



City of Portland, Oregon
Bureau of Development Services
Land Use Services

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: March 3, 2009
To: Interested Person
From: Matt Wickstrom, Land Use Services
503-823-7840 / WickstromM@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 09-101677 AD

GENERAL INFORMATION

Applicant/Property

Owner: Jacqueline E Kleinstub
3117 SW Palatine St
Portland, OR 97219-7590

Site Address: 8209 N FESSENDEN ST

Legal Description: BLOCK 12 LOT 12 EXC PT IN ST, OAK PARK ADD 2
Tax Account No.: R621301960
State ID No.: 1N1W01DA 13800
Quarter Section: 2022

Neighborhood: NPNS, St. Johns, contact Lorelei Juntunen at 503-516-3579
Business District: St. Johns Business Boosters, contact Gary Boehm at 503-286-1312
District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099

Zoning: CN2 (Neighborhood Commercial 2)
Case Type: AD (2 Adjustments)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant plans to construct three housing units on this site – a duplex and a detached single-dwelling residence. The duplex will face N Fessenden and the detached single-dwelling residence will be located toward the back of the site facing west. A 3-foot wide pedestrian connection is proposed to provide access to the single-dwelling residence. In addition, a driveway will be located on the west side of the site and will provide access to two on-site parking spaces. The driveway is proposed to be separated from the lot to the west by a 4-foot 6-inch wide landscaped setback and a 6-inch curb. In the CN2 zone, the Portland Zoning Code requires that development with three or more units have an on-site pedestrian circulation system which is at least 6 feet wide. The Portland Zoning Code also requires a 5-foot wide

landscaped setback to separate a driveway from an adjacent property. It also requires a 5-foot deep landscape area along the property line which abuts the residentially zoned site to the west. The landscaped setback for the driveway and the landscaped area abutting the residentially zoned property may occupy the same space. Through this Adjustment Review, the applicant requests two Adjustments. The first Adjustment request is to reduce the required width of the on-site pedestrian connection from 6 feet to 3 feet. The second Adjustment request is to reduce the width of the required landscaped setback and landscaped area along the west property line from 5 feet to 4 feet 6 inches.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of 33.805.040 A-F, Adjustments.

ANALYSIS

Site and Vicinity: The 4,600 square foot site is located on the north side of N Fessenden Street and is currently undeveloped. The site is located between two lots which are developed with two-story apartment buildings. A single-story industrial building with an exterior storage area is located across N Fessenden Street from the site. Single-dwelling and duplex residential development is located further west and north from the site. A single-story retail use is located to the east of the site.

Zoning: The site is zoned CN2 (Neighborhood Commercial 2). The CN2 zone is intended for small commercial sites and areas in or near less dense or developing residential neighborhoods. The emphasis of the zone is on uses which will provide services for the nearby residential areas, and on other uses which are small scale and have little impact. Commercial development is not required in the CN2 zone and residential development is allowed by right.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **January 30, 2009**. The following Bureaus have responded:

- The Life Safety Section of BDS responded that based on the information provided there appears to be no conflicts between this proposal and applicable building codes (Exhibit E-1).
- The Bureau of Environmental Services responded with information on sanitary services, stormwater management and water resources. The response states that BES has no objections to the proposed Adjustments and notes that BES and Site Development have already approved the building permits for the development planned for the site (Exhibit E-2).
- The Site Development Section of BDS responded with no objections to the proposed Adjustments. The response notes that the proposed 6-inch reduction to the landscape buffer will not diminish the effectiveness of the landscaped setback to act as a filter strip for stormwater runoff (Exhibit E-3).
- The Development Review Section of the Bureau of Transportation as well as the Fire, Water and Parks Bureaus responded with no concerns (Exhibit E-4).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on January 30, 2009. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA**Title 33.805.10 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 code's regulations would preclude all use of the site. Adjustment reviews provide flexibility for unusual situations and to 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.

33.805.40 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 are met.

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

Findings: The applicant requests two Adjustments to standards of the Portland Zoning Code. The first, to reduce the required width of the on-site pedestrian connection from 5 feet to 3 feet and the second, to reduce the width of the required landscaped setback and landscaped area along the west property line from 5 feet to 4 feet 6 inches. The purpose statements for these regulations are listed below:

33.130.215 Setbacks

Purpose: The required building setbacks promote streetscapes that are consistent with the desired character of the different commercial zones. The CN1, CM, CS, and CX setbacks promote buildings close to the sidewalk to reinforce a pedestrian orientation and built-up streetscape. The setback requirements for areas that abut residential zones promote commercial development that will maintain light, air, and the potential for privacy for adjacent residential zones. The setback requirements along transit streets and in Pedestrian Districts create an environment that is inviting to pedestrians and transit users.

33.130.240 Pedestrian Standards

Purpose: The pedestrian standards encourage a safe, attractive, and usable pedestrian circulation system in all developments. They ensure a direct pedestrian connection between abutting streets and buildings on the site, and between buildings and other activities within the site. In addition, they provide for connections between adjacent sites, where feasible.

33.266.130 Parking Development Standards for All Other Uses

Purpose: The development standards promote vehicle areas which are safe and attractive for motorists and pedestrians. Vehicle area locations are restricted in some zones to promote the desired character of these zones. Together with the transit street building setback standards in the base zone chapters, the vehicle area restrictions for sites on transit streets and in Pedestrian Districts:

- *Provide a pedestrian access that is protected from auto traffic; and*
- *Create an environment that is inviting to pedestrians and transit users.*

The parking area layout standards are intended to promote safe circulation within the parking area, provide for the effective management of stormwater runoff from vehicle areas, and provide for convenient entry and exit of vehicles. The setback and landscaping standards:

- *Improve and soften the appearance of parking areas;*
- *Reduce the visual impact of parking areas from sidewalks, streets, and especially from adjacent residential zones;*

- *Provide flexibility to reduce the visual impacts of small residential parking lots;*
- *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 site is adjacent to a residentially zoned lot and therefore a 5-foot setback landscaped to the L3 standard is required along that property line. The purpose of this setback is to “maintain light, air, and the potential for privacy for adjacent residential zones”. Concerning the applicant’s proposal, the minimum 5-foot building setback requirement will be met. In fact, development on the lot will be set back 16 feet 6 inches from the shared property line which more than adequately maintains light and air for the residential development to the west. The only reduction related to this standard has to do with the depth of the required landscaping and because it will still be planted to the L3 standard (high screen of shrubs with trees), privacy for the adjacent residential development will be maintained.

Similarly, the driveway is required to be set back 5 feet from the shared property line with this setback required to be landscaped to the L3 standard. The overall purpose of this standard as it relates to the project is to screen the driveway from the lot to the west as well as to manage stormwater and to shade and cool the parking area. As the 4-foot 6-inch perimeter setback can still be landscaped to the L3 standard, the driveway will be adequately screened from the lot to the west and the parking area will be equally shaded and cooled. The response from Site Development states that the proposed 6-inch reduction to the landscape buffer will not diminish the effectiveness of the landscaped setback to act as a filter strip for stormwater runoff.

The applicant also requests to reduce the width of the on-site pedestrian connection from 6 feet to 3 feet. Plans show that the pedestrian connection will be composed of brick pavers which will provide an attractive connection which also helps differentiate it from the driveway which improves safety. The pedestrian connection will only provide access to two on-site parking spaces and a total of three housing units on the site. Because of this, a 6-foot wide connection could, in fact, be of an excessive width while the proposed 3-foot wide pedestrian connection better reflects the amount of pedestrian traffic which will occur on this site and reflects an adequately useable connection.

Based on the information above this criterion is met for both the proposal to reduce the width of the landscape setback and landscape area along the west property line from 5 feet to 4 feet 6 inches and for the proposal to reduce the width of the pedestrian connection from 6 feet to 3 feet.

- 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 site is located on N Fessenden Street. The Transportation System Plan classifies N Fessenden as a Neighborhood Collector, a Transit Access Street, a City Bikeway, a City Walkway, a Local Service Truck Street, a Major Emergency Response Street and a Local Street. The proposal to decrease the depth of the landscaped setback and the pedestrian connection is not inconsistent with the classification of N Fessenden Street and the Portland Bureau of Transportation reviewer responded to the proposal with “no concerns”. The proposal is also consistent with the desired character of the area as it allows the site to be developed with three residential housing units which are allowed by right in the CN2 zone. 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.

Findings: The overall intent of the CN2 zone is for small commercial sites in less dense or developing residential neighborhoods and for the development to provide services for nearby residential development. The overall project doesn't meet this intent however, the three housing units which are proposed are allowed by right and should therefore be considered a secondary intent of the zone. As for the multiple Adjustments requested, the site could be developed with three dwelling units in a manner which wouldn't require any Adjustments so the two Adjustments proposed cannot be viewed as conflicting with the overall purpose of the zone. This criterion is met.

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

Findings: No impacts are expected to result from the two Adjustments. The landscaped setback/landscaped area along the west property line will still be planted to the required L3 standard which will adequately screen the driveway from the lot to the west, help shade and cool the parking area and help manage stormwater. The pedestrian connection will be surfaced with brick pavers which will add to it aesthetically and encourage pedestrians to walk on it rather than the driveway. As it will only provide on-site access for a total of three dwelling units and two parking spaces, the reduced width will still result in a useable pedestrian connection. This criterion is met.

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

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resources and resource value as is practical.

Findings: The site does not contain any identified scenic or historic resources and the site is not located in an environmental zone; therefore, these criterion are 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 proposes two Adjustments associated with the planned construction of a duplex and a single-dwelling residence on this site. As noted in this report, the proposed Adjustments are able to meet the Adjustment approval criteria with approval granted based on ability to still plant the reduced landscaped setback/landscaped area to the L3 standard and the limited amount of on-site pedestrian traffic which will be generated by the 3 units and the ability for the 3-foot wide pedestrian connection to accommodate this amount of pedestrian traffic.


ADMINISTRATIVE DECISION

Approval of three Adjustments to 33.130.215 Setbacks, 33.130.240 Pedestrian Standards and 33.266.130 Parking Development Standards for All Other Uses to:

- Reduce the required landscaped setback along the west property line from 5 feet to 4 feet 6 inches;
- Reduce the required perimeter landscaping depth along the west property line from 5 feet to 4 feet 6 inches; and to
- Reduce the required width of the on-site pedestrian connection from 6 feet to 3 feet,

per the approved site plans, Exhibit C-1, signed and dated February 27, 2009, 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 Exhibits C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-101677 AD."

Decision rendered by:  **on February 27, 2009**
By authority of the Director of the Bureau of Development Services

Decision mailed: March 3, 2009

Staff Planner: Matt Wickstrom

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 January 12, 2009, and was determined to be complete on January 28, 2009.

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 January 12, 2009.

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 March 17, 2009** 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 **March 18, 2009 – (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:

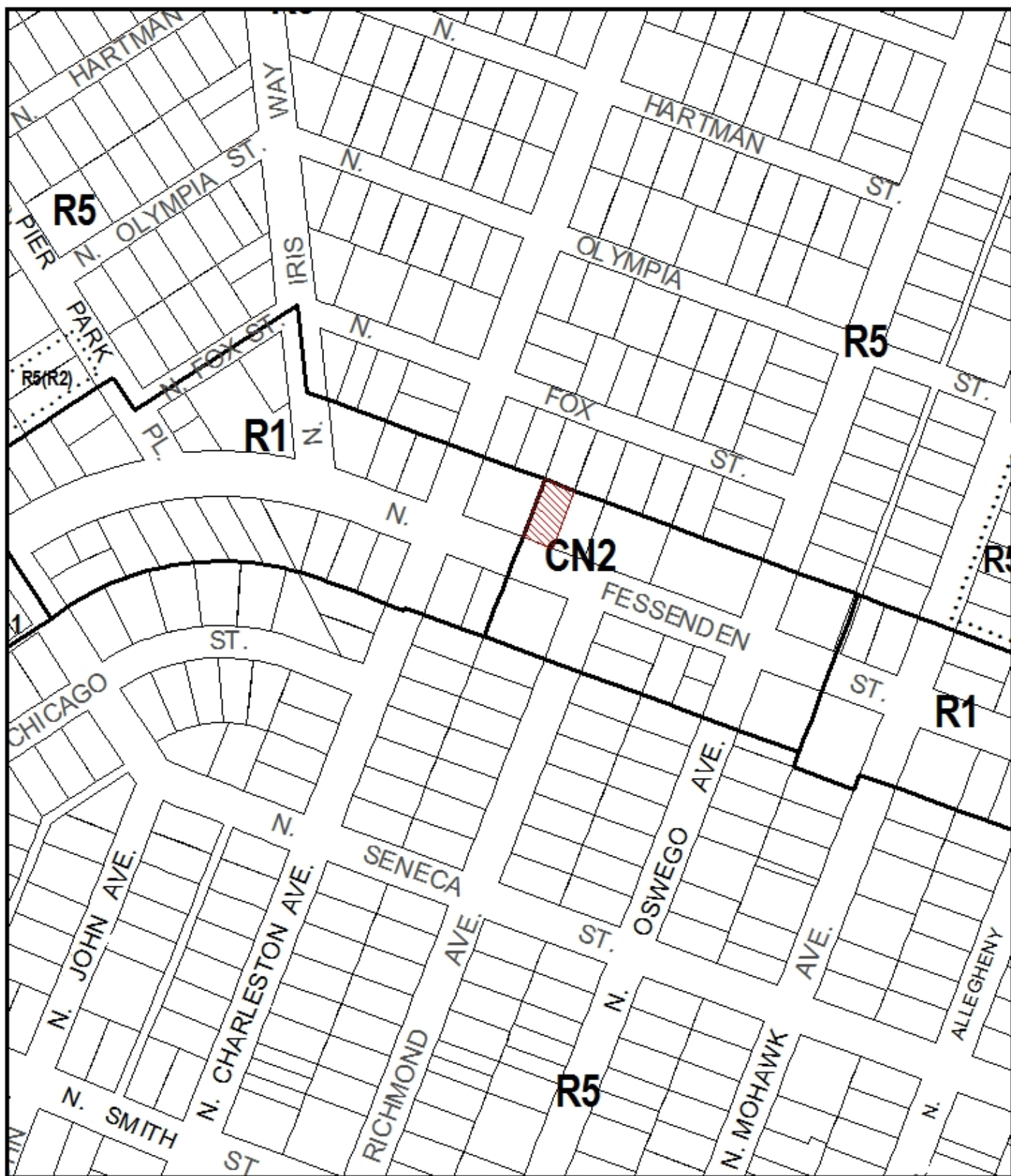
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Duplex Elevation Drawing (attached)
 - 3. Detached Residence Elevation Drawing (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Life Safety Section of BDS
 - 2. Bureau of Environmental Services
 - 3. Site Development Review Section of BDS
 - 4. Summary sheet of agency responses
- F. Correspondence: None received
- G. 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).

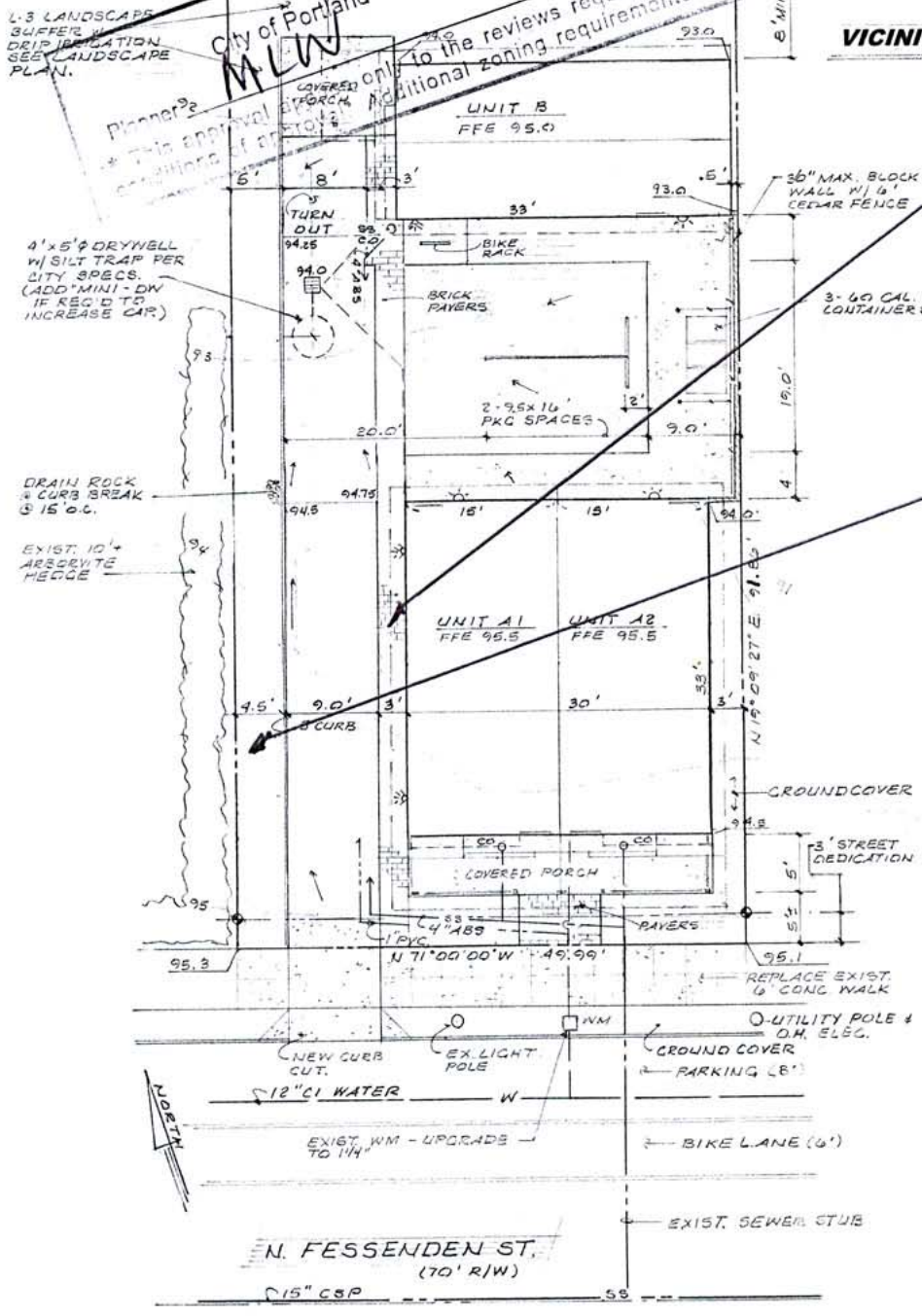


ZONING



File No. LU 09-101677 AD
 1/4 Section 2022
 Scale 1 inch = 200 feet
 State_Id 1N1W01DA 13800
 Exhibit B (Jan 12, 2009)

City of Portland - Bureau of Development Services
 Approved Date 2/27/09
 MLW
 Planner's only to the reviews requested and in accordance with additional zoning requirements.



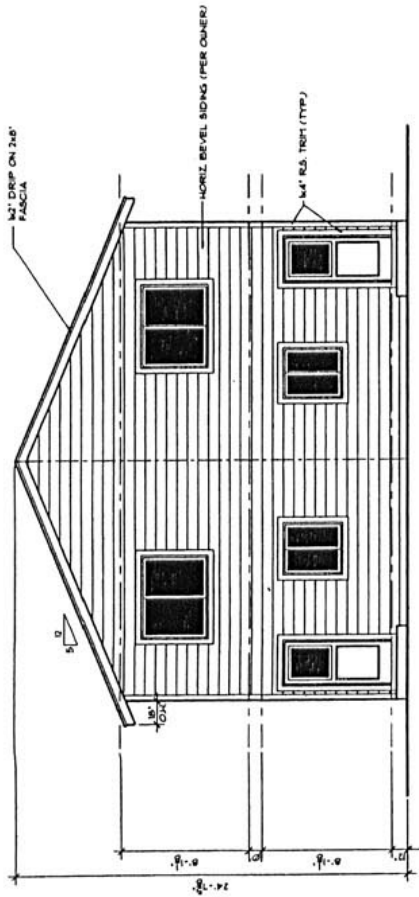
Request to reduce width of on-site pedestrian connection from 6 feet to 3 feet.

Request to reduce width of landscaped setback from 5 feet to 4 feet 6 inches.

PROJECT SUMMARY - Fessenden Triplex

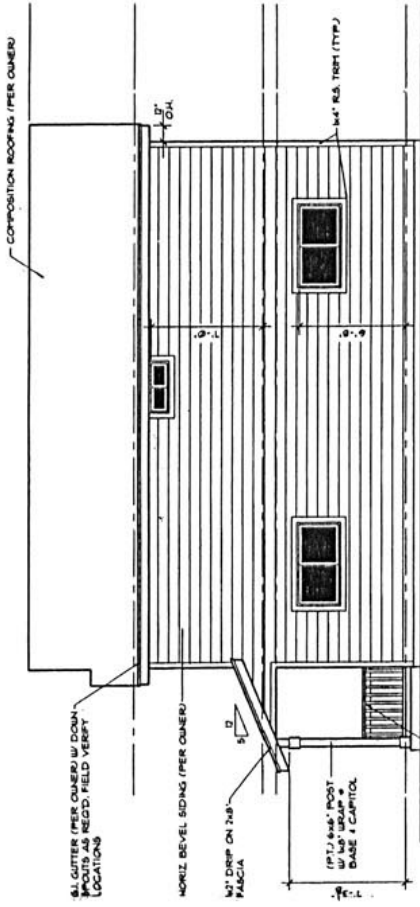
| | |
|--------------------|--|
| Jurisdiction: | City of Portland |
| Legal Description: | OAK PARK 2; EXC PT IN ST LOT 12, BLOCK 12 Parcel R 228978 Map No. 2022 |
| Zoning: | CN2 |
| Setbacks: | N (rear) & W side yards: 8 ft. w/ 5 ft L-3 landscape S (front) & E side yards: 0 ft. |
| Land Area: | 4600 SF (.11Ac) |
| Building Area: | 952 SF per unit = 2856 SF Total |
| Building Coverage: | Bldg. A 1336 SF (inc. covered porch) Bldg. B 693 SF (inc. covered porch) Total 2029 SF (44% coverage inc. eaves) |
| Landscape Area: | Planting 1395 SF / Hardscape 660 SF Total Area 2055 SF (45%) |
| Paved Area: | 863 SF (19%) |
| Owner/ Builder: | Construction Art, Inc. Jackie Kleinstub CCB 96417 503-799-0878 |

Notes: Subcontractor to locate exact locations of utility stubs.
 Energy Path 1 - Electric Zone Heating
 Mass transit exemption for required parking, two non- required spaces provided.
 One private bike storage area to be provided inside each unit.
 Landscaping - Except @ L-3 buffer, all landscaping to meet general L-1 requirements. All materials & planting specs to meet Ch. 33.245 requirements



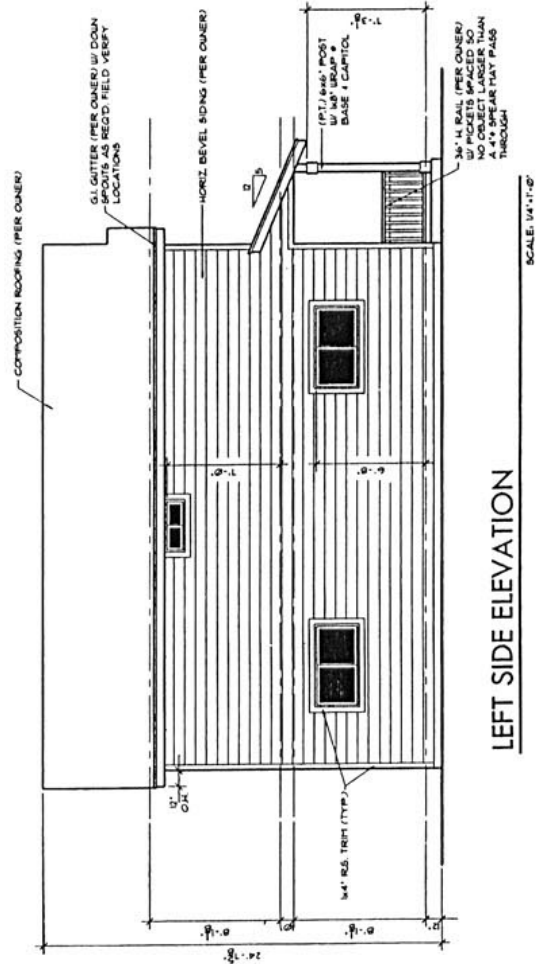
REAR ELEVATION

SCALE: 1/4"=1'-0"



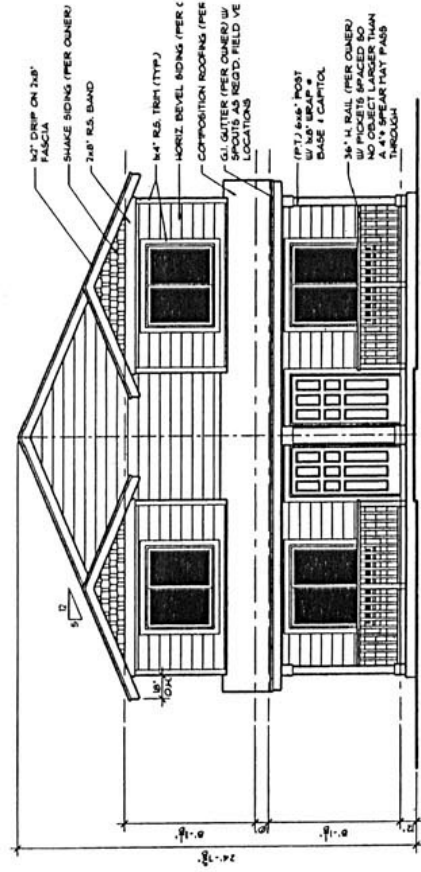
RIGHT SIDE ELEVATION

SCALE: 1/4"=1'-0"



LEFT SIDE ELEVATION

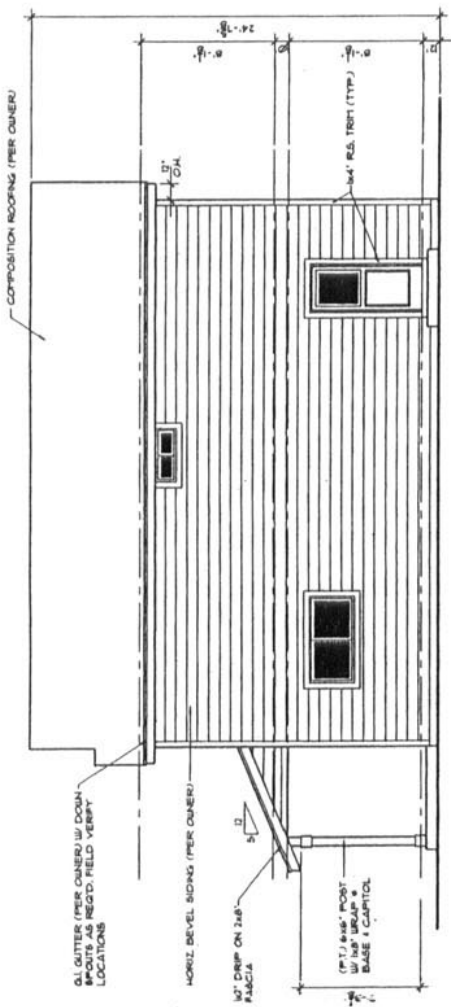
SCALE: 1/4"=1'-0"



FRONT ELEVATION

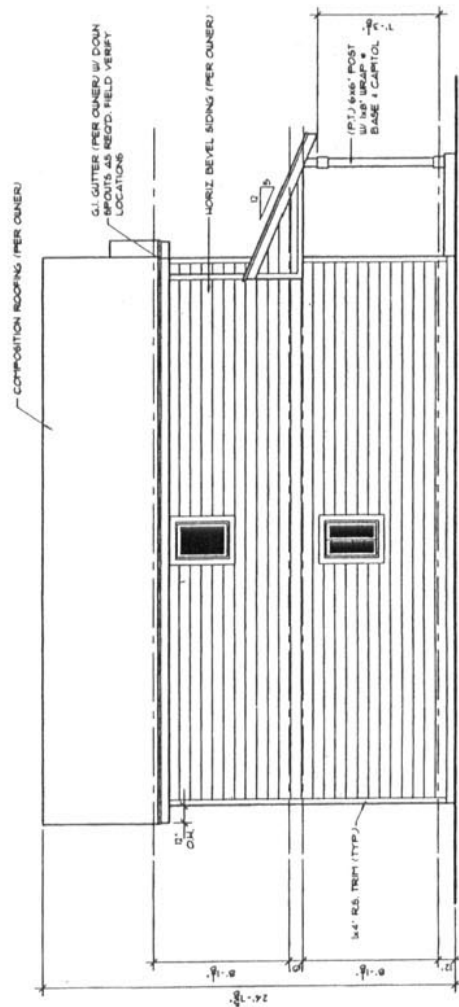
SCALE: 1/4"=1'-0"

Duplex



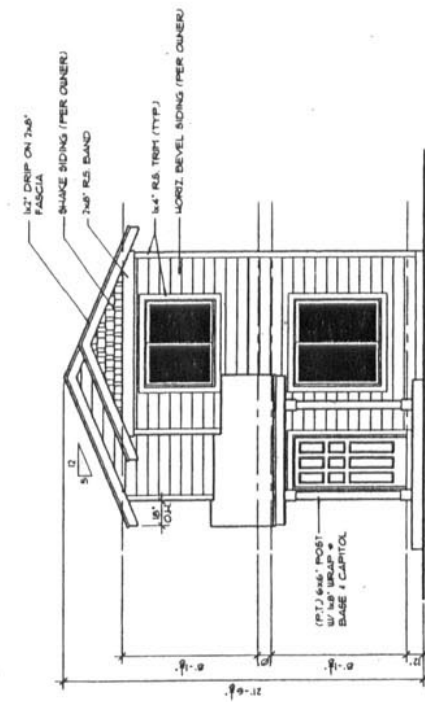
RIGHT SIDE ELEVATION

SCALE: 1/4\"/>



LEFT SIDE ELEVATION

SCALE: 1/4\"/>



FRONT ELEVATION

SCALE: 1/4\"/>

Single-dwelling
residence