



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

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Date: February 9, 2017
To: Interested Person
From: Mark Moffett, City Planner
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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 16-246809 AD

GENERAL INFORMATION

Applicant: Hal Donkin
12153 SE Flavel St.
Portland, OR 97266

Property Owners: Hal and Jonnie Donkin
12153 SE Flavel St.
Portland, OR 97266

Site Address: 12153 SE FLAVEL ST

Legal Description: LOT 1, PARTITION PLAT 1993-10
Tax Account No.: R649730370
State ID No.: 1S2E23BC 05601
Quarter Section: 3743

Neighborhood: Pleasant Valley, contact Steve Montgomery at foxtrotlove@hotmail.com.
Business District: None.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Zoning: **R10** (Single-Dwelling Residential 10,000), **Johnson Creek Basin plan district, South subdistrict**

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

PROPOSAL: The applicant is in the process of addressing issues related to enforcement of a City of Portland Code Compliance effort, which in turn is the result of a neighbor complaint about commercial business activity at the property in the Summer of 2015 (via case file #15-203499 CC). No commercial activity has been found at the site, but various shed-like structures and

attachments to the house, as well as additional front yard paving installed without benefit of permits, were found to be in violation of City Codes during the enforcement process.

To remedy the situation, the applicant is proposing to remove attached shed/carport structures on both the east and west sides of the house. An existing detached carport (labeled "RV Shelter" on the attached site plan) will be moved slightly closer to the house, in order to provide the required minimum 10'-0" setback to the rear lot line. A single-car driveway and paved area on the easternmost, downhill end of the property frontage along SE Flavel Street will be removed, with a small bollard placed along the frontage to prevent automobile access. With these changes, prior Zoning Code issues at the site with regards to minimum setbacks, maximum building coverage, and maximum impervious surfaces have been addressed.

The existing vehicle area along the street in front of and west of the house will remain, providing for approximately four vehicle parking spaces in the "front yard" area. Zoning Code regulations limit vehicle area paving to no more than 40% of the front yard area (862 sq. ft.), whereas 51% of the front yard would be paved for vehicles (1090 sq. ft.). Also, at the westernmost edge of the frontage along SE Flavel, there is room for a car to park in the front yard in a location that is not directly behind another parking space further back. Zoning Code regulations do not allow a non-required parking space to be located in the "front yard" area unless it immediately behind a parking space outside the (20'-0" deep) front yard.

Therefore, in order to remedy the ongoing Code Compliance action and prevent the imposition of additional fines and penalties, the applicant has requested the following two Adjustments:

1. Allow non-required vehicle parking in the 20' front setback not immediately adjacent to a required parking space outside the 20' front setback (33.266.120.C.2); and
2. Increase the maximum vehicle paving area from 40% to 51% of the front yard area (33.266.120.C.3).

RELEVANT APPROVAL CRITERIA: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are 33.805.040.A-F, Adjustment Approval Criteria.

ANALYSIS

Site and Vicinity: The site is a trapezoidal parcel of 10,425 square feet with frontage on the north side of SE Flavel St., just one lot west of the intersection of SE Flavel Street and 122nd Avenue. The property is developed with a two-story house developed in the mid-1990's, with an attached two-car garage facing the street. Concrete driveways lead to the garage and extend west of the garage leading to an RV storage area behind the house. There is a second informal driveway on the downhill east edge of the lot, below a short retaining wall, leading to a second parking area just east of the house.

The abutting right-of-way is developed with an asphalt-paved two-way roadway and wide asphalt shoulders extending all the way up to the private property line for the length of this site, allowing for perpendicular parking of vehicles all along the site frontage. There is a curb-tight concrete sidewalk on the south side of SE Flavel Street, but no sidewalk abutting the site on the north side. Southeast Flavel Street at this location is designated as a City Bikeway and City Walkway in the City of Portland Transportation System Plan.

Zoning: The Residential 10,000 (R10) base zone is intended to preserve land for single-dwelling housing, and to enhance and protect the character of single-dwelling neighborhoods. Parking regulations for houses are intended to enhance the safety and appearance of neighborhoods. The Johnson Creek Basin plan district is intended to protect environmental and floodplain resources in the neighborhoods abutting Johnson Creek, and at this location in the South subdistrict are implemented primarily by restrictions on tree removal and impervious surfaces.

Land Use History: City records indicate one prior quasi-judicial land use review at the site. In 1993, the site was separated from the property immediately to the east in a two-lot partition under City of Portland case file #LUR 92-00667 MP.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **January 6, 2017**. The following Bureaus have responded:

The *Bureau of Environmental Services* (BES) has reviewed the proposal and responded with comments, but no objections or concerns regarding the two requested Adjustments. The proposal does not appear to have an impact on the location of stormwater management systems on the site, although the proposal will be subject to BES standards and requirements during the permit process. Exhibit E.1 contains staff contact and additional information.

The *Life Safety Section of the Bureau of Development Services* has reviewed the proposal and responded with standard comments regarding building codes and permitting. A separate building permit is required for the project, and the proposal must be designed to meet all applicable building codes and ordinances. The proposed RV carport will require stamped structural engineering calculations and details by a licensed Oregon structural engineer. Exhibit E.2 contains staff contact and additional information.

The *Development Review Section of Portland Transportation* (PBOT) has reviewed the proposal and responded without concerns to the two requested Adjustments. Clarifying the original note made on this response, PBOT staff noted that upon future redevelopment of the site with a new house, the driveway width may need to be reduced to comply with the maximum 30’ width presently allowed under City Code for a lot of this (approximately 84’-0”) width. Exhibit E.3 is a record of the electronic “no concerns” response posted by PBOT.

The *Urban Forestry Division of Portland Parks and Recreation* has reviewed the proposal and responded with no concerns, as well as comments that there is no impact to existing street trees or heritage trees with the proposal (Exhibit E.4).

The following three agencies or bureau departments have responded without comment or concern to the two requested Adjustments:

- The *Site Development Section of the Bureau of Development Services* (Exhibit E.5);
- The *Fire Bureau* (Exhibit E.6); and
- The *Water Bureau* (Exhibit E.7).

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

33.805.010 Purpose of Adjustment Reviews

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 parking regulations for houses, as stated at **33.266.120.A**, reads: “*the size and placement of vehicle parking areas are regulated in order to enhance the appearance of neighborhoods*”.

The site is developed with a typical two-story home and double-car garage facing the street, similar to the development pattern found in most of the nearby suburban homes. The concrete driveway serving the home extends west from in front of the attached garage to a fenced area serving the backyard and an RV parking area behind the house. There is room for approximately four cars to park in the paved concrete driveway area in the front yard.

This development pattern of providing for three or four parking spaces in the front yard area is found in many other nearby homes in this R10-zoned area, especially the older areas north of SE Flavel Street abutting this site, including the home most directly adjacent the site to the west. A former driveway on the downhill side of the lot east of the house is being removed as part of this proposal, and will be provided with a bollard to eliminate access to this area for vehicles. Asphalt paving will be removed from this lower east-edge driveway and the area will be reconfigured with grass and a pedestrian walkway.

The abutting right-of-way in SE Flavel Street is configured with a wide asphalt shoulder that extends approximately 22'-0" from the outside striped edge of the roadway, providing for both a bike lane and an area for perpendicular parking of vehicles in the street. This is also a typical condition found along similar nearby properties on the north side of SE Flavel Street in the neighborhood.

The Development Review Section of Portland Transportation has reviewed the proposal and responded without concerns or detailed comments regarding the two requested parking-related Adjustments (Exhibit E.3).

For these reasons, and with the closure of the lower driveway east of the house as proposed, the proposal will at least equally enhance the appearance of the neighborhood as would a proposal that slightly narrowed the existing concrete driveway at the site. With approval granted based on the revised submitted site plan drawing, this criterion can be 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: For the reasons discussed above under findings for criterion A, the proposal will not significant detract from the livability of appearance of this specific residential area, which includes many nearby homes with similarly-sized driveways. 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: The overall purpose of the zone is to provide housing, and to preserve housing opportunities for individual households. This criterion is met.

- 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 requested adjustment, especially with removal of the east driveway as shown on the revised site plan, and considering the character of the abutting right-of-way and similar properties in the neighborhood. 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). The site is not within an environmental overlay zone. Although not technically relevant to this criterion, the proposal complies with the tree preservation and impervious surface limitations of the Johnson Creek Basin plan district. Because the site is not within an environmental overlay zone, this criterion does not apply.

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 has been under code enforcement for over one year as a result of neighbor concerns about a commercial business activity at the site. Although no commercial business activity was found, the site was deemed to be out of conformance with several other Zoning Code regulations. In order to address some of the code issues, and to reduce the number and scope of requested Adjustments, the applicant will be removing two attached shed-like structures on the home, the downhill driveway east of the house, and re-locating a large RV carport in the back yard. With the proposed changes, the remaining two parking-related Adjustments result in a site layout that is consistent with the surrounding neighborhood on the north side of SE Flavel Street, and able to meet the relevant approval criteria.

ADMINISTRATIVE DECISION

Approval of an Adjustment to allow non-required vehicle parking in the 20’-0” front setback not immediately adjacent to a required parking space outside the minimum 20’-0” front setback (33.266.120.C.2); and

Approval of an Adjustment to increase the maximum vehicle paving area from 40% to 51% of the front yard area (33.266.120.C.3).

The above approvals are granted based on the approved site plans, Exhibits C.1 and C.2, both signed and dated February 6, 2017, and subject to the following condition:

- A. As part of the required 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 Exhibits C.1-C.2. The sheets on which this information

appears must be labeled, "Proposal and design as approved in Case File # LU 16-246809 AD."

Staff Planner: Mark Moffett

Decision rendered by: M. MOFFETT **on February 6, 2017.**
By authority of the Director of the Bureau of Development Services

Decision mailed: February 9, 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 21, 2016, and was determined to be complete on December 29, 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 did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on April 27, 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 23, 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 **February 24, 2017 – (the next business 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:

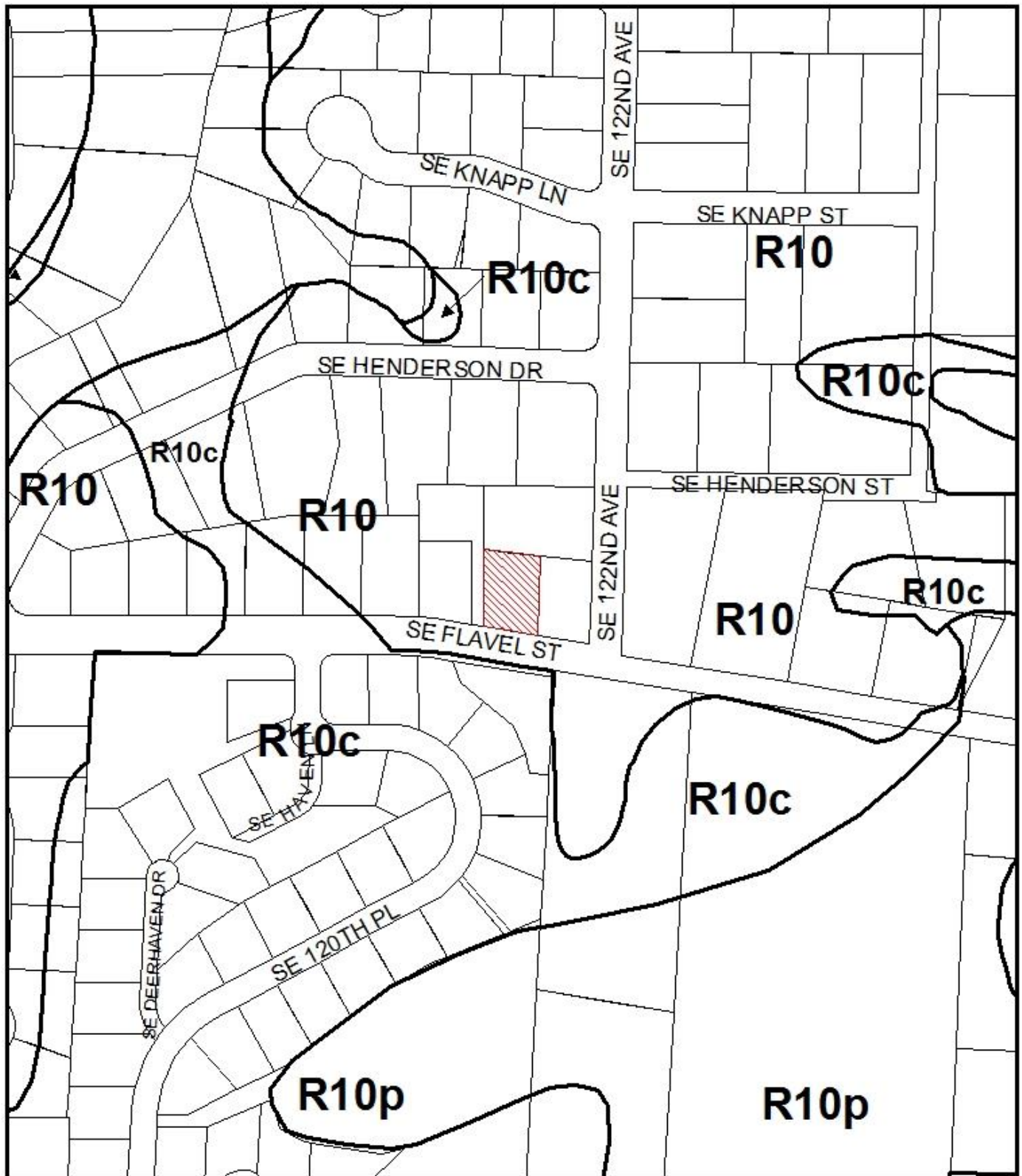
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statements
 1. Original narrative statement
 2. Site photos submitted by applicant
 3. House elevations – not approved/reference only
 4. Original site plan – not approved/reference only
 5. RV carport plans and details – not approved/reference only
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Large, scalable site plan including staff measurement notes
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Life Safety Section of the Bureau of Development Services
 3. Development Review Section of Portland Transportation
 4. Urban Forestry Division of Portland Parks and Recreation
 5. Site Development Section of the Bureau of Development Services
 6. Fire Bureau
 7. Water Bureau
- F. Correspondence (*none received at time of decision mailing*)
- G. Other:
 1. Original LU application form and receipt
 2. Incomplete letter from staff to applicant, sent Oct. 19, 2016

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

This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT
SOUTH SUBDISTRICT



File No.	<u>LU 16-246809 AD</u>
1/4 Section	<u>3743</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E23BC 5601</u>
Exhibit	<u>B</u> (Sep 27, 2016)

