



CITY OF
PORTLAND, OREGON

HEARINGS OFFICE

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**AMENDED DECISION OF THE HEARINGS OFFICER
ON APPEAL OF ADMINISTRATIVE DECISION**

I. GENERAL INFORMATION

File No.: LU 08-138536 NE (HO 4090008)

Applicant/: Kevin Anderson
Appellant: Bridge City Media
14780 Osprey Drive Ste 260
Beaverton OR 97007

Owner: Castle Realty Corporation
1850 N Central #2100
Phoenix, AZ 85004-4584

Appellant's: Christopher W. Rich
Representative: Perkins Coie LLP
1120 NW Couch St 10th Floor
Portland OR 97209-4128

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representative: Suzanne Savin

Site Address: 9815 SW CAPITOL HWY

Legal Description: TL 800 0.87 ACRES, SECTION 29 1 S 1 E

Tax Account No.: R991293410

State ID No.: 1S1E29CB 00800

Quarter Section: 3925

Neighborhood: Crestwood

Business District: None
District Coalition: Southwest Neighborhoods Inc.

Plan District: None

Zoning: CG (General Commercial)

Land Use Review: Type II, an administrative decision with appeal to the Hearings Officer, NE (Nonconforming Status Establishment)

BDS Administrative Decision: Denial of a Determination of Nonconforming Sign Status Review, for the painted pattern on the south building wall.

Public Hearing: The hearing was opened at 9:00 a.m. on April 6, 2009 in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland OR, and was closed at 10:49 a.m. The Appellant's representative, Christopher Rich, exercised Appellant's rights granted by ORS 197.763 (6)(e), if any, and requested an additional 7 day time period to submit written rebuttal into the record. The record was held open until 4:30 p.m. on April 13, 2009 for Appellant's rebuttal only. The record was closed at that time.

Testified at the Hearing:

Suzanne Savin, BDS Staff Representative

Christopher Rich, Perkins Coie LLP, 1120 NW Couch St., 10th Floor, Portland OR 97209

Kevin Anderson, 14955 SW Juliet Terrace, Tigard OR 97224

Chris Daugherty, 10711 NE 86th Circle, Vancouver WA 98662

History/Background:

The site abuts the Interstate 5 (I-5) freeway right-of-way to the south, and is developed with a commercial building on the southern portion of the site, and surface parking on the remainder of the site. On March 5, 2008, the property owner was cited for erecting a 60-foot by 20-foot (1200 square foot) banner on the south wall of the building (Citation 08-112777-VI). The south wall of the building is within 100 feet of the I-5 right-of-way and faces that right-of-way.

Citation 08-112777-VI stated that the banner appeared to be in violation of City of Portland Sign Code Sections 32.32.030.K.3.d, Section 32.32.020, and 32.32.020.B.1.a. Section 32.32.030.K.3.d states that banners larger than 32 square feet may be hung for up to 180 calendar days per year. Banners larger than 100 square feet must meet the standards for permanent signs. Section 32.32.020.A and Table 32.32-2 state that in the CG zone, permanent signs attached to buildings on sites without a freestanding sign are limited to 1 ½ square feet of signage per 1 lineal foot of the building's primary building wall. However, no one sign may be larger than 200 square feet. Section 32.32.020.B.1.a states that sign faces that are within 100 feet of a freeway right-of-way, and that are visible from the freeway, may not exceed 200 square feet in area.

The applicant states that a pattern of bold rectangles with intersecting horizontal lines against a contrasting lighter color background was painted directly on the south wall of the building, and that this painted pattern was part of the original design of the building. (The painted pattern on the south wall of the building is shown on the attached South Wall Elevation.) The applicant states that the 1997 Zoning Code was in effect when the south painted wall face on the site was constructed. The applicant states that the south painted wall face meets the definition of a "painted wall decoration" under the 1997 Code, and therefore should have been deemed a

“painted wall decoration” and included in the Official Sign Photo Inventory, which listed nonconforming and exempt signs as of November 17, 1998.

The applicant states that the banner that was placed on the south wall of the building did not move, structurally alter, or increase the size of the south wall face, and that the south wall face has not been moved, structurally altered, or increased in size since November 17, 1998. The applicant states that the placement of the banner on the south wall face is allowed pursuant to Section 32.36.020.C, which states that the changing of permanent sign faces on nonconforming signs is allowed as long as structural alterations are not made.

Proposal: The applicant is requesting a Determination of Nonconforming Sign Status Review, pursuant to Sign Code Section 32.38.040, to determine that the painted pattern on the south wall face is a “painted wall decoration” and therefore has legal nonconforming sign status.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are the approval criteria of Portland Sign Code Title 32, Section 32.38.040.D (Determination of Nonconforming Sign Status Review).

II. ANALYSIS

Site and Vicinity: The site is located in the northwest corner of the intersection of SW Capitol Highway and SW Barbur Boulevard. The Interstate 5 freeway runs beneath the intersection of these two streets, and there is an on-ramp to I-5 immediately west and south of the site.

The site is approximately 37,897 square feet in size and is developed with a 1-story (with basement level) commercial building and associated surface parking.

North of the site, on the north side of SW Taylor’s Ferry Road, are properties zoned CG, R7 and R7c. The CG-zoned property is developed with an automotive repair facility, while the R7 and R7c properties are developed with single-dwelling residences or are vacant. East of the site, on the east side of SW Capitol Highway, are properties zoned CG, developed with a grocery store, a liquor store and a barber shop. South of the site, on the south side of SW Barbur Boulevard and I-5, are properties zoned CG, developed with retail sales and service establishments, including a vehicle oil change business, a car wash, a coffee shop, and an auto fueling station. West of the site, on the west side of the I-5 on-ramp from SW Taylor’s Ferry Road, are properties zoned R7 and R7p. Some of these properties are vegetated and contain no improvements, while some are developed with single-dwelling residences and multi-dwelling structures.

Zoning: The site is zoned CG, 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 is one prior land use review for this site:

LUR 96-00155 DZ was the 1996 approval of a Design Review for a self-service storage facility.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **December 19, 2008**. 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
- Bureau of Transportation Engineering

The Life Safety Plans Examiner Section of BDS responded that based on the information provided, there appears to be no conflicts between this proposal and applicable building codes for the purpose of obtaining a land use approval. Painted signs on walls are exempt from building permits other than electrical if illuminated, or if the sign was previously installed with a building permit and no structural alterations take place. A separate sign permit will only be required if a new sign is attached to the building or a free standing sign is installed with or without electrical or if an existing sign is to be structurally altered. The sign must then be designed to meet all applicable building codes, ordinances and accepted engineering practices (Exhibit E-1).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on December 19, 2008. One written response, in opposition to the proposal, has been received from the Crestwood Neighborhood Association.

The Association’s letter expressed opposition on the following grounds:

- 1) The design that the applicant claims is a “wall decoration” goes on the east and west walls, making it part of the building, not just a single wall. The logic applied here means that anyone who painted trim on their building prior to November 17, 1998 has a wall decoration. We do not support such an interpretation.
- 2) Since the horizontal lines are being used to constitute a wall decoration, when the wall was re-painted and the horizontal lines were removed, they removed the wall decoration and therefore we believe that they can no longer claim the wall should be in the inventory.
- 3) The request states that the “sign” was not altered to accommodate the current banner sign. We believe that lighting was added to the building to accommodate the current banner sign. We believe this constitutes an alteration to the “sign” and therefore voids the grandfathering of the “sign.”

- 4) We believe that the City has issued permits to allow signs on the building's south wall. If the south wall was already a sign, then the permits would have been unnecessary. Since the permits were issued, the City does not consider the south side of the building a "sign."

Applicant's Response to Neighborhood Association Comments: Regarding Point #1 of the Neighborhood Association's opposition, the design on the building's south wall is not painted trim. Rather, it is a pattern of painted bold rectangular hollow boxes intersected by thinner horizontal lines, which run through the middle portion of the wall. This pattern was intentionally designed as part of the original construction (see December 15, 2008 letter, Exhibit A) and does not merely highlight trim. Furthermore, the application for nonconforming sign status applies only to the south wall. As noted in the December 15, 2008 letter, the bold rectangular pattern *on the south wall* was illuminated with accent lighting at night to gain the attention of the public prior to November 18, 1998. (See December 15, 2008 letter, Exhibit D). Accordingly, we believe that this clearly fits within the definition of a "painted wall decoration" as distinguished from a "painted wall highlight" under the applicable code provisions.

Regarding Point #2, Bridge City acknowledges that the wall face has been repainted after November 18, 1998. However, the decoration was also re-painted and such re-painting, at most, constitutes allowed "repair and maintenance" of the sign (see PCC 32.36.020.H(2)(a)). Bridge City further contends that the decoration was not removed for more than 6 continuous months since November 18, 1998, and thus, the nonconforming use has been preserved.

Regarding Point #3, Bridge City provided evidence that the incandescent accent lighting on the south wall was installed *prior to* November 18, 1998. See December 15, 2008 letter, Exhibit D. Any subsequent maintenance or "sign repair" (as defined in PCC 32.22.020.AAA) of this lighting would not constitute a "structural alteration" (as defined in PCC 32.22.020.GGG) because comparable materials were used.

Regarding Point #4, although we have not viewed the permit file, Bridge City is generally aware that a "fascia sign" permit was applied for, regarding a small display located on the upper right portion of the south wall – at the request/direction of the City of Portland. That noted, Bridge City does not believe that a "fascia sign" permit should have been required for several reasons. First, the definition of "fascia sign" expressly states that "fascia signs do not include signs that are attached to or projected onto structures defined as sign structures by this Title." See PCC 32.22.030.V. In our case, the south wall face constitutes a nonconforming sign structure, and the small sign should not require a separate permit. Second, we believe the above code definition is consistent with the City's policy and practice of not requiring fascia sign permits for display faces of this type which are currently attached to various pre-existing nonconforming signs. Bridge City certainly does not believe that these prior actions amount to either a land use determination by the City, or any sort of waiver of a valid pre-existing nonconforming use right.

BDS Staff Response to Neighborhood Comments and Applicant's Response to Neighborhood Comments: Points #1 and #2 of the comment letter concern the proposal's compliance with the Sign Code approval criteria for a Nonconforming Sign Status

Review. The proposal's compliance with the Nonconforming Sign Status Review approval criteria is discussed in the following section of this staff report. That discussion includes the definition of painted wall decoration (a sign category that was included in the 1997 and 1998 Zoning Code), and the south wall's compliance with that definition.

Regarding Point #2, Staff agrees that the south wall can appear to be a solid cream color when viewed from nearby rights-of-way. In the photos of the south wall taken for Violation File 08-112777, the south wall appears to be a solid color. BDS staff observed the south wall at close range (adjacent to the I-5 off-ramp at the southwest corner of the building), during site visits on January 6, 2009 and January 13, 2009. BDS staff also observed the south wall from the area near the intersection of SW Barbur Boulevard and SW Capitol Highway on February 12, 2009. When viewed at closer distances, the horizontal lines and rectangular box outlines are still discernable, although they have been painted the same hue as the background wall and appear to be only one shade darker than the background wall.

Regarding Point #3, the applicant has indicated that its submitted photo (Exhibit D) shows that incandescent lights were present along the south wall prior to November 18, 1998. The photo (Exhibit D of the December 15, 2008 letter) shows 4 uplights on the lower portion of the south wall, shining upward beneath the four rectangular box outlines on the wall. As discussed in the subsequent section of this staff report, the applicant has provided evidence to show that this photo was taken prior to November 18, 2008. (As a sidebar, Staff notes that two of these uplights appear to have been removed from the south wall, per Staff observation at a site visit on January 13, 2009.)

However, Staff believes that the letter writer is not referring to the uplights on the lower portion of the wall, but is instead referring to four lights that have been mounted on the roof parapet above the banner, and shine downward onto it. These roof-mounted lights were installed sometime between March 1, 2008 and August 27, 2008. They were not present in the photograph of the banner taken for Violation File 08-112777 VI on March 1, 2008, but they were present in the photograph taken of the banner for Violation File 08-158711 VI, on August 27, 2008. On the other hand, these four roof-mounted lights do not constitute a structural alteration of a sign, as they could be mounted along the top of any commercial building wall as long as the required electrical permits are obtained.

Regarding Point #4, the applicant has responded that Bridge City Media has applied for a sign permit for a cabinet sign added to the upper right portion of the south wall. However, Staff could locate no records of a submitted 2008 or 2009 permit for any sign on the building's south wall. On the other hand, the building permit listings for the site indicate that permits were issued for temporary 64 square foot banners on the building's west wall, on November 19, 2008 and on January 12, 2009 (Permits 08-178847 SR and 09-101813 SR). These permits for a temporary banner on the west wall have no bearing on this request for a Nonconforming Sign Status Determination for the south wall.

Lastly, even if the south wall is determined to be a nonconforming painted wall sign, Staff disagrees that a painted wall sign would be a sign structure, as stated by the applicant. The Sign Code defines a sign structure as, "*A structure specifically intended for supporting or*

containing a sign.” (Section 32.22.020.BBB). A wall does not meet this definition of a sign structure. A wall is specifically intended for supporting a building, and its potential for use as a sign substrate is incidental to its specific purpose as a building support. For that reason, even if the south wall is determined to be a nonconforming painted wall sign, it would not be a sign structure, and the exemption of Section 32.22.020.V would not apply to the fascia sign mounted on the south building wall.

ZONING CODE APPROVAL CRITERIA

32.38.040 Determination of Nonconforming Sign Status Review

A. Purpose. This review determines if a sign has legal nonconforming sign status.

D. Approval criteria. The legal nonconforming status of a sign will be certified if the review body finds that the applicant has shown that the following approval criteria have been met. The applicant must show that the sign meets criteria D.1. and either criteria D.2 or D.3:

1. The sign has not been moved, structurally altered, or increased in size since November 17, 1998; and
2. The sign existed before November 18, 1998; or
3. The sign would have been allowed when established.

Findings: The applicant is requesting a Determination of Nonconforming Sign Status Review, pursuant to Sign Code Section 32.38.040, to determine that the painted pattern on the south wall face has legal nonconforming sign status.

Overview. The current City Code, 33.22.020 FF., defines a Nonconforming Sign as follows:

A sign that was created in conformance with development regulations, but which subsequently, due to a change in the zone or land use regulations, is no longer in conformance with the current applicable development standards. Nonconforming signs also includes signs that do not conform with the land use regulations of this Title and that were established prior to November 18, 1998.”

Section 32.36.030 indicates that to document a Nonconforming Sign an applicant must satisfy the approval criteria set forth in section 32.38.040. In this case approval criteria 32.36.030 D.1 and D.2 must be satisfactorily addressed in order to for the City to grant Nonconforming Sign Status. The findings for these two approval criteria are set forth below.

Criterion D.1.

Criterion D.1 states: “The sign has not been moved, structurally altered, or increased in size since November 17, 1998”

The Hearings Officer finds that the applicant/appellant and BDS staff agree that the painted wall decoration sign has not been moved or increased in size since November 18, 1998. The Hearings Officer finds that the applicant/appellant and BDS staff disagree as to whether the painted wall decoration sign has been structurally altered. The remainder of this D.1 approval criteria discussion shall consider only **whether or not the sign has been structurally altered**. This approval criteria considers the time frame from November 18, 1998 to the present. This approval criteria (as compared to D.2) is not limited to circumstances existing as of November 18, 1998.

The Sign Code (Section 32.22.020.GGG) defines **structural alteration** as:
Modification of a sign, sign structure or awning that affects size, shape, height, or sign location; changes in structural materials; or replacement of electrical components with other than comparable materials. The replacement of wood parts with metal parts, the replacement of incandescent bulbs with light emitting diodes (LED), or the addition of electronic elements to a non-electrified sign would all be structural alterations. Structural alteration does not include ordinary maintenance or repair, repainting an existing sign surface, including changes of message or image, exchanging painted and pasted or glued materials on painted wall signs, or exchanging display panels of a sign through release and closing of clips or other brackets.

BDS staff identified two possible structural alterations: “cabinet sign” (aka the “fascia sign”) and “banner sign.” Applicant/appellant takes the position that neither the “cabinet sign” nor the “banner sign” are structural alterations.

The Hearings Officer first must determine on a methodology of interpretation of 32.22.010 GGG. The Hearings Officer could, at one extreme, interpret 32.22.020 GGG by limiting the only matters constituting a “structural alteration” to be those specifically listed within the definition. At the other extreme the Hearings Officer could interpret the list of matters in 32.22.020 GGG, to be included as “structural alterations” to be merely illustrative of the types of matters that would constitute a “structural alteration.” The Hearings Officer finds that the limiting the scope of 32.22.020 GGG to only those matters listed therein is the proper approach.

The Hearings Officer finds that 32.22.020 GGG does not contain any words of enlargement or expansion. Often times City Council will insert a phrase into an ordinance like “such as” or “includes.” These phrases are often interpreted as words/phrases of enlargement or illustrative application. See *Premier Products Co. v. Cameron*, 240 Or 123, 400 P 2nd 227 (1965) These phrases, in essence allow a decision maker to expand the scope of the ordinance beyond the words or phrases included in the ordinance.

The Hearings Officer finds that the list of matters to be considered as “structural alterations” in 32.22.020 GGG is exclusive and not illustrative. Therefore, the

Hearings Officer limits the inquiry into whether or not the painted wall sign on the south wall of the Subject Property has been structurally altered to the list of matters included in 32.22.020 GGG. The Hearings Officer also finds that matters *not* to be considered structural alterations under 32.22.020 GGG is illustrative. The Hearings Officer finds that what is not a structural alteration is not limited by the list of examples. The word “including,” as used in 32.22.020 GGG, is often interpreted as a word of enlargement. The word “including,” as interpreted by the Hearings Officer in 32.33.020 GGG, suggests that the list of matters is suggestive of the types of activities that are not structural alterations. For example, placing a clear coat sealing material over the painted wall sign not specifically mentioned in the 32.22.020 GGG “not included” list; however, the Hearings Officer would not consider such activity to be a structural alteration.

The Hearings Officer will now address the issue of whether or not a structural alteration to the painted wall sign occurred through (1) the “cabinet sign” and (2) the “banner sign.” The Hearings Officer finds that neither the “cabinet sign” nor “banner sign” are alleged, by either the City or applicant/appellant, to have changed the painted wall sign in size, shape, height or location. The Hearings Officer finds that neither the “cabinet sign” nor “banner sign” added electronic elements to a non-electrified sign, did not replace wood parts with metal parts, and did not replace incandescent bulbs with light emitting diodes (LED). The only remaining item in the list of “structural alterations” is an inquiry into whether or not actions taken by applicant/appellant or other person/entity, after November 18, 1998, is a change in structural material.

32.22.020 HHH. defines “structure” as “any object constructed in or on the ground. Structure includes buildings, decks, fences, towers, flag pole and other similar objects.” 32.22.020 BBB. defines “sign structure” as “a structure specifically intended for supporting or containing a sign.” BDS staff stated, in Exhibit 2a., page 5, that that “a wall does not meet this definition of a sign structure.” The Hearings Officer concurs with this statement. The attachment of the “cabinet sign” and “banner sign”, therefore did not change the “structural material.” As such, the Hearings Officer finds that the actions of attaching the “cabinet sign” or the “banner” are not changes in structural materials.

Because the Hearings Officer finds that the attachment of the “cabinet sign” and the “banner sign” is not included in the list of structural alterations in 32.22.020 GGG. The Hearings Officer finds that the criteria D.1 has been met. The Hearings Officer finds unnecessary to analyze the “cabinet sign” and “banner sign” in the context of what is not considered a “structural alteration” under 32.22.020 GGG. The Hearings Officer also does not find it necessary to engage in the debate raised by BDS and the applicant/appellant of whether the “cabinet sign” is a “fascia sign” or if the hanging sign(s) (see exhibits H.15 and H.16) need additional permitting. This decision relates only to this application; is the painted wall decoration sign entitled to be considered a nonconforming sign?.

Criterion D.1 is met.

Criterion D.2.

Criterion D.1 states: “The sign existed before November 18, 1998”

The Hearings Officer finds that this approval criteria asks a very simple question: Did the sign in question exist on or before November 18, 1998? The staff analysis, as set forth in its Notice of a Type II Decision on a Proposal in Your Neighborhood (Exhibit H.2b), appears to the Hearings Officer to be misdirected. BDS staff, while discussing the status of the sign on or before November 18, 1998, makes its decision based upon the appearance of the south wall of the Subject Property in 2009.

BDS staff, on page 8 of the Staff Decision, states that it “concur[s] that the painted pattern on the south wall existed prior to November 18, 1998.” (Exhibit H.2b). BDS staff concluded that “because the painted pattern on the south wall is difficult to detect from the distances from which it would typically be viewed Staff concludes that the painted pattern on the south wall does not qualify as a nonconforming painted wall sign. Criterion D.2 is not met for the painted pattern on the south wall.” (Exhibit H.2b) This BDS staff statement/conclusion is based upon a current observation of the south wall of the Subject Property.

The Hearings Officer finds, based upon the evidence in the record of this case, that the painted pattern did exist on or before November 18, 1998.

The Hearings Officer finds that the 1997 City Code (in effect prior to the November 18, 1998 date referenced above) defined a “painted wall decoration” as:

“Displays painted directly on a wall which are designed and intended as a decorative or ornamental feature. Painted wall decorations do not contain text, numbers, registered trademarks, or registered logos.” (1997 Portland City Code 33.910)

Pursuant to 33.286.040 (E) painted wall decorations were exempt from sign code regulations.

The Hearings Officer finds, having reviewed photographs submitted by BDS staff (Exhibit H.3) and applicant/appellant (Exhibit A.10) and the summary provided by BDS staff in the Staff Decision (Exhibit H.2b, bottom of page 7 and top of page 8) that dark blue highlighted horizontal and vertical areas are painted directly on the south wall and were intended to be decorative/ornamental features. The Hearings Officer finds that the blue highlighted horizontal and vertical areas painted on the south wall did not contain text, numbers, registered trademarks, or registered logos. The Hearings Officer finds the dark blue highlighted horizontal and vertical areas painted directly on the south wall meet the definition of a “painted wall decoration” and as of November 18, 1998 were exempt from 33.286.040.

The Hearings Officer finds criterion D.2 is met.

Conclusion

The Hearings Officer finds that both 32.38.040 D.1 and D.2 are met. As such, the Hearings Officer finds that the painted wall decoration sign has Nonconforming Sign Status.

III. CONCLUSIONS

The Hearings Officer acknowledges that most reasonable persons would not consider the painted surfaces of the south wall of the Subject Property to be a “sign.” However, the Hearings Officer is not permitted to conduct this review using a reasonable person standard. Rather, the Hearings Officer is obligated to analyze this application and appeal under the approval criteria and definitions promulgated by City Council in the applicable zoning and/or sign codes of the City of Portland. Under the applicable City of Portland zoning and sign codes the Hearings Officer found that the painted pattern on the south wall meets the definition of a painted wall decoration (1997 Zoning Code 33.910) and painted wall sign (32.22.020 II) and that it existed on or before November 18, 1998. The Hearings Officer found that the painted wall decoration sign was not structurally altered (per 32.22.020 GGG); including the attachment of the “fascia sign” and “banner sign.” The Hearings Officer did not address the *current status* of the “fascia sign” (which has been removed per testimony of the applicant/appellant) and “banner sign” (which remains on the south wall of the Subject Property).

The Hearing Officer’s Amended Decision corrects a scrivner’s error in exhibit labeling of the ‘H’ exhibits.

IV. DECISION

1. The Hearings Officer overturns the February 13, 2009 Administrative Decision and finds that the painted pattern on the south wall face of the Subject Property has Nonconforming Sign Status.
2. The appellant prevailed in this appeal.

Gregory J. Frank, Hearings Officer

Date

Application Deemed Complete: December 15, 2008
Report to the Hearings Officer: March 27, 2009
Decision Mailed: April 24, 2009

Amended Decision Mailed: April 28, 2009
Last Date to Appeal: May 19, 2009

Appealing this decision. The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearings Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

Recording the final decision.

If this land use review is approved, the final decision must be recorded with the Multnomah County Recorder.

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. This approval may expire 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.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
 - 1. Narrative submitted June 18, 2008, with attached Exhibits 1 through 7
 - 2. Narrative addendum submitted December 15, 2008, with attached Exhibits A through E
 - 3. Applicant's written response, dated January 9, 2009, to the Crestwood Neighborhood Association comment letter
 - 4. Applicant's request to stop the 120-day clock from January 9, 2009 to February 9, 2009
 - 5. Narrative addendum submitted February 6, 2009
 - 6. Narrative addendum submitted February 9, 2009
- B. Zoning Map (**attached**)
- C. Plans/Drawings: (**8 ½ x 11 attached**)
 - 1. Site Plan
 - 2. Elevations
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Life Safety Plan Review Section of BDS
 - 2. Water Bureau
 - 3. "No concerns" responses from Transportation Engineering and Development Review, Fire Bureau, Site Development Review Section of BDS, Bureau of Parks - Forestry Division
- F. Correspondence:
 - 1. John Prouty, President of Crestwood Neighborhood Association, expressed opposition to the request.
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. BDS Staff Correspondence to Applicant, dated June 26, 2008
 - 4. BDS 180-Day Warning Letter to Applicant, dated November 14, 2008
 - 5. Photo of South Wall, dated March 1, 2008, from Violation File 08-112777
 - 6. BDS Staff Photos of South Wall taken from abutting site to the west, dated January 6, 2009
 - 7. BDS Staff Photos of South Wall taken from SW corner of site and from ODOT r-o-w to the southwest of the site, dated January 13, 2009
 - 8. BDS Staff Photos of South Wall taken from SW Barbur Blvd and SW Capitol Hwy, dated February 12, 2009
- H. Received in the Hearings Office:
 - 1. Hearing Notice - Savin, Suzanne
 - 2. Appeal form - McKinney, Susan
 - 2a. Letter from appellant's attorney - McKinney, Susan
 - 2b. Staff decision - McKinney, Susan
 - 3. PowerPoint - Savin, Suzanne
 - 4. Report dated 12/15/08 - Rich, Christopher W.

5. Chapter 33.286 Sign Code dated 7/1/97 - Rich, Christopher W.
6. Code section on Definitions dated 11/14/97 - Rich, Christopher W.
7. Copy of Court Decision dated 11/13/98 - Rich, Christopher W.
8. Temporary Sign Permit form w/duplicate set attached - Rich, Christopher W.
9. Sign Permit Application w/duplicate set attached - Rich, Christopher W.
10. Copy of email from Millard to Peterson dated 2/29/08 - Rich, Christopher W.
11. Zone Affidavit w/photo attached - Rich, Christopher W.
12. #1 Certification of local jurisdiction form w/photo - Rich, Christopher W.
13. #2 Certification of local jurisdiction form w/photo - Rich, Christopher W.
14. Photo - Rich, Christopher W.
15. Copy of Staff's Exh. G-5 (photo) - Rich, Christopher W.
16. Photo - Rich, Christopher W.
17. Photo - Rich, Christopher W.
18. Photo - Rich, Christopher W.
19. Letter from Rich to Savin dated 1/9/09 - Rich, Christopher W.
20. Letter from Rich to Savin dated 2/6/09 w/attachments - Rich, Christopher W.
21. Letter to Hearings Officer dated 4/13/09 - Rich, Christopher W.

