



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

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Date: June 4, 2012
To: Interested Person
From: Kathleen Stokes, 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 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 12-116354 AD

GENERAL INFORMATION

Applicant: Robert Evenson, Robert Evenson Assoc, Architects
6249 SW Canyon Ct
Portland OR 97221

Property Owners: Ralph Bolliger,
2078 NW Everett St
Portland, OR 97209-1011

Kirsten Bailey, Rose Apartment Investors/ Bristol Equities Inc.
2078 NW Everett
Portland, OR 97209

Site Address: 2434 SE ANKENY ST

Legal Description: BLOCK 9 TL 17700, ETNA
Tax Account No.: R257801320
State ID No.: 1N1E36CC 17700
Quarter Section: 3033
Neighborhood: Buckman, contact Susan Lindsay at 503-725-8257.
Business District: East Burnside Business Association, Matt Bender at 503-803-4224.
District Coalition: Southeast Uplift, Leah Hyman at 503-232-0010.
Zoning: R2.5 (R2500, Attached Single-dwelling Residential)
Case Type: Adjustment Review
Procedure: Type II, administrative decision with appeal to Adjustment Committee.

Proposal: The applicant is proposing to create a 10-space parking area on the western portion of this site. The parking spaces will serve the existing 17-unit apartment building.

The apartment building has a nonconforming residential density for this 8,603 square-foot property, which is zoned for single-dwelling development with a maximum density of one unit per 2,500 square feet of site area. The R2.5 single-dwelling standards require outdoor area to be provided at a rate of 200 square feet for each unit. This creates a requirement of 3,400 square feet of outdoor recreation area for the 17 apartment units. Construction of the proposed parking area will make the site go out of conformance with this standard.

Exceptions to development standards are approved through Adjustment Reviews, when all of the relevant approval criteria are met or if the criteria can be met with conditions of approval. The applicants have requested an Adjustment to Code Section 33.110.235 to reduce the required Outdoor Recreation Area, from 3,400 square feet to 680 square feet. (Additional outdoor areas are also provided on the site, which would bring the total to about 1,156 square feet, but as these areas do not fully meet the requirements for size and location of outdoor areas for the R2.5 zone, they do not count toward the officially recognized area).

The proposed plan has vehicles extending into the perimeter landscaping for two feet, effectively reducing the width of the landscaped area to three feet. Code Section 33.266.130 G requires 5 feet of L3 (high screen) perimeter landscaping on edges of parking lots that abut residential zones. Because the two feet where the vehicle is proposed to overhang the landscaped area cannot be counted toward this requirement for perimeter landscaping, the applicant has requested an Adjustment to reduce the perimeter landscaping from 5 feet to 3 feet in width and also, originally requested that the requirement to plant shrubs within this 3-foot area be waived. In response to a request received in response to the notice of this Adjustment request, the proposal is being amended to propose low screen (3-foot-tall) shrubs to be planted in this area.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

ANALYSIS

Site and Vicinity: The applicants' site is an 8,603 square-foot parcel that is located on the south side of SE Ankeny Street, one property to the east of the intersection with SE 24th Avenue. The site is developed with a 3-story wood apartment building, with a stucco façade on the street-facing wall. County records indicate that the building was constructed in 1912 and it does not include any onsite parking. The area around the site, on a double block that stretches from SE 24th to SE 26th Avenues, between SE Ankeny and SE Ash Streets, is developed with a mixture of uses and development. The abutting property to the west has a commercial building that was documented in 1998 as having legal nonconforming status for warehouse and freight movement use. Light manufacturing and office were also mentioned as being associated uses. The northeastern quadrant of the double block and the north side of the street, both have a mixture of retail, office and residential uses in the CM (Mixed Commercial/Residential) zone. The remainder of the area is devoted to a combination of single and multi-dwelling uses. On a staff site visit, there were very few vacant on street parking spaces on this portion of SE Ankeny.

Zoning: The zoning for this site is R2.5, Attached Residential. This zone is intended for areas with complete public services and without development constraints. The zone allows a mixture of housing types of a single-dwelling character, including attached houses. The maximum density is generally 17.4 units per acre or one unit per 2,500 square feet. To allow the fulfillment of these densities, the allowed scale of development is greater than for other single-dwelling housing structure types. As mentioned previously, the existing development on the site consists of a nonconforming 17-unit apartment building that was constructed many years before the R2.5 designation was placed on the properties in this area.

Land Use History: City records include one prior land use review for this site. VZ 049-74 was a 1974 Variance that approved a reduction in the required lot area. Variances to reduce side and rear yard reductions were denied.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **May 15, 2012**. The following Bureaus have responded to indicate there are no issues or concerns regarding this proposal. Agencies that provided comments for building permit requirements are noted with exhibit numbers:

- Environmental Services
- Transportation Engineering
- Water Bureau provided information on the existing water service for the site (Exhibit E-1).
- Fire Bureau
- Site Development Section of BDS
- Life Safety Plan Review Section of BDS noted that a building permit is required for the proposed work and provided information on standards for accessible parking spaces. The response also noted that the outdoor area must allow for egress from the building that is free and clear of any obstructions (Exhibit E-2).
- Parks-Forestry Division

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 15, 2012. A total of two written responses have been received from notified property owners in response to the proposal. A representative for the property owner across the street from the site originally wrote to endorse the approval of the adjustment to the required outdoor area, stating that the proposed outdoor area appeared to be adequate and that the new parking area would improve the livability of the area. Following receipt of the revised notice, the same respondent sent a second letter that indicated concern about waiving the requirement to plant shrubs along the western edge of the parking area. In the letter, it was indicated that the concrete wall of the commercial building that faces the common property line has proved to be a target for graffiti and that planting shrubs along this wall would act as a deterrent and would also soften the “starkness of this wall, and significantly add to the overall visual appeal of the Poplar Apartments and parking lot” (Exhibits F-1 and F-2).

(Staff note: In discussing the points that were made in the second letter, the applicants indicated that there was concern that a six-foot tall hedge would make a hidden area, due to the proximity of the hedge to the adjacent building wall. The concern was that this would become a space where trespassers could be hidden from view. The proposed solution, which is being put forward as mitigation for the requested Adjustment to the landscape standard, is to plant a low screen (3-foot tall) hedge. This will make the wall more difficult to use for graffiti but will not provide a place for people to hide).

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. stated below have been met.

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

Findings: Adjustment to Code Section 33.110.235 to reduce the required Outdoor Recreation Area, from 3,400 square feet to 680 square feet.

The purpose of the required outdoor area standard is to, “assure opportunities in the single-dwelling zones for outdoor relaxation or recreation. The standards work with the maximum building coverage standards to ensure that some of the land not covered by buildings is of an adequate size and shape to be usable for outdoor recreation or relaxation. The location requirements provide options for private or semiprivate areas. The requirement of a required

outdoor area serves in lieu of a large rear setback requirement and is an important aspect in addressing the livability of a residential structure.”

The existing outdoor area is apparently underutilized, as it is overgrown and there are no physical amenities, such as benches or plazas. The on street parking situation is crowded. Placing a parking area on the west side of the property will relieve the congestion with the on street parking on SE Ankeny and a small area will be retained for a vegetative screen and a break in the built environment. Further, the standard that applies here is the one that exists for single-dwelling development and so requires a much larger outdoor area (250 square feet for each unit) than the multi-dwelling zones (48 square feet per unit) where apartment buildings such as this one are generally found. In the CM-zoned areas on the east end of the block and across the street, residential development is a required component, but there is no requirement to provide any outdoor recreation area. The existing private outdoor areas on the site will remain and the common area that will be retained will likely provide as many opportunities for outdoor recreation or relaxation as the present situation provides. Therefore the purpose of this regulation will be equally met and for this adjustment, this criterion has been met.

Adjustment to Code Section 33.266.130 G to reduce the perimeter landscaping from 5 feet to 3 feet in width, along the west side of the parking area, and to plant low screen (3-foot-tall) shrubs, instead of the required high screen (6-foot-tall shrubs) in this area.

The landscaping requirements are intended to

- *Improve and soften the appearance of parking areas;*
- *Reduce the visual impact of parking areas from sidewalks, streets, and especially from adjacent residential zones;*
- *Direct traffic in parking areas;*
- *Shade and cool parking areas;*
- *Reduce the amount and rate of stormwater runoff from vehicle areas;*
- *Reduce pollution and temperature of stormwater runoff from vehicle areas; and*
- *Decrease airborne and waterborne pollution.*

The space that is available for providing a parking area is compact and in order to meet the required depth of parking stalls, the aisle width and the landscaped areas, the design was configured so that the bumpers of the cars would overhang the landscaped area by two feet. This configuration is allowed for interior parking lot landscaping, but when used for perimeter landscaped areas, the portion where the bumper overhangs the landscaping does not count toward the landscaped perimeter area. Because the area where this configuration would occur is on the western edge of the proposed parking area, adjacent to a blank concrete wall, the reduced width of the landscaped strip, which will be five feet wide, but allow the two-foot overhang for the car bumpers, will not make any significant visual impact or any reduction in the ability to direct traffic, shade or cool the parking area or reduce stormwater runoff and decrease airborne and waterborne pollution. As indicated in the applicant's consideration of the planting plan for this area, three-foot tall shrubs will provide the softening effect that is desired and also make it more difficult for graffiti artists to target the adjacent building wall, but will not create a place for people to hide behind the shrubbery. Therefore the purposes of the perimeter landscaping regulation are equally fulfilled and, for this adjustment, 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 requests to reduce the outdoor recreation area and to modify the standards for the perimeter landscaping for the parking area will actually result in a more tidy physical presentation to the neighborhood than currently exists. Reducing the pressure on the available on street parking adjacent to the apartments should make a positive

contribution to the livability of this portion of SE Ankeny Street. Therefore, for these reasons, 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 have been requested. The R2.5 zone and the other single-dwelling residential zones are intended to preserve land for housing and to provide housing opportunities for individual households. The Poplar Apartments building has a nonconforming residential density in this zone, with 17 units where the current zoning would normally allow only 3 units. Because the building has been a part of the neighborhood fabric since early in the development of the area, the reduction in outdoor area, which has previously been underutilized, and the modifications to the perimeter landscaping standards, in order to provide the parking area to serve the apartments will not have any cumulative impact and will not alter the character of the existing single-dwelling residential development in the area. Therefore, this criterion is met.

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

Findings: There are no City-designated scenic or historic resources on the site. Therefore, this criterion does not apply.

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

Findings: No impacts that require mitigation have been identified by staff, for the adjustment to the required size of the outdoor recreation area. The adjustment to the perimeter landscaping standards does not appear to have any impacts due to the reduction in the width of the landscaped area. The amended proposal, to plant low screen shrubs rather than high screen shrubs, will provide mitigation to address the concerns expressed in the letter that was received and also the concerns about creating a hiding place with high screen shrubs. Therefore, potential impacts have been mitigated to the extent that is practical and 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 site is not located in an environmental zone. Therefore, 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

All of the relevant approval criteria for the requested Adjustments have been met and the proposal can be approved, subject to general compliance with the approved site plan.

ADMINISTRATIVE DECISION

Approval of Adjustments:

- To Code Section 33.110.235, to reduce the required Outdoor Recreation Area, from 3,400 square feet to 680 square feet, and

- To Code Section 33.266.130 G to reduce the width of the perimeter landscaping on the west side of the parking area, from 5 feet to 3 feet and to plant low screen (3-foot tall) shrubs rather than high screen (6-foot tall) shrubs in this area.

Approval is subject to general compliance with the approved site plans, Exhibit C-1, signed and dated May 31, 2012, subject to the following condition:

- 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 12-116354 AD."

Staff Planner: Kathleen Stokes

Decision rendered by:  **on May 31, 2012**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 4, 2012

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 February 28, 2012, and was determined to be complete on **April 27, 2012**.

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 February 28, 2012.

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 requested that the 120-day review period be extended for two weeks, as stated with Exhibit A-7. Unless further extended by the applicant, **the 120 days will expire on: September 9, 2012.**

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 June 18, 2012** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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. 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 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 **June 19, 2012**
- 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:

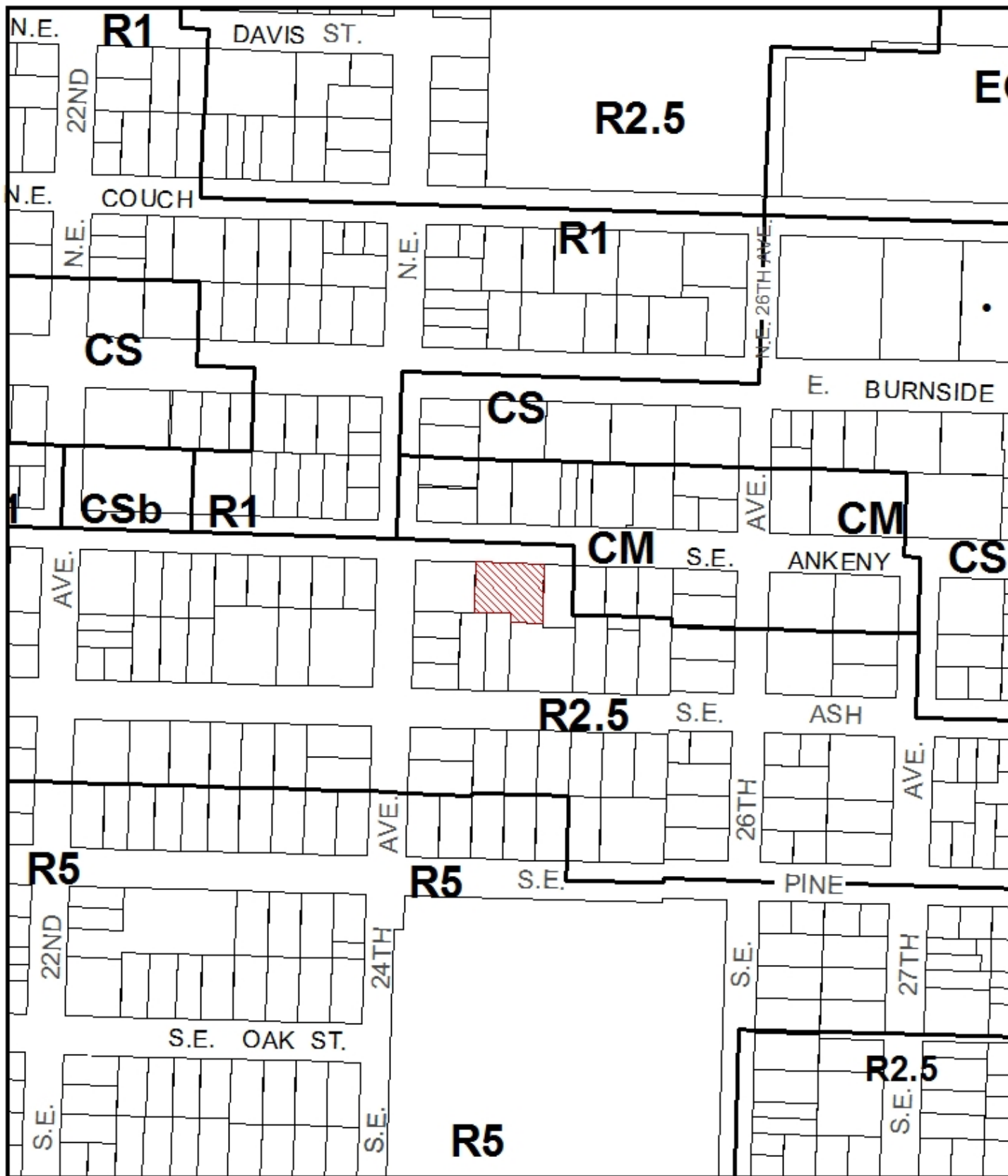
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Application and original narrative and plans
 2. Addendum, dated March 22, 2012
 3. Revised plans, dated April 19, 2012
 4. Additional revised plans, received April 25, 2012
 5. Addendum, dated May 15, 2012
 6. Amended proposal for landscaping, May 25, 2012
 7. Request to extend 120 day deadline for final local decision
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
 3. Mailing list for revised notice
 4. Mailed copy of revised notice
- E. Agency Responses:
 1. Water Bureau
 2. Life Safety Plan Review Section of BDS
 3. Summary of electronic responses from City service agencies
- F. Correspondence:
 1. Rick Jacobson, May 3, 2012
 2. Rick Jacobson, May 20, 2012
- G. Other:
 1. Site History Research
 2. Letter from Kathleen Stokes to Robert Evanson, March 22, 2012

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 12-116354 AD

1/4 Section 3033

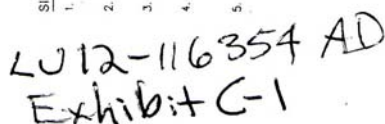
Scale 1 inch = 200 feet

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Exhibit B (Mar 01,2012)



NORTH



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