



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

Dan Saltzman, Commissioner
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Date: February 24, 2012
To: Interested Person
From: Kathleen Stokes, Land Use Services
503-823-7843 / 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 12-101567 AD

GENERAL INFORMATION

Applicant: Steve Ewoldt
Artifekt Architecture + Interiors
421 SW 6th Ave Ste 1250
Portland, OR 97204

Bar Vivant LLC (property owner)
5808 SE Hawthorne Blvd
Portland, OR 97215-3456

Site Address: 2225 E BURNSIDE ST

Legal Description: BLOCK 11 LOT 2&3 EXC PT IN ST, DUNNS ADD
Tax Account No.: R219800900
State ID No.: 1N1E35DA 19800
Quarter Section: 3032
Neighborhood: Kerns, Steve Russell at 503-784-8785.
Business District: East Burnside Business Association, Matt Bender at 503-803-4224.
District Coalition: Southeast Uplift, Leah Hyman at 503-232-0010.
Zoning: CS (Storefront Commercial)
Case Type: Adjustment Review
Procedure: Type II, administrative decision with appeal to Adjustment Committee.

Proposal: The existing structure on this site is being remodeled, in order to be converted to a restaurant, which is an allowed use in the CS zone. The proposed kitchen area, in rear of the building, includes an addition in the northwest corner of the structure that would house a walk-in cooler and freezer and a trash and storage area.

The Portland Zoning Code, Title 33, requires a maximum building setback of 10 feet from the street lot line for buildings that are situated on transit streets. At least 50% of the length of the ground level of the street-facing façade of the structure must meet this maximum setback requirement. East Burnside is classified as a Major Transit Priority Street, so this maximum setback requirement applies to this site. Exceptions to development standards, such as this requirement, are approved through Adjustment Reviews, if all of the relevant approval criteria are met or if the criteria can be met through conditions of approval. Therefore, the applicant

has requested approval of an Adjustment to Code Section 33.130.215 C, to increase the maximum allowed setback from East Burnside, from 10 feet to a distance that varies from 19 feet, 4 inches at the existing north wall to about 58 feet, 2.5 inches and 71 feet, 1 inch at the northern walls of the proposed addition.

The proposed addition also creates a situation where the parking and loading area is now located between the building and the street. This situation is not in conformance with the requirements of Code Section 33.266.130 C and so, an additional Adjustment is also being requested to waive this standard, in order to allow the proposed location for the addition.

The driveway loading space is nonconforming, in regards to size and the ability to enter and exit the site in a forward motion. Since nothing is proposed to change, in regards to the use of the driveway as a loading space, this use can continue.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

ANALYSIS

Site and Vicinity: The applicant's site is a 7,722 square-foot parcel that is located on the north side of East Burnside, one property to the east of the intersection with NE 22nd Avenue. The property is developed with an existing, one-story commercial building that was constructed in 1954. Portions of the building extend nearly to the property lines on the north and the east sides of the site. A driveway is located to the west of the building, with a deck and open court area on the far western portion of the site.

The area around the site is generally developed with other small scale, "storefront," commercial development from a variety of different eras and architectural periods. The street carries a heavy load of vehicular traffic, but the character of the area is very pedestrian friendly and accommodates walkers, bicyclists and transit users, in addition to cars.

Zoning: This site is zoned CS, Storefront Commercial. This zone is intended to preserve and enhance older commercial areas that have a storefront character. New development in these areas, under the standards of the CS zone, should be compatible with this desired character. The zone allows a full range of retail, service and business uses with a local and regional market area. 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. Residential uses are also allowed. The desired character includes areas which are predominantly built-up, with buildings close to and oriented towards the sidewalk especially at corners. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged.

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 **January 26, 2012**. The following Bureaus have responded with no issues or concerns related to approval of the requested Adjustments. Agencies that provided written information on requirements for building permits are noted with exhibit numbers:

- Bureau of Environmental Services provided information on sanitary sewers, stormwater management and requirements for controlling pollution from solid wastes and grease from restaurants (Exhibit E-1).
- Transportation Engineering
- Water Bureau provided information regarding the existing water service for the site and also noted the requirements for any changes to the service (Exhibit E-2).
- Fire Bureau
- Site Development Section of BDS
- Life Safety Plan Review Section of BDS noted general requirements for building plan review for the proposal (Exhibit E-3).

- Parks-Forestry Division

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on January 26, 2012. One written response was received from a notified property owner, who indicated support of approving the proposal (Exhibit F-1).

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of Adjustments The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below, have been met.

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The required building setbacks promote streetscapes that are consistent with the desired character of the different commercial zones. The CN1, CM, CS and CX setbacks promote buildings close to the sidewalk to reinforce a pedestrian orientation and built-up streetscape. The setback requirements along transit streets and in Pedestrian Districts create an environment that is inviting to pedestrians and transit users. The proposed addition will house the cold storage area that is needed to convert the building for use as a restaurant. The addition of this area would not be appropriate at the street edge and would likely detract from, rather than promote a pedestrian orientation for the site. Therefore, locating the proposed addition at the rear of the property, while maintaining the landscaped area and the pedestrian connection at the front will equally meet the purpose of this regulation.

The regulations for vehicle area locations are intended to promote vehicle areas which are safe and attractive for motorists and pedestrians. The locations are restricted in some zones to promote the desired character of those zones. Together with the transit street building setback standards, the vehicle area restrictions for sites on transit streets and in Pedestrian Districts:

- Provide a pedestrian access that is protected from auto traffic; and
- Create an environment that is pleasing to pedestrians and transit users.

The proposed development plan includes an upgrade to the pedestrian pathway, drawing as direct of a line as possible, from the sidewalk to the front or main entrance. In order to provide the required perimeter landscaping at the edge of the driveway, and to separate the pathway from the vehicle area and still clear the corner of the existing building, the relocated and widened pathway will include a slight jog, but will still fit the requirements of the Code for direct pedestrian access. The vehicle area, which has always existed in this location will not change. The building addition will extend the structure farther to the west, in the area beyond the vehicle access. However, this will not have any negative impacts on the environment for pedestrians and transit users. The new portion of the structure will contain a freezer and cooler and so would not be accessed by the public. These portions of the proposed restaurant will be located to the rear of the property, away from the street

frontage, as logic, aesthetics and practicality dictate. Therefore, the purposes of the regulations are equally fulfilled and this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: At this location, East Burnside is classified as a district collector, major transit priority street, city walkway, truck access street, major emergency response street, and a Community Main Street, for design. The City's Transportation System Plan defines these classifications as follows:

District Collectors are intended to serve as distributors of traffic from Major City Traffic Streets to streets of the same or lower classification. District Collectors serve trips that both start and end within a district.

Transit Streets are intended for high-quality transit service that connects to the Central City or other regional centers on the Major Transit Priority Streets and for district-oriented transit service along Transit Access Streets. Auto-oriented development is discouraged, except on Major City Traffic Streets. An enhanced environment for transit users, with covered shelters, trash receptacles, benches, and route information is expected, regardless of the traffic classification. Pedestrian-oriented development is expected along Transit Access Streets, with safe and convenient pedestrian and bicycle access to transfer points and transit stops. Community Transit Streets are intended to serve neighborhoods and industrial areas and connect to citywide transit service.

City Walkways are intended to provide safe, convenient, and attractive pedestrian access to activities along major streets and to recreation and institutions; provide connections between neighborhoods, and provide access to transit.

Truck Streets are intended to provide convenient access for freight movement on City streets. Major Truck Streets are intended to serve truck trips with one or both trip ends in a Transportation District (ie. Southeast Portland). Minor Truck Streets are intended to serve truck trips with both trip end within the same transportation district.

Emergency Response Streets are intended to provide access for fire, police and ambulance services. The Major Emergency Response Streets are intended to serve primarily the longer, most direct legs of emergency response trips. The Minor Emergency Response Streets are intended to serve primarily the shorter legs of emergency response trips.

Community Main Streets are designed to accommodate motor vehicle traffic, with special features to facilitate public transportation, bicycles, and pedestrians. Development is expected to include a mix of uses that are oriented toward the street.

The desired character of the area, as described by the CS zone designation, includes areas which are predominantly built-up, with buildings close to and oriented towards the sidewalk especially at corners. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged.

The requested Adjustments will allow the proposed addition to be constructed in a manner that is consistent with the classifications of East Burnside and the desired character of the CS zone. The proposal includes site improvements that will retain and further enhance the pedestrian environment. Placing the addition that will house the cold storage components of the restaurant use to the rear of the property will actually better serve the desired character of the street and the zone than complying with the letter of the Code and putting this nonpublic portion of the structure next to the street frontage. Therefore, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments

results in a project which is still consistent with the overall purpose of the zone; and

Findings: Two adjustments have been requested, in order to create an addition to the rear of the existing structure. Because the intended purpose of the addition is strictly for the internal, utilitarian use of restaurant staff (a walk-in cooler and freezer), the proposed location at the rear of the lot is the most reasonable approach. The purpose of the CS zone is to provide for storefront development that offers a full range of retail uses that serve a local and regional market. By separating the internal working area of the restaurant and placing it to the rear, away from the public, pedestrian-access areas, this proposal is entirely in keeping with this purpose and the desired character of the zone.

D. City-designated scenic resources and historic resources are preserved; and

Findings: There are no scenic or historic resources on the site. Therefore, this criterion does not apply.

E. Any impacts resulting from the adjustment are mitigated to the extent practical.

Findings: No impacts that might result from approval of the Adjustments have been identified. Moreover, the plan includes upgrades to nonconforming development, for landscaping and pedestrian access, which will improve the overall aspect of the site as it relates to the pedestrian or transit user along the street frontage. Therefore, this criterion does not appear to apply, but would in any event be met by this proposal.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.

Findings: The site is not located in an environmental zone, so 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 issues that could be raised by the approval of the requested Adjustments are simple. They consist of the potential to allow development that detracts from the desired character that is called for by the Commercial Storefront zoning designation and contradicts the pedestrian-oriented environment that is indicated in the street classifications for East Burnside. In this case, approval of the adjustments to increase the maximum building setback from East Burnside Street and to allow the vehicle area to be located between the proposed addition and the street will not create an outcome that has these types of negative results. The conversion of the existing structure for use as a restaurant calls for an addition to house components of the operation that are best suited to a location at the rear of the property, away from the public environment. Approval of the requested adjustments will allow this to occur and so should be approved, in accordance with the proposed plans and drawings.

ADMINISTRATIVE DECISION

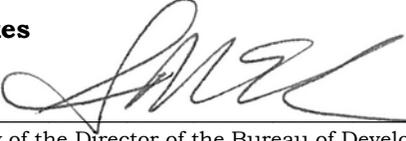
Approval of an Adjustment to Code Section 33.130.215 C, to increase the maximum allowed setback from East Burnside, from 10 feet to a distance that varies from 19 feet, 4 inches at the existing north wall to about 58 feet, 2.5 inches and 71 feet, 1 inch at the northern walls of the proposed addition.

Approval of an Adjustment to Code Section 33.266.130 C to allow the parking and loading area to be located between the building addition and the street.

Approvals are subject to general compliance with the approved site plan and elevation drawings, Exhibits C-1 through C-2, signed and dated February 22, 2012, and also subject to the following condition:

- 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 Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 12-101567 AD."

Staff Planner: Kathleen Stokes

Decision rendered by:  **on February 22, 2012**

By authority of the Director of the Bureau of Development Services

Decision mailed: February 24, 2012

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 January 6, 2012, and was determined to be complete on **January 24, 2012**.

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 January 6, 2012.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless extended by the applicant, **the 120 days will expire on: May 25, 2012.**

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 Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on March 9, 2012** 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.

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 Adjustment Committee 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 Adjustment Committee 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 12, 2012 – (the first business 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:

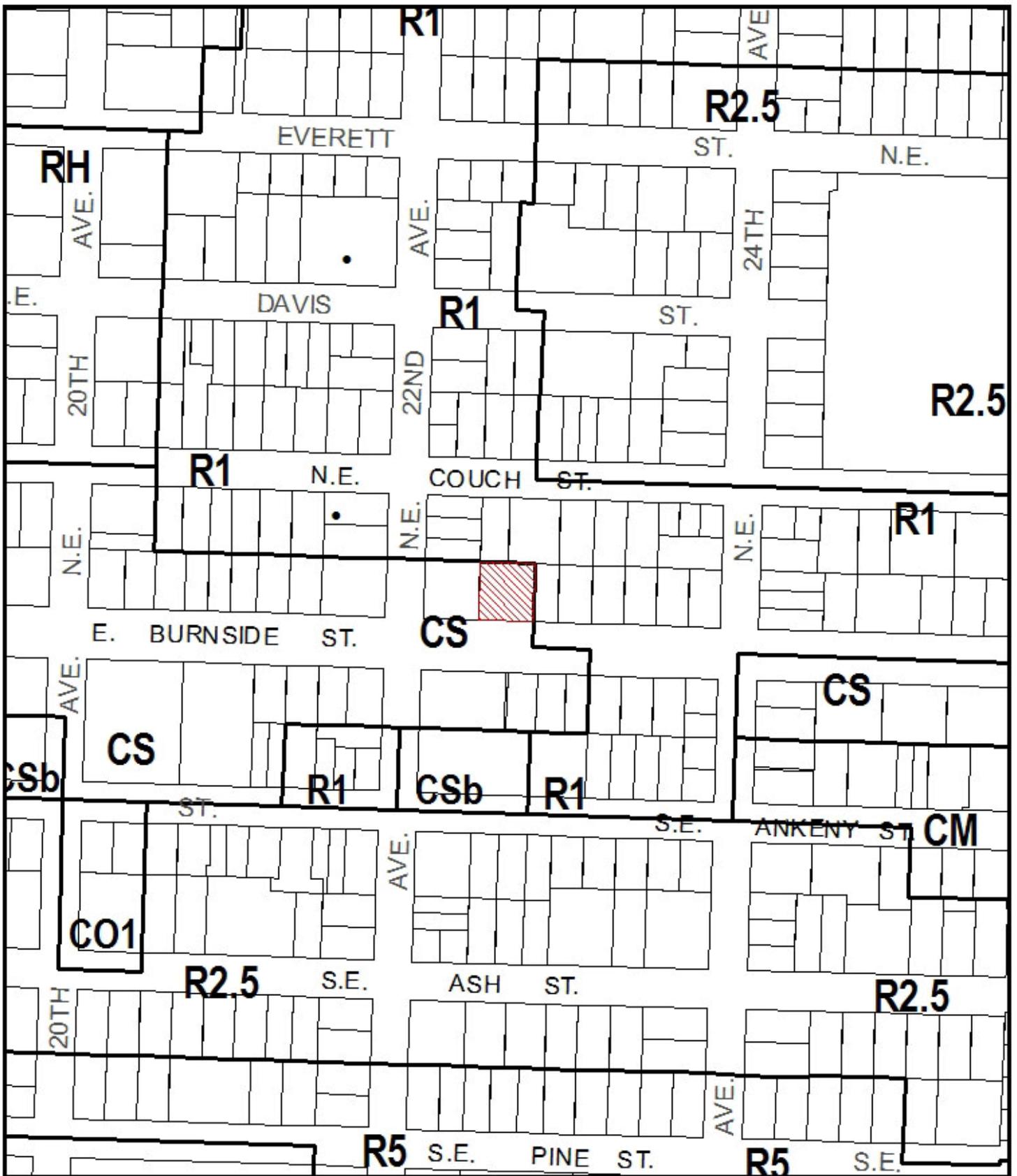
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Application and original plans and narrative
 2. Supplemental information, received January 23, 2012
 3. Final revised plans, received February 17, 2012
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Elevation Drawings (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Water Bureau
 3. Life Safety Plan Review Section of BDS
 4. Summary of electronic responses from City service agencies
- F. Correspondence:
 1. Kurt Chiapuzio
- G. Other:
 1. Letter from Kathleen Stokes to Steve Ewoldt, January 20, 2012

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



Historic Landmark



NORTH

File No.	LU 12-101567 AD
1/4 Section	3032
Scale	1 inch = 200 feet
State_Id	1N1E35DA 19800
Exhibit	B (Jan 09,2012)

