



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** November 26, 2012  
**To:** Interested Person  
**From:** Douglas Hardy, Land Use Services  
503-823-7816 / [Douglas.Hardy@portlandoregon.gov](mailto:Douglas.Hardy@portlandoregon.gov)

**NOTICE OF A TYPE II DECISION ON A LAND USE  
REVIEW IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has **approved** a land use review 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 12-196908 NE**  
**GENERAL INFORMATION**

**Applicant:** Ralph House / Eye Health Northwest  
1955 NW Northrup Street / Portland, OR 97209

**Property-Owner:** Ravi Vedanayagam / RA Parking Lot, LLC  
721 SW Oak Street, Suite 100 / Portland OR 97205

**Site Address:** NW Corner of NW 18th Avene and NW Lovejoy Street

**Legal Description:** Block 179, W 55' of Lot 1, W 56' of Lot 4, Couchs Add; Block 179, S 40' of Lot 5, Couchs Add

**Tax Account No.:** R180216430, R180216450

**State ID No.:** 1N1E33AB 07500, 1N1E33AB 07300

**Quarter Section:** 2928

**Neighborhood:** Northwest District, contact John Bradley at 503-313-7574

**Business District:** Nob Hill, contact Mike Conklin at 503-226-6126

**District Coalition:** Neighbors West/Northwest, contact Mark Sieber at 503-823-4212

**Plan District:** Northwest

**Zoning:** RHd - High Density Residential with a Design overlay zone

**Case Type:** Nonconforming Status Review (NE)

**Procedure:** Type II, Administrative decision with appeal to the Hearings Officer

**PROPOSAL**

The site is presently developed as a surface parking lot, which the applicant indicates has been used for Commercial Parking since at least 1978. The site is currently zoned High-Density Residential (RH), and the RH zone prohibits Commercial Parking uses. The applicant is seeking a Non-Conforming Status Review in order to document that the existing surface parking lot at this location has legal nonconforming use status as Commercial Parking. To establish legal nonconforming use rights, the applicant must demonstrate that the use was allowed when established, and has continued over time without a lapse exceeding three consecutive years.

In support of the request, the applicant has submitted signed affidavits from two prior owners and the current owner attesting that the parking lot has been in continuous use as Commercial

Parking since 1978, when the underlying zoning would have allowed such a use. Lease records dating back to 2005 have also been submitted identifying the lot being used for Commercial Parking.

**RELEVANT APPROVAL CRITERIA**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Zoning Code Section 33.258.075.D (Determination of Legal Nonconforming Status Review).

**ANALYSIS**

**Site and Vicinity:** The 9,550 square foot, L-shaped site is located at the northwest corner of NW Lovejoy Street and NW 18<sup>th</sup> Avenue. The site is developed with a paved surface parking lot accommodating approximately 25 parking spaces. The parking lot has access from both NW Lovejoy Street and NW 18<sup>th</sup> Avenue. The parking spaces are posted as “Permit Only” parking.

The surrounding area within a one block radius of the subject site is developed with a variety of multi-dwelling residential and commercial uses, as well as other surface parking lots. The streetcar line runs along NW Lovejoy Street.

**Zoning:** The site is located in an RHd zone – High-Density Multi-Dwelling Residential with a Design overlay zone. The site is also located in the Northwest Plan District.

The use regulations of the Multi-Dwelling zones are intended to create and maintain higher density residential neighborhoods. At the same time, they allow for large scale institutional campuses and other nonresidential uses but not to such an extent as to sacrifice the overall residential neighborhood image and character. The development standards work together to create desirable residential areas by promoting aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The development standards generally assure that new development will be compatible with the City’s character, yet allow for flexibility for new development. Specifically, the RH zone is a high density multi-dwelling zone that allows a density of development ranging from 80 to 125 dwelling units per acre. Allowed housing is characterized by medium to high height and a relatively high percentage of building coverage. The major types of new housing development will be low, medium, and high-rise apartments and condominiums. Generally, RH zones will be well served by transit facilities or be near areas with supportive commercial services.

The Design overlay zone promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. This overlay zone also promotes quality, high-density development adjacent to transit facilities. This is achieved through the creation of design districts and applying the Design overlay zone as part of community planning projects, development of design guidelines for each district, and by requiring design review or compliance with the Community Design Standards. In addition, design review or compliance with the Community Design Standards ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

The Northwest Plan District implements the Northwest District Plan, providing for an urban level of mixed-use development including commercial, office, housing, and employment. Objectives of the Plan District include strengthening the area’s role as a commercial and residential center.

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

**Agency Review:** A Notice of Proposal was mailed October 29, 2012. The notified bureaus had no issues or concerns with the requested land use review.

**Neighborhood Review:** No written comments have been received from either the Neighborhood Association or notified property owners in response to the mailed Notice of Proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.258.075 Determination of Legal Nonconforming Status Review

**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.

#### 33.258.075 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

**Findings:** To determine whether the Commercial Parking would have been allowed when established on the property, it is necessary to look at the historical zoning on the property and identify if there was a previous zone that would have allowed Commercial Parking.

Prior to January 1, 1981, the northern portion of the site (Tax Account # R140918) was located in an M3S zone (Light Manufacturing with a Signboard Control Zone). The M3 designation was a mixed-use zone that allowed a variety of activities including manufacturing, wholesale, warehouses, retail, office and others. While the 1980 Zoning Code did not include the term Commercial Parking, it did include the term Parking Garage, which was an allowed use in the M3 zone (Zoning Code Section 33.50.020.A). The Parking Garage use is the closest equivalent to the Commercial Parking use in the current Zoning Code. Based on this information, Commercial Parking would have been allowed as late as December 31, 1980, on the northern portion of the property. Commercial Parking became a prohibited use (i.e., a nonconforming use) when the zoning on the property was changed from M3 to RHd (High Density Residential with a Design overlay zone) on January 1, 1981.

The southern portion of the property (Tax Account # R140917) was also located in a M3S zone prior to January 1, 1991. As indicated above, the M3 zone would have allowed Commercial Parking. On January 1, 1991, this portion of the property was rezoned to EXd (Central Commercial with a Design overlay zone), a zone in which Commercial Parking was allowed only if approved as a Conditional Use (Zoning Code Section 33.140.100.B.15). Commercial Parking became a prohibited use (i.e., nonconforming use) when the zoning on the property was changed from EXd to RHd on November 8, 2003.

While the above information demonstrates that the former zoning on the property would have allowed Commercial Parking, the applicant must demonstrate that such a use existed on the property at that time. For the northern portion of the property, it must be demonstrated that a Commercial Parking use existed prior to January 1, 1981, when the property was still mapped with the M3 zone. For the southern portion of the property, it must be demonstrated that Commercial Parking existed on the site prior to November 8, 2003, when it was rezoned to RHd. The applicant has included in the

record an affidavit signed by Jordan D. Schnitzer, owner of the property in its entirety from December 18, 1978, to January 5, 2006 (Exhibit A.2). In this affidavit, Mr. Schnitzer attests that spaces within the paved parking lot were leased for the entire time he owned the property to a variety of persons associated with office, retail and residential uses in the area, with some of the spaces made available for a fee to individuals who were not associated with a particular use. This affidavit documents that Commercial Parking was an allowed use at the time zoning on the property would have allowed such a use.

This criterion is met.

- b. The nonconforming situation has been maintained over time.

**Findings:** The applicant has provided two additional affidavits signed by the representatives of two subsequent owners of the property, Harsch Investment Properties LLC and RA Parking Lot LLC (Exhibits A.3 and A.4). Statements included in these affidavits attest that the parking lot continued to be used up to the present time for the same type of parking as identified in Mr. Schnitzer's affidavit. The affidavits of Harsch Investment Properties LLC and RA Parking Lot LLC also indicate the parking lot was used in this manner continuously while under their respective ownerships. Lease agreements, as well as an additional affidavit, that identify the property being used for parking associated with particular businesses and others not associated with a particular use, between June 2005 and April 2012, are also provided. Together, this information documents that the Commercial Parking use has been maintained over time on the property without a lapse exceeding three consecutive years.

This criterion is met.

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 applicant's written narrative and accompanying affidavits describe the use of the property as surface parking that has been leased for a fee to a variety of specific office, retail and residential uses, with some of the spaces made available for a fee to users not associated with a particular use. This use fits the description of Commercial Parking, which is described in Zoning Code Section 33.920.210.A follows:

*Commercial Parking facilities provide parking that is not accessory to a specific use. A fee may or may not be charged. A facility that provides both accessory parking for a specific use and regular fee parking for people not connected to the use is also classified as a Commercial Parking facility.*

Based on this definition, the existing use at the property is considered to be Commercial Parking.

This criterion is met.

## **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.

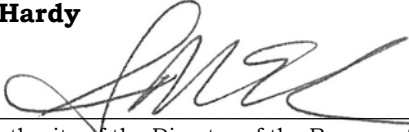
## CONCLUSIONS

The applicant has demonstrated that the applicable criteria needed to document a nonconforming use Commercial Parking use on the property have been met. Information in the record demonstrates that a Commercial Parking use was allowed on the property prior to the current RHd zoning, and that this use has continued since that time without a lapse exceeding three consecutive years. The proposed activity that has been occurring on the property is determined to be Commercial Parking, as that use is described in Zoning Code Chapter 33.920.

## ADMINISTRATIVE DECISION

**Approval** of a Nonconforming Status Review [33.258.075.D) that documents legal nonconforming status for a surface Commercial Parking lot at the property identified in Exhibits B and C.

**Staff Planner: Douglas Hardy**

**Decision rendered by:**  **on November 21, 2012.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: November 26, 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 October 19, 2012, and was determined to be complete on **October 29, 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 October 19, 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 February 26, 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 land use review 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 December 10, 2012**, at 1900 SW Fourth Avenue. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3:00 pm. After 3:00 pm 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 **December 11, 2012**.
- A building or zoning permit will be issued only after the final decision is recorded.
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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.

**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:

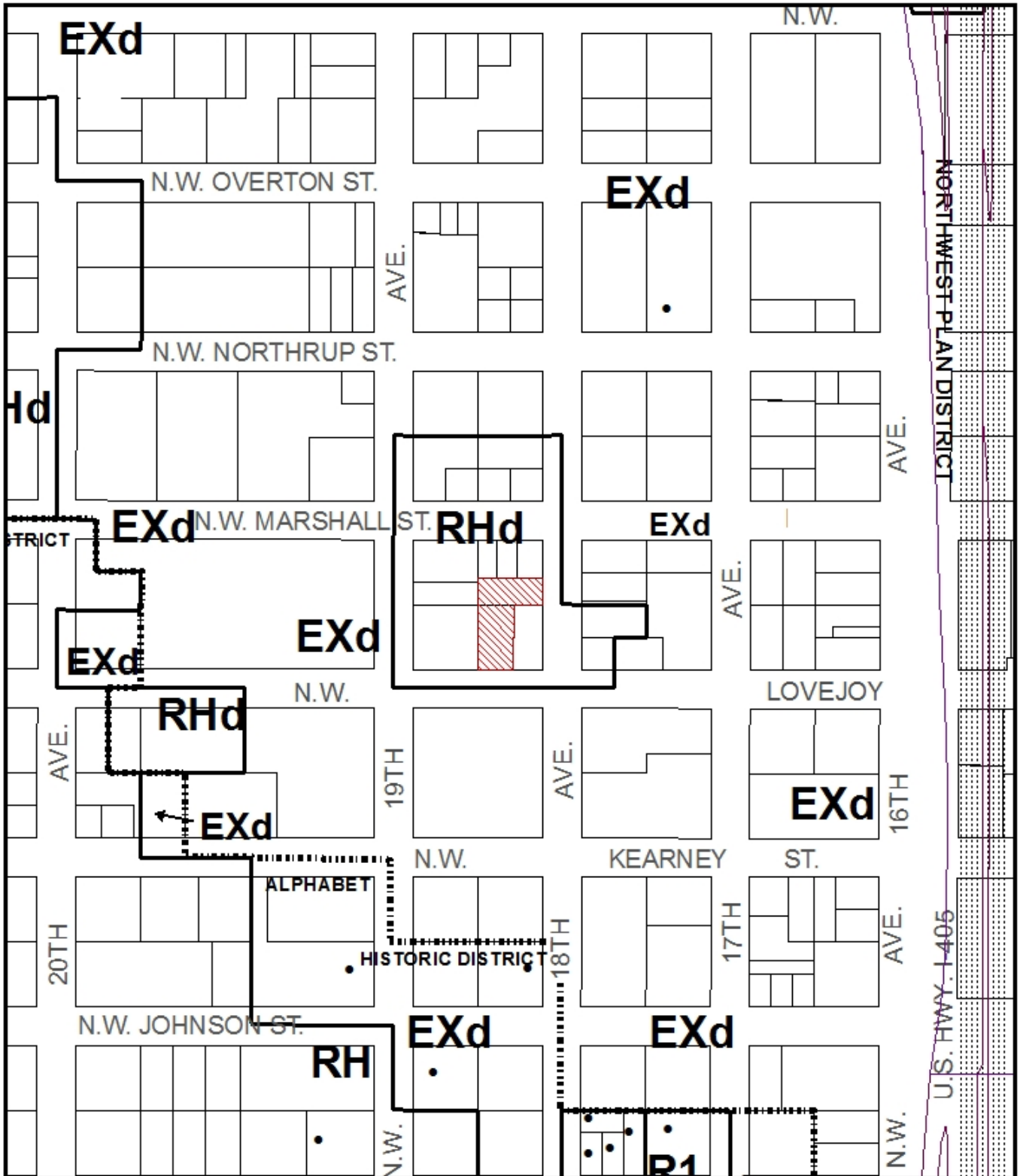
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Written narrative, including lease information
  2. Affidavit from Jordan D. Schnitzer
  3. Affidavit from Harsch Investment Properties LLC
  4. Affidavit from RA Parking Lot LLC
- B. Zoning Map (attached)
- C. Site Plan (attached)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Transportation Engineering and Development Review
- F. Correspondence (none)
- G. Other:
  1. Original LU Application
  2. Excerpt from Chapter 33.50 (M3 Light Manufacturing Zone), Zoning Code dated December 31, 1980
  3. Excerpt from Chapter 33.140 (Employment and Industrial Zones), Zoning Code dated January 1, 2003

**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

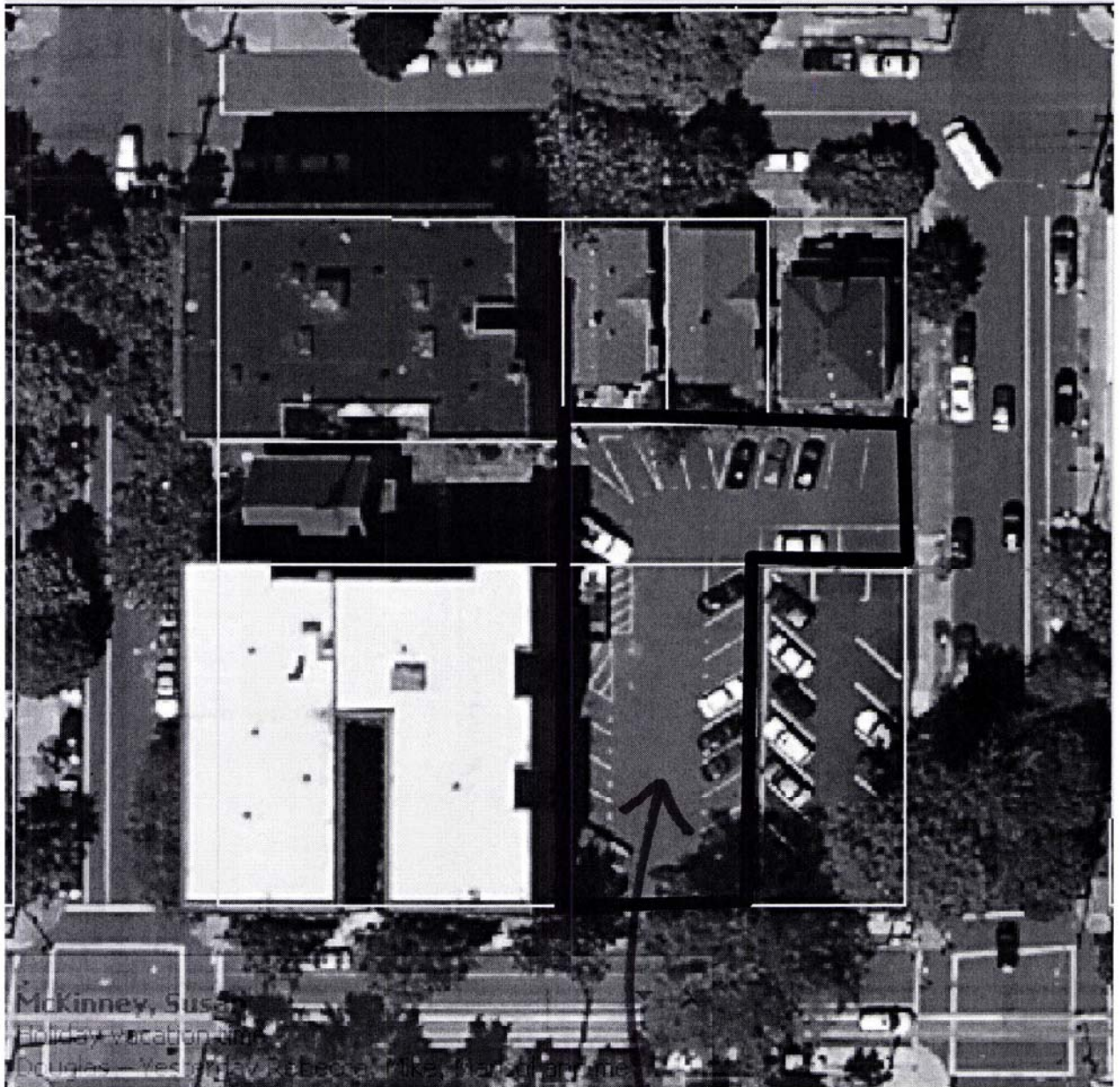


This site lies within the:  
NORTHWEST PLAN DISTRICT

File No.	LU 12-196908 NE
1/4 Section	2928
Scale	1 inch = 200 feet
State_Id	1N1E33AB 7500
Exhibit	B (Oct 23, 2012)



# Site Plan



SITE

CASE NO. 12-191608  
EXHIBIT C