



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

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Date: August 1, 2022
To: Interested Person
From: Matt Wickstrom, 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 22-144488 AD

GENERAL INFORMATION

Applicant: Garrett Collins | Peter Meijer Architect PC
2232 SE Linton St | Portland, OR 97202
Phone: 503-517-0283 | Email: garrettc@pmapdx.com

Owner: Housing Authority of Portland
135 SW Ash St #500 | Portland, OR 97204-3540

Site Address: 4667 NE 95TH AVE

Legal Description: TL 2100 1.79 ACRES, SECTION 21 1N 2E
Tax Account No.: R942210520
State ID No.: 1N2E21AC 02100
Quarter Section: 2540

Neighborhood: Parkrose Neighborhood Assoc., contact at parkroseneighbors@gmail.com

Business District: Parkrose Business Association, contact parkrosebusinessassociation@gmail.com

District Coalition: East Portland Community Office, contact at info@eastportland.org

Zoning: RM1h (Residential Multi-Dwelling 1 zone with an Aircraft Landing Zone overlay)

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

Proposal:

The applicant proposes to construct an 8-foot tall wrought iron fence within the 5-foot side setback along the NE 95th Avenue property line of the multi-dwelling residential housing complex as well as a 10-foot tall sound wall within the side setback along the north and west

property line and adjacent to a pedestrian connection. The Portland Zoning Code limits the height of fences within the side setback abutting a street to 3.5 feet and the height of fences or walls within side setbacks and setbacks abutting pedestrian connections to 8 feet. The applicant requests two Adjustments to Section 33.110.275.C.1 and 33.110.275.C.2. The first to increase the allowed fence height within the side setback abutting NE 95th Avenue from 3.5 feet to 8 feet and the second to increase the allowed height of the sound wall within the west and north setback, and abutting the pedestrian connection, from 8 feet to 10 feet.

Relevant Approval Criteria:

To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The approximately 78,000 square foot site is developed with six two-story multi-dwelling buildings and one one-story office/common building. The site currently has an approximately 3.5-foot tall wrought iron fence along the NE 95th Avenue property line. A driveway accessed at the north of the site along a NE 95th Avenue cul-de-sac provides access to a surface parking area for the apartment complex as does a driveway at the south of the site, also along NE 95th Avenue.

For the purposes of this review, the surrounding vicinity is defined as the area within 400 feet of the site. Interstate 205 and the off-ramp to NE Sandy Boulevard are located to the west of the site, NE Sandy Boulevard is located to the north and NE 95th Avenue is located to the east. A major public trail for pedestrians and bicycles is located to the west of the site as is a large amount of undeveloped right-of-way adjacent to the freeway. The surrounding vicinity to the east and the south is primarily developed with small one and two-story single dwelling houses and low-scale multi-dwelling apartment buildings.

Zoning: The site is zoned RM1h (Residential Multi-Dwelling1 with an Aircraft Landing Zone overlay). The RM1 zone is a low-scale multi-dwelling zone that is generally applied in locations intended to provide a transition in scale to single-dwelling residential areas, such as the edges of mixed-use centers and civic corridors, and along or near neighborhood corridors. The “h” overlay limits the height of buildings in proximity to the landing zone of Portland International Airport. The definition of Street in Portland Zoning Code Chapter 33.910 clarifies that “interstate freeways and the Sunset Highway including their ramps” are not streets.

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 **June 16, 2022**. The following Bureaus have responded with no issues or concerns:

- The Fire Bureau responded the necessary conditions have been satisfied through revisions to plans showing a “Knox Box” permit for both gates to the apartment complex. The Knox Boxes allow emergency vehicles access to the site in case of emergency (Exhibit E.1);
- The Site Development Section of BDS, the Bureau of Environmental Services, the Water Bureau and the Portland Bureau of Transportation responded with no concerns (Exhibits E.2 and E.3); and
- The Life Safety Section of BDS responded that a separate building permit is required for the work proposed and the proposal must be designed to meet all applicable building codes and ordinances (Exhibit E.4).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 16, 2022. A total of two written responses have been received in support of the proposal (Exhibits F.1 and F.2).

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

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

Findings: The purpose of the requirement to limit the height of fences within a side setback abutting a street to 3.5 feet and to limit the height of fences along a side property line and adjacent to a pedestrian connection to 8 feet is stated below:

***Purpose.** The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, lessen solar access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.*

Staff finds the proposal to increase the allowed height of the wrought iron fence within the side setback and abutting NE 95th Avenue from 3.5 feet to 8 feet and to increase the allowed height of the sound wall within the side setbacks along the west and north property lines, as well as adjacent to a pedestrian connection, from 8 feet to 10 feet is equally consistent with the purpose statement above for the following reasons:

- The proposed 8-foot fence height along NE 95th Avenue and within the side setback will not negatively impact community or endanger public or vehicle safety because it is visually permeable, and plans have been revised to show Knox Boxes at gated vehicle entrances so emergency vehicles may access the site.
- The 8-foot fence provides separation between the apartment complex and the street which promotes an additional sense of safety and delineates the public area from the private (on-site) area thus reducing the potential for trespassing.
- The fence is made of wrought iron and will appear as a quality permanent addition to the streetscape while still allowing for police and community surveillance. Existing landscaping will also complement the wrought iron fence as it does the existing 3.5-foot fence. This also reduces negative impacts on the sense of community which could result from a solid fence. Solar access will not be compromised and a safe movement of pedestrians and vehicles, including emergency vehicles has been demonstrated.
- The proposed 10-foot sound wall along the west and north property lines is adjacent to an interstate freeway and off-ramp. These are locations where a sound wall would be expected. In addition, sound walls are commonly taller than the 8-foot height limit and therefore this sound wall will not appear unusually tall, instead it will appear as necessary development to achieve the desired purposes of sound walls along interstate freeways and off-ramps.
- The 10-foot sound wall will promote a sense of privacy, protect children and pets from a busy freeway and will provide necessary separation, including noise separation, from the freeway.
- A street wall will not be created by the 10-foot tall sound wall because it will be adjacent to an interstate freeway and a freeway off-ramp, not a public (or private) street. It also will not impact community or police surveillance due to its location. Furthermore, emergency access is provided via two driveways that are not connected to the sound wall. The safe movement of pedestrians and vehicles is also not impacted by the sound wall.

- Minimal or no impacts to solar access will occur due to the sound wall as a result of its distance from existing multi-dwelling buildings. Any impacts resulting from an unattractive appearance of the sound wall are negligible especially since the alternative is a view of a freeway and freeway off-ramp.

Based on the information above, this criterion is met.

- B.** If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The proposal is located in a residential zone and therefore may not significantly detract from the livability or appearance of the residential area. Based on this site and the defined vicinity, a 400-foot distance to the west and south of the site composes the residential area.

The proposed 8-foot-tall wrought iron fence within the side setback along the NE 95th Avenue street frontage will not detract from the livability or appearance of the residential area because it is visually permeable, composed of a quality material similar to that of the current approximately 3.5 tall fence in the same location. It also defines the property line and restricts trespassing while allowing existing landscaping to remain. Although an 8-foot tall fence along the south property line is allowed by Portland Zoning Code regulations, no new fencing is proposed. The proposed sound wall is not adjacent to a residential area in the vicinity and therefore will have no impacts other than to help reduce freeway noise if other barriers between the site and nearby residential development does not already accomplish this.

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: Two Adjustments are requested but they function as one: increasing the allowed fence height within the side setback along NE 95th Avenue from 3.5 feet to 8 feet and increasing the allowed height of a sound wall along the north and west property lines, adjacent to the I-205 freeway and an offramp, from 8 feet to 10 feet. Both Adjustments accomplish the purposes of reducing sound impacts from the adjacent freeway and off-ramp and reducing opportunities for trespassing while minimizing cumulative impacts due to the different approaches proposed. The proposed approach along NE 95th Avenue is to install a taller wrought iron fence along the street property line. The approach along the freeway and off-ramp is to construct a sound wall.

Based on this information, there is no cumulative impact as two separate approaches are proposed depending on the property line. This criterion is met.

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

Findings: City-designated scenic resources are identified on the official zoning maps with a lower case "s," and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic resources or historic resources 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: Staff has not identified any negative impacts on neighbors or on the neighborhood specifically resulting from this Adjustment request. Since no negative impacts are identified which require mitigation, this criterion is not applicable.

- 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: The site is not located in an environmental zone; therefore, 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 to adjust standards of the Residential Multi-Dwelling Fence regulations (33.120.285 Fences) to construct an 8-foot tall wrought iron fence within the side setback along NE 95th Avenue and to construct a 10-foot tall sound wall along the west and north property lines adjacent to the I-205 Interstate Freeway, an off-ramp and a pedestrian connection. The proposal meets the applicable approval criteria and will provide positive benefits to the residents of the apartment complex without negatively impacting adjacent residential areas. Based on the findings above, this Adjustment request is approved.

ADMINISTRATIVE DECISION

Approval of and Adjustment to increase the allowed fence height within the side setback abutting NE 95th Avenue from 3.5 feet to 8 feet (33.120.285.C.1) and to increase the allowed height of the sound wall within the west and north setback, and abutting the pedestrian connection, from 8 feet to 10 feet (33.120.285.C.2), per the approved site plans, Exhibit C-1, signed and dated July 20, 2022, subject to the following:

- A. As part of the building permit application submittal, the following development-related condition must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 22-144488 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

Staff Planner: Matt Wickstrom

Decision rendered by:  **on July 20, 2022**
By authority of the Director of the Bureau of Development Services

Decision mailed: August 1, 2022

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 May 18, 2022, and was determined to be complete on June 13, 2022.

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 May 18, 2022.

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: October 11, 2022.**

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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on August 15, 2022.** **The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIX decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **August 15, 2022** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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

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

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

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

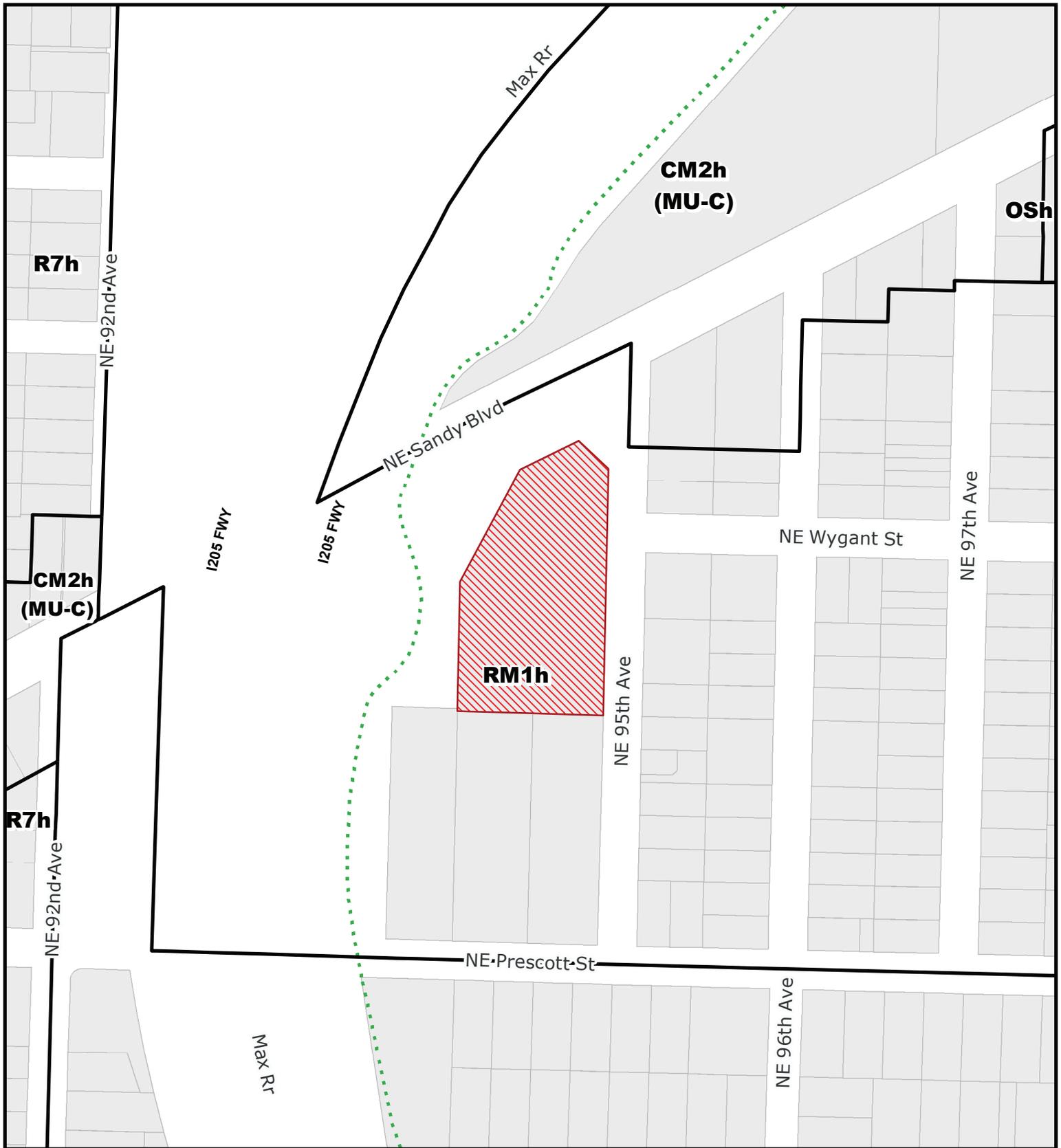
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Fire Bureau
 - 2. Site Development Section of BDS, Bureau of Environmental Services, Water Bureau, Portland Bureau of Transportation
 - 3. Life Safety Section of BDS
- F. Correspondence:
 - 1. Sengchanh Inthavong, June 28, 2022, support
 - 2. Angele Sombounkhanh, June 28, 2022 support
- G. Other:
 - 1. Original LU Application

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



For Zoning Code in effect Post August 1, 2021



Site



Recreational Trails

File No.	LU 22 - 144488 AD
1/4 Section	2540
Scale	1 inch = 200 feet
State ID	1N2E21AC 2100
Exhibit	B May 19, 2022

Consultant:

**Home Forward
 Celloilo Court**

4605-4667
 NE 95TH AVE,
 PORTLAND, OR 97220

Approved:



Approval:

No.	Description	Date
1	Preparation	7/17/22
2	Review	7/17/22
3	Final Design	7/17/22

Reference:
 Zoning Amendment Set

Date:
 07/12/22

Scale:
N.T.S.

Drawn By:
 C.C.

Checked By:
 P.H.

Sheet Title:
 Site Plan - Zoning Amendment - New Fence

Sheet Number:
A-000

