



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** December 1, 2011  
**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 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 11-156870 NU**

#### **GENERAL INFORMATION**

**Applicant:** Terry R and David Collier  
PO Box 2205  
Vancouver, Wa 98668-2205

**Representative:** Bruce Vincent, Bedsaul/Vincent Consulting, Llc  
416 Laurel Ave #3  
Tillamook OR 97141

**Site Address:** 5202-5204 N ALBINA AVE

**Legal Description:** S 33 1/3' OF LOT 17&18 BLOCK 2 SUB TRACT K, M PATTONS & SUB  
**Tax Account No.:** R520705070  
**State ID No.:** 1N1E22BA 09400  
**Quarter Section:** 2529  
**Neighborhood:** Humboldt, contact Brian Murtagh at 503-962-9194.  
**Business District:** North Portland Business Assoc, contact Jim Schaller at 503-517-9915.  
North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321.  
**District Coalition:** Northeast Coalition of Neighborhoods, contact Shoshana Cohen at 503-823-4575.  
**Zoning:** R1a (R1,000, Medium Density Multi-Dwelling Residential, with an Alternative Design Density Overlay)  
**Case Type:** Nonconforming Situation Review  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

**Proposal:** The applicants are requesting recognition of legal nonconforming use status for a Manufacturing Use for this site and also requesting approval of a change from Manufacturing to Retail Sales and Service. These uses are prohibited in the R1 residential zone, but may be allowed under the regulations for Nonconforming Uses, found in the Portland Zoning Code in Section 33.258. Legal nonconforming uses are uses that were allowed when established, either by right or through a land use approval, but then subsequently, due to a change in the zone or zoning regulations, are now prohibited in the zone. When an applicant can show that a use was allowed when established and has been maintained over time, without a continuous gap of more than three years, it can be recognized as having Legal Nonconforming Use status. When this status is recognized, the use may continue on the site or it may be changed to another

prohibited use in the same use category. It may also be changed to another prohibited use in another use category, when it is approved through a Nonconforming Situation Review.

The retail use that is being proposed for the site at this time is a store that sells vinyl musical recordings (records). A small in-house coffee shop may also be included. The hours of operation would be from 12 Noon until 7 PM, daily. There would be 2 employees and as many as 6 customers an hour might visit the store. If all of these were in single-occupant motor vehicles, this could result in a potential of 88 trips, counting both arrivals and departures. (It should be noted that this is a worst case estimate. It is unlikely that there would be no use of alternative transportation modes and that all of the customers would arrive in single-occupant motor vehicles).

**Relevant Approval Criteria:** Nonconforming Situation Review, 33.258.080 B.

## ANALYSIS

**Site and Vicinity:** The applicants' site is a 3,333 square-foot property that is located on the northwest corner of N. Albina Avenue and N. Sumner Street. The site is developed with a single-story building, with a basement, that is classified by Multnomah County as a, "free standing store," and was constructed in 1913. The building is structured in a way that provides the potential for either one or two primary tenants. A driveway on the east side of the building provides room for one to two parking spaces. The area around the site includes a variety of uses. Some retail operations, including a small grocery store and a bar, are located across N. Sumner on a property that is also residentially zoned. The western boundary of the Jefferson High School campus is located one block to the east. A small open space, owned by the City of Portland is directly across the street, on the southeast corner of the intersection. The majority of the remaining uses within a couple of blocks of the site are devoted to residential uses. There are a few multi-dwelling uses, but the bulk of the development consists of single-dwelling residences that were built in the early 1900s.

**Zoning:** The site is zoned R1, or R1,000, 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 density on some sites, when the proposed development meets Community Design Standards or is approved through Design Review. The regulations of the "a" overlay only apply to residential uses and development.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **October 7, 2011**. The following Bureaus have responded with no issues or concerns. Agencies that provided written comments on requirements for any permits that may be needed are noted with exhibit numbers:

- Bureau of Environmental Services
- Transportation Engineering noted that system development charges may be assessed. Any changes to driveways or curbcuts must meet the requirements of Title 17 (Exhibit E-1).
- Water Bureau provided information on the existing water service for the site and requirements for any modifications to the existing service (Exhibit E-2).
- Fire Bureau noted that a building (occupancy) permit is required for any proposed change of use (Exhibit E-3).
- Site Development Section of BDS
- Life Safety Plan Review Section of BDS also noted the requirements to review occupancy permits for the proposed use and to ensure that the building code requirements are being met (Exhibit E-4).
- Parks-Forestry Division

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on October 7,

2011. A total of three written responses have been received from notified property owners in response to the proposal. Two of the letters expressed support of the proposal and asked that the review be approved to allow the record store and coffee shop to locate at the site (Exhibits F-1 and F-2). The third letter expressed opposition to approval of the proposal, noting concerns regarding potential impacts from parking, littering and street and sidewalk congestion. The neighbors who wrote this letter stated that they had lived in the neighborhood for over 31 years and had experienced these types of impacts from the other businesses that had located in the vicinity, that they had worked hard to address problems in the neighborhood and did not want to see an increase in traffic and littering or blocking the use of sidewalks from outdoor activities or displays (Exhibit F-3).

## **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 non-complying 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 (at least in part) for a record store, with an accessory coffee shop, which is classified as a retail sales and service use. A portion of the building may be used for manufacturing and production, which would be a continuation of the same use category that has historically occupied the building. No changes are proposed to the development on the site, other than any needed interior alterations to the building.

The site was zoned commercial (C-2), prior to 1980. From 1980 to the present, the zoning has been R-1, or R1, 000, Medium Density Multi-Dwelling Residential. The applicants provided information on the historical use of the property, prior to the 1980 zone change. The uses included a variety of retail stores and small manufacturing uses. For the years after 1980, the applicant provided copies of lease agreements, a purchase agreement, County Tax records and personal affidavits that show the property has continued to be in commercial or industrial use. The documentation provided by the applicants shows that the use of the site, from 1978 to 2010, was for a manufacturing use. Therefore, the applicants have the right to legal nonconforming status, 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 record store, which would be relocating from another site, proposes to maintain their current hours of operation, from 12:00 Noon to 7:00 PM, daily. The business generally has an average of 6 customers per hour. Two employees are planned for the operation of the proposed business.

Collier Products made and sold kaleidoscopes at this site for 17 years. The business was open from 7:00 AM to between 4:00 to 5:00 PM, five days per week, and had four to nine employees. Sales were mostly wholesale, though there were some direct sales. The numbers of clients varied and included group tours that involved about 10 to 20 people at a time. A T-shirt manufacturer occupied the space during the past five years. This business operated between 8:00 AM and 6:00 PM, weekdays, and had three to four full-time employees. A small retail counter was included at the front of the shop but no information was available on the numbers of customers that visited the shop. The applicants indicated that economic conditions forced the business to close during the past year.

Vehicle trips, to and from the site for the record store are anticipated to be at a maximum of 88 trips per day, including both customers and staff. The applicants state that the trips will be spread throughout the business day. The previous uses generated customer trips of about 8 to 9 trips per day. Employees generally arrived in single-occupancy vehicles, so they added from 4 to 9 trips to both the AM and the PM peak hours. These manufacturing businesses also had regular pickup and deliveries from UPS and other small commercial vans.

No noticeable impacts from noise, vibration, dust, odor, fumes, glare or smoke are expected from the proposed use, as all operations will be contained within the building. The property owners have responded to neighbors' concerns by sending a statement to the City that indicates that they will make a condition of the lease and/or sale of the property that no outdoor seating or displays or other activities will be allowed. With this caveat, the proposed use is not likely to generate any litter or sidewalk congestion. No information is available on impacts from these sources for the previous use, but based on the information that was provided for the proposed use, it can 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.

**Summary:** The impacts on the surrounding residential area will not increase as a result of the change from the previous manufacturing use to a retail sales and service use as the proposed record store, with possible accessory coffee shop. The hours will now include weekends, but there will be no morning activity, since the business will not open until noon. The numbers of employees will be somewhat smaller. There will likely be more customers, but they will come in at various times. It can be anticipated, due to

the nature of the business, that most will arrive in the evenings or on weekends, but they should not come in such large numbers that they will make a noticeable impact from either foot or automobile traffic. There will be no AM peak hour trips and may be a decrease in PM peak hour trips because the business closes after the evening peak hour. With the caveat, imposed by the applicants that there will be no outdoor activities or displays associated with the businesses that are located on the site, there should be no change from the previous uses in any of these other measures. Therefore, with this condition, this criterion 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. Therefore, the appearance of the development that serves the proposed new uses 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 manufacturing to retail sales and service, for the proposed record store and coffee shop, will not result in a net increase in overall detrimental impacts on the surrounding residential area. The hours of operation will expand into the weekends, but the business will not be open in the morning hours. The projected numbers of employees and customers is likely to generate the same or fewer peak hour vehicle trips. There will be no additional impacts from noise, odors and litter than there was from the previous use. There will be no fumes, vibration or dust. A condition of approval will ensure that no outdoor displays, storage or activities will be 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 retail sales and service uses (a record store and accessory coffee shop) to locate on this site, which was formerly occupied by a legal nonconforming manufacturing and production and wholesale sales use. Approval is subject to general compliance with the approved site plan, Exhibit C-1, signed and dated November 29, 2011, and also to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through C) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 11-156870 NU." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. This approval allows retail sales and service uses to occupy some or all of the building, but does not preclude the ability of the applicants to locate another manufacturing and production use on the site, as long as it is within three years of the time that the last use in that category was discontinued. For any portion of the site where a retail sales and service use has not been located within three years from the date of this decision or if a retail sales and service use does occupy a portion of the site but is discontinued for at least three continuous years, then the right to have a retail sales and service use is lost for that portion of the property.
- C. No outdoor seating or displays or other outdoor activities are allowed for any nonconforming uses that may locate on this site.

**Staff Planner: Kathleen Stokes**

**Decision rendered by:**  **on November 29, 2011**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: December 1, 2011**

**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 July 12, 2011, and was determined to be complete on July 26, 2011.

*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 July 12, 2011.

*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 applicants. In this case, the applicants requested, on three occasions, that the 120-day review period be extended. On August 5, the applicants requested an extension of the 120-day review period (Exhibit A-2). On September 6<sup>th</sup>, the applicants sent a request for an additional 30 day extension (Exhibit A-3) and on November 8, the applicants requested an open-ended extension to respond to issues raised in letters from neighbors (Exhibit A-5). The total time that the case was extended is 59 days. Unless further extended by the applicants, **the 120 days will expire on: January 29 2012.**

**Some of the information contained in this report was provided by the applicants.**

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicants to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicants 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 "applicants" includes the applicants 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 December 15, 2011** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the 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 applicants for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **December 16, 2011** -
- A building or zoning permit will be issued only after the final decision is recorded.

The applicants, 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.

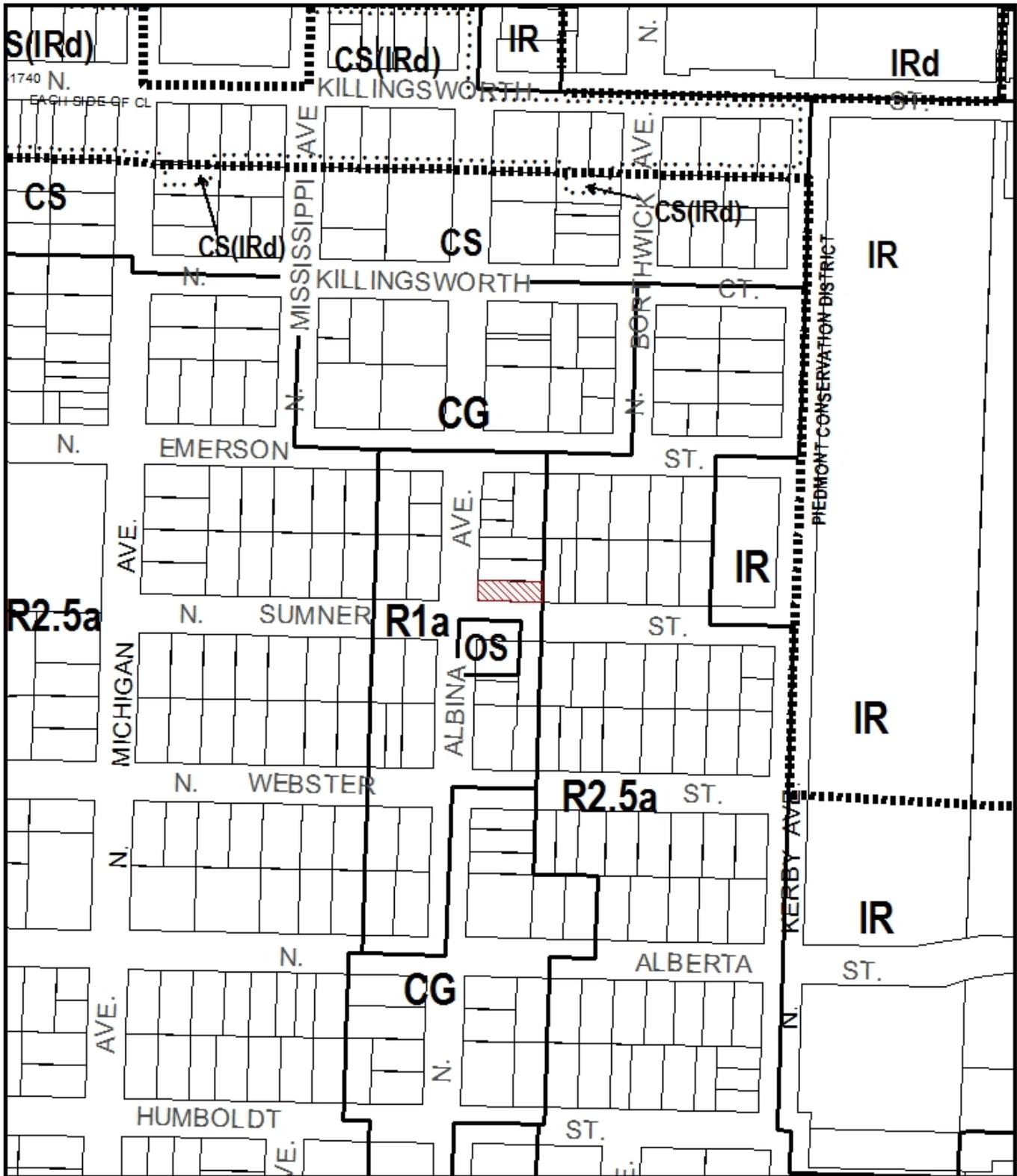
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicants Statement
  1. Application and original narrative, documenting evidence and site plan
  2. First request to extend the 120-day deadline for a final local decision
  3. Second request to extend the 120-day deadline for a final local decision
  4. Additional information, received September 28, 2011
  5. Third request to extend the 120-day deadline for a final local decision
  6. Applicants plan for response to neighborhood concerns, received November 15, 2011
  7. Supplemental information, received by email, November 23 and November 29, 2011
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Transportation Engineering and Development Review
  2. Water Bureau
  3. Fire Bureau
  4. Life Safety Plan Review Section of BDS
  5. Summary of electronic responses from City agencies
- F. Correspondence:
  1. Adam Minor
  2. Constance Rigney
  3. Al and Edna Rooks
- G. Other: (none)

**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

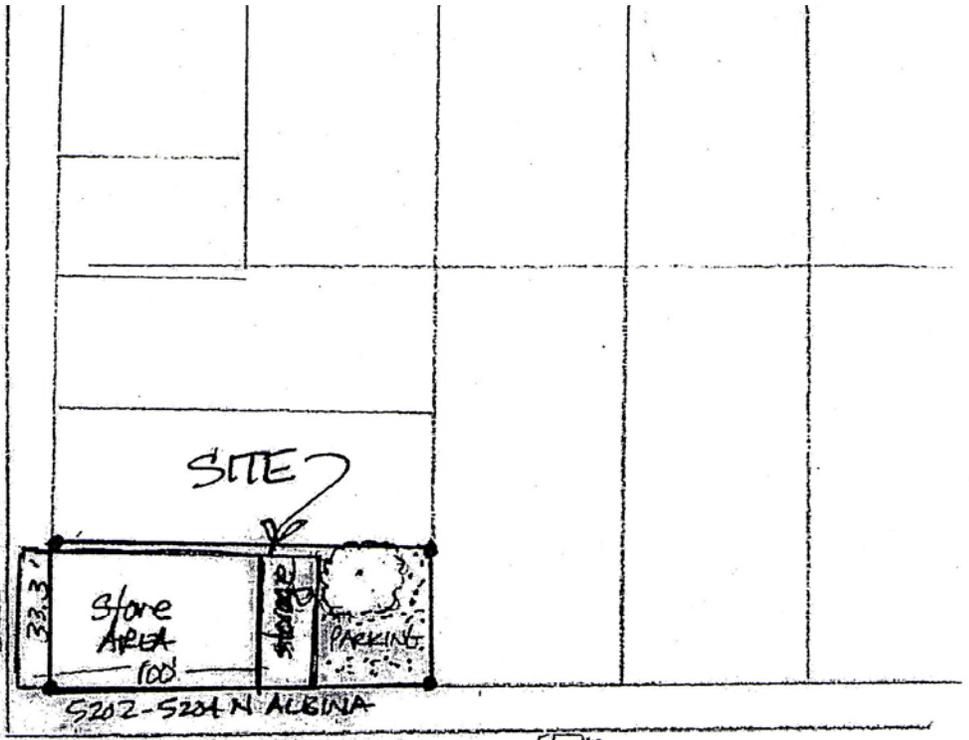
 Site



File No.	LU 11-156870 NU
1/4 Section	2529
Scale	1 inch = 200 feet
State_Id	1N1E22BA 9400
Exhibit	B (Jul 21, 2011)

↑  
N  
11'-50'  
SITE PLAN  
TL 9400  
INIE22BA

N. ALBINA AVE.



N SUMNER ST.

Exhibit C-1  
LU 11-156870 NU

\*Approved\*  
City of Portland - Bureau of Development Services  
Kathleen A. Stokes November 29, 2011  
... to the review ...  
... additional zoning ...