



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

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: May 29, 2009
To: Interested Person
From: Kathleen Stokes, Land Use Services
503-823-7843 / kstokes@ci.portland.or.us

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 09-120544 NU

GENERAL INFORMATION

Applicant: David Young, Umbriel Ventures LLC
11517 General Wadsworth Drive
Spotsylvania, VA 22551

Tish Stoebner (current property owner)
131 NE 24th Avenue
Portland, OR 97232-3109

Representative: Renee M France, Ball Janik LLP
101 SW Main Street, Ste 1100
Portland, OR 97204

Site Address: 1620-1624 SE Hawthorne Boulevard

Legal Description: EXC NLY 5' IN HAWTHORNE BLVD W 2 1/2' OF LOT 19 BLOCK 19
EXC NLY 5' IN HAWTHORNE BLVD LOT 20 BLOCK 19, LADDS ADD

Tax Account No.: R463304170
State ID No.: 1S1E02DB 11500
Quarter Section: 3232

Neighborhood: Hosford-Abernethy, contact Kina Voelz at 971-207-9243.
Business District: Hawthorne Blvd. Bus. Assoc., contact Karin Edwards at 503-230-0087.
District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.

Zoning: R1 (R1,000, Medium Density Multi-dwelling Residential)
Other Designations: Ladd's Addition Historic District (noncontributing structure)

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

Proposal: The applicant is proposing to locate a retail sales use (yarn store) in the existing building on this site. The R1 zoning designation only allows residential uses, but when it can be documented that a commercial use was legally established in a residential zone and has continued to operate legally, overtime, it is recognized as a legal nonconforming use. In such cases, the use may continue and, when approved through a Nonconforming Situation Review,

the use may expand or it may be changed to another type of use that is not allowed in the zone. This site previously was determined to have legal nonconforming use status for an office use, with an accessory manufacturing use (recording studio). A portion of the building was subsequently converted to residential use. Once a conforming use is established, it cannot be replaced with a nonconforming use, as the nonconforming rights for that portion of the site are lost. The current proposal is to maintain the existing residential unit and convert use of the remainder of the building from office and manufacturing to retail sales and service.

Details regarding the previous use on the site are not readily available. It is known that the use was discontinued in 2008, which is within the three-year time limit to retain nonconforming use status. The applicant states that the average hours for office uses are generally from 9 AM to 6 PM. While many offices are open only five or six days per week, the applicant understands that the associated recording studio was actively used in the evenings and on weekends, when the office may have been closed to the general public. Therefore the hours of operation appear to have exceeded those of a standard office. The office had two regular employees. It is not known if any additional employees were associated with the recording studio.

The yarn store is expected to have two employees and have hours of operation that would be from 10 AM to 6 PM, Tuesday through Saturday and 12 PM to 5 PM on Sunday. Small knitting classes would be offered, with a planned schedule of approximately three classes per week for up to six students per class. The classes would generally be during regular weekend business hours, but some could be scheduled in the evening hours, after the shop closes. Four parking spaces, including one accessible space will be offered, with restriping in the existing nonstandard parking area that is located between the south edge of the building and the alley. No other external changes are proposed for the site.

Relevant Approval Criteria: Nonconforming Situation Review, Code Section 33.258.080 B.

ANALYSIS

Site and Vicinity: The applicant's site is a 5,228 square-foot parcel that is located on the south side of SE Hawthorne Boulevard, one lot to the east of the intersection with SE 16th Avenue. The property is developed with a 1.5-story, 3,546 square-foot commercial building that was constructed in 1954. The rear of the property abuts an alley which provides access to onsite parking spaces and a covered loading dock at the rear of the building. The building has an earth-tone stucco finish that helps to blend with the older structures on the block, mainly residential apartments from the 1920s.

Two other commercial buildings are located on the east end of the block. An Ace Hardware Store is located in the R1 zone, one lot to the west of the intersection with SE Poplar Avenue, in a single-story building that was constructed in 1949. This building is set back at the rear of the lot, with a landscaped area and pedestrian amenities fronting onto SE Hawthorne. At the end of the block, on the south side of Hawthorne and the west side of Poplar Avenue, there is a 1929 commercial building with several small shops, that is located in the Storefront Commercial (CS) Zone. Development on the north side of the street includes residential apartments on either side of 16th Avenue, in an area of RH zoning. The remainder of the street, from the midblock alley, east of 16th to SE 18th, is developed with commercial buildings, in the R1 zone, that have a variety of small office and storefront retail uses. South of the site, the Ladd's Addition Historic District contains mainly residential development, including many significant vintage single-dwelling homes.

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, with 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). Allowed housing is characterized by one to four story buildings and a higher percentage of building coverage than in the lower density multi-dwelling zones. The major type of new housing will be condominiums and apartments, duplexes, townhouses, and rowhouses.

Generally, R1 zoning is applied near neighborhood collector and district collector streets, and local streets adjacent to commercial areas, or major streets. Nonconforming commercial uses in the R1 and other residential zones may continue, and may also change to other uses that are prohibited in the zone, when approved through a Nonconforming Situation Review. This site is also located within the boundaries of the Ladd's Addition Historic District. Historic Districts apply the Historic Resource Protection Overlay Zone to areas that include a collection of individual resources that are of historical or cultural significance at the local, state or national level.

Land Use History: City records include the following prior land use reviews for this site:

LU 03-175563 HDZ 2003 approval of Historic Design Review for exterior alterations, including replacement of windows, application of a stucco finish and a sign of approximately 32 square feet. Approval was subject to the approved plans and drawings.

LU 07-101866 HDZ 2007 approval of Historic Design Review for the addition of four rooftop mechanical units, to be screened with parapets comprised of horizontally-oriented metal louvers, painted to match the primary façade, and a metal top cap, painted to match the storefront and trim, per the approved site plan and drawings.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **May 1, 2009**. The following Bureaus have responded with no issues or concerns:

- Environmental Services stated that there were no concerns with approval of the proposal, as long as there were no changes to the existing parking area, other than restriping of the parking spaces (Exhibit E-1)
- Transportation Engineering noted that the proposed retail use as a yarn shop would likely have very similar impacts to the previous use and so Transportation has no objection to approval of the proposal (Exhibit E-2).
- Water Bureau provided information on available water services for the property and stated that there is no objection to approval of the proposed use (Exhibit E-3).
- Site Development Section of BDS stated that there were no concerns with approval of the proposal, as long as there were no changes to the existing parking area, other than restriping of the parking spaces (Exhibit E-4).
- Life Safety Plan Review Section of BDS noted that a building permit is required for the proposed interior alterations and did not state any objections to the proposed use (Exhibit E-5).
- Parks-Forestry Division provided an electronic response that indicated that there are no concerns related to approval of the proposed use.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 1, 2009. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

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

B. Change of Use A change to a use in a different use category which is prohibited by the base zone may be allowed through a nonconforming situation review.

Nonconforming use status for this site and purposes for review requirements: This proposal is to use the existing structure for a yarn shop, which is classified as a retail sales and service use. No changes are proposed to the development on the site, other than some interior alterations to the building and restriping the spaces in the parking area.

Previous City records have acknowledged the status of nonconforming rights for this site. The zoning map history shows that the base zone designation of R1 has existed on the site since January 1, 1981. The City recognized that various occupants used the property for an office use from 1981 to 1990. The applicant provided documentation that showed that the last previous nonconforming use, an office for a compact disc and printing sales company, with an accessory recording studio, occupied the site, from 1990 until 2008. Building permits were issued in 2005 to convert a portion of the building add a residential dwelling unit of approximately 839 square feet. The applicant proposed to retain the existing dwelling unit. Therefore, the applicant has the right to legal nonconforming status for the remainder of the site, according to Code Section 33.258.050, and also has the right to request a change of use to another prohibited use in a different use category.

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 following are comparisons of the proposed operations and the most recent situation for the site:

The proposed hours of store operation are Tuesday through Saturday, from 10:00 AM to 6:00 PM, and Sunday, from 12:00 Noon to 5 PM. Approximately three knitting classes, with an average of six students per class, would be offered each week. These classes would generally be held during the regular business hours. Two employees are planned for the operation of the proposed business. The previous office use (Terrestrial Records) included an accessory use as a recording studio. The applicant explained that the exact hours of operation of that business are unknown, but noted that typical office hours are weekdays from 9:00 AM to 6:00 PM. The office may also have been open on Saturdays. The recording studio apparently was available for client use at many off-hour times,

including evenings and weekends. The applicant states that the previous use included two employees. Therefore, there will be no increase in the number of employees or in the overall hours for the site and could be a decrease in hours, especially in the evening hours that were associated with the recording studio.

The applicant provided information prepared by a transportation engineering firm (Kittleson and Associates, Inc.) that compared potential vehicle trips from a "worst case" office use, such as a Doctor's or Dentist's office, to a "worst case" retail use, such as a retail shopping center. This comparison showed the "worst case" office use would generate more peak hour trips than the "worst case" retail use. The Kittleson memorandum noted that these comparisons are not closely related to the previous office use or the proposed retail use, but offered that they might be used as a general analysis of the types of uses that could have located on the site, by right, in comparison to the extent of impact that could occur with the applicant's proposed use. Staff considers that the site would not be likely to accommodate either of the "worst case" scenarios presented by Kittleson, but finds it reasonable that the proposed retail sales and service use will not be likely to generate appreciably more traffic or parking impacts than the previous office use. If the retail sales and service use is approved only for the specific proposed retail use (yarn store) and any other retail use that proposes to locate at the site is required to be analyzed through a subsequent Nonconforming Situation Review, then this portion of this criterion can be met.

No noticeable impacts from noise, vibration, dust, odor, fumes, glare or smoke are expected from the proposed use, as all operations are contained within the building. The proposed use is not likely to generate any litter. No information is available on impacts from these sources for the previous use. From this, it can at least be deduced that there will be no increase in impacts on the residential area.

Signs for the proposed use will meet the requirements of Title 32, the Portland Sign Code and the Design Guidelines for the Ladd's Addition Historic District. Any significant changes to signs or any other exterior modifications to the building will require approval through Historic Design Review, as occurred with the previous use.

Summary: The impacts on the surrounding residential area will not increase as a result of the change from the previous office use to a retail sales and service use as the proposed yarn shop. In fact, the overall operation and character of the yarn shop will fit more easily into the residential neighborhood. There may be occasional weeknight or weekend classes, but none are planned at this time and the regular hours of operation will decrease. Traffic is not expected to increase and most likely would decrease with this specific use. The on-site parking will accommodate the clients and staff and so there should be no impacts on the availability of street parking in the surrounding area. There is expected to be either no change or a decrease in impacts from noise, vibration, dust, odor, fumes, glare, smoke and litter.

No outside displays, storage or activities are proposed. The character of the building will be retained, as previously approved through Historic Design Reviews in 2003 and 2007. Therefore, with the condition that only this specific use (yarn shop) is approved through this review, these criteria can be 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: No changes are proposed to the development on the site, other than interior reconfiguration of commercial space and restriping of the existing parking area to meet size standards for the parking spaces. Therefore, the appearance of the development that serves the proposed new 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 change of use from office to retail sales and service, for the proposed yarn store, will not result in a net increase in overall detrimental impacts on the surrounding residential area. The hours of operation are not proposed to increase and the hours and projected numbers of employees and customers, is likely to generate the same or fewer peak hour vehicle trips and less noise, odors and litter than the previous use. There will be no fumes, vibration or dust. No outdoor displays, storage or activities are associated with the proposed use. No physical changes are proposed that would detract from the residential character of the area. All of the relevant approval criteria can be met and the proposed change of nonconforming use can be approved, with the condition that the use is permitted only as the proposed yarn shop.

ADMINISTRATIVE DECISION

Approval of a Nonconforming Situation Review to allow a change of use from office to retail sales and service, for the proposed yarn shop, as described in the proposal for this review and in general compliance with the approved site plan, Exhibit C-1, signed and dated May 27, 2009, and subject to the following conditions:

- A. As part of the building permit application submittal, the following condition (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 09-120544 NU."
- B. This approval is only for the proposed use as a yarn shop. The existing residential unit, with an approximate size of 839 square feet, must be retained. The location of any other commercial use on this site, including any other use in the retail sales and service use category, requires approval through another nonconforming situation review.

Staff Planner: Kathleen Stokes

Decision rendered by:  **on May 27, 2009.**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 29, 2009

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on April 10, 2009, and was determined to be complete on May 29, 2009.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on April 10, 2009.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

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 12, 2009** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 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 at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **June 15, 2009 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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

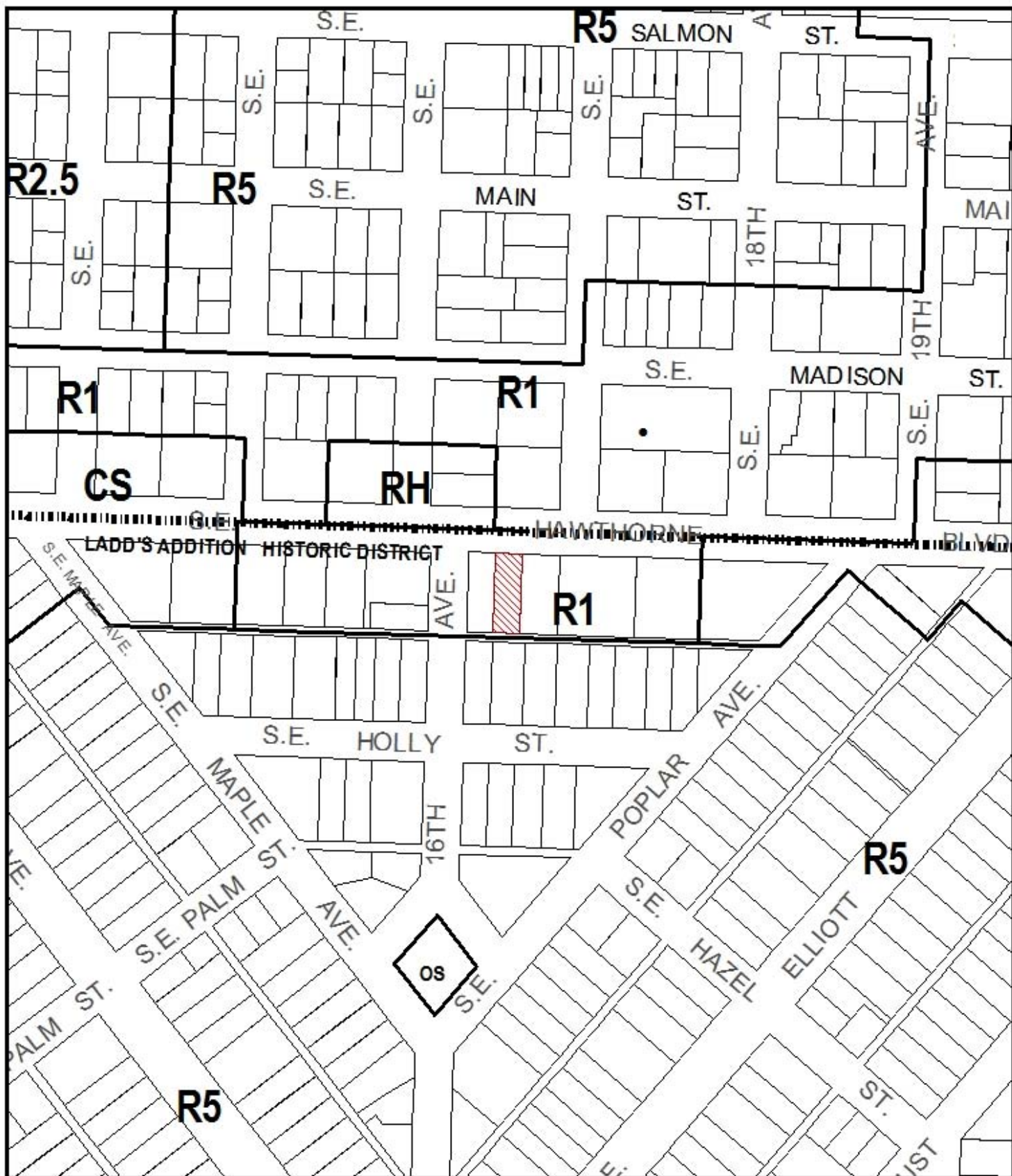
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED


- A. Applicant's Statement
 - 1. Application, nonconforming status documentation, narrative and map
 - 2. Addendum, site plan and conceptual floor plan, received April 28, 2009
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Conceptual Floor Plan
 - 3. Elevation Drawing
- 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. Site Development Review Section of BDS
 - 5. Life Safety Plan Review Section of BDS
 - 6. Agency responses printout of electronic data sheet
- F. Correspondence: (none received)
- G. Other:
 - 1. Site History Research
 - 2. Letter from Kathleen Stokes to Renee France, April 23, 2009

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-7300 (TTY 503-823-6868).



ZONING

 Site

 Historic Landmark

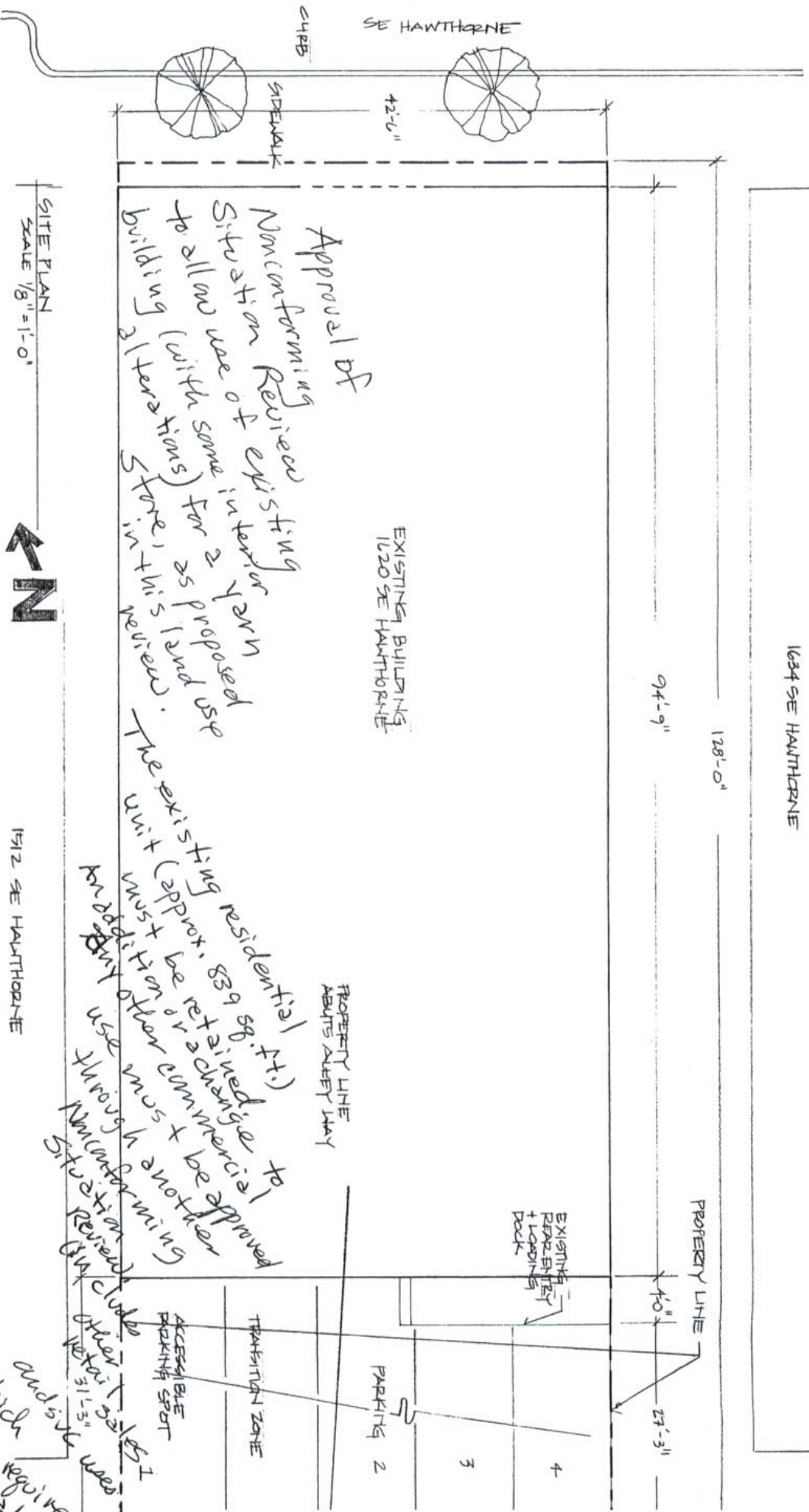


This site lies within the:
LADD'S ADDITION HISTORIC DISTRICT

File No.	LU 09-120544 NU
1/4 Section	3232
Scale	1 inch = 200 feet
State Id	1S1E02DB 11500
Exhibit	B (Apr 14, 2009)

RECEIVED
 APR 28 2008
 BY

1634 SE HAWTHORNE



SITE PLAN
 SCALE 1/8" = 1'-0"



1512 SE HAWTHORNE

Approval of
 Nonconforming
 Reviewed
 Situation of existing
 to allow use of existing
 (with some) for 2 proposed
 building alterations.
 Space in this review.

EXISTING BUILDING
 120 SE HAWTHORNE

PROPERTY LINE
 ADJUTS ALLEY WAY

The existing residential unit (approx. 839 sq. ft.) must be retained to be used for other commercial use. Other commercial use must be approved through another nonconforming situation review. Other uses 31'-3" and side uses which also require additional review.

Other uses 31'-3" and side uses which also require additional review.

Approved

City of Portland - Bureau of Development Services

Prepared by Ruthleen A. Stokes Date May 27, 2009

This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.