



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

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

Date: December 15, 2009
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 09-116843 NU

GENERAL INFORMATION

Applicant: 144th & Stark Property LLC, listed property owner
Roy Moore, agent
PO Box 2048
Fairview, OR 97024

Jack Camp, consultant
West Coast Forensics
3205 SE 13th Ave Ste 400
Portland, OR 97202

Representative: Eric S. Rouse, MBA; main contact
Moore Investment Properties
PO Box 2048
Fairview, OR 97024

Site Address: 14465 SE STARK ST

Legal Description: LOT 181 EXC PT IN ST LAND & IMPS SEE R109665 (R041805611),
ASCOT AC

Tax Account No.: R041805610
State ID No.: 1N2E36CC 02000
Quarter Section: 3045

Neighborhood: Hazelwood, contact Arlene Kimura at 503-252-9429.
Business District: Gateway Area Business Association, contact Fred Sanchez at 503-256-3910.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.
Plan District: East Corridor
Other Designations: None
Zoning: CO2: Commercial Office 2

Case Type: NU: Nonconforming Situation Review
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal: The site is currently zoned CO2, which limits the amount of retail to 10% of the floor area of a building on site. However, the applicant has provided evidence documenting that this property has legal nonconforming rights for manufacturing, warehousing, and associated retail sales on the site. These uses were legal when established, via permits from Multnomah County, and have been maintained over time. When nonconforming uses are proposed to change to a use in a different use category which is prohibited by the base zone, or expansions of floor area in nonconforming uses is proposed, such proposals can be allowed via approval of a nonconforming situation review.

The building to the front of the site is currently used as office space, manufacturing and retail sales. The applicant is requesting approval to expand the retail sales and service use floor area in the back building to provide sufficient area to use the space for a practice facility for softball teams. The proposal includes three batting cages set up with nets to separate one cage from another. The space will be leased to a softball coach who intends to have softball teams practice on batting and fielding techniques. The intention is to use the facility in the winter months during inclement weather, with winter hours from 3 PM to 10 PM Monday through Friday and 8 AM to 8 PM on weekends. In the summer, when school is out, the hours would shift to 11 AM to 10 PM Monday through Friday and remain 8 AM to 8 PM on weekends. The maximum number of people anticipated at any one time would be 25; more typically the attendance would be 10-20 players with 5 coaches. Traffic to the facility will be off-peak, and most patrons will car pool or be dropped off and picked up by a parent. Adequate on-site parking is available, with 16 spaces set aside for the back building. An additional 14 parking spaces normally associated with the front building could be utilized after business hours.

Records indicate that the back building has been utilized by previous tenants with up to 75% of the floor area devoted to manufacturing, 8% to warehousing and 17% to retail sales activities. The proposal would expand the floor area in retail uses to 70%, with 22% of the floor area remaining in manufacturing, and 8% in warehousing. The applicant notes in their proposal narrative that noise levels were measured using a sound decibel meter to demonstrate that the standards of Title 18, Noise, are met.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

- 33.258.080 B 1 through 3

ANALYSIS

Site and Vicinity: The site is a 42,005 square foot parcel in the CO2 zone, developed with two one story buildings. Immediately abutting the east property line is a parcel zoned CS and developed with a Multnomah County School facility. Immediately west are several lots and parcels in the CO2 zone and developed with commercial uses and development. Immediately north of the site is a large parcel zoned RHd and developed with the Ascot Park Condominiums.

Zoning: The site lies within the CO2, Commercial Office 2 zone. The Office Commercial 2 (CO2) zone is a low and medium intensity office zone generally located on Major City Traffic Streets as designated by the Transportation Element of the Comprehensive Plan. Uses are limited to those in the Office category and may have a local or regional emphasis. The zone is intended to prevent the appearance of strip commercial development by allowing office uses but not other commercial uses. Commercial uses are also restricted to limit detrimental impacts on nearby residential areas. Development is expected to be somewhat auto-accommodating. Where the site is adjacent to a transit street or in a Pedestrian District, development should be oriented to

pedestrians. The development standards allow for more intense development than in the CO1 zone, but not so intense as the CG 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 November 12, 2009. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

The Bureau of Transportation Engineering responded with no objections, and provided comments related to transportation impacts, which are incorporated into the findings below in this decision: Exhibit E-2 has additional details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 12, 2009. One written response was received from the Hazelwood Neighborhood Association with no objections to the proposal, but noted that the parking lots on site seem to be deficient in landscaping, and recommends that additional landscaping and updated planting systems could provide some stormwater collection and enhance the parking areas with greenery. *Staff Comment:* The parking lots are nonconforming development and do not meet the current parking lot landscaping standards. However, upgrades to nonconforming development are triggered via building permit valuation; when the value of the proposed alterations on the site, as determined by BDS, is more than \$131,150. It is staff’s understanding that improvements to the site associated with the proposed use will not trigger any upgrades at this time.

ZONING CODE APPROVAL CRITERIA

33.258.010 Purpose

Nonconforming situations are created when the application of a specific zone to a site changes, or a zoning regulation changes. As part of the change, existing uses, density, or development might no longer be allowed. The intent of the change is not to force all noncomplying situations to be immediately brought into conformance. Instead, the intent is to guide future uses and development in a new direction consistent with City policy, and, eventually, bring them into conformance.

This chapter provides methods to determine whether situations have legal nonconforming status. This is based on whether they were allowed when established, and if they have been maintained over time. This chapter also provides a method to review and limit nonconforming situations when changes to those situations are proposed. The intent is to protect the character of the area by reducing the negative impacts from nonconforming situations. At the same time, the regulations assure that the uses and development may continue and that the zoning regulations will not cause unnecessary burdens.

Nonconforming situations that have a lesser impact on the immediate area have fewer restrictions than those with greater impacts. Nonconforming uses in residential zones are treated more strictly than those in commercial, employment or industrial zones to protect the livability and character of residential neighborhoods. In contrast, nonconforming residential developments in residential zones are treated more liberally because they do not represent a major disruption to the neighborhood and they provide needed housing opportunities in the City.

33.258.075 Determination of Legal Nonconforming Status Review

- A. Purpose.** This review will determine if a use or site has legal nonconforming situation rights. In addition, it will determine what the current legal use is, based on the use categories in Chapter 33.920.
- B. When this review is required.** Determination of Legal Nonconforming Status Review is required where a land use review or building permit is requested, and the applicant does not provide standard evidence or the Director of BDS does not find the evidence to be satisfactory. (See 33.258.038). This review also may be requested by an applicant when it is not required.
- C. Procedure.** Determination of Legal Nonconforming Status Reviews are processed through a Type II procedure.
- D. Approval criteria.**
1. The legal status of the nonconforming situation will be certified if the review body finds that:
 - a. The nonconforming situation would have been allowed when established; and
 - b. The nonconforming situation has been maintained over time.
 2. The review body will determine, based on the evidence, what the current legal use is, using the definitions in Chapter 33.910 and the use categories in Chapter 33.920.

Findings: The mixture of uses on the site were allowed when established, as determined by copies of three Multnomah County Permit File Cards submitted by the applicant. These permits indicate that in August 1964, new construction occurred on the site for a warehouse, in addition to an existing use on the site which included an auto body shop. In December 1964, a cabinet shop and paint room was added; a permit issued in 1974 notes that uses on the site include auto accessories, retail & warehouse as well as the cabinet shop. Given the county zoning in place during this time [C-2] and the building permits, this mixture of uses [manufacturing; retail and warehousing] were all allowed when established. This site was annexed into the City of Portland circa 1989.

Further, the applicant has submitted a number of pages from telephone directories that indicate that the uses have been maintained over time. Finally, the applicant submitted non standard evidence, a letter from the vice president of Crown Door, which had occupied the site from 1984 to 2007. The letter asserts that during their time on the site, both buildings were used in the making of doors, showing of doors and selling of doors to customers.

Therefore, based on the evidence in the record, the site has legal nonconforming status for uses on the site to be: manufacturing, retail, and warehousing.

33.258.080 Nonconforming Situation Review

- A. Procedure.** A nonconforming situation review is processed through a Type II procedure.

Findings: This administrative decision is processed as a Type II Land Use Review, with a local appeal to the Hearings Officer. This requirement is met.

B. Approval criteria. The request will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:

1. With mitigation measures, there will be no net increase in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:

a. The hours of operation;

Findings: The applicant proposes that the batting cages/softball practice facility will operate during winter hours from 3 PM til 10 PM Monday through Friday and 8 am to 8 pm on weekends. During summer months [when school is out] the hours would shift from 11 AM to 10 PM Monday through Friday and 8 AM til 8 PM on weekends. Previous permit records for the site indicate that the cabinet shop had multiple shifts. In addition, the allowed uses in the CO2 zone would include office and limited retail, which would have a greater range of hours that what the applicant proposes. Therefore, there will be no net increase in impacts associated with the hours of operation. This criterion is met.

b. Vehicle trips to the site and impact on surrounding on-street parking;

Findings: Portland Transportation reviewed the proposal and offers the following comments:

With regard to the vehicle trips to the site, staff refers to the Institute of Transportation Engineers Trip Generation Manual. This document contains studies of uses with a variety of factors taken into account. The relevant factor to determine the net increase in detrimental impacts for the proposed use is the morning and evening peak hour trip generation. The Manual does contain similar use categories for the manufacturing, warehousing, office and retail uses on the site. However, although the manual does have a use category for “batting cages”, it is described as a use open to the general public.

Because the proposed batting cages will not be open for use by the general public, the use category in the ITE Manual cannot be applied for comparison purposes to determine whether or not there will be an increase of vehicle trips generated by the proposed use (as related to the existing uses on the site). Given that the existing uses within the front building on the site will not be changing, that the proposed batting cages will be available to groups of 10-20 players and up to 5 coaches at one time, that players will be driven and dropped off by parents and that the hours of operation will be limited throughout most of the year to afternoon and evening hours only, PBOT can conclude that any additional trips generated by the proposed use will not be concentrated during the PM peak hour of travel, and those trips that are generated during this time period will be inconsequential to the transportation system, and therefore considered to be a de minimus (non-detrimental) impact.

With regard to the impact to surrounding on-street parking consideration, there will be 16 on-site parking spaces specifically identified for use by patrons of the proposed use towards the rear of the site, and during non-operating hours of the uses of the front building, another 14 on-site parking spaces will be available. It does not appear as though parking is permitted along the frontage of the site on SE Stark Street, but there is available on-street parking supply along SE 146th Ave to the east of the subject site. It is not likely that parents will be parking along SE 146th Ave (approx. 150-ft to the east of the site) and the available parking spaces on-site should be sufficient for the proposed use, therefore resulting in no impacts to the surrounding area.

PBOT is able to conclude that there will be no net increase in overall detrimental impacts related to transportation issues on the surrounding area. Therefore, this criterion is met.

- c. Noise, vibration, dust, odor, fumes, glare, and smoke;

Findings: The applicant notes that prior to requesting this review to go forward, noise levels were measured around the building while both baseballs and softballs were hit inside the building. No decibel levels were recorded at the north property line, which abuts residential uses. The highest noise level noted was 66 decibels registered at the east property line, and produced by a baseball and metal bat. This level is below the maximum permissible levels allowed between two commercially zoned properties. The adjacent property to the east of the site is zoned CS, Storefront Commercial. The applicant also notes that when these measurements were taken, the east wall of the back building was a 2 x 6 framed wall, and that insulation had not yet been installed. Since then, the building has been fully insulated and the insulation is anticipated to absorb 3-5 decibels, which lowers the highest noise level measured to between 61 to 63 decibels.

The proposed batting cages and associated coaching of softball playing techniques is not anticipated to produce vibration, dust, odor, fumes, glare or smoke. For these reasons, this criterion is met.

- d. Potential for increased litter; and

Findings: The applicant notes that there is no anticipation of any litter associated with the proposed batting cages or related activities inside the building. This criterion is met.

- e. The amount, location, and nature of any outside displays, storage, or activities; and

Findings: All of the activities associated with the batting cages and softball coaching will take place within the confines of the back building. There are no proposed changes to the existing site and no outside displays, storage or activities associated with the proposal. This criterion is met.

2. If the nonconforming use is in an OS or R zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the OS or R zoned area. This is based on taking into account factors such as:

- a. Building scale, placement, and facade;
 b. Parking area placement;
 c. Buffering and the potential loss of privacy to abutting residential uses;
 and
 d. Lighting and signs; and

Findings: The site is in a Commercial zone, not a Residential or Open Space zone. Therefore this criterion is not applicable.

3. If the nonconforming use is in a C, E, or I zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

Findings: The site is within the CO2 zone. No external changes to the site are proposed, and therefore there will be no change in the appearance of the site. The

existing development on the site is typical of buildings in a commercial office zone, and there are no aspects that are detrimental to the desired function and character of the base zone. Therefore, this criterion is met.

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 is requesting approval to expand the retail sales and service use floor area in the back building to provide sufficient area to use the space for a practice facility for softball teams. The proposal includes three batting cages set up with nets to separate one cage from another. The space will be leased to a softball coach who intends to have softball teams practice on batting and fielding techniques. The intention is to use the facility in the winter months during inclement weather, with winter hours from 3 PM to 10 PM Monday through Friday and 8 AM to 8 PM on weekends. In the summer, when school is out, the hours would shift to 11 AM to 10 PM Monday through Friday and remain 8 AM to 8 PM on weekends. The maximum number of people anticipated at any one time would be 25; more typically the attendance would be 10-20 players with 5 coaches. Traffic to the facility will be off-peak, and most patrons will car pool or be dropped off and picked up by a parent. Adequate on-site parking is available, with 16 spaces set aside for the back building. An additional 14 parking spaces normally associated with the front building could be utilized after business hours. All applicable criteria are met, and therefore the proposal should be approved.

ADMINISTRATIVE DECISION

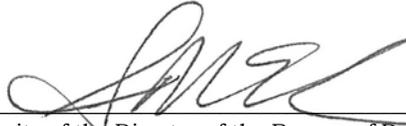
Approval of:

- An expansion of nonconforming retail use to allow a softball practice facility to occupy a portion of the rear building on the site.
- The site continues to have a mixture of nonconforming uses on the site, which include manufacturing, warehousing and retail.
- The floor area of the rear building will continue to have a mixture of these uses, with the floor area allocated as follows: Manufacturing 22%; Warehouse 8% and Retail 70%,

per the approved site plans, Exhibits C-1, signed and dated December 10, 2009, 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. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-116843 NU."

Staff Planner: Sylvia Cate

Decision rendered by:  **on December 10, 2009**

By authority of the Director of the Bureau of Development Services

Decision mailed: December 15, 2009

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 March 26, 2009, and was determined to be complete on September 22, 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 March 26, 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. Unless further extended by the applicant, **the 120 days will expire on: January 20, 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 Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on December 29, 2009** 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 Hearings Officer 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 Hearings Officer 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 **December 30, 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;

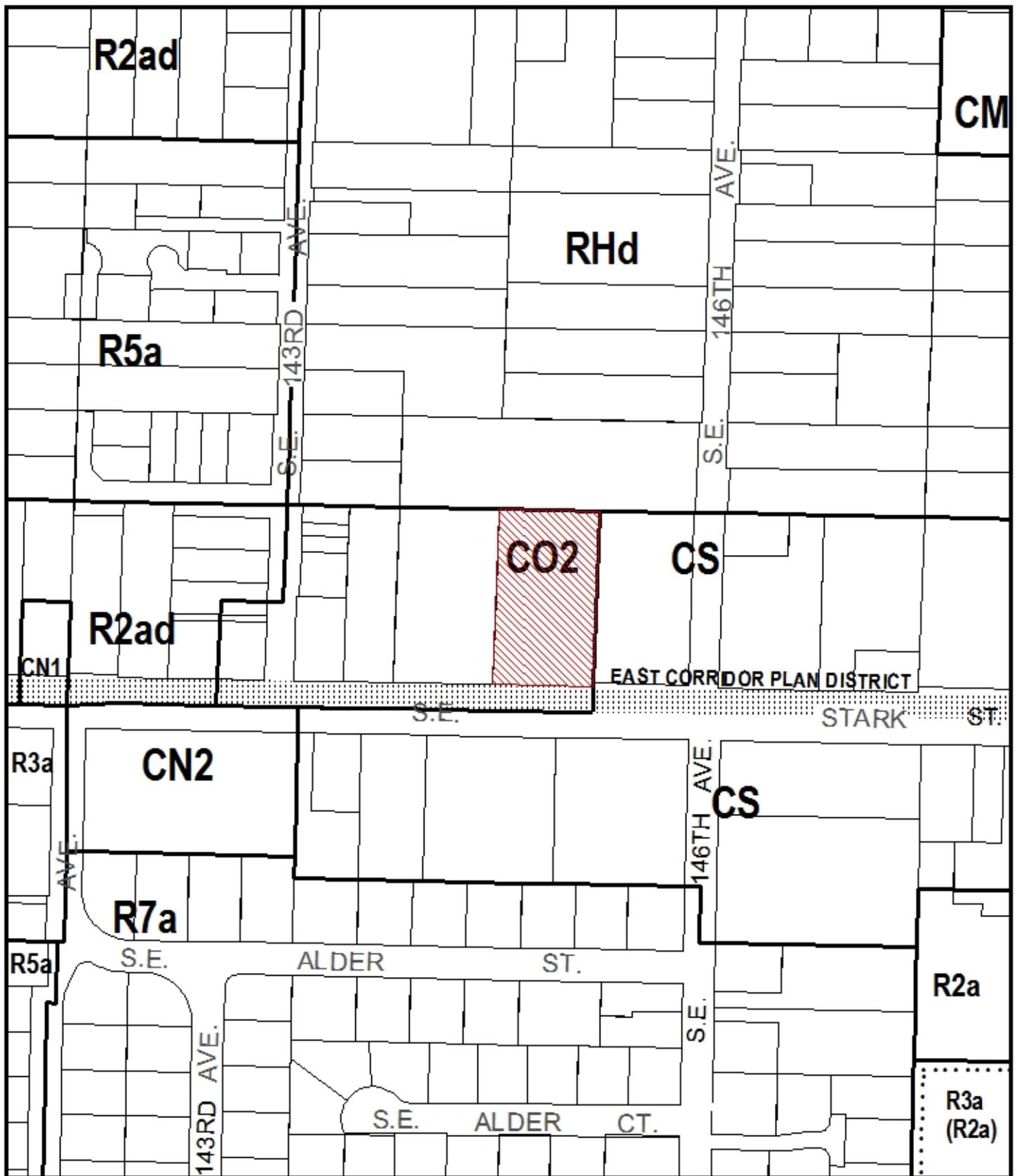
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. 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:
 - 1. Hazelwood Neighborhood Association, December 3, 2009, no objections
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete letter

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING

 Site

File No. LU 09-116843 NU

1/4 Section 3045,3145

Scale 1 inch = 200 feet

State_Id 1N2E36CC 2000

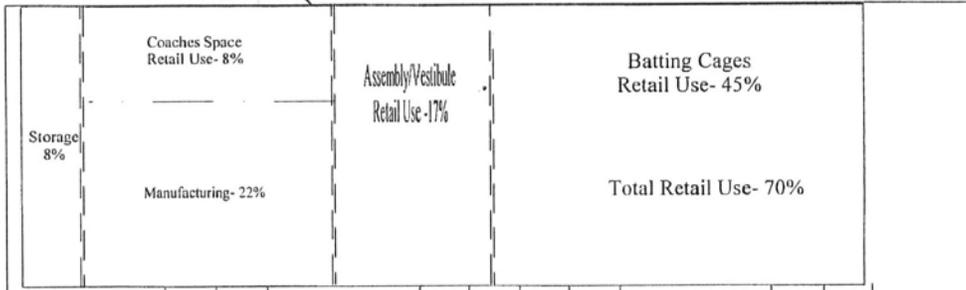
Exhibit B (Mar 31,2009)



NORTH

This site lies within the:
EAST CORRIDOR PLAN DISTRICT

10' hedge entire width
of property.



8 spaces

Approved
 City of Portland - Bureau of Development Services
 Date **12-10-2009**
 This approval applies only to the reviews requested and is subject to all
 conditions of approval. Additional zoning requirements may apply.

10' hedge entire length
of property.

8 spaces

12'

15.75'

8 spaces

3 spaces

3 spaces