



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: January 14, 2010
To: Interested Person
From: Sheila Frugoli, Land Use Services
503-823-7817 / frugolis@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 09-163176 AD

GENERAL INFORMATION

Applicant: City of Portland, Parks & Recreation
Contact: Travis Ruybal
1120 SW 5th Ave, Suite 1302
Portland, OR 97204

Site Address: 2533 SE 47TH AVE (vacant lot at northwest corner of SE 47th Ave. and Ivon)

Legal Description: S 1/2 OF LOT 7&8 BLOCK 9, WINDSOR HTS
Tax Account No.: R921803050
State ID No.: 1S2E07BA 07500
Quarter Section: 3335

Neighborhood: Richmond, contact Douglas Klotz at 503-233-9161.
Business District: Division-Clinton Business Association, contact Darice Robinson at 503-233-1888.
District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.

Zoning: R5, Single-Dwelling Residential 5,000

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

PROPOSAL:

Portland Parks intends to develop Ivan Street Park, an undeveloped neighborhood park, as a children's playground. A lawn area, concrete sidewalk, benches and play equipment will be installed at this vacant site. The proposed play equipment area will be located within 5 feet of the north property line. The northern abutting lot is developed with a single-dwelling residence. The Zoning Code requires playground facilities to be set back at least 25 feet from adjacent residentially-zoned properties. Therefore, the Parks Bureau is requesting an Adjustment to reduce the required setback from 25 feet to 5 feet.

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 subject site is comprised of three vacant lots each approximately 4,000 square feet in area. Two of the lots are located on the north side SE Ivon Street, while the third is located on the southwest corner of the SE 47th Avenue and Ivon Street intersection. The proposed improvements will be located on the northwest corner lot. The three lots are planted with lawn. Adjacent to the site and across from the park, on the east side of SE 47th Avenue, are single-dwelling homes. Both SE Ivon Street and SE 47th Avenue are fully improved with curbs, sidewalks and planter strips. Planter boxes, are located within the roadway along the Parks Bureau property on both sides of SE Ivon, west of SE 47th Avenue.

Zoning: The site and surrounding properties are zoned R5. The R5, Single-Dwelling Residential zone provides housing opportunities for individual households. This zone is generally developed with detached homes on individual lots at a density of one unit per 5,000 square feet. Parks and Open Area uses, except for swimming pools and fields that draw spectators, are allowed in the R5 zone.

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 **October 16, 2009**. The following Bureaus have responded with no issues or concerns:

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

The Water Bureau responded that it has no objections to the requested setback Adjustment. The site will be served from one of the 8-inch water mains in SE Ivon Street and SE 47th Avenue. The static water pressure ranges from 46 to 58 psi. (Exhibit E.3)

The Site Development Section of BDS responded that it had no objections to the Adjustment. A Site Development Permit will be required for this project. Plans must address stormwater runoff from impervious surfaces in accordance with the Stormwater Management Manual and Title 10, erosion control requirements. (Exhibit E.2)

The Bureau of Environmental Services (BES) responded initially on November 2, 2009 with issues regarding the site. In a memo from Benjamin Kersens, BES could not recommend approval of the request because of concerns regarding the location of a private sanitary line from the northern lot crossing near the proposed development area. BES requested that a sewer scope be used to locate the sewer for the home at 2525 SE 47th Avenue. The BES Nonconforming Sewer Connection Program implements the requirements for sewer lines. (Exhibit E.1.a)

On December 16, 2009, Ben Kersens transmitted an e-mail string from other BES staff, Parks Bureau and the adjacent owner of the home at 2525 SE 47th Avenue. The e-mail notes that the sewer line was scoped, located and drawn on a new site plan. The sewer extends, at one point, into the Parks Bureau site approximately 1.5 feet. In order to keep the sewer line in that location, BES requires the adjacent owner obtain a temporary easement from the Parks Bureau. And because the easement will not be 10 feet wide, as required in the Plumbing Code, the owner must obtain a Plumbing Code Appeal. BES will not support the requested Adjustment until the appeal is approved and the easement is recorded. (Exhibit E.1.b)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on October 16, 2009. A total of five written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal. The responses are summarized below.

- Letter from nearby property owner, sent Oct. 26, 2009. Neighbor supports the setback reduction that is necessary to accommodate the proposed playground. (Exhibit F.1)
- E-mail forwarded from applicant, sent on October 7, 2009 from nearby property owners. The e-mail states they have been patiently waiting for the playground since they bought their house in 1993. They support the setback adjustment that would make the “small bit of heaven” possible. (Exhibit F.2)
- E-mail forwarded from applicant, sent a signed petition, dated October 9, 2009. The petition states support for the park from 8 nearby residents. (Exhibit F.3)
- E-mail from northern abutting property owners, sent November 6, 2009. The neighbors raised objections to the requested setback reduction. The owners stated opposition to the reduced setback because it will adversely affect their livability in the following ways: (1) Having a play structure within 5 feet of their property line will undoubtedly increase noise levels, that are currently high, (2) A play structure will be unsightly and will affect resale value of the house, and (3) there is potential hazard with the construction of a retaining wall near the gate of their fence. In summary, they note that the proposal will adversely affect many of the positive aspects of their current living environment. (Exhibit F.4)
- On December 11, 2009, the northern abutting property owner sent an e-mail formally withdrawing their opposition to the setback reduction. (Exhibit F.5)

ZONING CODE APPROVAL CRITERIA

Adjustments

33.805.010 Purpose

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 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: A 25 foot setback is required between playground facilities and abutting R-zoned properties. The applicant is requesting to reduce the required setback from 25 feet to 5 feet.

The purpose of the standards is described under Section 33.110.245.A, Institutional Development Standards, as follows:

The general base zone development standards are designed for residential buildings. Different development standards are needed for institutional uses which may be allowed in single-dwelling zones. The intent is to maintain compatibility with and limit the negative impacts on surrounding residential areas.

The proposed children's play area will be delineated by a retaining wall, approximately 3 feet tall. The wall will retain mulch material used as a soft surface for the play area. Children's play equipment will be located within the submerged play area and set back at least 10 feet from the property lines. The applicant will plant new lawn and trees between the play area and the northern property line. The adjacent house to the north, at 2525 SE 47th Avenue, is located approximately 5 feet from the property line. A six-foot tall solid wood fence is attached to the rear of the house and follows the property line, providing privacy and separation between the Parks Bureau property and the backyard of the residence.

Proposed play area will be modest in size---approximately 2,000 square feet. Given the size and limited play equipment, it will likely serve only the immediate residents rather than draw from the surrounding neighbors. Further, the play equipment will likely attract only younger children.

A relatively open play area, visible from the surrounding homes, will maintain safety and tend to be used only by those it is intended to serve---young children and their parents/guardians. The park will not be lighted. Use of the park will likely occur only during daylight hours. Negative impacts of a small playground area with play equipment located at least 15 feet from the adjacent house will be compatible with the surrounding single-dwelling residential development. 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: Letters of support were sent for this proposal from nearby neighbors who find the project will enhance the residential experience of families in the neighborhood. But, concerns were initially raised by the northern abutting property owners. They asserted that a play structure within 5 feet of their property line will undoubtedly increase noise levels, that are currently high and a play structure will be unsightly. Furthermore, they fear potential harm to their fence and gate with the construction of a retaining wall. However, the adjacent property owners concerns were lessened as they sent staff a request to withdraw their objections.

According to the submitted plans, the play equipment will be placed within the proposed retaining wall and be located in the center of the circular play areas. The equipment will be placed at least 10 feet from the property lines. The proposed retaining wall will be located five feet from the property line. A 10-foot separation is comparable to what would be achieved if a home were developed on the lot. With required 5-foot deep side setbacks, the homes could be located within 10 feet of each other. A public playground has the potential of generating more exterior noise than noise generated by a residence. However, the noise at the facility will likely be limited to that of small children and only during daylight hours. To ensure the play equipment is not moved closer than 10 feet to the northern property line, a condition will require at least a 10 foot setback from the edge of the children's play equipment. At least three shade trees will be required to provide some screening between the playground and the adjacent residence. Further, to ensure protection from construction impacts,

construction fencing must be installed to protect the adjacent property owner's fence and sewer connection. Finally, to ensure protection and address the requirements of the Bureau of Environmental Services, another condition will require the Parks Bureau to identify on the construction plans a recorded easement for the portion of sewer that runs through the city-owned property.

With conditions that protect the fence and sewer connection and provide at least a 10-foot separation between the play equipment and the northern property line, the livability of the adjacent property owners will not be significantly diminished. Many nearby property owners have conveyed support of the project in their neighborhood.

This approval 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: The applicant is requesting to vary from only one development standard. Therefore this criterion does not apply.

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

Findings: City-designated scenic or historic resources are shown on the City's zoning map by the "s" overlay symbol. Historic resources are designated by a large dot. There are no such designated 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: Conditions are required in order to satisfy approval criterion A and B. To provide visual buffering and separation between the play area and the abutting residence, a condition will require the applicant plant at least three broadleaf (shade) trees. Through compliance with conditions, this criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: This site is not within an environmental zone, which is shown on the City's zoning map by either a "c" or "p" overlay symbol. 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

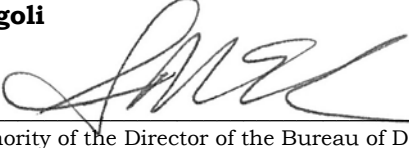
With conditions that address potential impacts to the adjacent property owners who are most impacted by the requested setback reduction, the proposal will not negatively impact the residential character of the area. Based on the findings of this report, the approval criteria are met or will be met through compliance with conditions of approval. Therefore, the requested Adjustment should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the required setback from 25 feet to 5 feet for playground facilities for a children's playground on a City park, per the approved site plans, Exhibits C.1 and C.2, signed and dated January 12, 2010, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through E) must be noted on each of the required sets of plans. The sheet on which this information appears must be labeled. All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED, per Case File LU 09-163176 AD."
- B. The site plans must identify, with recording information, an easement for the sewer connection serving the northern abutting residence.
- C. Construction fencing must be installed to protect the adjacent property owners' fence and sewer easement area.
- D. At least 3 broadleaf trees must be planted between the north property line and the play area.
- E. Children's play equipment must be located at least 10 feet from the northern property line.

Staff Planner: Sheila Frugoli

Decision rendered by:  **on January 13, 2010**

By authority of the Director of the Bureau of Development Services

Decision mailed: January 14, 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 October 8, 2009, and was determined to be complete on October 13, 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 October 8, 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 requested that the 120-day review period be extended 34 days (November 13, 2009 through December 14, 2009 (Exhibit A.7 and A.8). Unless further extended by the applicant, **the 120 days will expire on: March 16, 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 January 28, 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 **January 29, 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.

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EXHIBITS

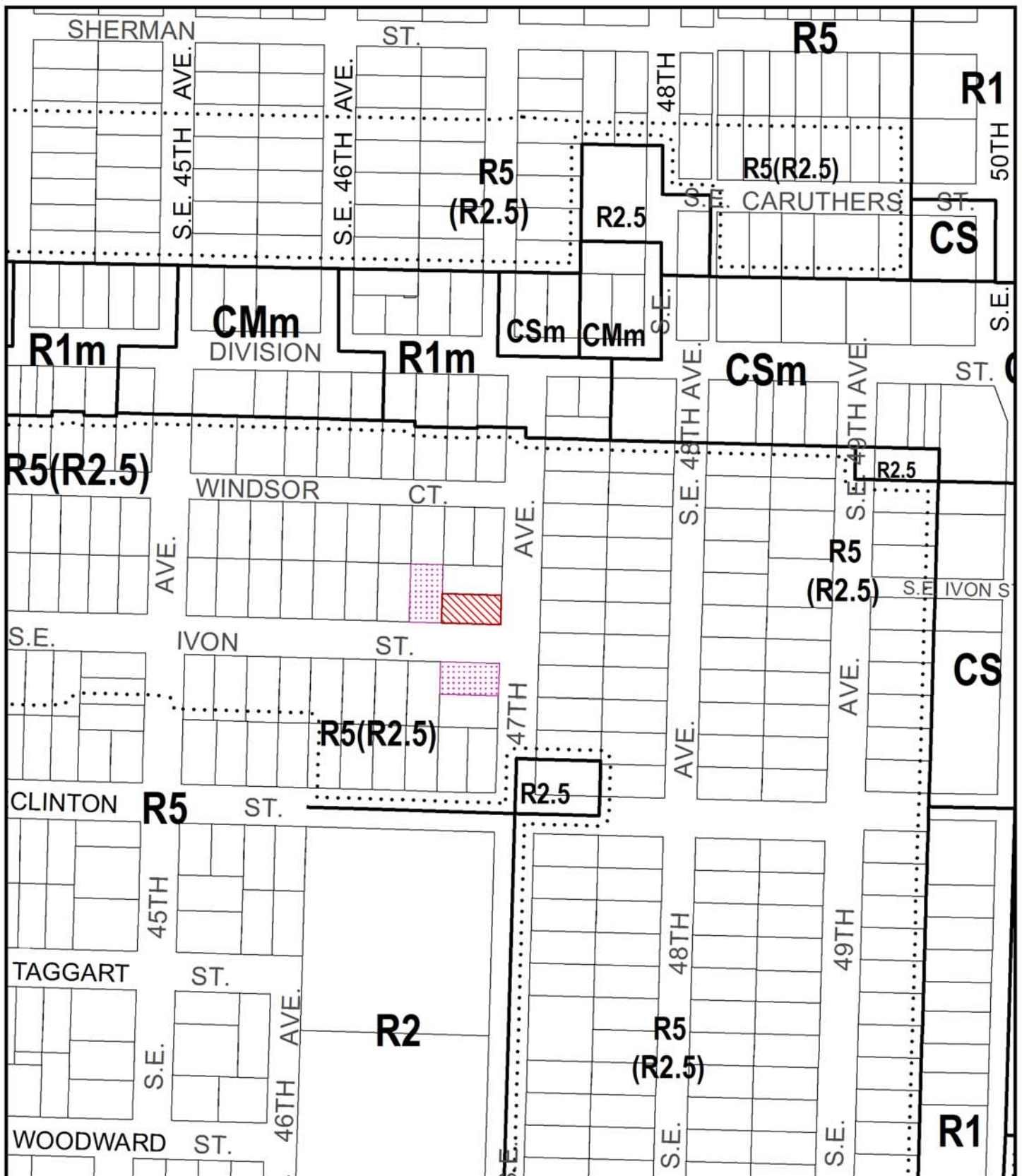
NOT ATTACHED UNLESS INDICATED

A. Applicant's Submittal

1. Project Description
2. Response to Approval Criteria
3. Alternative Schemes and Play Equipment Example
4. Photos of Site
5. Completed Questionnaires from Nearby Property Owners Regarding Park Improvements
6. Survey Showing Sewer Lateral and Clean-out for 2525 SE 47th Ave, on Parks Site

7. 120-Day Review Timeline Extension, Placing Review On-Hold to Address BES Comments
8. Request from Applicant to Activate Review
- B. Zoning Map (attached)
- C. Plans/Drawings:
1. Grading/Site Plan, Updated December 14, 2009 (attached)
 2. Landscaping Plan (attached)
 3. Site Plan, Original Submittal
- D. Notification information:
1. Mailing list
 2. Mailed notice
- E. Agency Responses:
1. Bureau of Environmental Services
 - a. Memo dated November 2, 2009
 - b. E-mail dated December 16, 2009
 2. Site Development Review Section of BDS
 3. Water Bureau
 4. BDS Life Safety Plans Examiner
 5. Fire Bureau, Bureau of Transportation Engineering and Development Review, Bureau of Parks, Forestry Division
- F. Correspondence:
1. Roderick Richards, October 26, 2009, supports proposal.
 2. Lark and Scott Ryan, October 7, 2009, e-mail sent to Parks Bureau supporting proposal.
 3. Neighbors of Ivan Park, Jess and Mark Desbrow, et.al., October 9, 2009, petition supporting proposal.
 - 4.. Brian and Kelly Sabom, November 6, 2009, raises concerns objections to proposal.
 5. and Kelly Sabom, December 14, 2009, withdraws objections to setback reduction.
- 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

 Also Owned

File No. LU 09-163176 AD

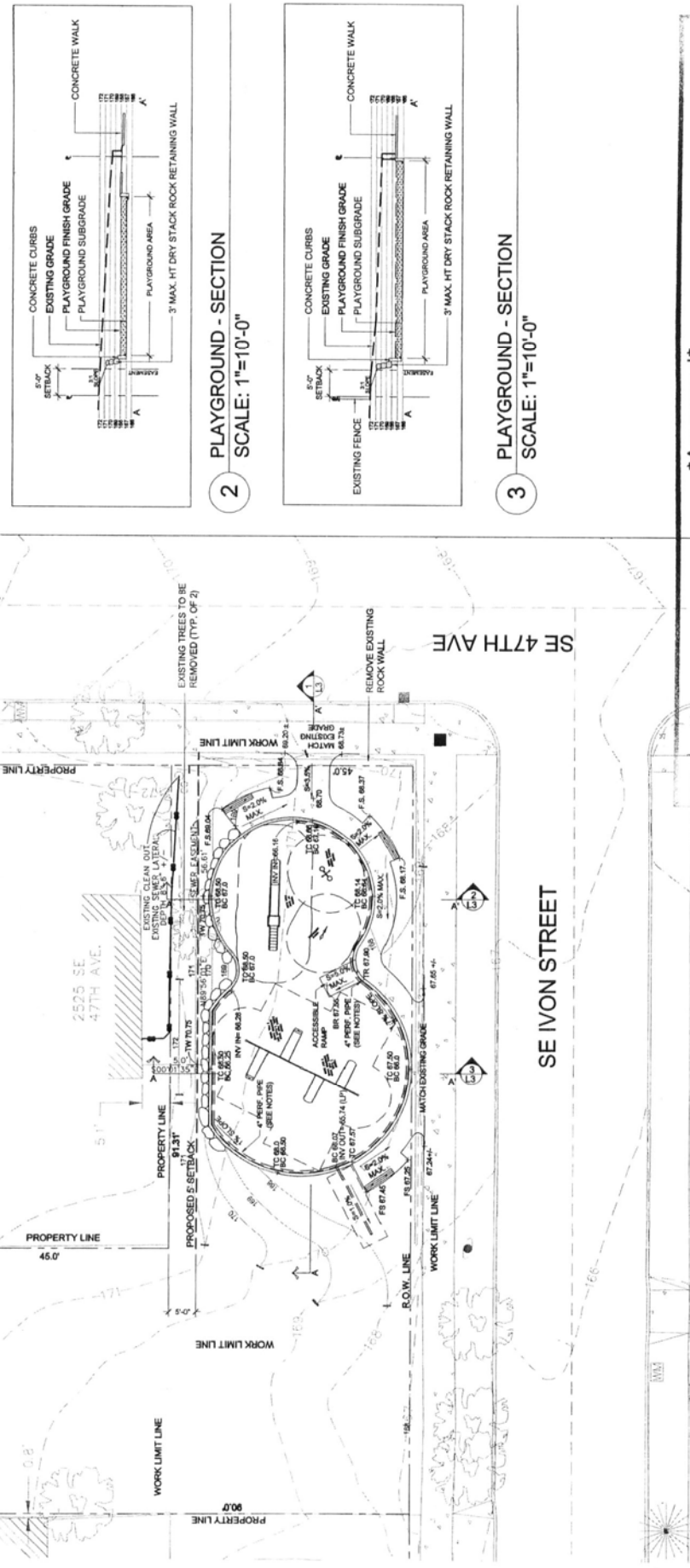
1/4 Section 3335

Scale 1 inch = 200 feet

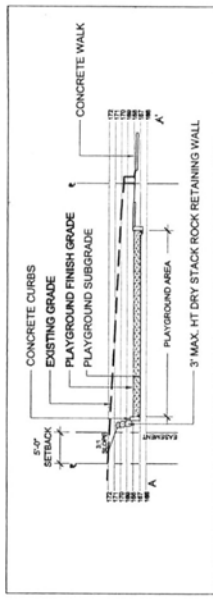
State_Id 1S2E07BA 7500

Exhibit B (Oct 12, 2009)

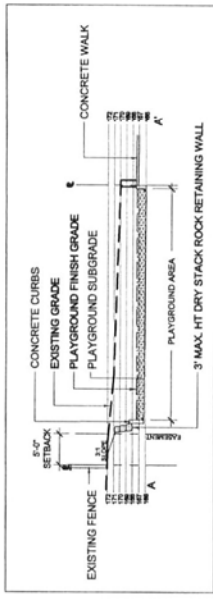




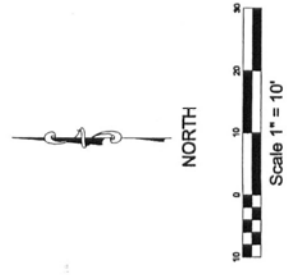
2 PLAYGROUND - SECTION
SCALE: 1"=10'-0"



3 PLAYGROUND - SECTION
SCALE: 1"=10'-0"



Approved
 City of Portland - Bureau of Development Services
 Planner *Shelie Tugoli* Date *1/13/10*
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



1 PLAYGROUND - SECTION
SCALE: 1"=10'-0"

LA 09-163176 AD

Exhibit C.1

