



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

Dan Saltzman, Commissioner  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** October 16, 2012  
**To:** Interested Person  
**From:** Sylvia Cate, Land Use Services  
503-823-7771 / [Sylvia.Cate@portlandoregon.gov](mailto:Sylvia.Cate@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 the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 12-176292 NU**

#### **GENERAL INFORMATION**

**Applicants:** Todd Vogt / Yoga Union LLC  
2043 SE 50th Ave / Portland, OR97215

**Representative:** Chris Calarco / Chris Calarco Yoga LLC  
1636 NE 48th Ave / Portland, OR 97213

**Owner:** Michael A Mather, Listed Property Owner  
2305 SE 50th Ave #100 / Portland, OR 97296

**Site Address:** 2305 SE 50TH AVE  
**Legal Description:** BLOCK 3 LOT 3&4, GILHAMS ADD & 2ND  
**Tax Account No.:** R315400760  
**State ID No.:** 1S2E06CD 16700  
**Quarter Section:** 3235  
**Neighborhood:** Richmond, contact Douglas Klotz at 503-233-9161.  
**Business District:** Division-Clinton Business Assoc, Darice Robinson at 503-233-1888.  
**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.  
**Zoning:** R1, Multi-Dwelling Residential 1,000  
**Case Type:** NU: Nonconforming Situation Review  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The applicants request a change in non-conforming use from Industrial Service to a retail use so that their existing business, The Yoga Union, can relocate from their current location two blocks away to the subject site. The applicant notes that their current space occupies 4,000 square feet; but that the building on the site will provide an additional 2,500 so that the existing business can expand by providing additional rooms for services, such as massage, acupuncture and naturopathic healing, and retail boutique.

The subject site has had a legal, non conforming use [Industrial Service Use] since 2004 with the occupancy of Omni Interiors, a design and construction company. To change the legal non conforming use from Industrial Service to Retail requires a Type II Nonconforming Situation review. Attached to this Notice is a zoning map and site plan that depicts the site.

**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 10,000 square feet in area developed with a 6,500 square foot building that includes offices and a warehouse in support of an industrial service use at the site. The site is located in the southwest quadrant of the intersection of SE 50<sup>th</sup> and SE Sherman. SE 50<sup>th</sup> is designated as a Neighborhood Collector and Major Transit Street. SE Sherman is designated as a Local Service Street for all modes. The site is two blocks north of SE Division, which is also a Major Transit Street. The site is zoned R1, and thus both the existing and proposed uses are nonconforming. However, south of the site are properties zoned Storefront Commercial, as well as a node of Neighborhood Commercial 1 lots to the northeast. To the north and directly east are other parcels zoned R1, while immediately west are lots in the Single Dwelling Residential 5,000 zone.

**Zoning:** The R1 zone is a medium density multi-dwelling zone. It allows approximately 43 units per acre. Density may be as high as 65 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one to four story buildings and a higher percentage of building coverage than in the R2 zone. The major type of new housing development will be multi-dwelling structures (condominiums and apartments), duplexes, townhouses, and row houses. Generally, R1 zoning will be applied near Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.

**Land Use History:** City records indicate there is one prior land use review for this site: VZ 112-64, which approved variances to allow parking in the north front yard of the site, to waive the required landscape screening and setback for the parking area, and to reduce the west rear yard setback from the required 5 feet to 0 feet in order to construct a 49' 6" x 49' 10" warehouse addition.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **September 13, 2012**. The following Bureaus have responded with no issues or concerns:

- Water Bureau: no concerns; and notes that water service is available
- Fire Bureau no concerns
- Site Development Section of BDS: has no concerns
- Bureau of Parks-Forestry Division: has no concerns
- Bureau of Environmental Services has no concerns
- Bureau of Transportation Engineering has no objection

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on September 13, 2012. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

**ZONING CODE APPROVAL CRITERIA****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 last legal 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 current use at the site is a design and construction company that has office space as well as warehousing for material storage and deliveries. That business operates from 6:30 AM until 5:00 PM 7 days a week. The proposed use would operate from 7 AM to 9 PM Monday through Friday, with weekend hours of 9 AM to 3:30 PM on Saturday and 9 AM to 5 PM on Sundays. While the proposed use would have 11 additional hours of operation, the starting time is later than the previous use, and the weekend hours are also starting later in the morning.

Although the proposed hours of operation are slightly expanded, the type of activity occurring during these hours has inherently less impacts [patients arriving and departing via vehicle, transit, bicycle, etc.] than delivery and loading of construction materials from the warehouse via heavy trucks utilizing heavy equipment for these operations. The site has existing on-site parking which the applicant proposes to esthetically enhance as well as add a significant amount of bike parking, as the applicants note that 60 percent of patrons arrive by bike at their current location, which is two blocks north of the site.

The Industrial Service use utilized a number of on-street parking spaces in order to keep the on-site parking lot clear for the maneuvering of heavy trucks, etc. for pick up and delivery of construction materials. The applicant notes that at times, customers or employees may park on the street if the existing on-site parking lot is full. PBOT has responded with comments, including:

*There is no indication that transportation facilities are not adequate to serve the proposed use. The change in the type of vehicles coming to the yoga studio will reduce transportation impacts because the previous industrial service use operated with large trucks rather than the passenger vehicles, bikes, and walkers that are anticipated arriving at the proposed use of the site. The current location of the yoga studio is only two blocks away and they report that 60% of their customers bike to the location. The on-site parking will be more available for the proposed use without the trucks utilizing most of the on-site parking. The corner site has 200-ft of frontage with approximately 8 on-street parking spaces that will reduce the need for customers to park in front of neighboring properties.*

The proposed use has no aspect of operation that would create noise, vibration, dust, odors, fumes, glare or smoke. All yoga classes and treatments occur in doors. In contrast, the Industrial Service use generates noise, vibration, dust, odors, fumes, etc and similar throughout the day via deliveries, pick up of materials by heavy trucks and operation of heavy equipment. In contrast, the proposed yoga studio and community health center will have none of these impacts.

The proposed use will include a groundskeeper who will maintain the site for both landscaping and litter patrol. The only proposed outside display for the new use would be signage. No exterior storage or activities are proposed. In contrast, the construction company operations involve construction material delivery, storage, and pick up, which can include exterior activities with heavy trucks and heavy

equipment. The applicant notes that with the planned 'court yard' like enhancements to the existing parking lot, the exterior of the site will be upgraded and more pleasant in appearance for passers-by and nearby residents.

Overall, in assessing these factors, the proposed use will operate 11 additional hours during the week, but the nature of the operations of the proposed Yoga Studio and Community Wellness Center are inherently more confined to the indoors as well as less disruptive with external impacts. This is particularly true of the passenger vehicle trips to and from the site, as compared to the maneuvering and loading/unloading of heavy trucks, heavy equipment and construction materials. For these reasons, the impacts of the proposed use are less than the existing Industrial Service Use, and therefore 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 existing building is L-shaped, with a 0-foot setback along the westerly property line. This configuration shields the residential uses to the west and southwest. The applicant proposes esthetic exterior alterations to the building that will include new signage, new siding and new paint. The applicant also proposes to upgrade the existing parking lot with enhanced landscaping and additional secure bicycle parking for customers. The parking lot is separated from the residential uses to the west by the existing building; other residential uses nearby are separated by either SE Sherman or SE 50<sup>th</sup> Avenue rights of way, which serves as additional distance to buffer the residential uses from the proposed yoga studio and community health center. There is no aspect of the proposal that is anticipated to reduce privacy to any abutting residential uses. The applicant notes that the enhancements to the existing parking lot will provide improved esthetics and appearance of the overall site. The applicant notes that the existing security lighting from the Industrial Service Use will be removed, which will eliminate any glare from night lighting onto adjacent properties. The additional landscaping will add more buffering to the site and further separate the proposed operations from adjacent residential uses. For these reasons, 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 in the R1 zone. 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

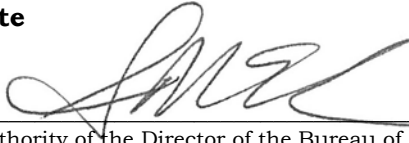
The applicants request a change in non-conforming use from Industrial Service to a retail use so that their existing business, The Yoga Union, can relocate from their current location two blocks away to the subject site. The proposal meets all of the applicable approval criteria and therefore should be approved.

## ADMINISTRATIVE DECISION

Approval of:

- A change in nonconforming use from Industrial Service Use to Retail Sales and Service use for a yoga studio and community wellness center, per the approved site plans, Exhibit C-1, signed and dated October 11, 2012, 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 Exhibits C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 12-176292 NU."

**Staff Planner: Sylvia Cate**

**Decision rendered by:**  **on October 11, 2012**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: October 16, 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 August 27, 2012, and was determined to be complete on **September 10, 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 August 27, 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 further extended by the applicant, **the 120 days will expire on: January 9, 2013.**

**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 October 30, 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](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 applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **October 31, 2012**.
- 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.

**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:

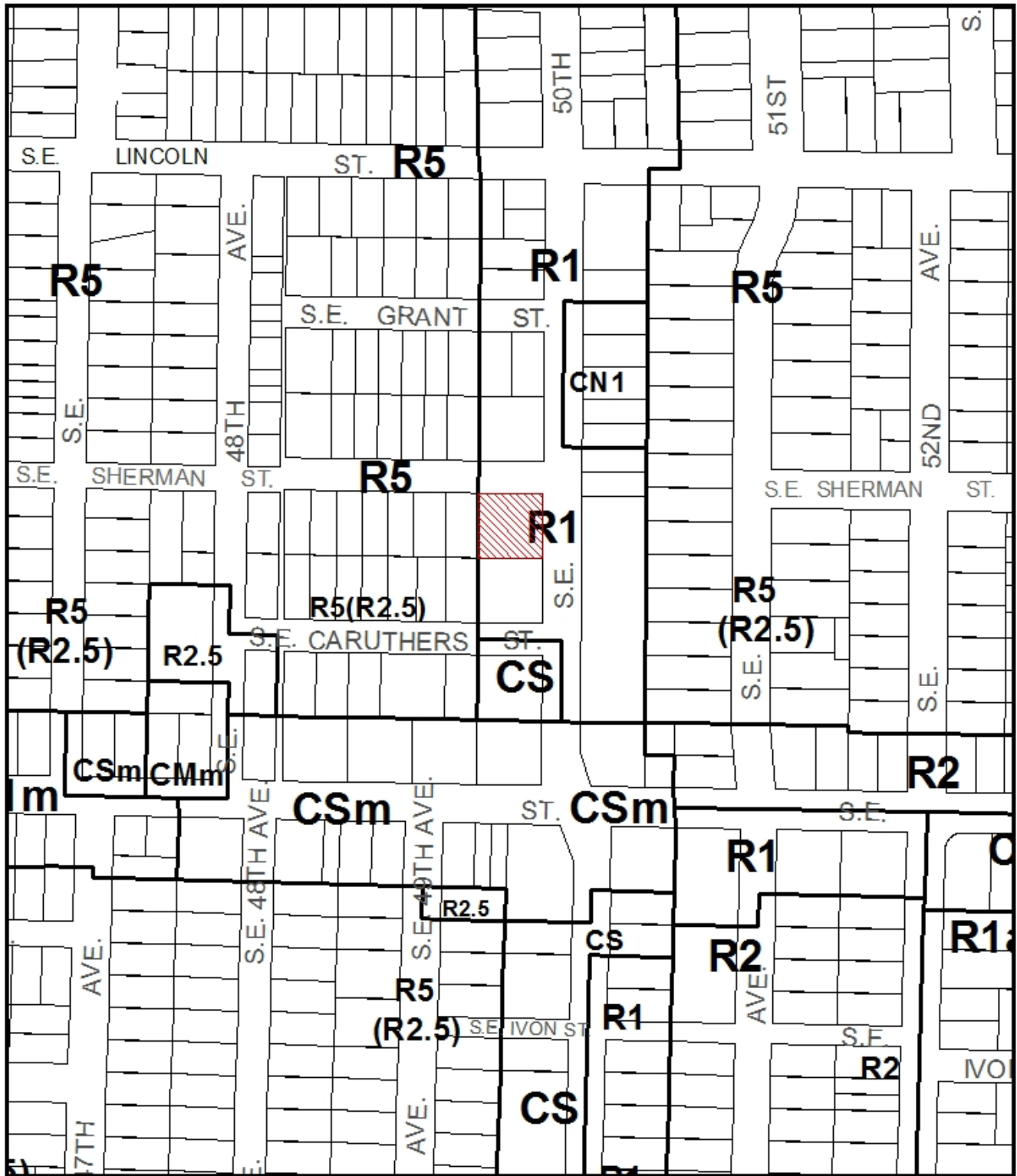
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- 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: None received
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research

**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

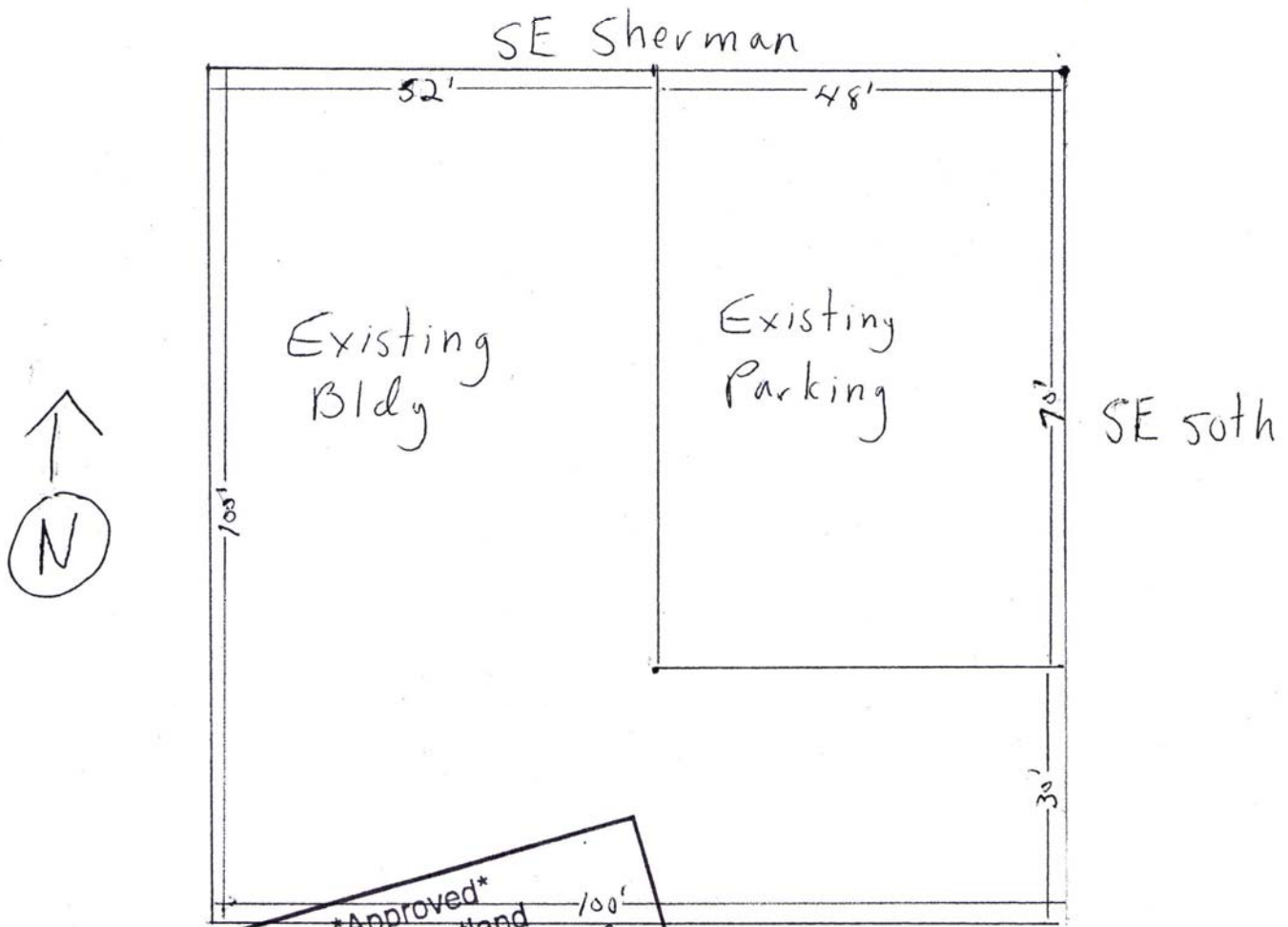


File No. LU 12-176292 NU  
 1/4 Section 3235  
 Scale 1 inch = 200 feet  
 State\_Id 1S2E06CD 16700  
 Exhibit B (Sep 10,2012)



2305 SE 50th Avenue

12-176292



**\*Approved\***  
City of Portland 100'  
Bureau of Development Services  
Planner *[Signature]*  
Date 10/11/2012  
• This approval applies only to the reviews requested and is subject to all conditions of approval.  
• All zoning requirements may apply.

EXHIBIT C-1

LU12-176292 NU