



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

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Date: October 28, 2010.
To: Interested Person
From: Sheila Frugoli, 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 10-175921 AD

GENERAL INFORMATION

Representative: Jonathan Ramos
Stantec Architecture
1137 N McDowell Blvd
Petaluma, CA 94954

Applicant: Arco AM PM Mini Mart
5282 N Lombard St
Portland, OR 97203

Owner: H P D Enterprises LLC
3435 NE M L King Jr Blvd
Portland, OR 97212-2058

Site Address: 5282 N LOMBARD ST

Legal Description: BLOCK 39 LOT 4-7, UNIVERSITY PK
Tax Account No.: R851300040
State ID No.: 1N1E07DA 06900
Quarter Section: 2224

Neighborhood: University Park, contact Fletcher Trippe at 503-232-6499.
Business District: North Portland Business Assoc, contact Jim Schaller at 503-517-9915.
District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

Plan District: None
Zoning: CGj, General Commercial zone with the j, Main Street Node Overlay zone

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

Proposal: The Arco AM-PM mini-mart intends to remodel the existing gas station/convenience store. A small addition to the building will be constructed and the canopy over the existing fuel pumps will be replaced. Upgrades to the site, such as landscaping 15 percent of the site, will be a requirement of the building permit. The applicant plans to install tall shrubs as well as trees and groundcover in a 5-foot deep landscape area along the south property line. Also three small landscape areas will be installed in the following locations: (1) along the east side of the building, (2) at the corner of the site, near N. Lombard and N. Portsmouth Streets and (3) near the west property line, adjacent to the N. Portsmouth St. public sidewalk. The new landscaped areas will cover approximately 5 percent of the site. The applicant is requesting an Adjustment to reduce the minimum required landscape area from 15 to approximately 7 percent.

RELEVANT APPROVAL CRITERIA:

In order to be approved, this proposal must comply with the approval criteria of Title 33. 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 14,000 square foot site is located at the corner of N. Lombard and N. Portsmouth streets. The site is developed with a small convenience store and cashier area. Fuel pumps, under a canopy are located between N. Lombard and the store. The area behind the building is fenced off with a tall chain-link fence with vinyl slats. Customer parking, with approximately 4 spaces, is located on the west side of the building. Nearby retail uses, fronting N. Lombard include a fabric store directly west of the site and small storefront retail stores, north and east of the site. Kitty-corner from the site is another gas station. Abutting sites to the south are residentially-zoned and are developed with housing.

Zoning: The CG zoning represents the General Commercial zone, which is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner. It allows a full range of retail and service businesses with a local or regional market. The “j” overlay encourages a mix of residential, commercial, and employment opportunities within identified centers of activity along identified main streets. Allowing additional height and floor area for all uses encourages transit-supportive densities and a mix of uses and activities.

Land Use History: City records indicate there is a prior land use review for this site. In 1969 a Variance was approved to the landscape buffer requirement (case VZ 186-69).

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed October 1, 2010. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Bureau of Parks-Forestry Division
- Site Development Section of BDS

The **Bureau of Environmental Services** responded with the following comments: Due to the limitations of the existing site and structure, there are limited areas that would allow additional landscaped areas. BES will not request further landscaping beyond what has been reviewed. Vegetation planted within the lined flow-through planter cannot compromise the integrity of the facility liner and the applicant must coordinate with BES and BDS staff regarding applying BES Stormwater Management Manual (SMM) requirements, while meeting landscaping requirements (as identified the Zoning Code). Be aware, vegetation must be planted within a minimum growing medium depth of 24 inches. The entire area of proposed vegetated surface

in the stormwater facility must be planted with vegetation. Appendix F.4 of the 2008 SMM provides recommended vegetation (approved by BES) for planting within stormwater facilities and describes different planting zones where various types of vegetation should be located. (E.1)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on October 1, 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

33.805.040 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: The purpose of the landscaped area requirement in commercial zones, per Zoning Code Section 33.130.225.A, is as follows:

33.130.225.A Purpose. *Landscaping is required in some zones because it is attractive and it helps to soften the effects of built and paved areas. It also helps reduce stormwater runoff by providing a surface into which stormwater can percolate. Landscaping is required for all commercial-zoned lands abutting R zoned lands to provide buffering and promote the livability of the residential lands.*

Presently, the site is completely developed with building and paving. There is no existing pervious area or landscaping on-site. To meet the setback standards for commercial development (Zoning Code Section 33.130.215.B.2), the applicant is proposing to install shrubs, ground cover and trees along the southern edge of the site to create a buffer between the residential development and the Arco AM/PM facility.

Smaller landscape areas will be constructed including a planter strip along the west edge of the site in between two vehicle entrance areas along N. Portsmouth. A low-screen landscape buffer, with trees, is required in this area between the vehicle area and the public right-of-way. The applicant has designed this area to function as a flow-through planter that will fulfill the City's Stormwater Management requirement. Staff finds that there is additional area available for buffering between the vehicle area and N. Portsmouth Street. There are two vehicle entrances provided from N. Portsmouth. Between the access points, there is approximately a 10 foot length that could be planted without significantly impacting the maneuverability of vehicles on the site. So that all available areas are utilized for planting, a condition will require the expansion of the landscape buffer along N. Portsmouth. This additional landscaping will result in a total of over 8 percent landscaping on the site.

With compliance with conditions, the landscape areas will soften the appearance of the fully developed site and provide functional (stormwater reduction and pollution control) benefits. This approval criterion will be 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: As stated above, the site is located within the CG zone. The streets adjacent to the site are N. Lombard Avenue to the north and N Portsmouth Ave to the west. The streets are classified as follows:

Rights-of-Way	Traffic Classification	Transit Classification	Bicycle Classification	Pedestrian Classification
N Lombard Ave	District Collector	Major Transit	City Bikeway	City Walkway
N Portsmouth	Neighborhood Collector	Transit Access	City Bikeway	City Walkway

Portland Transportation (PDOT) has no concerns about the proposed landscape area Adjustment.

The Zoning Code defines the term “desired character” as being based on the purpose statement of the base zone, and the preferred and envisioned character included in adopted area plans (Section 33.910.030). The proposal is in the CG, General Commercial zone. Further, the site is within the plan boundary for the Portsmouth Neighborhood Plan (adopted July 2002) and the St. Johns/Lombard Plan (adopted June 2004).

The CG zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. Development is expected to be generally auto-accommodating, except where the site is adjacent to a transit street, and is intended to be aesthetically pleasing for motorists, transit users, pedestrians and the businesses themselves.

The “vision statement” in the **Portsmouth Neighborhood Plan** includes the following relevant description:

Portsmouth is a neighborhood with a vital, energetic, pedestrian-friendly, commercial mixed-use district along Lombard Street from Fiske to Portsmouth.

The plan includes the following relevant policy and objectives:

Policy 4B: Neighborhood Appearance

Improve Portsmouth neighborhood’s appearance by maintaining property, keeping the neighborhood clean, and planting more green and landscaped areas.

Policy 6: Business Growth and Development, Objective 3

Encourage buildings and landscaping along Lombard Street that create a safe, pleasant environment for pedestrians.

The **St. John/Lombard Plan** includes the following vision statement:

A genuine hometown atmosphere within the city is distinctly evident in the St. Johns town center and along the Lombard main street. Community members value its rich history and actively work toward improving the quality of daily life. It is a place where people are comfortable walking the streets and spending time in public places...Lombard Street has a strong identify and draws people from around the city. Its appealing sidewalk environment is accentuate by small community gathering places, and an array of retailers, restaurants, and services for the surrounding neighborhoods.

The applicant is proposing the installation of landscaping in a number of locations. Even so, the amount of landscaping on the site is relatively modest, at approximately 7 percent. The auto-oriented function of a gas station with convenience store, limits the placement of landscape areas. If the proposed canopy over the gasoline pumps did not extend to the north

property line, there would be an opportunity for a landscape strip between the facility and N. Lombard Street. However, given the underground fuel tanks will not be moved, the remodeling and expansion is limited to remain relatively unchanged. The Zoning Code does not require a building setback along the street frontage, therefore the canopy can be built up to the property line. Landscaping under a canopy with no southern sun exposure would likely not thrive. Therefore, given the proposed large canopy, no additional landscaping is feasible along N. Lombard. However, there is area available to expand the landscape buffer between the vehicle area and N. Portsmouth Street. There are two vehicle entrances provided from N. Portsmouth, an expansion of the 5-foot wide landscape strip to the south by 10 feet will not significantly lessen the maneuverability of vehicles on the site. Therefore, a condition will require the expansion of the landscaping by approximately 50 square feet. This additional landscaping will result in a total of over 8 percent landscaping on the site. The 59-foot long landscape strip must be designed to meet the L2 standard which requires 4 small trees or 3 medium trees, a continuous row of shrubs and groundcover.

The L2 standard applies to proposed landscape area at the northwest corner of the site. The existing free-standing sign will remain in the new landscape feature. Because the view of the sign could eventually be obstructed by trees, the tree requirement should be waived. *Note: Improvements within the public right-of-way including street trees is not regulated by Title 33, Portland Zoning Code. The City Engineer and City Forester have the authority to determine the appropriate location of required street trees.*

An increase from zero to eight percent landscaping with landscape buffers proposed on the south and west property lines and along the north side of the proposed garbage collection area will improve the appearance of the site, reduce negative impacts and enhance the pedestrian experience. The landscape improvements are consistent with the desired character as articulated in the Portsmouth Neighborhood and St. Johns/Lombard Plans. With compliance with conditions, 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: The proposed landscaping plan is generally approved. However, an additional landscape strip along the west property line between the access points is required to satisfy criterion B—desired character of the area. The additional landscaping, approximately 50 square feet will mitigate the impact of limited landscaping along the Lombard Main Street. Through compliance with conditions, this criterion is satisfied.

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

Based on the findings of this report, the applicable approval criteria are met or will be met through compliance with conditions. A condition will require an expanded landscape area along the west property line. This condition will require that the plants be selected from the plant list of the Stormwater Management Manual and achieve the qualitative results of the L2 standard. The landscaping will serve to soften the appearance of the auto-oriented development.

ADMINISTRATIVE DECISION

Approval of Adjustments to: (1) reduce the minimum required landscaped area from 15 percent to 8 percent (Table 130-3 and 33.130.225.B) and (2) waive the tree requirement of the L2 standard (33.248.020.B.2) for the proposed landscaping area located at the northwest corner of the site, per the approved landscaping plan, Exhibit C.1, signed and dated October 26, 2010, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B and C) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 10-175921 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The 5-foot wide landscape area, abutting the N. Portsmouth right-of-way, must be extended by 10 feet and planted to satisfy the requirements of the Zoning Code L2, low-screen landscaping standard. The plants must be selected from the Stormwater Management Manual, Appendix F.4.
- C. Landscaping must be installed, in substantial conformance with the approved plan (Exhibits C.1).

NOTE: Street Trees, planted in the public right-of-way, must be installed consistent with the public works permit and City Forester approval. Street trees do not fulfill Zoning Code requirements.

Staff Planner: Sheila Frugoli

Decision rendered by: _____ on October 26, 2010

By authority of the Director of the Bureau of Development Services

Decision mailed: October 28, 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 September 14, 2010, and was determined to be complete on September 27, 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 September 14, 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.

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 November 11, 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 **November 12, 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;

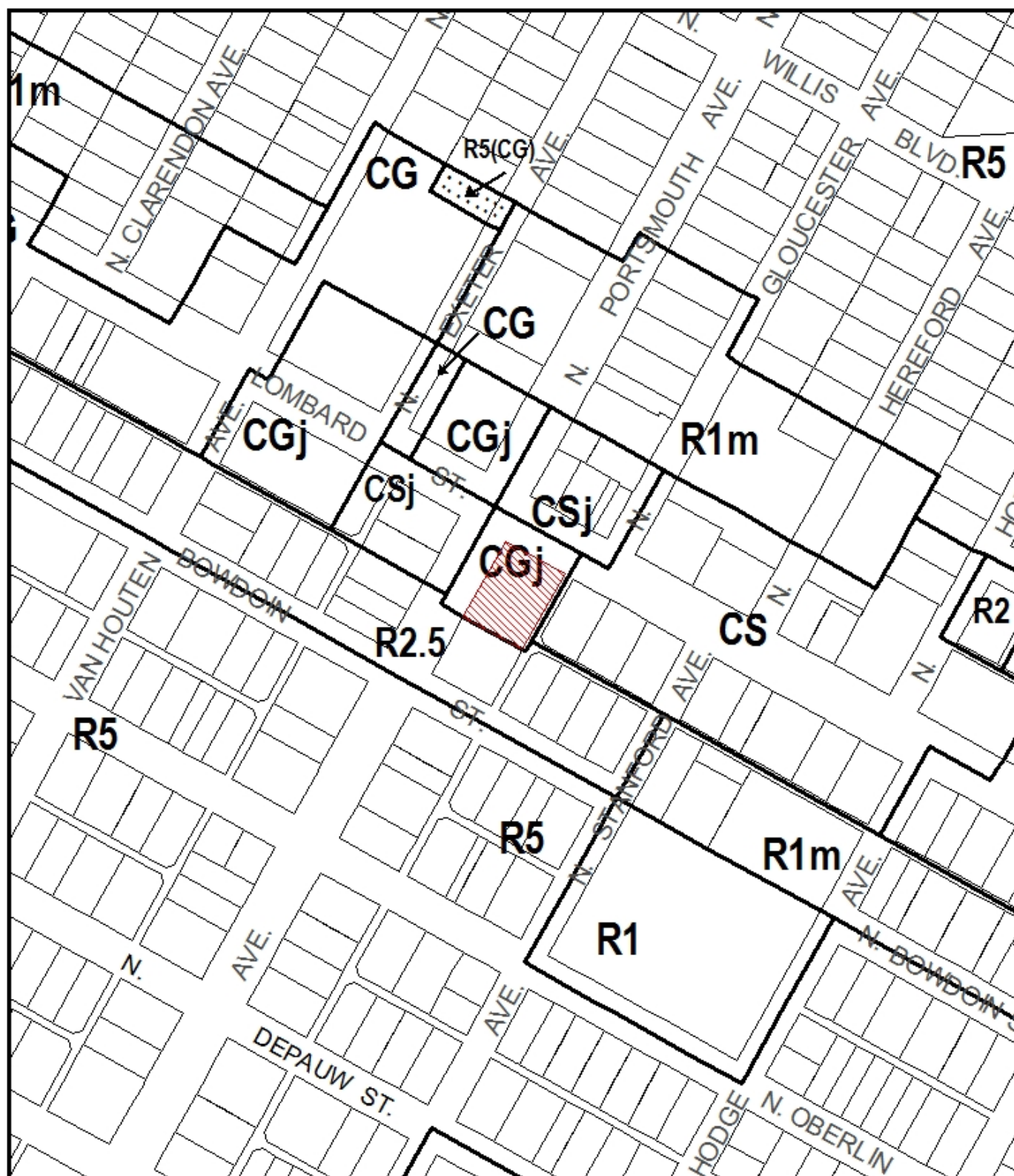
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Proposed Landscaping Plan (attached)
 - 2. Site Plan
 - 3. Exterior Building Elevations
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
 - 3. Fire Bureau
 - 4. TRACS Print-Out Showing "no concerns" from Bureau of Transportation Engineering and Development Review, Site Development Review Section of BDS and Bureau of Parks, Forestry Division
- F. Correspondence: NONE
- 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



File No.	LU 10-175921 AD
1/4 Section	2224, 2225
Scale	1 inch = 200 feet
State Id	1N1E07DA 6900
Exhibit	B (Sep 21, 2010)

Extent 5' wide landscape buffer/
flow-thru planter, per condition B.

