



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
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www.portlandoregon.gov/bds

Date: October 11, 2012
To: Interested Person
From: Sylvia Cate, 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 the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 12-174096 AD

GENERAL INFORMATION

Applicant: Steve Pulcheon, Lessee / Taco Bell Corporation
1 Glen Bell Way, MD 534 / Irvine, CA 92618

Owner: Aldo Rossi Limited,
Po Box 35370 / Louisville, KY 40232-5370

Main Contact: Eldrick Alexander, / VMI Architecture Inc.
637 5th Avenue / San Rafael, CA 94901

Site Address: 12605 SE DIVISION ST
Legal Description: LOT 2, PARTITION PLAT 1992-50
Tax Account No.: R649722980
State ID No.: 1S2E02CC 10101
Quarter Section: 3343
Neighborhood: Mill Park, contact Beverly Tobias at 503-255-8327.
Business District: Gateway Area Business Association, Fred Sanchez at 503-256-3910.
District Coalition: East Portland Neighborhood Office, Richard Bixby at 503-823-4550.
Zoning: CG, General Commercial
Case Type: AD, Adjustment
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The site is currently developed with a Taco Bell restaurant with a drive-through food service window. The applicant proposes to demolish the existing development and construct a new Taco Bell restaurant with a different site layout such that the drive-through exits directly from the site onto Division Street. Additionally, a stormwater management infiltration facility will be located on-site, along with a new restaurant building. Because SE Division is a designated transit street, the proposed development is subject to the Transit Street Setback requirements, which limits building setbacks along transit streets to a maximum of 10 feet. The existing building has a 22-foot setback; the proposed new building and reconfigured site layout places the new restaurant at a 32 foot setback. Therefore the applicant is requesting an Adjustment to

allow a building setback of 32 feet. Attached to this notice is a zoning map and site 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 33.805.040 A. through F. below have been met.

ANALYSIS

Site and Vicinity: The site is 20,624 square feet in area, developed with an existing Taco Bell Restaurant. The site is one of many in the General Commercial zone along the north side of SE Division Street. To the northwest is a parcel zoned R2a and developed with condominiums. Lots and parcels in the CG zone are to the north, east, south and west. The site has frontage on SE Division Street, which is a designated District Collector and Major Transit Street.

Zoning: The site is zoned General Commercial. The General Commercial (CG) zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market. Industrial uses are allowed but are limited in size to avoid adverse effects different in kind or amount than commercial uses and to ensure that they do not dominate the character of the commercial area. Development is expected to be generally auto-accommodating, except where the site is adjacent to a transit street or in a Pedestrian District. The zone's development standards promote attractive development, an open and pleasant street appearance, and compatibility with adjacent residential areas. Development is intended to be aesthetically pleasing for motorists, transit users, pedestrians, and the businesses themselves.

Land Use History: City records indicate there are several prior land use reviews for this site: LUR 92-00133 MP, which approved a minor partition. Much older land use actions that included this site before the site was annexed into the City of Portland include: MCF 78-11-04; MCF PR 5-86 and MCF ZC 10-86.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **September 13, 2012**. The following Bureaus have responded with no issues or concerns:

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

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on September 13, 2012. 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 for Transit Street setbacks is found at 33.130.215.A, Purpose, which states [emphasis added]:

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

The proposal is to demolish the existing Taco Bell and rebuild with a configuration that allows the drive-through lane to enter and exit on the site. This will reduce the number of curb cuts along this segment of SE Division Street, which in turn will reduce the opportunities for vehicle-pedestrian conflicts. The proposed drive-through lane will be screened and buffered by new landscaping along the site frontage, resulting in a more pleasant and esthetically enhanced streetscape. 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 the CG, General Commercial zone. The proposal is consistent with the classifications of adjacent streets because the increased setback of the building will allow a safer queuing drive-through lane on site, which will in turn increase pedestrian safety along SE Division Street. The reconfiguration, along with the additional new landscaping and on-site stormwater facility will meet current regulations and provide aesthetic and functional enhancements to the site consistent with the General Commercial zone.. The General Commercial zone is intended to allow auto-accommodating commercial development, and drive-through service windows are reliant on customers arriving by automobile to the site. The Adjustment will result in a project that promotes pedestrian safety, enhances the streetscape with landscaping, and provides a more convenient access to the drive-through window because of the reconfigured drive-through lane. All of these aspects are consistent with the street classification of SE Division and is consistent with the desired character and intended development within the General Commercial zone. For these reasons, 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

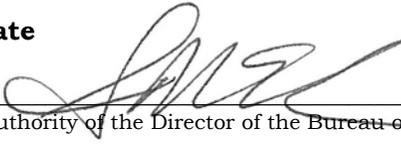
The site is currently developed with a Taco Bell restaurant with a drive-through food service window. The applicant proposes to demolish the existing development and construct a new Taco Bell restaurant with a different site layout such that the drive-through exits directly from the site onto Division Street. Because SE Division is a designated transit street, the proposed development is subject to the Transit Street Setback requirements, which limits building setbacks along transit streets to a maximum of 10 feet. The proposed new building and reconfigured site layout places the new restaurant at a 32 foot setback. Therefore the applicant is requesting an Adjustment to increase the Transit Street setback from 10 to 32 feet. The proposal meets all of the applicable approval criteria, and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of:

- Adjustment to 33.130.215, to allow the Maximum 10 foot Transit Street setback to be increased to 32 feet for a new Taco Bell with drive-through service window, per the approved site plans, Exhibit C-1, signed and dated October 8, 2012, subject to the following conditions:
 - A. As part of the building permit application submittal, the following development-related conditions (B through XX) 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 12-174096 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
 - B. The approved setback will be measured from the front property line after the required 5-foot dedication required by PBOT along the SE Division Street frontage.

Staff Planner: Sylvia Cate

Decision rendered by:  **on October 8, 2012**
By authority of the Director of the Bureau of Development Services

Decision mailed: October 11, 2012

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 August 21, 2012, and was determined to be complete on **September 10, 2012**.

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 August 21, 2012.

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 8, 2013**.

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 October 25, 2012** 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 **October 26, 2012**.
- 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.

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

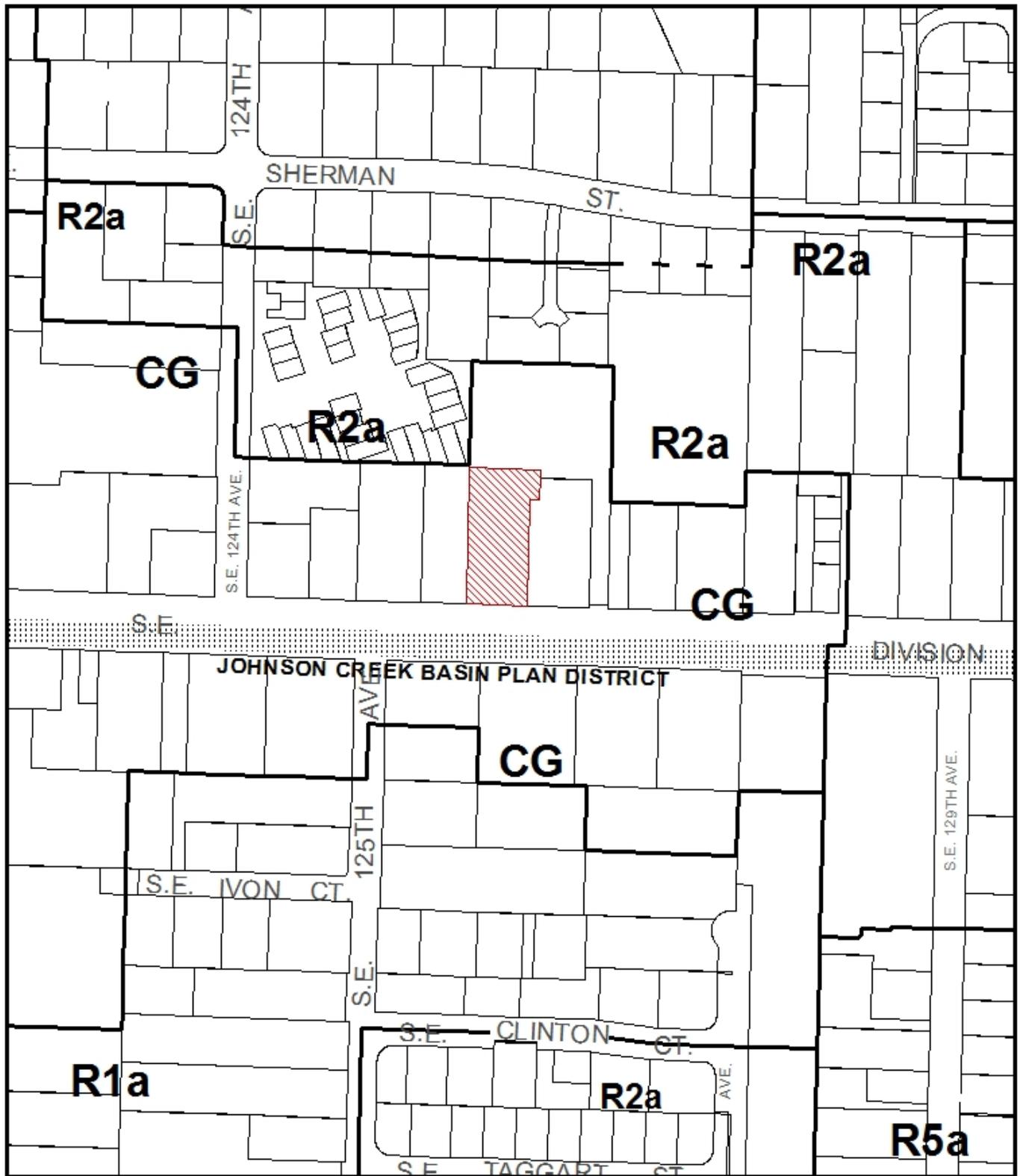
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations
- 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



File No.	<u>LU 12-174096 AD</u>
1/4 Section	<u>3343</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E02CC 10101</u>
Exhibit	<u>B (Aug 21,2012)</u>

