



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, 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:** June 3, 2014  
**To:** Interested Person  
**From:** Kathleen Stokes, Land Use Services  
503-823-7843 / [Kathleen.Stokes@portlandoregon.gov](mailto:Kathleen.Stokes@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 13-226790 NU**

#### **GENERAL INFORMATION**

**Applicant:** Brian Bainnson, Quatrefoil  
404 SE 80th Avenue / Portland OR 97213

**Owners:** Woo Yong Choi, Man Ja Choi  
2323 NE 165th Dr / Portland, OR 97230-5533

**Site Address:** 16955 SE Division

**Legal Description:** TL 5200 0.75 ACRES LAND & IMPS SEE R337924 (R993062611) FOR BILLBOARD, SECTION 06 1S 3E

**Tax Account No.:** R993062610

**State ID No.:** 1S3E06CD 05200      **Quarter Section:** 3247

**Neighborhood:** Centennial, Tom Lewis at 503-347-5715.

**District Coalition:** East Portland Neighborhood Office, Richard Bixby at 503-823-4550.

**Zoning:** R1a (R1,000, Medium Density Multi-dwelling Residential Zone with an Alternative Design Density Overlay Zone)

**Case Type:** Nonconforming Situation Review

**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

**Proposal:** The applicant is requesting approval of an expansion of the development for a Legal Nonconforming Retail Use on this residentially -zoned site. The proposed development consists of the legalization of the construction of a parking area to serve the retail use that is located on the eastern two tax lots of this site. The parking will not serve the western portion of the site, which does not have legal nonconforming status and so is only allowed to have residential uses.

**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.**

#### **ANALYSIS**

**Site and Vicinity:** The site is comprised of three tax lots, which were combined into Tax Lot 5200 in 1995. The overall area of the three original tax lots is 32,548 square feet. Only the two easterly tax lots, which have an area of 17,846 square feet, are the subject of this review, because the third tax lot, on the western portion of the site, does not have any claim to legal nonconforming use status. The property is located on the northwest corner of the intersection of SE 170<sup>th</sup> Avenue and SE Division Street. The development on the site includes a commercial

building on the eastern two tax lots, which was constructed in 1950. The is a single story building that is located in a position that straddles the tax lot line between the easternmost and the middle parcels. The southern half of these two tax lots also has paved parking area that is located immediately to the north and the west of the building. The northern half of the tax lots is undeveloped and has an existing lawn. The western tax lot contains a small building that is located just north of the midpoint of the tax lot, with a paved area to the south of the building, and an undeveloped area to the north of the building.

The area around the site includes a mix of residential and commercial development. The area to the north and east of the site includes a mix of older single-dwelling residences and newer single and multi-dwelling residences that were built to the higher density of the R1 zone. Immediately to the west of the site is a manufactured home park, in an R3 zone. Along SE Division Street, to the south of the site and further to the west, there is a mix of commercial uses that includes small neighborhood retail stores and offices, and also larger scale retail stores in the General Commercial zone at the intersection with SE 162<sup>nd</sup> Avenue.

**Zoning:** The site is zoned R1, Medium Density Multi-dwelling Residential. This zone allows up to one unit per 1,000 square feet of site area and requires a minimum of one unit per 1,450 square feet of site area, or 1 unit per 2,000 square feet of site area for sites that are smaller than 10,000 square feet. There is also an “a” or Alternative Design Density Overlay on this site. The provisions of this overlay zone allow increased residential density on some sites, when the proposed development meets Community Design Standards or is approved through Design Review.

**Land Use History:** City records include reference to a Multnomah County review (MCF 103-551). There are no records of a decision or what type of review was involved, only a notation that the review was for an “auto parts store.” There are no other records of prior land use reviews for this site.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **April 29, 2014**. The following Bureaus have responded with no issues or concerns regarding approval of the land use review. Agencies that provided written comments regarding permit submittal requirements are noted with exhibit numbers:

- Environmental Services provided comments, as a courtesy to the applicant, that described the existing sanitary sewer infrastructure and that discussed the regulations for stormwater management (Exhibit E-1).
- Transportation Engineering provided an analysis of the proposal, in regards to transportation-related approval criteria. These comments are included in the findings for Criterion **33.258.080 B. 1. b**, below (Exhibit E-2).
- Water Bureau noted that the water service for the site is provided by the Rockwood Water People’s Utility District (Exhibit E-3).
- Life Safety Plan Review Section of BDS noted requirements for building permit submittal and review (Exhibit E-4).
- Fire Bureau, Site Development Section of BDS and Parks-Forestry Division each provided a comment of “no concerns,” (Exhibit E-5).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on April 29, 2014. One written response has been received from notified property owners in response to the proposal. The letter expressed support for approval of the requested Nonconforming Situation Review (Exhibit F-1).

## ZONING CODE APPROVAL CRITERIA

### NONCONFORMING SITUATION REVIEW

#### **33.258.010 Purpose of Nonconforming Situation Regulations**

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.

Legal nonconforming status is based on whether the situation was allowed when established, and if it has 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.

### **33.258.050 Nonconforming Uses**

The applicant provided a copy of **13-207266 PR** (Revised Zoning Confirmation Letter, Exhibit A-2), which was issued by the City of Portland, Bureau of Development Services, on October 15, 2013, and confirmed that there is legal nonconforming status for Retail Sales and Service Uses, for the “front building on the site.” The letter stated that the zoning was changed on the site, through adoption of Ordinance 185-203 by Multnomah County on July 26, 1979. This ordinance changed the zoning from C-3 (Retail Commercial) to HR-1 (high density residential). The letter also stated that documentation, in the form of standard evidence that included City Directory (reverse phone directory) listings and business license records, was submitted which verified that a retail use was established in the building at 16955 SE Division, when it was allowed on the site, and that a retail use had continued in that building, without a lapse of more than three years, since it had become nonconforming in 1979. No evidence was presented at that time, or in this present review, to establish any nonconforming rights for any other part of the site. Therefore, at this time, the site continues to have an existing legal nonconforming use status for uses in the Retail Sales and Service use category for the two tax lots that include the building at 16955 SE Division. The site does not have any legal nonconforming status for the western building (also referred to as “Building B” and as 16959 SE Division).

**Nonconforming use status for this site and purposes for review requirements:** This proposal is to expand the exterior development for a parking area that is accessory to a retail store (Medical Marijuana dispensary). The parking area was previously paved without a permit and because it represents an expansion of the development on the site that is part of the Retail Sales and Service use, it requires approval through a Nonconforming Situation Review. No other changes are proposed to the development on the site, except for bringing the parking area and pedestrian connections up to code standards for striping and landscaping.

### **33.258.080 Nonconforming Situation Review**

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

**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;
  - b. Vehicle trips to the site and impact on surrounding on-street parking;
  - c. Noise, vibration, dust, odor, fumes, glare, and smoke;
  - d. Potential for increased litter; and
  - e. The amount, location, and nature of any outside displays, storage, or activities; and

**Findings:** The use that is occupying this site is not changing. The Lewis and Clark Collective, a Retail Sales and Service Use that occupies the building on the eastern portion of the site ("Building A") currently operates from 11:00 AM to 7:00 PM, Monday through Friday and 11:00 AM to 6:00 PM on Saturday and Sunday. These hours are within the allowances for nonconforming uses in residential zones and will not be changing because of the proposed improvements to the parking area.

The tenants for "Building A" have two to three employees on site at any one time and see an average of 30 clients per day. The improvements to the parking area would provide spaces for 25 vehicles. This would accommodate the amount of parking required on average days and would reduce the demand for on-street parking, thereby having a positive impact on the surrounding residential area.

As stated previously, there will not be a change in tenant, due to approval of this proposal. The activities of the business do not generate these types of impacts and, further, are the activities related to the business are conducted inside. A condition of approval will ensure that the parking lot will not be used for outdoor gatherings and that clients and persons making deliveries are warned not to keep motors running or to cause other impacts from vehicles that would contribute to noise, vibration, dust, odor, fumes, glare or smoke.

The tenants currently maintain the site to be free of litter and will continue this practice. There are no outdoor displays, storage or activities that are currently occurring or that are proposed

Summary:

The approval criterion requires that there will be no net increase in overall impacts from the proposed new use(s) over the impacts felt from the previous use. This proposal calls for making improvements to what was previously an unpaved, informal parking area. The improvements, was started prior to obtaining the required development permit. Approval for the permit will require that the parking area has perimeter and interior landscaping installed. This requirement will ensure that the parking area has screening and buffering from the adjacent residential properties and the abutting streets and will also require the overall development to contain and manage stormwater runoff, all of which will further enhance the public environment. Therefore, with the previously mentioned condition to limit outdoor activity in the parking area, there are not expected to be any detrimental impacts from the proposed expansion of the development for the nonconforming use on this site and 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:** At this time, the only changes that are proposed to the development on the site include the legalization of the parking area, bringing it up to current Code standards. Previously, on-site parking occurred on an unpaved surface and there was no landscaping to buffer and screen the parking area from view from the adjacent sidewalk or other residential properties.

The required perimeter landscaping for the parking area will improve buffering for abutting residential uses. A condition of approval will require that no outdoor gatherings or activities are conducted in the parking area and that vehicles are not allowed to remain running in the parking lot or cause unnecessary noise or other impacts from noise, dust, odor, fumes or glare. With this condition, the proposed

improvements are not expected to impact the privacy of the abutting residential uses. No lighting is proposed beyond that which might be needed for safety and security. Any lighting such as this would have to meet the requirements of offsite impacts, which will also ensure that there are no detrimental impacts on abutting residents. Signs that are placed on the site will be subject to the requirements of Title 32, the Portland Sign Code, which are intended to ensure that signs do not impact safety or lead to visual clutter. With the previously mentioned condition of approval and the other requirements and safeguards discussed in these findings, the proposed expansion of the development for this nonconforming use will not lessen the residential character of the R zone and this criterion is met.

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 proposal is in a residentially zoned area. 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

The proposed expansion of the development for this nonconforming Retail Sales and Service use can occur without a net increase in the overall impacts on the residential area. The hours of operation will not change as a result of this proposal. The improvements to the parking area will not generate more vehicle trips and will reduce the demand for on-street parking, which will be an enhancement to the residential area. With a condition that limits the activities that occur in the parking area, there are not expected to be any potential impacts from noise, vibration, dust, odor, fumes or glare. The condition and the required landscape screening will ensure that there are no impacts to privacy for the abutting residential uses. There will not be any change in the amount of litter or in the use of signs. No physical changes are proposed that would detract from the residential character of the area.

The proposal can therefore be approved, subject to the approved site plan (Exhibit C-1) and the previously described condition of approval.

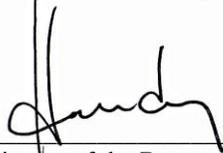
## ADMINISTRATIVE DECISION

Approval of an expansion of the development for the Existing Nonconforming Retail Sales and Service use, in order to legalize construction of a parking area, in general compliance with the approved site plan, Exhibit C-1, signed and dated May 30, 2014, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B) 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 13-226790 NU." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The owner of the property and the tenants of Building A must ensure that the parking lot will not be used for outdoor gatherings and that clients and persons making deliveries are

warned not to keep motors running or to cause other impacts from vehicles that would contribute to noise, vibration, dust, odor, fumes, glare or smoke.

**Staff Planner: Kathleen Stokes**

**Decision rendered by:**  **on May 30, 2014**

By authority of the Director of the Bureau of Development Services

**Decision mailed: June 3, 2014**

**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 November 12, 2013, and was determined to be complete on April 25, 2014.

*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 November 12, 2013.

*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 extended by the applicant, **the 120 days will expire on: August 22, 2014.**

**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 June 17, 2014** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 2:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 2:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> 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 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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 **June 18, 2014**.
- 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.

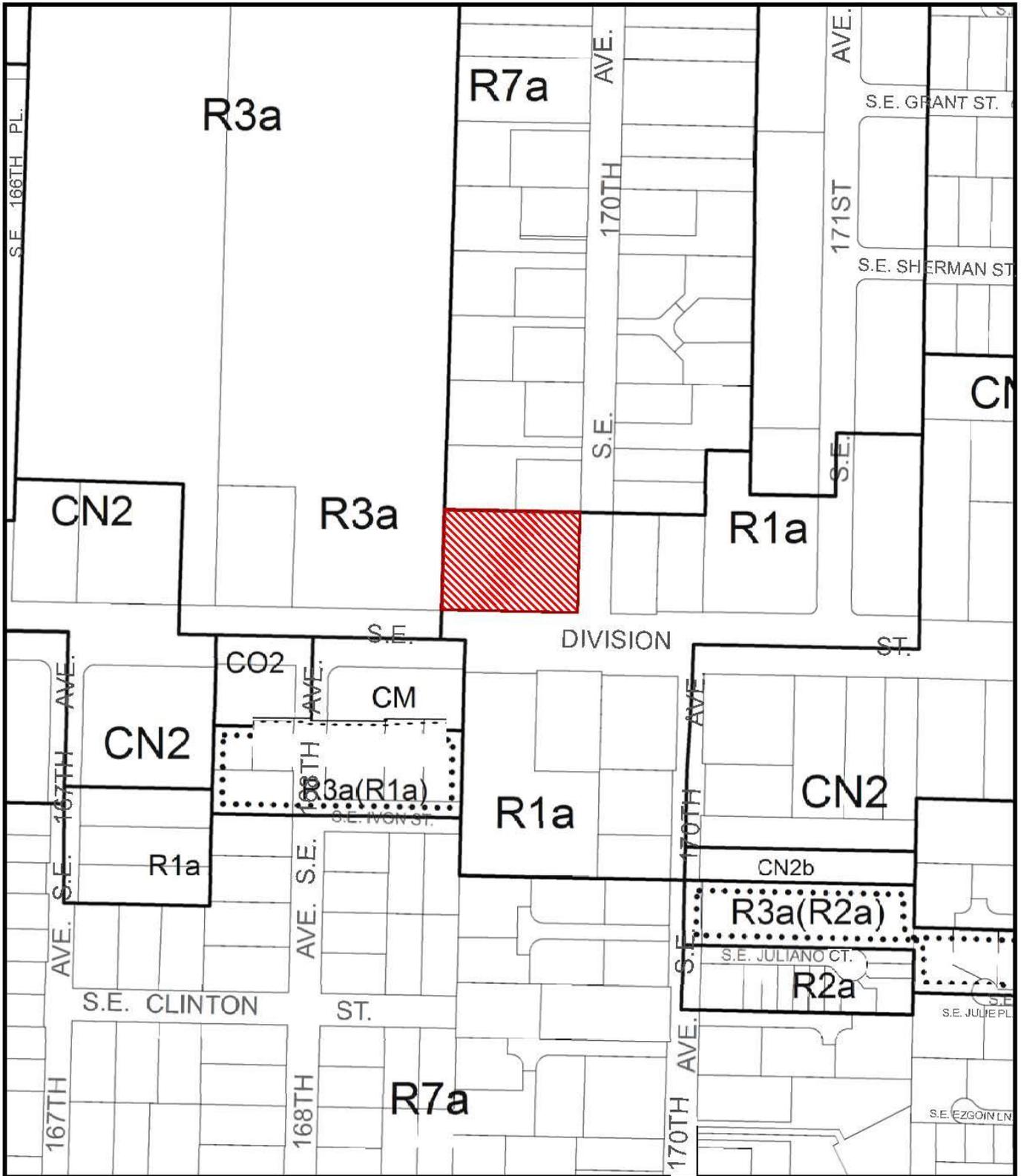
**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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
  - 1. Application, original narrative and plans
  - 2. Decision letter for PR13-207266 PR (Revised Zoning Confirmation Letter)
  - 3. Additional submittal, with revised plans, received April 22, 2014
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation drawings
- 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. Life Safety Plan Review Section of BDS
  - 5. Summary of electronic responses from City service agencies (including Fire Bureau, Site Development Section of BDS and Bureau of Parks, Forestry Division)
- F. Correspondence:
  - 1. Bui Kim Anh and Kim Dung
- G. Other:
  - 1. Letter from Kathleen Stokes to Brian Bainnson, November 26, 2013
  - 2. Letter from Kathleen Stokes to Brian Bainnson, April 18, 2014

**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 13-226790 NU  
 1/4 Section 3247,3347  
 Scale 1 inch = 200 feet  
 State\_Id 1S3E06CD 5200  
 Exhibit B (Nov 14, 2013)

