



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

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Date: February 22, 2010
To: Interested Person
From: Sylvia Cate, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in 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 09-174736 NU

GENERAL INFORMATION

Applicant: Ravinder Singh and Sandeep Kaur, Property Owners
6839 SE 135th Ave
Portland, OR 97236-4999

Representative: Carter Case, Designer and Main Contact
1314 NW Irving #203
Portland, OR 97209
503 863 4235

Site Address: 1739 SE 139TH AVE

Legal Description: LOT 2, PARTITION PLAT 1996-17
Tax Account No.: R649760660
State ID No.: 1S2E02DA 11305
Quarter Section: 3244

Neighborhood: Hazelwood, contact Arlene Kimura at 503-252-9429.
Business District: Midway, contact Bill Dayton at 503-252-2017, Gateway Area Business Association, contact Fred Sanchez at 503-256-3910.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Zoning: R5a: Single Dwelling Residential 5,000 with Alternative Design Density overlay

Case Type: NU, Nonconforming Use
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The site is developed with a one-story storefront that is 960 square feet in area. The applicant proposes a one story 540 square foot addition to the back of the store to provide additional area for a walk-in cooler and an accessible restroom. No retail floor space is being added. Because the store is a nonconforming use, the proposed addition triggers a nonconforming use review

in order to expand the store as proposed. Attached to this notice is a site plan and elevation depicting the proposed addition.

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 1 through 3

ANALYSIS

Site and Vicinity: The site is a relatively flat parcel that is 8215 square feet in size and developed with a 'free standing store' built in 1927. The site and immediate area was zoned R5 in 1959. The area was annexed into the City of Portland in June 1994; the 'a' overlay zone was added in 1996 via the Outer Southeast Community Plan. Directly across the street from the store is a large parcel developed with a church and associated structures. The balance of the immediate area is zoned R5a, and is developed with residential uses.

Zoning: The R5 zone is a high density single-dwelling zone. The R5 zone allows attached and detached single-dwelling structures and duplexes. The purpose of the Alternative Design Density Overlay Zone is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements.

Land Use History: City records indicate there are prior land use reviews for this site, including a variance for signage and a Minor Partition. None of the prior land use reviews have bearing on the current proposal, except for inclusion of findings describing the store.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **January 19, 2010**. The following Bureaus have responded with no issues or concerns:

- Water Bureau notes no objection and that water is available to serve the site.
- Fire Bureau
- Site Development Section of BDS notes no objections, and included comments pertinent to building permit review.
- Bureau of Parks-Forestry Division

The Bureau of Environmental Services responded with no objections to the proposed expansion, and included comments pertinent to building permit review.

The Bureau of Transportation Engineering did not respond.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on January 19, 2010. One written response has been received from the Neighborhood Association in response to the proposal, noting no objections to the proposal and suggesting that the existing parking area could use landscaping to help soften its appearance and help with stormwater management. *Note:* at time of building permit review, any necessary nonconforming upgrades will be required if the value of the project meets the required threshold for upgrades.

ZONING CODE APPROVAL CRITERIA

33.258.010 Purpose

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.

This chapter provides methods to determine whether situations have legal nonconforming status. This is based on whether they were allowed when established, and if they have 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. In contrast, nonconforming residential developments in residential zones are treated more liberally because they do not represent a major disruption to the neighborhood and they provide needed housing opportunities in the City.

33.258.075 Determination of Legal Nonconforming Status Review

- A. Purpose.** This review will determine if a use or site has legal nonconforming situation rights. In addition, it will determine what the current legal use is, based on the use categories in Chapter 33.920.
- B. When this review is required.** Determination of Legal Nonconforming Status Review is required where a land use review or building permit is requested, and the applicant does not provide standard evidence or the Director of BDS does not find the evidence to be satisfactory. (See 33.258.038). This review also may be requested by an applicant when it is not required.
- C. Procedure.** Determination of Legal Nonconforming Status Reviews are processed through a Type II procedure.
- D. Approval criteria.**
 - 1. The legal status of the nonconforming situation will be certified if the review body finds that:
 - a. The nonconforming situation would have been allowed when established; and
 - b. The nonconforming situation has been maintained over time.
 - 2. The review body will determine, based on the evidence, what the current legal use is, using the definitions in Chapter 33.910 and the use categories in Chapter 33.920.

Findings: The original store structure was built in 1927, long before zoning was established in this area. Therefore, the store is presumed to have been allowed when established, because there were no zoning regulations that prohibited this use in 1927.

The records of Multnomah County and the City of Portland indicate that R5 zoning was applied circa 1959 and remained in place on the site even after annexation into the city in 1994. In 1996, the 'a' overlay was added via the Outer Southeast Community Plan. The applicant has submitted evidence, including business licensure and phone book records demonstrating that the store continued to operate from 1960 until present day, without a break in operations.

Therefore, based on the evidence in the record, the site has legal nonconforming status for retail sales and service on the site.

33.258.080 Nonconforming Situation Review

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

Findings: This administrative decision is processed as a Type II Land Use Review, with a local appeal to the Hearings Officer. This requirement is met.

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;

Findings: The applicant proposes that the current hours of operation, 8:00 AM until 9:00 PM will not change. This criterion is met.

b. Vehicle trips to the site and impact on surrounding on-street parking;

Findings: The additional floor area will be for a walk-in cooler and ADA compliant restroom. No retail floor space is being added. Therefore, nothing about the proposed expansion is anticipated to increase vehicle trips to the site. The store has on-site parking, and therefore there is nothing about the proposed expansion that is anticipated to have an impact on the surrounding on-street parking demand. The proposed expansion is at the back of the building and will not reduce the size of the on-site parking area. This criterion is met.

c. Noise, vibration, dust, odor, fumes, glare, and smoke;

Findings: There is nothing about the proposed expansion for an ADA restroom and walk-in cooler that is anticipated to create any additional noise, vibration, dust, odor, fumes, glare or smoke. The proposed expansion will have an insignificant impact. Therefore this criterion is met.

d. Potential for increased litter; and

Findings: There is nothing about the proposed expansion for an ADA restroom and walk-in cooler that is anticipated to create any additional potential for litter. This criterion is met.

e. The amount, location, and nature of any outside displays, storage, or activities; and

Findings: No outside displays storage or activities are proposed. 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: The site is in a Single Dwelling Residential zone. The proposed expansion of the building is entirely behind the store and well outside any setbacks. The store itself will get a facelift and have an improved appearance. The result of the expansion will have no apparent affect on the scale of the store, and it will not reduce the existing parking available on site. Lighting and signage for the store will meet current City regulations. The proposal, as a whole, will result in an enhanced appearance and new landscaping as shown on the submitted plans. There is no anticipated impact on the residential character of the immediately surrounding area. 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 site is within the R5a zone, therefore this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant requests approval to expand the footprint of an existing nonconforming retail store to allow the development of an ADA compliant restroom and an additional walk-in cooler. No portion of the expanded floor area will be used for retail sales, but for refrigerated storage of products as well as an accessible restroom for customers. The proposal meets all of the applicable approval criteria and therefore should be approved.


ADMINISTRATIVE DECISION

Approval of:

A nonconforming situation review in order to develop a one story 540 square foot addition to the back of the store to provide additional area for a walk-in cooler and an accessible restroom, per the approved site plans, Exhibit C-1, signed and dated February 18, 2010, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-174736 NU."

Staff Planner: Sylvia Cate

Decision rendered by:  **on February 18, 2010**

By authority of the Director of the Bureau of Development Services

Decision mailed: February 22, 2010

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 December 2, 2009, and was determined to be complete on January 14, 2010.

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 December 2, 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. Unless further extended by the applicant, **the 120 days will expire on: May 14, 2010.**

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 March 8, 2010** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. 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 call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the 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 **March 9, 2010 – (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:

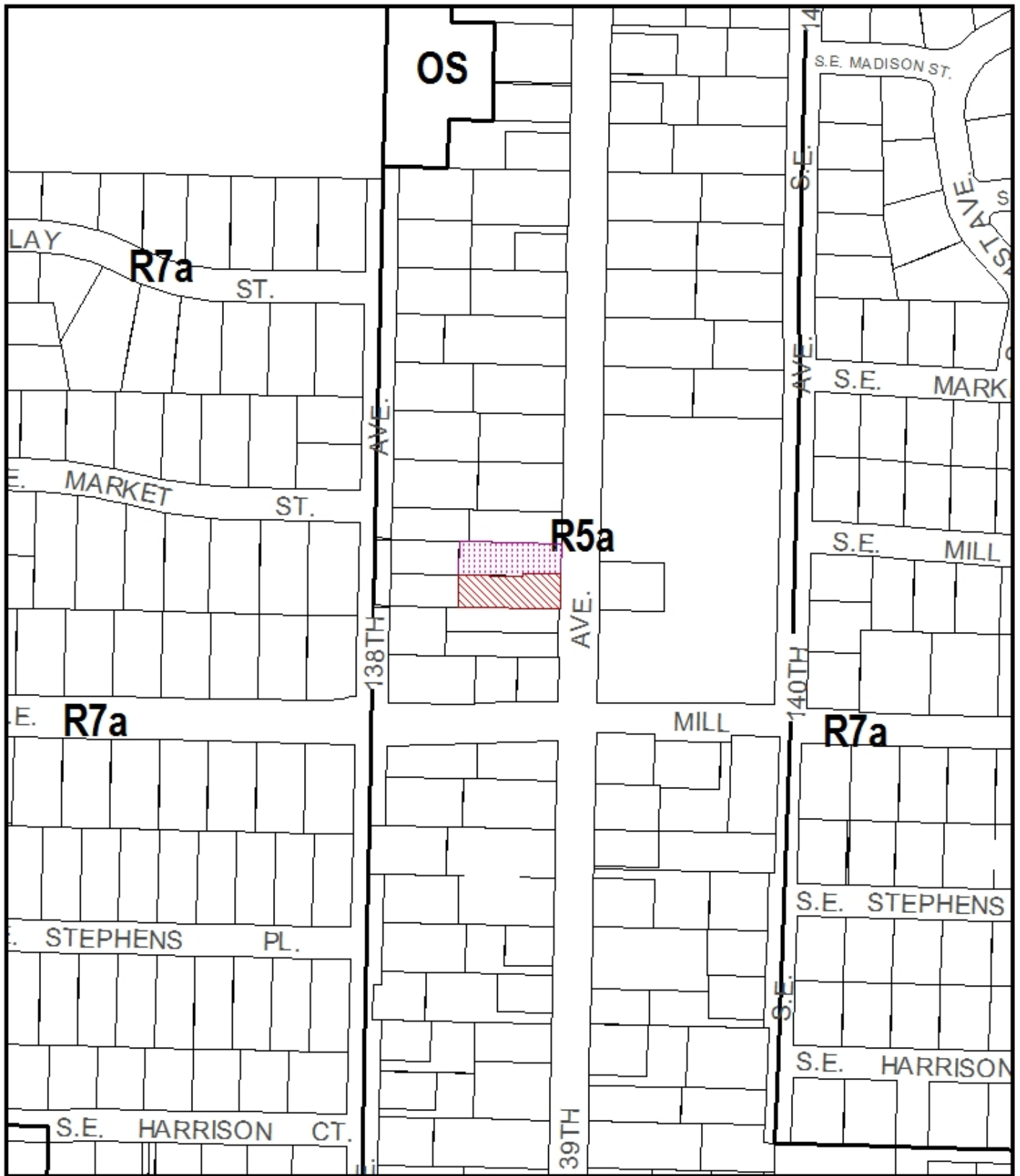
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation East
 - 3. Elevation North
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. A Kimura: Hazelwood Neighborhood Association, February 9, 2010, no objection
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete Letter to applicant; December 17, 2009

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).

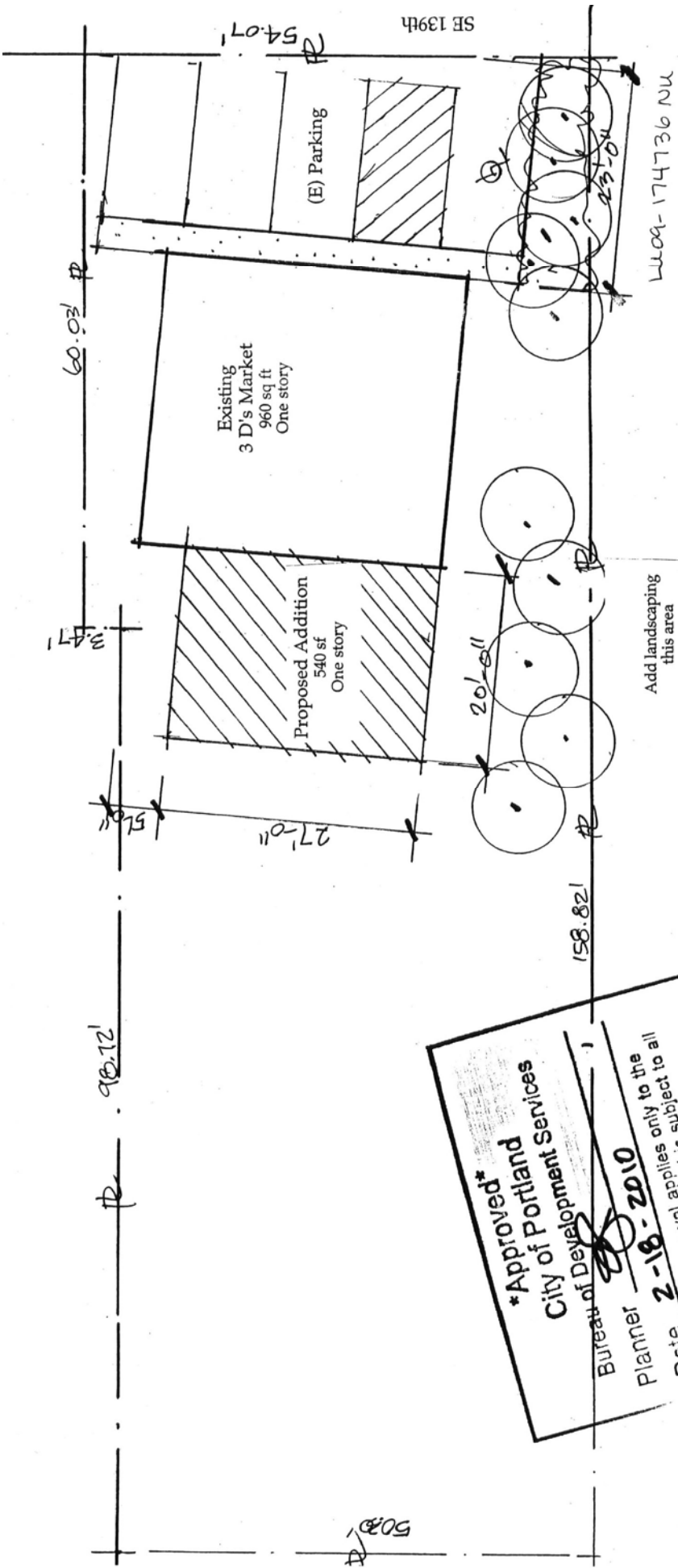


ZONING

-  Site
-  Also Owned



File No. LU 09-174736 NU
 1/4 Section 3244
 Scale 1 inch = 200 feet
 State_Id 1S2E02DA 11305
 Exhibit B (Dec 07, 2009)



Site Plan

3D's Market Expansion
1739 SE 139th
Portland, Or

Approved
 City of Portland
 Bureau of Development Services
 Planner *[Signature]*
 Date **2-18-2010**
 * This approval applies only to the
 reviews requested and is subject to all
 zoning requirements may apply.

Exhibit C-1