



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
Paul L. Scarlett, Director
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TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: April 22, 2015
To: Interested Person
From: Marguerite Feuersanger, Land Use Services
503-823-7619 / Marguerite.Feuersanger@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 mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, 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 15-113372 AD

GENERAL INFORMATION

Applicant: Kevin Godwin / SGA
15629 SW 149th Place / Tigard OR 97224

Owner: Booth Family LLC #1
10518 SW Hood Ave / Portland OR 97219

Site Address: 10020-10040 SW Capitol Highway

Legal Description: BLOCK 2 LOT 4&5 TL 1400, HUBER TR; BLOCK 3 LOT 1&15 TL 3200, HUBER TR

Tax Account No.: R406400460, R406401030, R406401030

State ID No.: 1S1E29CB 01400, 1S1E29CB 03200, 1S1E29CB 03200

Quarter Section: 4025

Neighborhood: West Portland Park, contact Bill Dant at 503-244-0445.

Business District: None

District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

Zoning: CG, General Commercial

Case Type: AD, Adjustment Review

Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

A new coffee shop is proposed using an existing building and drive-through facility (prior tenant was a car wash). A new pre-manufactured kiosk, 351 square feet in area (13.5 feet by 26 feet) will be attached to the south side of the building. The new kiosk will be used only by coffee shop employees; no customers will enter the building. In addition to the drive-through window, a walk up window is proposed to serve customers. It's expected that most customers, however, will use the existing drive-through facility. No new vehicle parking spaces are proposed. Landscaping and pedestrian improvements are proposed near the building. The site also contains a retail tire store and a quick vehicle servicing facility.

An adjustment is requested to increase the maximum transit street setback from 10 feet to 58 feet for the new addition, to align with the existing building wall facing the transit street, SW Capitol Highway.

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 **33.805.040.A-F, Adjustment Approval Criteria.**

ANALYSIS

Site and Vicinity: The site is approximately 32,000 square feet in area, located near the intersection of SW Capitol Highway, SW Barbur Boulevard, and Interstate 5. Nearby existing development is auto-focused, and many businesses have a significant amount of site area used for surface parking and circulation, with a low percentage of building coverage. An established, single dwelling residential area is located southeast of the site. Three commercial buildings are located on the site with a paved surface parking and vehicle maneuvering areas adjacent to SW Capitol Highway. Two of the buildings have drive-through facilities. A row of vehicle parking spaces is partially contained within the SW Capitol Highway right-of-way. A freeway on-ramp is located adjacent to the site's southeastern boundary. There is a small amount of landscaping on the site. Landscaping surrounds the site but it is located within the public rights-of-way abutting the site. While the site and intersection accommodate a high level of vehicle traffic, transit service is readily available along SW Capitol and SW Barbur; both are transit routes for multiple bus lines.

Zoning: CG: The General Commercial Zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market. 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. Development is expected to be generally auto-accommodating, except where the site is adjacent to a transit street or in a Pedestrian District. The zone's development standards promote attractive development, an open and pleasant street appearance, and compatibility with adjacent residential areas. Development is intended to be aesthetically pleasing for motorists, transit users, pedestrians, and the businesses themselves.

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

Summary of Applicant's Statement: The applicant proposes to convert the existing vacant drive-through car wash building into a drive-through coffee kiosk. The scope of work will include minor demolition of a small portion of the south wall of the car wash building to allow the pre-manufactured State-approved coffee kiosk to be attached. The existing car wash lane will become the drive-through lane for the coffee kiosk. Note that this is a drive-through only facility: there is no customer seating in the kiosk or existing building. We anticipate only limited walk-up traffic due to the auto-oriented character of the site location.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **March 23, 2015**. The following Bureaus have responded with no issues or concerns:

Bureau of Transportation Engineering comment: The proposed setback adjustment "does not impact vehicle load capacity or the amount of vehicles. See Exhibit E-1 for additional details.

Bureau of Environmental Services comment: BES does not object to approval of the requested Adjustment. Approval of this application does not alter BES requirements as identified under building permit application 14-250687-CO. See Exhibit E-2 for additional details.

Water Bureau comment: The Water Bureau has no issues regarding the requested Adjustment Review for proposed adjustments to applicable zoning code standards as

depicted in this LUR, but does have comments to be included with the Water Bureau portion of the BDS response, for the property located at 10020-40 SW Capitol Hwy. See Exhibit E-3 for additional details.

Site Development Section of BDS comment: Site Development takes no exception to the proposed adjustment to increase the maximum transit street setback from 10 feet to 58 feet for the new addition, to align with the existing building wall facing the transit street, SW Capitol Highway. See Exhibit E-4 for additional details.

The Life Safety Plans Examiner of BDS comment: A Building Permit has been applied for and is currently under review or has been issued or, a Life Safety plans examiner has been in contact with the applicant. Please refer to correspondence from the Life Safety plans examiner for building code-related comments. See Exhibit E-5.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on March 23, 2015. One written response was received in response to the proposal. A nearby property owner wrote to express concern about the potential for drivers using their site as a short-cut across SW Capitol Highway, to and from the new coffee drive-through. City staff have reviewed the proposal and considered the neighbor's concern. Because the request is for a coffee retail business, allowed by right in the General Commercial Zone, and the adjustment request only pertains to the location of the proposed building (maximum building setback for the kiosk), potential off-site traffic circulation impacts as a result of this proposal are not relevant.

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

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

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

Findings: The purpose for the transit street setback is found in Section 33.130.215.A., which states:

The setback requirements along transit streets and in Pedestrian Districts create an environment that is inviting to pedestrians and transit users.

The applicant is requesting an adjustment to increase the maximum transit street setback in order to construct an addition on the south side of the existing building, rather than locate the addition within 10 feet or closer to SW Capitol Highway, a designated transit street.

Given the location of the existing building, 58 feet from SW Capitol Highway, the proposed placement of the kiosk aligned with the existing building wall is reasonable with additional pedestrian-related site improvements.

The applicant proposes a new onsite pedestrian connection from the new walk-up service window southward to the Oil Can Henry's building entrance. Also proposed are a pedestrian plaza/seating area at the south side of the building and two landscape islands at the east and west portions of the building. These internal site improvements will increase safety and comfort of pedestrians and other customers who use and move around the site. These improvements are supportive of the transit street setback purpose and will improve the environment for transit users and off-site pedestrians.

An additional pedestrian route is needed that will safely connect pedestrians and transit users from the existing sidewalk along SW Capitol Highway to the site and vice versa. Even though the applicant does not expect a high volume of walk-up customers, this connection will create a more inviting pedestrian environment along SW Capitol

Highway and the site.

A direct pedestrian connection from the sidewalk to the building is most desirable for users. This location, however, has site constraints. Between existing spaces labeled #4 and #5 on the site plan, the existing sidewalk is between 2 and 4 feet higher than the onsite paved parking area. Stairs would be needed – or a significant regrading/resurfacing of the existing parking area – in order to construct this direct connection. Stairs also do not meet accessibility (ADA) requirements. Therefore, the connection need not be a direct, straight line connection, but may be located near the existing landscaping adjacent to the driveway, near spaces #10 and #11. It can then connect to the planned pedestrian connection to the Oil Can Henry's entrance. During the building permit review for the kiosk, the applicant must coordinate work within the public right-of-way and the site to ensure an appropriate grade transition at this location.

A pedestrian connection to the sidewalk in SW Capitol Highway, six feet in width, constructed with a paving material – such as plain concrete or concrete pavers – that is different from the parking area asphalt, would substantially improve the pedestrian environment and make the site more inviting to pedestrians and transit users. Additionally, a different paving material will increase safety for both drivers and pedestrians, and is compatible with the pedestrian path materials standards of the Commercial Zones, 33.130.240.B.2. This construction is also complimentary to the construction planned for the internal path. The connection will lead to the walk up window and adjacent plaza, further meeting the purpose of the maximum transit street setback.

For all the reasons cited above, the proposed pedestrian and landscape improvements together with the condition of approval for a pedestrian connection from the sidewalk within SW Capitol Highway right-of-way to the walk-up window of the coffee kiosk, this proposal will equally meet the purpose of the regulation and will satisfy this criterion.

- 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: As stated above, the site is located within the CG zone. The Transportation Bureau review staff has no concerns about the proposal.

The Zoning Code defines “desired character” as:

The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.

The character statement of the General Commercial Zone (excerpt):

. . . to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market. Development is expected to be generally auto-accommodating, except where the site is adjacent to a transit street or in a Pedestrian District. The zone's development standards promote attractive development, an open and pleasant street appearance, and compatibility with adjacent residential areas. Development is intended to be aesthetically pleasing for motorists, transit users, pedestrians, and the businesses themselves.

From one standpoint, the site and surrounding sites are developed to be auto-accommodating: the site is, after all, located at the crossroads of three major

transportation routes: SW Capitol Highway, SW Barbur Boulevard, and Interstate 5. From another standpoint, transit service plays a significant role for all three routes: frequent service is provided by the #12 on SW Barbur. Other nearby bus lines include the #44 on SW Capitol and the #43 on SW Taylors Ferry. The Barbur Transit Center located just north of the site provides connections to many other transit lines. This site, considered well-served by transit and therefore exempt from minimum parking requirements, is expected to transition to become more pedestrian- and transit user-accommodating. To be consistent with and help achieve this desired character for the site, a condition should be placed on the proposal to add an onsite pedestrian connection between the sidewalk along SW Capitol and the walk-up window of the kiosk. This connection will greatly improve the safety, ease and comfort of transit users. With the above condition, 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: Only one adjustment is requested. This criterion is not applicable.

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

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such City designated resources on the site. Therefore, this criterion is not applicable.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: This large commercial site contains three buildings and surface vehicle maneuvering and parking paved areas – as it was designed for auto-servicing and driver convenience. This design will not change significantly as a result of the proposed new coffee shop drive-through. All existing buildings are set far back on the site and do not conform to the maximum 10-foot transit street building setback. The new kiosk measures only about 14 feet by 26 feet and is aligned with an existing building wall. Onsite vehicle maneuvering will generally remain as originally designed.

The applicant is proposing to add new landscaping, an outdoor seating area, and a well-designed pedestrian connection (6 feet in width, concrete surface cut into existing asphalt) to the adjacent onsite business. These new features will mitigate impacts from allowing the kiosk to be placed at 58 feet from the transit street by improving safety and comfort of pedestrians moving around the site and will help slow onsite vehicle movements. To further reduce impacts of placing the new kiosk so far back on the site, a condition must be placed on the proposal as identified in Criterion B above, to add a pedestrian connection from the SW Capitol Highway sidewalk to the proposed onsite pedestrian connection near the kiosk walk-up window, constructed to be compatible with the proposed onsite connection, and shown on the Site Plan, Exhibit C-1. This will result in an improved environment for transit users and walkers in the area and will mitigate for impacts resulting from the setback adjustment for the new kiosk.

With the added features proposed and condition cited above, this criterion is met.

- 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 within an environmental 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

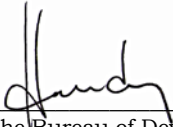
The proposal to transform a vacant car wash building into a retail coffee drive-through business will activate the site and is generally consistent with the regulations of the General Commercial zone. Although the proposed location of the small coffee kiosk does not meet the maximum 10-foot transit street building setback, the applicant proposes positive improvements aimed at facilitating pedestrian safety and movement around the site and between the onsite businesses. With these improvements – including two new landscape islands, a plaza or seating area, an onsite connection between the kiosk and the adjacent building entrance to the south -- and a condition for a pedestrian connection between the sidewalk of SW Capitol Highway and the proposed coffee kiosk walk-up window, this proposal can be approved because it meets the applicable approval criteria for adjustment reviews.

ADMINISTRATIVE DECISION

Approval of an adjustment to the maximum transit street setback of 33.130.215.C to allow a 14-foot by 26-foot kiosk to be set back 58 feet, and including associated new landscape islands, onsite pedestrian connection and plaza, per the approved site, floor and elevation plans, Exhibits C-1 and C-2, signed and dated April 20, 2015, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition 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 15-113372 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. As part of the building permit application submittal, identify on the site plan a new 6-foot wide pedestrian path connecting the existing sidewalk within the SW Capitol Highway right-of-way to the new onsite pedestrian path near the walk-up window of the kiosk. The path materials shall meet the materials standards of 33.130.240.B.2. The location and alignment shall be as shown on the Site Plan & Floor Plan, Exhibit C-1.

Staff Planner: Marguerite Feuersanger

Decision rendered by:  **on April 20, 2015.**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 22, 2015

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 February 2, 2015, and was determined to be complete on **March 19, 2015**.

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 February 2, 2015.

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.

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 May 6, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th 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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 **May 7, 2015**.
- 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:

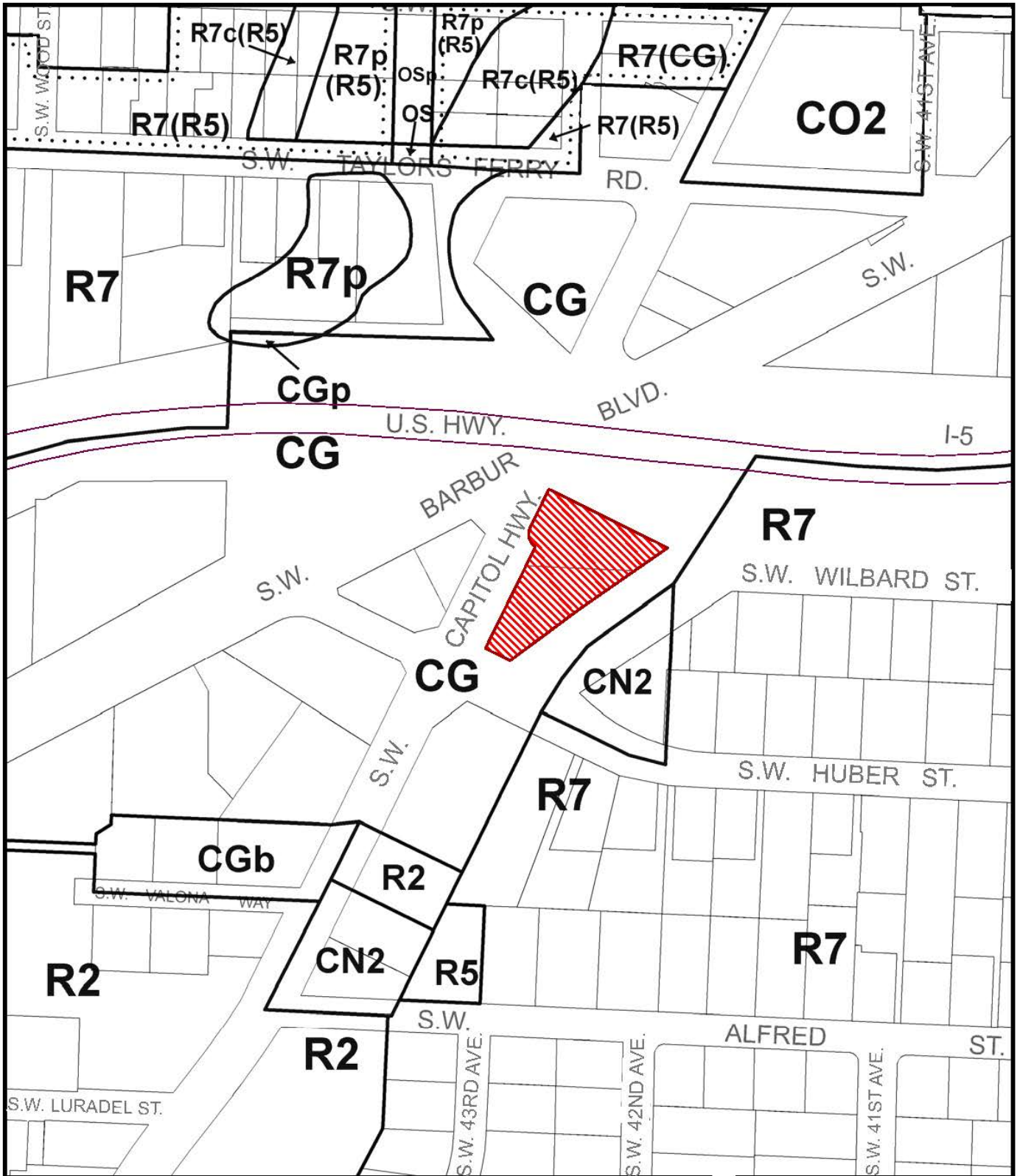
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- | | |
|---|---|
| A. Applicant's Statement | 2. Bureau of Environmental Services |
| B. Zoning Map (attached) | 3. Water Bureau |
| C. Plans/Drawings: | 4. Site Development Review Section of BDS |
| 1. Site Plan & Floor Plan (attached) | 5. Plans Examiner Review of BDS |
| 2. Building Elevations (attached) | F. Correspondence: |
| D. Notification information: | 1. Chuck Lamb, April 12, 2015 |
| 1. Mailing list | G. Other: |
| 2. Mailed notice | 1. Original LU Application |
| E. Agency Responses: | 2. Incomplete Letter to Applicant, February |
| 1. Bureau of Transportation Engineering and Development Review | 12, 2015 |

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 15-113372 AD
 1/4 Section 4025
 Scale 1 inch = 200 feet
 State_Id 1S1E29CB 1400
 Exhibit B (Feb 04, 2015)

SGA

15629 SW 147TH PLACE
TIGARD, OREGON 97224

BLACK ROCK COFFEE

10020 SW Capitol Hwy.
Portland, Oregon

BABYDEER
PROPERTIES,
LLC

17847 Hillway Ave.
Lake Oswego, OR
97034

PROJECT NUMBER: 14-101
ISSUE DATE: JANUARY 2015
DRAWN BY: KO / JS

REVISIONS:
3-16-2015 TYPE II CITY COMMENTS

ADJUSTMENT SUBMITTAL EXTERIOR ELEVATIONS

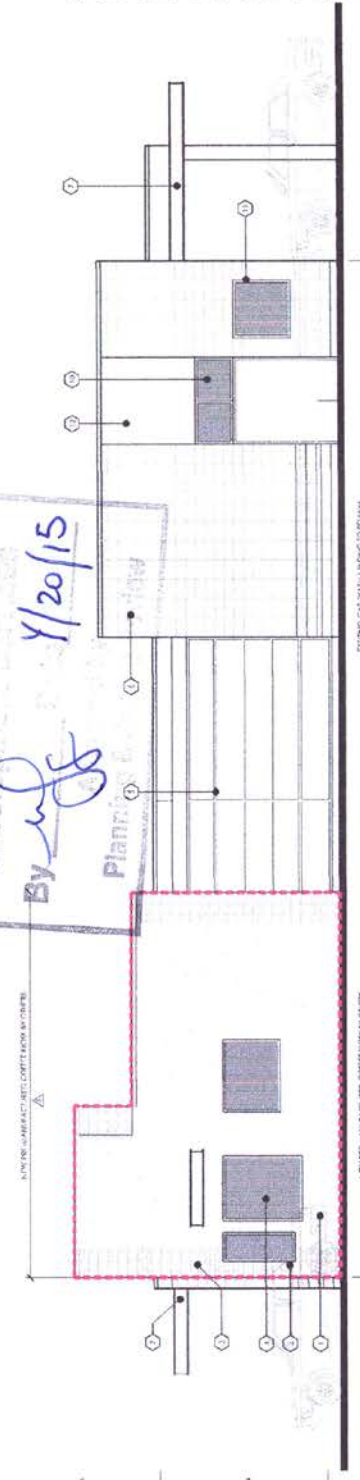
A3.1

KEY NOTES

- 1) STACED WITH REFERENCED BOOKS AND/OR DRAWINGS
- 2) FINISHES TO BE SHOWN IN THE FINISH SCHEDULE
- 3) CITY COMMENTS AND NOTES TO BE MAINTAINED THROUGHOUT
- 4) ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF TIGARD
- 5) ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF TIGARD
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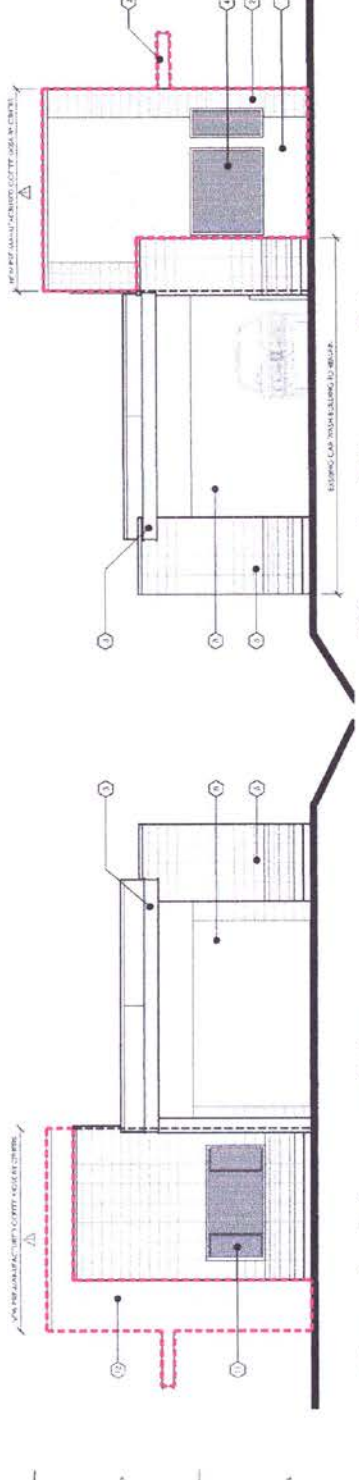
NOT TO SCALE
UNLESS OTHERWISE NOTED

City of Tigard
Development
Plan
By [Signature]
1/20/15



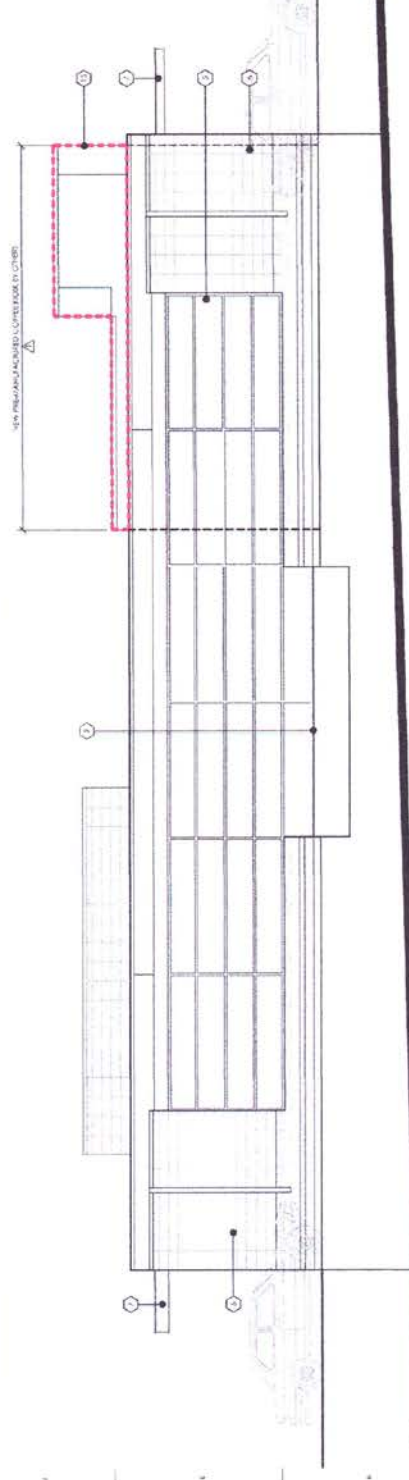
South Elevation

SCALE = 1/8" = 1'-0"



West Elevation

SCALE = 1/8" = 1'-0"



North Elevation

SCALE = 1/8" = 1'-0"

15-113372 AD EXHIBIT C-2

3127/15