>nd</sup> Avenues) by marketing the areas as a special place to do business.*

*6. Enhance 82<sup>nd</sup> Avenue to make it a more attractive and viable arterial for shoppers, pedestrians, residents, and visitors.*

The requested Adjustment to reduce the number of small trees along the site's frontage from 7 to 6 would still enhance SE 82<sup>nd</sup> Avenue to make it a more attractive and viable arterial for shoppers, pedestrians, residents, and visitors.

For these reasons, the proposal would be consistent with the classifications of the adjacent streets and the desired character of the 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:** Because 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. Because there no scenic or historic resource designations are 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 B, the proposal has no adverse impacts on the classifications of the adjacent streets or the desired character of the area for which mitigation would be required. Therefore, 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). Because no environmental overlay zone is mapped on subject 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 reduce the number of small trees along the site's frontage from 7 to 6 equally meets the intent of the regulations and is consistent with the classifications and the adjacent streets and the desired character of the area. The applicant has demonstrated that the applicable approval criteria have been met. Because the approval criteria have been met, the proposal should be approved.

## **ADMINISTRATIVE DECISION**

Approval of an Adjustment to reduce the number of small trees along the site's frontage from 7 to 6 (Zoning Code Section 33.288.020.C), per the approved site plan, Exhibit C-1, signed and dated February 1, 2017, subject to the following conditions:

- A. As part of the building 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-1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-288871 AD. No field changes allowed."

**Staff Planner: Lauren Russell**

**Decision rendered by:** Lauren Russell **on February 1, 2017.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: February 7, 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 December 20, 2016, and was determined to be complete on January 4, 2017.

*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 December 20, 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: May 4, 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 February 21, 2017** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> 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](http://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 **February 22, 2017**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

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

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

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a

new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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

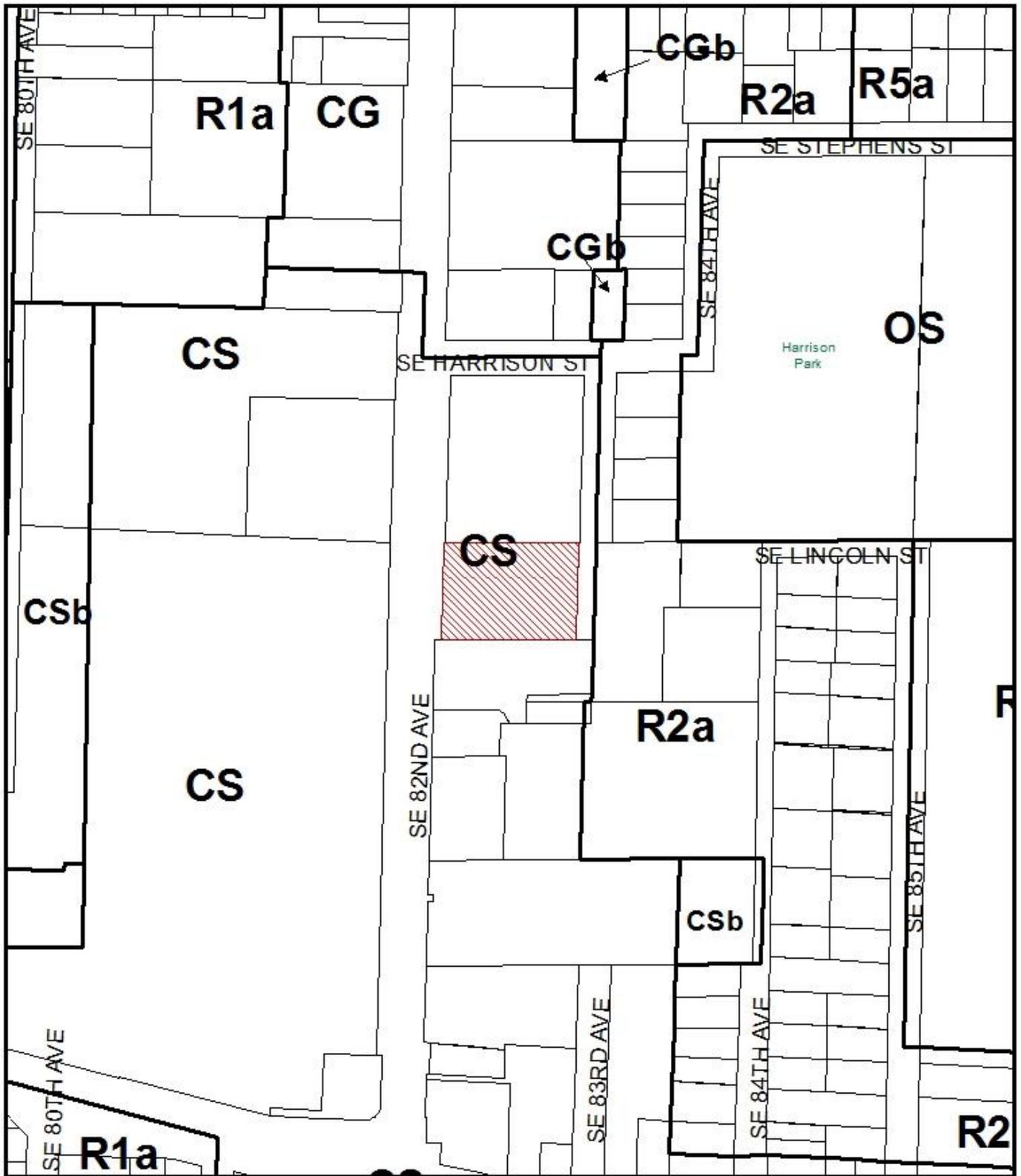
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Site Plan and Narrative 12/20/16
  - 2. Revised Site Plan and Narrative 1/4/17
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. West Elevation (attached)
- 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 Section of BDS
- F. Correspondence: none received
- G. Other:
  - 1. Original LU Application
  - 2. Incomplete Letter

**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

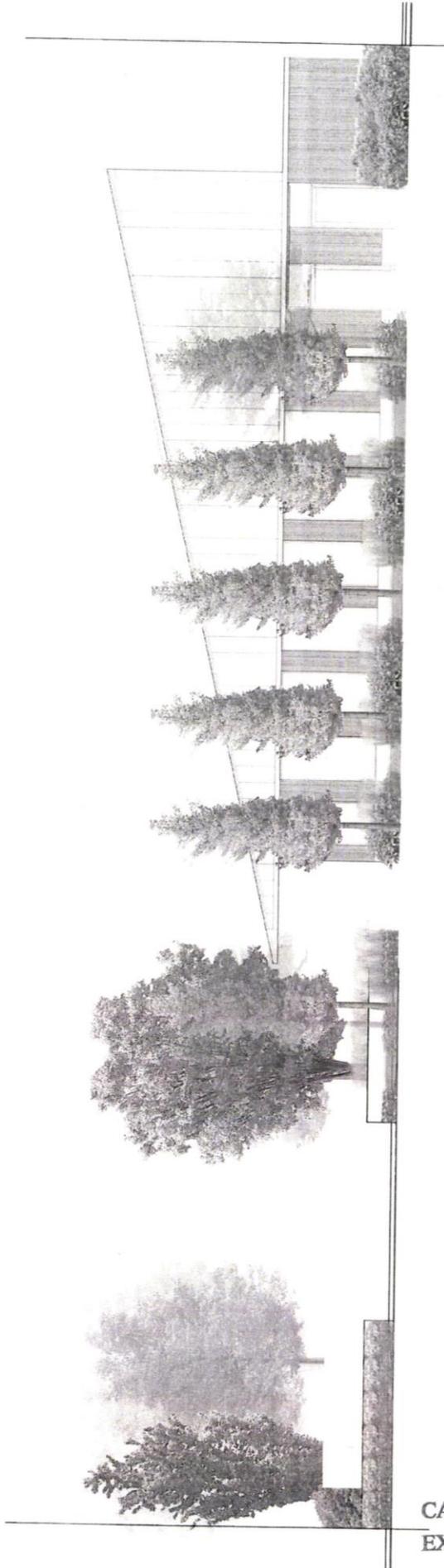
 Site



File No. LU 16-288871 AD  
 1/4 Section 3239  
 Scale 1 inch = 200 feet  
 State\_Id 1S2E04CC 8500  
 Exhibit B (Dec 28, 2016)



82nd Ave ELEVATION



CASE NO. 16-288871 AD  
EXHIBIT C-2

West Elevation SCALE 1" = 10'