



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

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www.portlandonline.com/bds

Date: April 7, 2010
To: Interested Person
From: Sylvia Cate, Land Use Services
503-823-7771 / scate@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 10-112683 AD

GENERAL INFORMATION

Applicant: John Sullivan, owner
Mt Hood Realty Management
PO Box 12172
Portland OR 97212

Site Address: 3202-3236 SW MARIGOLD ST *

Legal Description: BLOCK 2 LOT 11-13, MARIGOLD TERR
Tax Account No.: R539000450, R539000450
State ID No.: 1S1E29AB 03300, 1S1E29AB 03300
Quarter Section: 3926

Neighborhood: Multnomah, contact Mary Verghies at 503-244-3553.
Business District: None
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

Zoning: R2: Multi-Dwelling Residential 2,000

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

Proposal:

The trash collection and recycling area for this apartment complex is screened on three sides by an existing 6 foot high masonry wall. The applicant proposes to fully enclose the trash and recycling area with a 6 foot high black vinyl-coated chain link gate with privacy slats. However, because the collection area is within the 10-foot front building setback, an Adjustment is required to allow a fence above 3 1/2 feet in height within the first 10 feet from the front property line. Therefore, the applicant requests an adjustment to 33.120.285 C 1 a in order to fully comply with 33.120.250 B. Attached to this notice are plans depicting the proposal.

Relevant Approval Criteria:

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria have been met.

ANALYSIS

Site and Vicinity: The site is a 28,800 square foot lot developed with an apartment building. West of the site are parcels in the R7 zone and developed with single family residential uses. East of the site are large parcels in the General Commercial zone. To the north and across SW Marigold from the site is a narrow park parcel zoned Open Space. The site has curved frontage on SW Marigold, a designated Local Service Street.

Zoning: The site lies within the Multi Dwelling R2 zone.

Land Use History: City records indicate there is one prior land use reviews for this site, case file 07-162376 AD.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **March 2, 2010**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division
- Water Bureau
- Life Safety/Plans Examiner Section of BDS

The Bureau of Environmental Services responded with the following comment: BES cannot support the requested adjustment. This site has an open BDS code compliance file [CC 07-138978]. The trash enclosure is not in compliance with Chapter 4, Stormwater Management Manual. A sanitary drain must be installed that meets all BES code and rule requirements.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on March 2, 2010. 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 (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 providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

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

Findings: The purpose of fence regulations is found at 33.120.285 A, which states:

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.

The applicant is requesting an adjustment to allow a 6 foot high, black vinyl-coated chain link fence gate to fully enclose an existing trash and recycling area. Due to the location of the trash area within the 10-foot front setback, the fence regulations allow a maximum height of 3 ½ feet for fences in this location. However, the trash area is fully enclosed on three sides by a 6 foot high masonry wall. By completely enclosing the trash and recycling area with the proposed fence gate, the area will provide safety to children, pets and passers-by, as well as help to contain any refuse that might otherwise become windblown. Because of the orientation of the trash area and the existing 6 foot high masonry walls on three sides, the addition of a fence gate will have no visual impact on property and will not result in a 'street wall' for pedestrians. The fence gate will further promote an attractive and neat appearance to the trash and recycling area, and the privacy slats will provide additional visual screening of the recycling contents from the street and from pedestrians. Given the specific circumstances of the trash and recycling enclosure, and the height of the existing masonry walls on three sides, the proposed 6 foot fence gate with privacy slats will provide all of the positive aspects of fully enclosing the trash area with no significant visual or negative impacts to the subject site or adjacent residential properties. For these reasons, 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 site is in a residential zone. The proposal will better meet the screening requirements for trash and recycling areas while providing access to residents for recycling. Given the height of the masonry walls that enclose the trash area on three sides, the addition of a 6 foot chain link fence gate with privacy slats will significantly improve the appearance of the residential area. By fully enclosing the trash area, the proposal will also improve the livability by providing a physical barrier to prevent any loose trash from becoming wind blown and kiting to adjacent properties or the street. Although the adjustment to fence height does not directly interfere with the function of the required sanitary drain for trash enclosures, the lack of a properly installed drain does have a negative impact on the livability of the immediately surrounding area. Therefore, a condition is warranted that requires the applicant to obtain the necessary permits to properly install and connect the required drain. With this condition, 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 requested. This criterion is not applicable.

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

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

Findings: There are no discernible impacts that would result from granting the requested adjustment. 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 within an environmental zone. 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 trash collection and recycling area for this apartment complex is screened on three sides by an existing 6 foot high masonry wall. The applicant proposes to fully enclose the trash and recycling area with a 6 foot high black vinyl-coated chain link gate with privacy slats. However, because the collection area is within the 10-foot front building setback, an Adjustment is required to allow a fence above 3 1/2 feet in height within the first 10 feet from the front property line. Therefore, the applicant requests an adjustment to 33.120.285 C 1 a in order to fully comply with 33.120.250 B. The proposal meets all of the applicable approval criteria and therefore should be approved.

ADMINISTRATIVE DECISION


Approval of:

- An Adjustment to 33.120.285 to allow a six foot high, black vinyl covered chain link fence/gate with privacy slats within the 10 foot front setback to fully enclose a trash and recycling area,

per the approved site plans, Exhibits C-1 through C-2, signed and dated April 5, 2010, 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.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 10-112683 AD.
- B. The applicant must obtain the necessary permits to install the required sanitary drain so that the trash enclosure full meets all applicable BES code and rule requirements.

Staff Planner: Sylvia Cate

Decision rendered by:  **on April 5, 2010**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 7, 2010

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 18, 2010, and was determined to be complete on February 25, 2010.

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 18, 2010.

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: June 25, 2010.**

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 April 21, 2010** 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. 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 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 **April 22, 2010 – (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:

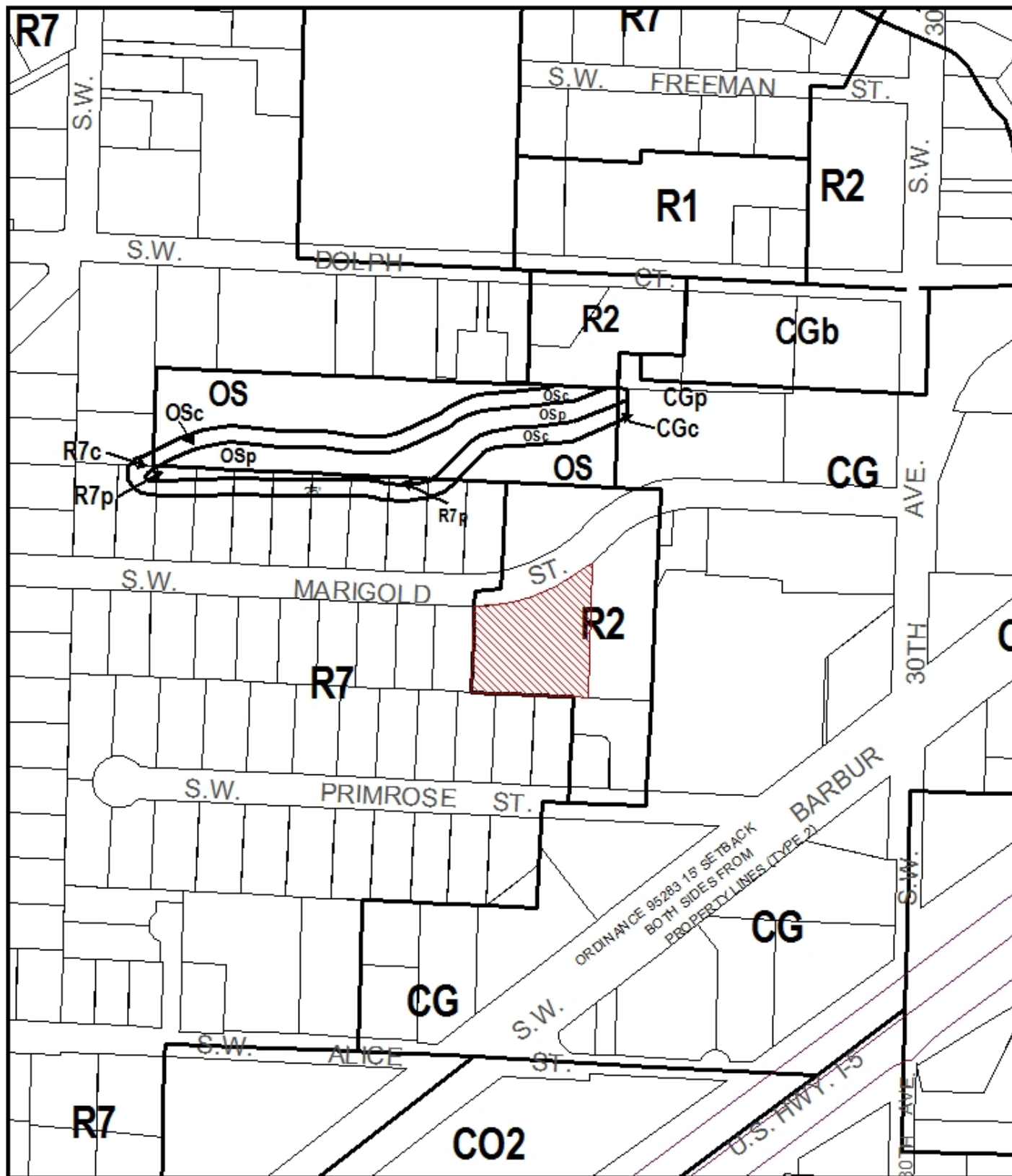
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Detail & elevation
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
- F. Correspondence: None received
- 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. 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



NORTH

File No.	LU 10-112683 AD
1/4 Section	3926
Scale	1 inch = 200 feet
State_Id	1S1E29AB 3300
Exhibit	B (Feb 19, 2010)

RECEIVED
FEB 18 2010
BY

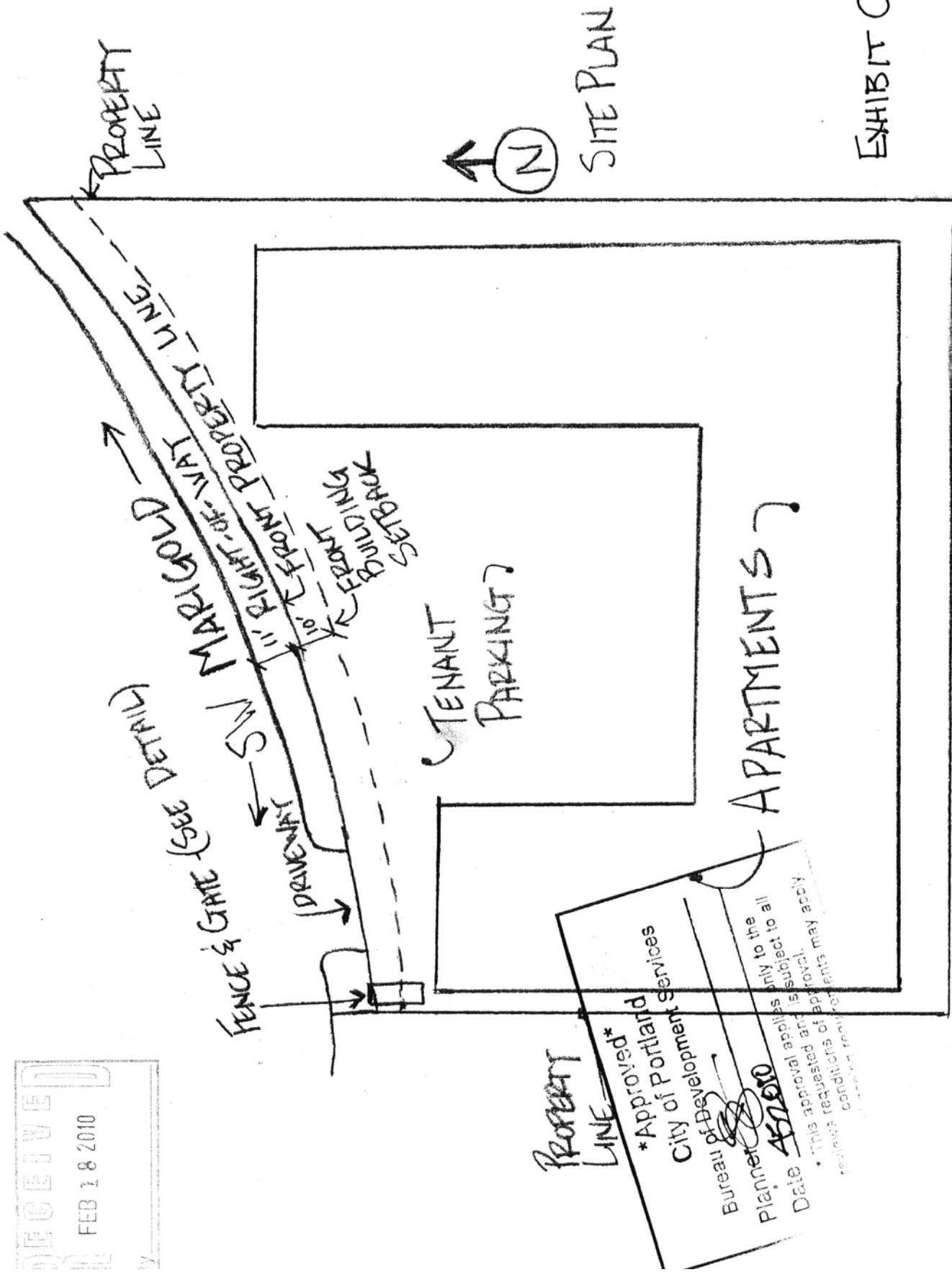
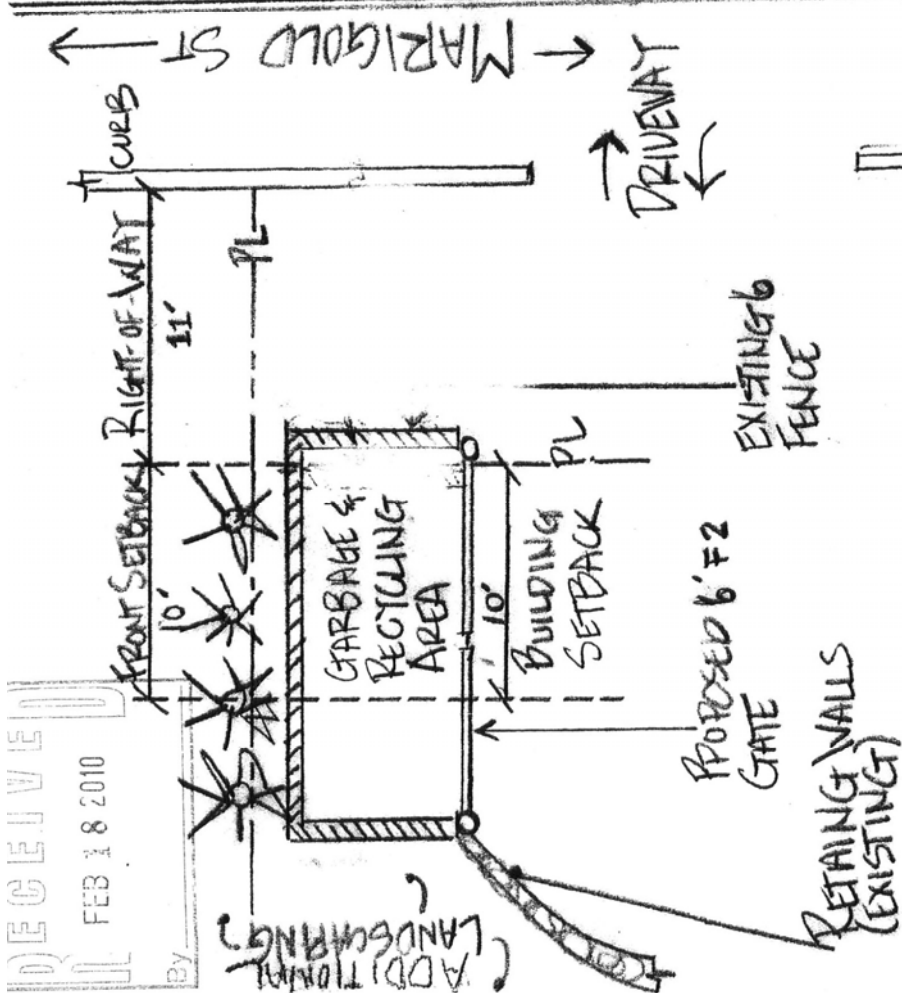


EXHIBIT C-1

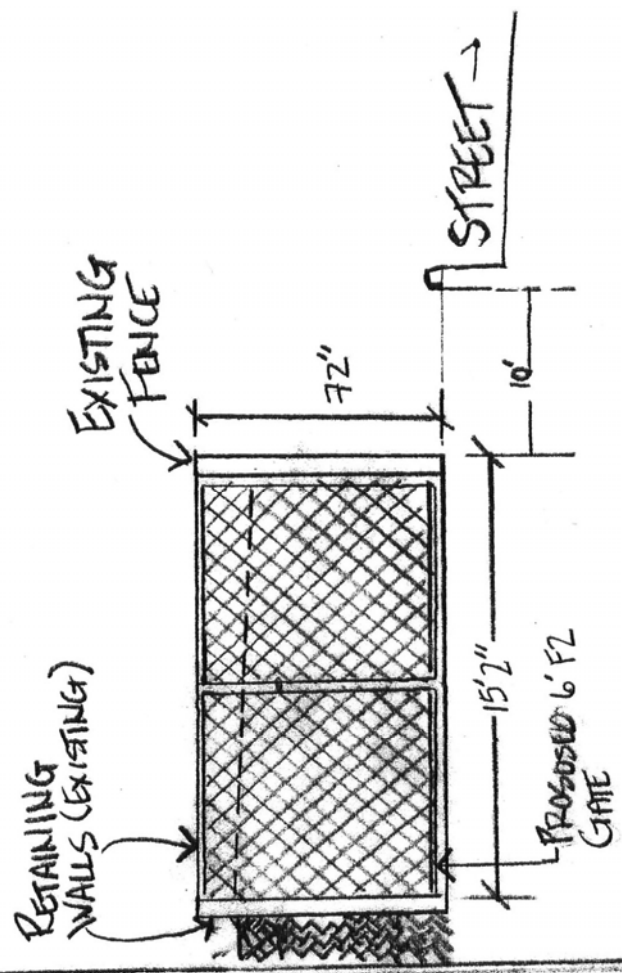
Lu 10-112683 AD

RECEIVED
FEB 18 2010



SITE PLAN DETAILS

CONDITION B - INSTALL 2x4x10
DRAIN W/IN
ENCLOSURE



EAST ELEVATION

Approved
City of Portland Services
Bureau of Development Services
Planner AS2010
Date _____
This approval applies only to the
is subject to all
requested and
conditions of approval may apply.

EXHIBIT C-2