



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

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** November 8, 2012  
**To:** Interested Person  
**From:** Sylvia Cate, Land Use Services  
503-823-7771 / [Sylvia.Cate@portlandoregon.gov](mailto:Sylvia.Cate@portlandoregon.gov)

## **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 12-177673 AD**

#### **GENERAL INFORMATION**

**Applicant / Owner:** Brent Leathers, / Leathers Limited Partnership  
255 Depot Street / Fairview, OR 97024

Victor Onofreychuk, lessee / Prestine Motors  
5613 SE 119th Ave. / Portland, OR 97266

**Owner:** Jerry W Matson, realtor / Colliers International  
1220 NE 17th Ave #11B / Portland, OR 97232

**Representative:** Leslie Ann Hauer  
6100 Collins Road / West Richland, WA 99353

**Site Address:** 10251 SE DIVISION ST

**Legal Description:** TL 6300 0.59 ACRES LAND & IMPS SEE R332162 (R992032851) FOR BILLBOARD, SECTION 03 1S 2E

**Tax Account No.:** R992032850

**State ID No.:** 1S2E03CC 06300

**Quarter Section:** 3241

**Neighborhood:** Hazelwood, contact Arlene Kimura at 503-252-9429.

**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:** CN2: Neighborhood Commercial 2

**Case Type:** AD: Adjustment

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

#### **Proposal:**

The applicant requests an Adjustment to zoning code section 33.130.245, Exterior Display, Storage and Work Activities, to allow establishment of a used automobile sales lot. The existing building on the site will be used to conduct sales and also serve as an enclosed storage area. Exterior display is not allowed outright in the Neighborhood Commercial 2 zone, but can be

allowed via an approved Adjustment. Attached to this notice of decision is a zoning map and site plan depicting the proposal.

**Relevant Approval Criteria:**

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

- 33.805.040.A.-F., Adjustments

## ANALYSIS

**Site and Vicinity:** The site is a parcel 25,758 square feet in area and developed with a one story brick building, constructed circa 1947, with a second metal building immediately behind the 510 square foot brick building. The site has frontage along SE Division Street, a designated District Collector and Major Transit Street. The northern portion of the site is heavily vegetated and includes several mature trees. This vegetative buffer area slopes toward a subdivision immediately to the north. This section of SE Division is characterized by multiple commercial zones: Commercial Office 2, Commercial Office 1, Neighborhood Commercial 2 and General Commercial zones, all within a 600 foot radius of the site. Across SE Division, toward the southwest are lots and parcels zoned R2a, the aforementioned subdivision to the north is zoned R7a. This site has been used for a number of years as a maintenance and storage site for Leathers Fuel Company. A number of vehicles and heavy equipment for servicing fuel pumps have been parked and or stored on the site. The site is on the north edge of SE Division Street, in a stretch of commercial zoning of various types along both sides of the street. Some of the adjacent commercial businesses include repair shops, small retail malls and similar.

**Zoning:** The site is zoned CN2: Neighborhood Commercial 2. The Neighborhood Commercial 2 (CN2) zone is intended for small commercial sites and areas in or near less dense or developing residential neighborhoods. The emphasis of the zone is on uses which will provide services for the nearby residential areas, and on other uses which are small scale and have little impact. Uses are limited in intensity to promote their local orientation and to limit adverse impacts on nearby residential areas. Development is expected to be predominantly auto accommodating, except where the site is adjacent to a transit street or in a Pedestrian District. The development standards reflect that the site will generally be surrounded by more spread out residential development.

**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 4, 2012**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering notes no concerns regarding the Adjustment but advises the applicant that a dedication and frontage improvements will be required.
- Water Bureau notes no concerns and that water service is available to the site.
- Fire Bureau has no objections
- Site Development Section of BDS has no concerns
- Bureau of Parks-Forestry Division has no concerns
- Life Safety Section of BDS has no concerns, but notes that a Building Permit is required to change the use of a building to a different occupancy classification, and the building must be made to comply with building code requirements for the proposed new use or occupancy.
- Bureau of Environmental Services has no objections.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on October 4, 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 of the Exterior Display, Storage, and Work Activities regulations is found at 33.130.245.A, *Purpose*, which states:

*The standards of this section are intended to assure that exterior display, storage, and work activities:*

- *Will be consistent with the desired character of the zone;*
- *Will not be a detriment to the overall appearance of a commercial area;*
- *Will not have adverse impacts on adjacent properties, especially those zoned residential; and*
- *Will not have an adverse impact on the environment.*

The proposal to allow exterior display and storage of motor vehicles for a small local car lot is consistent with the uses allowed in the CN2 zone; that is the retail sales and service is an allowed use. The display of motor vehicles for sale rather than the storage of heavy maintenance equipment and trucks on the site will be an esthetic improvement in appearance of the site. Given the variety of commercial uses and multiple commercial zones in the immediate area, the proposal will not be detrimental to the overall appearance of the commercial area along this section of SE Division Street. Given the distance and visual buffering between the site and adjacent residential properties to the north, there is no anticipation of the display area impacting these residential properties.

However, the chain link fence along the front property line does not meet current zoning regulations because it is over-height. Fences within the front setback of any property [residentially or commercially zoned] can be a maximum of 3 ½ feet in height. Therefore, a condition is warranted that the applicant must either alter the existing fence to meet the zoning requirements, or move the over-height fence away from the public sidewalk and outside of the front setback area. With such a condition, this criterion can be found to be met.

The property does not have an environmental overlay zone, however, motor vehicles are required to be displayed, parked, and stored on a paved surface so that oils etc. that might leak from the vehicles will be appropriately managed by associated stormwater management of runoff from the asphalt.

For these reasons, and with a condition of approval, 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:** Exterior display and storage occurs on private property and will have no impact on the classification of SE Division Street. The desired character of the area/zone is defined at 33.910, which states:

***Desired Character.** The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.*

As previously described earlier in this decision, the CN2 zone is intended:

*“... for small commercial sites and areas in or near less dense or developing residential neighborhoods. The emphasis of the zone is on uses which will provide services for the nearby residential areas, and on other uses which are small scale and have little impact. Uses are limited in intensity to promote their local orientation and to limit adverse impacts on nearby residential areas. Development is expected to be predominantly auto accommodating, except where the site is adjacent to a transit street or in a Pedestrian District.*

The proposal to use a portion of the site for exterior display of used motor vehicles for sale will result in a relatively small scale retail use as compared to a full dealership car lot. Consequently, this business will likely draw customers from the nearby area rather than a regional draw, as the bigger dealerships command.

Because vehicle display requires the vehicles to be on a paved surface, and because a portion of the site is gravel, the applicant proposes to add less than 500 square feet of additional paving in order to adequately display inventory. Given the existing vegetation buffer between the site and the adjacent R7 lots to the north, there appears to be no significant impacts on nearby residential uses.

While the only development proposed is to replace a portion of paving on the site, the site itself is currently configured to be auto accommodating in addition to having frontage along a transit street. The applicant also proposes to install new landscaping along this frontage to enhance the streetscape and pedestrian experience of passersby. The new landscaping, along with the condition of approval regarding the fencing along the front property line will result in an improved appearance of the site. For all of 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 applicant requests an Adjustment to zoning code section 33.230.245, Exterior Display, Storage and Work Activities, to allow establishment of a used automobile sales lot. The existing building on the site will be used to conduct sales and also serve as an enclosed storage area. The proposal meets all of the applicable approval criteria, with conditions, and therefore should be approved.

## ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to 33.130.245, to allow exterior storage and display for motor vehicles, per the approved site plan, Exhibit C-1, signed and dated November 5, 2012, subject to the following conditions:
  - A. As part of the building permit application submittal, the following development-related conditions (B through 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 12-177673 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
  - B. All motor vehicles must be displayed, stored, or parked on a paved surface.
  - C. The fence in the front setback must be lowered to the maximum height of 3 ½ feet, or moved out of the front setback.
  - D. Applicant must obtain a development permit for paving, landscaping and fence relocation [or include this work with the required building permit for the change in use]

**Staff Planner: Sylvia Cate**

**Decision rendered by:**  **on November 5, 2012**

By authority of the Director of the Bureau of Development Services

**Decision mailed: November 8, 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 30, 2012, and was determined to be complete on **October 2, 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 30, 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 30, 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 November 26, 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](http://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 27, 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.

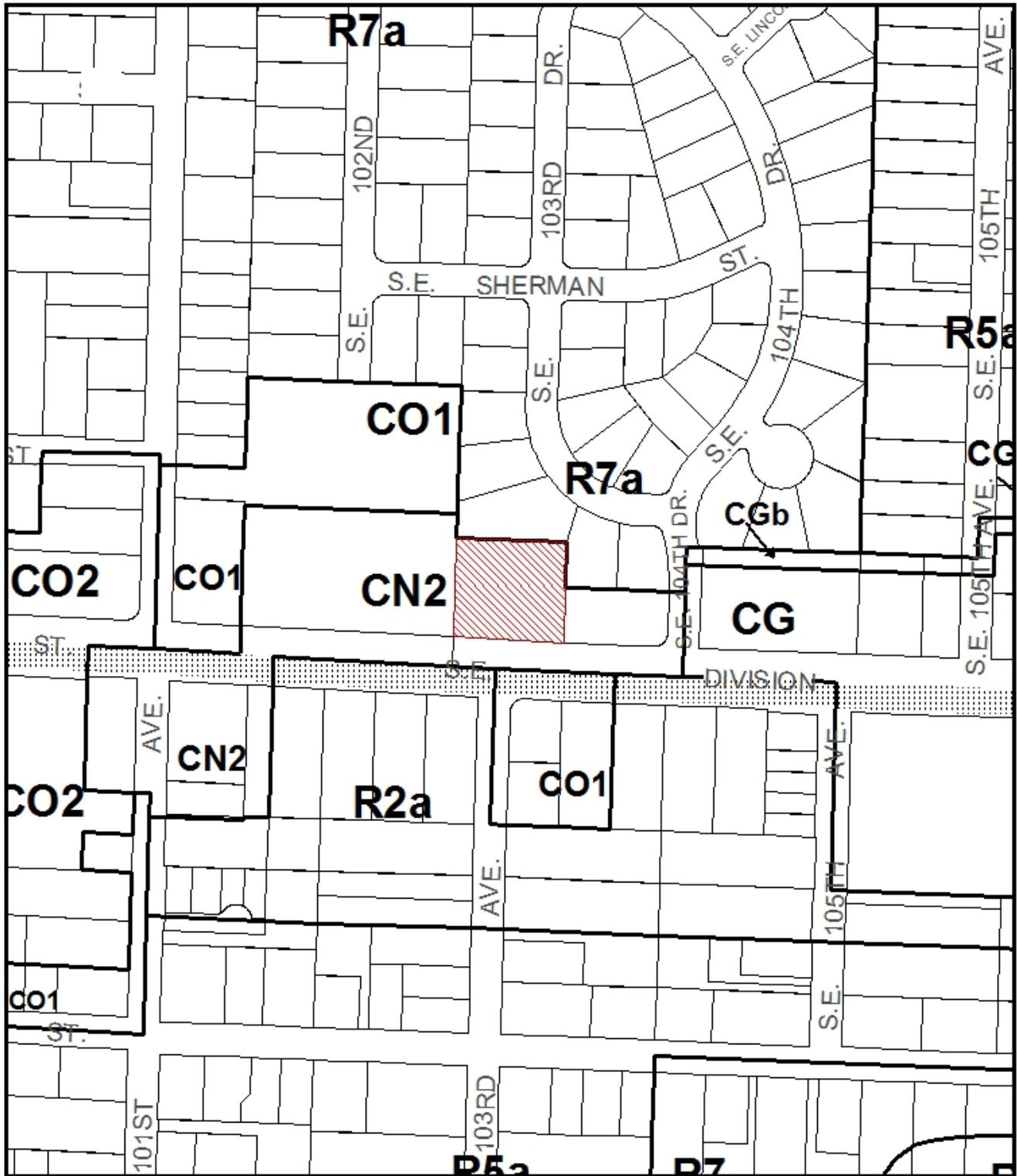
**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)

- C. Plans/Drawings:
  - 1. Site Plan (attached)
- 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 12-177673 AD</u>   |
| 1/4 Section | <u>3241</u>              |
| Scale       | <u>1 inch = 200 feet</u> |
| State_Id    | <u>1S2E03CC 6300</u>     |
| Exhibit     | <u>B (Sep 18,2012)</u>   |

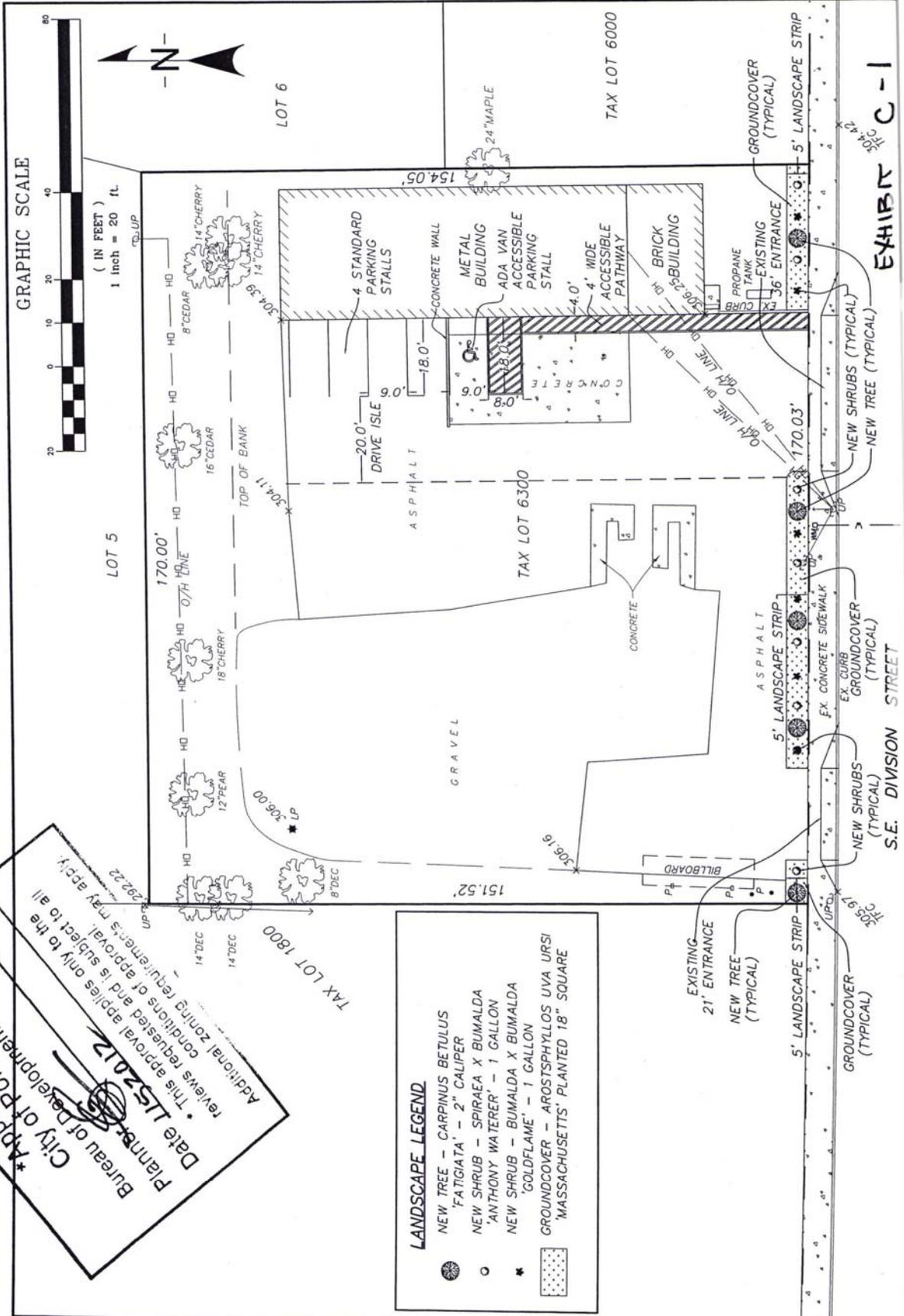
| NO. | DATE | BY | REVISIONS |
|-----|------|----|-----------|
|     |      |    |           |
|     |      |    |           |
|     |      |    |           |
|     |      |    |           |

SITE IMPROVEMENTS  
10251 SE DIVISION STREET  
LEATHERS LIMITED PARTNERSHIP

Proposed Striping  
& Landscape Plan

SSUL ENGINEERING  
12042 SW  
375 PORTLAND AVENUE  
PORTLAND, OREGON 97207  
PHONE 503-255-0188  
FAX 503-255-0188

DATE: APRIL 2011  
SCALE: NOTED  
DRAWN: JEE  
JOB: 102-10-038  
SHEET: 01  
OF: 1



**\*Approved\***  
City of Portland  
Bureau of Development Services  
Planner: **11/24/12**  
Date: **11/24/12**  
Additional zoning requirements may apply.  
This approval applies only to the  
reviews requested and is subject to all  
conditions of approval.

AD 37621-12-17

EXHIBIT C-1