



City of Portland
Bureau of Development Services
Land Use Services Division

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Portland, Oregon 97201
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Date: June 25, 2008
To: Interested Person
From: Suzanne Savin, Land Use Services
503-823-5888 / Suzanne.Savin@ci.portland.or.us

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 reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-122631 AD

GENERAL INFORMATION

Applicant: Gary Young
Western Construction Services
4612 NE Minnehaha St
Vancouver, WA 98661

Owner: Southeast Co
3336 E 32nd St #217
Tulsa, OK 74135

Also Notify: Mike Van Kirk
Fred Meyer
PO Box 42121
Portland, OR 97242

Site Address: 5241-5253 SE 82ND AVE

Legal Description: TL 600 BLOCK 1&2&3, AVONDALE
Tax Account No.: R048300400
State ID No.: 1S2E17AD 00600
Quarter Section: 3538

Neighborhood: Foster-Powell, contact Ken Pliska at 503-775-9101.
Business District: Foster Area, contact Nancy Chapin at 503-313-1665.
District Coalition: Southeast Uplift, contact Gary Berger at 503-232-0010.

Plan District: None

Zoning: EXd (Central Employment, with Design Overlay Zone)

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

Proposal:

The applicant is proposing to construct a fenced, approximately 9,700 square foot outdoor garden center on the south side of the existing Fred Meyer building. Approximately 4,800 square feet of the proposed outdoor garden center will be covered with an open-air steel structure, with a translucent polycarbonate roof. The perimeter of the garden center will be enclosed with an approximately 12-foot high, black vinyl-coated chain link fence. The fenced perimeter of the garden center will be set back approximately 30 to 40 feet from the west property line, and at least 50 feet from the south property line. A landscaped border and a pedestrian sidewalk will be located along the outside of the fenced perimeter of the outdoor garden center.

The site is zoned EXd (Central Employment, with Design Overlay Zone). Zoning Code Section 33.140.245.B states that the exterior display of goods is allowed in all of the E and I zones except the EX zone. Because the proposed outdoor garden center will be an exterior display of goods, it is not allowed per Section 33.140.245.B.

The applicant is requesting an Adjustment to waive the standard in 33.140.245.B, in order to allow the proposed outdoor garden center to be constructed on the site.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are the Adjustment Approval Criteria of Section 33.805.040.A – F.

ANALYSIS

Site and Vicinity: The site is located near the northwest corner of SE 82nd Avenue and SE Foster Road. The site covers almost an entire block and has frontage on SE 82nd Avenue, SE Foster Road, SE 80th Avenue, and SE Mitchell Street. The site is developed with an approximately 96,000 square foot Fred Meyer store and associated surface parking area. To the immediate north of the site, on the north side of SE Mitchell Street, are two EXd-zoned properties. One of these properties is under the same ownership as the site, and is developed with a Fred Meyer Garden Center building and associated parking. The other property is developed with a Qwest service vehicle storage yard and office. To the east of the site, on the east side of SE 82nd Avenue, are EXd-zoned properties developed with relatively large retail buildings that are set back from the street (including Value Village, Standard TV and Appliance, and Big 5 Sporting Goods), with surface parking located between the front of the buildings and the street. To the south of the site, on the south side of SE Foster Road, are EXd and CS-zoned sites, developed with smaller retail establishments with minimal setbacks from the street. One of these establishments, the Portland Fruit Company, has an exterior display of produce between the street and the front of the building. To the west of the site, on the west side of SE 80th Avenue, are CG-zoned properties developed with a clothing consignment shop, a vehicle repair facility, and a warehouse building.

Zoning: The site is zoned EXd, Central Employment with Design Overlay Zone. The EX 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 Design Overlay Zone (designated with a “d”) promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The Design Overlay Zone also promotes quality high-density development adjacent to transit facilities. 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 or compliance with the Community Design Standards. In addition, design review or compliance with the Community Design Standards ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

In this case, the proposal is eligible to use the Community Design Standards in lieu of the design review process. Because the site is within an Employment zone, the proposal is subject to the Community Design Standards of Section 33.218.140 (Standards for All Structures in the RH, RX, C and E Zones). However, because the proposal is for the addition of a fenced and partially covered structure, rather than a building addition, the majority of the standards of Section 33.218.140 are not applicable to the proposal.

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

LUR 94-00771 AD: Approval with conditions of two adjustments – 1) reduce the setback and landscaping along SE Foster Road to 4 feet of L2 with trees, and 2) reduce the setback and landscaping along the SE property line to 3 feet of L2 without trees.

LUR 99-00607 DZ: Approval of a Design Review to install a new bottle return area, extend the sidewalk at the bottle return area, and relocate handicap parking stalls.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **May 30, 2008**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Bureau of Parks-Forestry Division

The Bureau of Environmental Services (BES) responded that BES has no objections to the proposed adjustment to waive the Zoning Code standard in order to allow the proposed outdoor garden center to be constructed on the site. Further development of this property would be subject to the BES standards and requirements during the building plan review process. (Exhibit E-1)

The Site Development Section of BDS responded that Site Development has reviewed additional information submitted by the applicant which confirms that the sidewalk installation will result in more than 500 square feet of redeveloped area and will thus trigger Stormwater Management Manual requirements. The information submitted by the applicant indicates that the overflow drain would connect with the existing combo sewer line. Although Site Development has no objection to the proposed Adjustment to allow exterior display of goods in the EX zone, modifications to the proposed design will be required prior to submittal of plans for building permit review. Site Development recommends use of surface infiltration facilities with no overflow to the combination sewer and can offer suggestions for design alternatives. The applicant should review the recommended plant list in the Stormwater Management Manual (SWMM) when selecting landscape plantings for the stormwater facility. No additional information will be required by Site Development in conjunction with this land use review. (Exhibit E-2)

The Life Safety Plan Review Section of BDS responded that a building permit has been applied for and is currently under review. Please refer to correspondence from the Life Safety plans examiner for building code-related comments. (Exhibit E-3)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 30, 2008. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of 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 to provide certainty and rapid processing for land use applications.

33.805.040 Adjustment 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: Zoning Code Section 33.140.245.B states that the exterior display of goods is allowed in all of the E and I zones except the EX zone. Because the proposed outdoor garden center will be an exterior display of goods in the EX zone, it is not allowed per Section 33.140.245.B. The applicant is requesting an Adjustment to waive the standard in 33.140.245.B, in order to allow the proposed outdoor garden center to be constructed on the site.

The purpose of the regulation, per Zoning Code Section 33.140.245.A, is as follows:

The exterior development standards of this section are intended to assure that exterior display, storage, and work activities:

- Will be consistent with the desired character of the zone;
- Will not be a detriment to the overall appearance of an employment or industrial area;
- Will not have adverse impacts on adjacent properties, especially those zoned residential; and
- Will not have an adverse impact on the environment.

The first bulleted purpose of the regulation refers to the desired character of the zone. The site is located within the EX base zone. Section 33.140.030.B describes the characteristics of the EX zone as follows:

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 site is developed with a commercial use (retail building). The proposed outdoor garden center will be an extension of the existing retail establishment on the site. The garden center will be delineated with black vinyl-clad chain link fencing, which will provide an attractive screening enclosure for the goods to be displayed within the garden center. A sidewalk and 3-foot wide landscaped area will be located along the outside perimeter of the fence enclosure. For the landscaping, a total of approximately 12, 2-inch caliper trees of a medium tree species are proposed, to be spaced approximately 16 to 20 feet apart along the

garden center's perimeter. The area between the trees will be landscaped with shrubs (approximately 65 shrubs are proposed), and a groundcover, Irish moss, is proposed within the southeast corner of the landscaped area. The proposed landscaping, along with the plant materials to be displayed within the garden center, will add attractive greenery to a portion of the site that is now dominated by a large expanse of building wall and asphalt parking. For these reasons, the proposal will be consistent with the desired character of the zone, will not be a detriment to the overall appearance of an employment or industrial area, will not have adverse impacts on adjacent properties, and will not have an adverse impact on the environment.

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: The proposal is within the EXd zone. The streets adjacent to the site are SE 82nd Avenue to the east, SE Foster Road to the south, SE 80th Avenue to the west, and SE Mitchell Street to the north. The proposed garden center will be located on the south side of the building, near the building's west corner, so the streets that will be closest to the garden center are SE 80th Avenue and SE Foster Road.

SE 80th Avenue is a local service street that contains an entrance/exit driveway for the site at the site's southwest corner. No changes to this SE 80th Avenue entrance/exit driveway are proposed in conjunction with the proposed outdoor garden center. SE Foster Road is a Major Transit Priority Street that does not contain driveway access into the site. No change to this condition is proposed in conjunction with the outdoor garden center.

The proposed garden center is an extension of the existing retail use on the site. Retail sales and service is a use allowed in the base zone (EX). Portland Transportation (PDOT) has no concerns about the proposal. Therefore, the adjacent streets are adequate for the retail use in the area, and for the proposed garden center's additional exterior display of retail goods and associated customers and vehicle trips. In addition, the proposal will have no adverse impacts on adjacent streets. Therefore, the proposal will be consistent with the classifications of the adjacent streets.

The desired character of the area is described in Zoning Code Section 33.140.030.B (Characteristics of the Zones – Central Employment (EX)). That section states that the 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. The development standards are intended to allow new development which is similar in character to existing development.

The existing development in the surrounding area to the north and east consists of retail sales and service establishments that have larger setbacks from their front property lines, and surface parking areas located adjacent to the front property line and/or between the front property line and the front of the building. The existing development in the abutting area to the west and south consists of smaller retail establishments located close to the street. One of these establishments, the Portland Fruit Company, is located approximately opposite the proposed garden center location and features an exterior display of produce between its front property line and the front of the building.

The proposed outdoor garden center on the site is an enhancement to the character of the existing surrounding development, and is consistent with the desired character of the area, for several reasons. First, the garden center is set back at least 30 feet from the closest property lines. Second, the exterior of the garden center and the goods displayed within it will be screened with tall, 12-foot black vinyl-clad chain link fencing, as well as trees and

shrubs within a landscaped area on the outside perimeter of the fencing. Third, the goods to be displayed within the garden center will be predominantly plant materials, and will thus provide additional greenery and softening in an area that is presently dominated by a building wall and asphalt parking.

This criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is being requested, therefore this criterion is not applicable.

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

Findings: The site does not contain a city-designated scenic or historic resource, therefore this criterion is not applicable.

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

Findings: No negative impacts are anticipated from the adjustment. The applicant notes that the outdoor garden center's roof will add to the architectural relief of the south side of the building, and the garden center will be enhanced with landscaping around its perimeter. These features of the outdoor garden center will add visual interest to the site and improve the site's appearance when compared with existing conditions. 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: The proposal is not within 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.

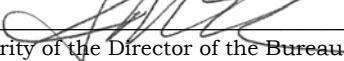
CONCLUSIONS

The applicant has requested an Adjustment to waive Section 33.140.245.B, which states that exterior display of goods is allowed in all of the E and I zones except the EX zone. Waiver of this standard will allow an outdoor garden center to be constructed on the south side of the Fred Meyer store. Information has been submitted to demonstrate that the Adjustment complies with the Adjustment Approval Criteria. Therefore, the Adjustment can be approved, according to the site plan, site plan detail, and elevations.

ADMINISTRATIVE DECISION

Approval of an Adjustment to waive Zoning Code Section 33.140.245.B and allow development of an approximately 9,700 square foot outdoor garden center on the south side of the Fred Meyer building, per the approved plans, Exhibits C-1 through C-3, signed and dated June 23, 2008, 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 Exhibits C.1 – C.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 08-122631 AD."

Decision rendered by:  **on June 23, 2008.**
By authority of the Director of the Bureau of Development Services

Decision mailed: June 25, 2008

Staff Planner: Suzanne Savin

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 April 16, 2008, and was determined to be complete on May 27, 2008.

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 April 16, 2008.

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.

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 July 9, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **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. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-7967 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 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, 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 **July 10, 2008 – (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.

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:

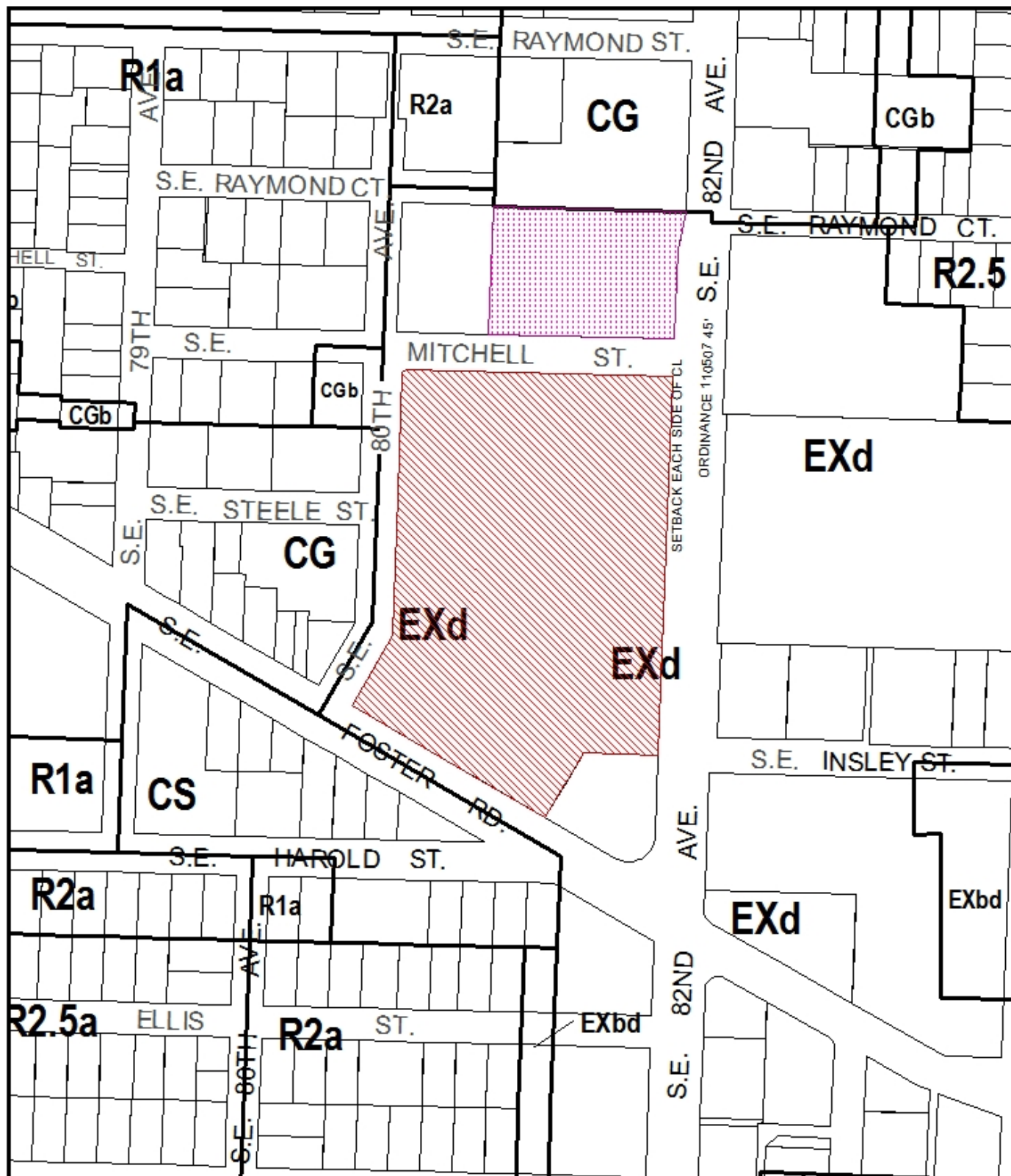
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Overall Site Plan (attached)
 - 2. Site Plan Detail (attached)
 - 3. Elevations (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Site Development Section of BDS
 - 3. Life/Safety Plan Review Section of BDS
 - 4. "No concerns" responses from the Bureau of Transportation Engineering and Development Review, Water Bureau, Fire Bureau, Bureau of Parks - Forestry Division
- F. Correspondence:
 - 1. No correspondence submitted.
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING

 Site
 Also Owned



File No. LU 08-122631 AD
 1/4 Section 3538,3539
 Scale 1 inch = 200 feet
 State_Id 1S2E17AD 600
 Exhibit B (Apr 22,2008)

Approved

City of Portland - Bureau of Development Services

Planner

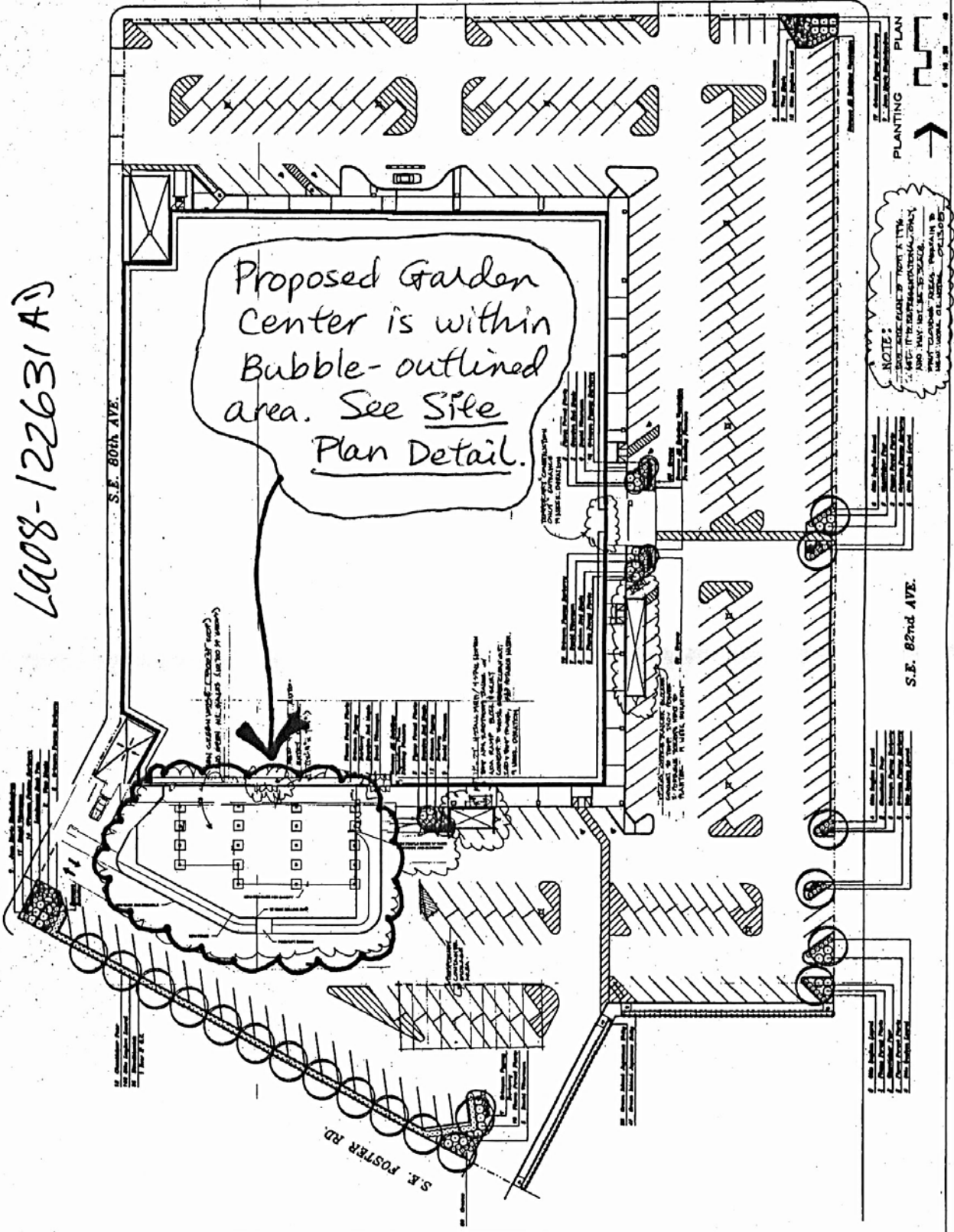
Suzanne Javin

Date

June 23, 2008

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

LA08-122631A)



Overall Site Plan

GENERAL NOTES:

Planner Suzanne Savin Date June 23, 2008

* Approved*
City of Portland - Bureau of Development Services
Planner Suzanne Swin Date June 23, 2008
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

LU 08-122631 AD

ELEVATIONS