



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

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
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Date: October 3, 2016
To: Interested Person
From: Andrew Gulizia, Land Use Services
503-823-7010 / Andrew.Gulizia@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 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 16-221975 AD

GENERAL INFORMATION

Applicant: Caryl Pinner
Barghausen Consulting Engineers, Inc.
18215 72nd Ave. S
Kent, WA 98032

Property Owner: PacWest Energy LLC
3450 Commercial Ct.
Meridian, ID 83642

Site Address: 10120 SW Capitol Hwy.

Legal Description: BLOCK 4 LOT 2-5 TL 4300, HUBER TR
Tax Account No.: R406401090
State ID No.: 1S1E29CB 04300
Quarter Section: 4025
Neighborhood: West Portland Park, contact Vick Johnson at cvmjohns@comcast.net
District Coalition: Southwest Neighborhoods Inc., contact Syla Bogert 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: The applicant proposes to construct an addition onto the east side of the commercial building on this site. Zoning Code Section 33.130.215.C.2 requires that new building area be set back no greater than 10 feet from the north lot line abutting SW Huber Street (a designated Transit Street). Because the addition will be 118 feet from the north lot line, the applicant is requesting approval of an Adjustment to increase the maximum setback from the north lot line from 10 feet to 118 feet.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Section 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The site is 32,700 square feet in area and located on the southeast corner of SW Capitol Highway and SW Huber Street. The site is developed with a gas station, accessory parking, and an 1,828-square-foot building which the applicant proposes to expand. Neighboring properties to the north and west are developed with a variety of commercial uses. A private school abuts the site to the south, and a multi-dwelling residential development abuts the site to the east. An on-ramp to the I-5 freeway is just across SW Huber Street from the site.

Zoning: The site is designated with the CG (General Commercial) zone. Commercial zones generally seek to promote uses and developments that will enhance the economic viability of both the City and neighborhood. The CG zone in particular 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.

Land Use History: City records indicate one prior land use review for this site. In 1967, a Variance was approved to reduce the required setback for a sign (file no. VZ 025-67).

Agency Review: A “Notice of Proposal” was mailed September 6, 2016. The following Bureaus have responded with no concerns about the proposed Adjustment:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- Site Development Section of BDS (Exhibit E-4); and
- Life Safety Review Section of BDS (Exhibit E-5).

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

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated 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 applicant is requesting an Adjustment to increase the maximum setback requirement from the north lot line (which abuts a transit street) from 10 feet to 118 feet. The purposes of the setback standards in commercial zones are stated in Zoning Code Section 33.130.215.A:

Purpose. *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 for areas that abut residential zones promote commercial development that will maintain light, air, and the potential for privacy for adjacent residential zones. The setback requirements along transit streets and in Pedestrian Districts create an environment that is inviting to pedestrians and transit users.*

Based on the statement above, the 10-foot maximum setback requirement from transit streets is intended to create an inviting environment for pedestrians and transit users by requiring buildings to be close to pedestrian and transit infrastructure.

In this case, the existing building is already set back 118 feet from the north lot line, and staff finds the proposed 7-foot increase in the width of the existing north-facing building wall will not worsen the pedestrian environment along SW Huber Street.

Staff finds the project could equally meet the purpose of the maximum setback requirement by improving the pedestrian environment along SW Huber Street by means other than building placement. Therefore, a condition of approval will require a 5-foot-wide landscaping buffer abutting the north lot line. This landscaping buffer must include trees, shrubs, and ground cover plants meeting the L2 (low screen) standard detailed in Zoning Code Section 33.248.020.B. This new landscaping will create a more pleasant and inviting environment for users of the sidewalk along SW Huber Street. Staff notes the applicant's site plan (Exhibit C-1) already illustrates a 5-foot-wide landscaping buffer in this location.

To further enhance the pedestrian environment along SW Huber Street, another condition of approval will require a 6-foot-wide pedestrian connection between the expanded building and the public sidewalk along SW Huber Street. This walkway must comply with the pedestrian standard applicable in commercial zones, which is detailed in Zoning Code Section 33.130.240. Staff notes a 6-foot-wide walkway is already illustrated on the applicant's site plan (Exhibit C-1), but is shown connecting the building to the public sidewalk along SW Capitol Highway. The condition of approval will require a new walkway to connect to SW Huber Street as well, since the proposed Adjustment affects the building's relationship with SW Huber Street. (The "nonconforming upgrades" requirement detailed in Zoning Code Section 33.258.070.D.2 may require both walkways at the time of building permit review, depending on the valuation of the project.)

Based on these reasons, and with conditions of approval for new landscaping and a pedestrian connection to SW Huber Street, staff finds the Adjustment equally meets the purpose of the regulation. 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: Because the site is located in the CG zone, the applicant must demonstrate that the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area.

Street Classifications

The site is a corner lot fronting on SW Capitol Highway and SW Huber Street. The classifications of these streets in the Transportation Element of the Comprehensive Plan are as follows:

	Traffic	Transit	Bikeway	Pedestrianway	Freight
SW Capitol Highway	District Collector	Transit Access Street	City Bikeway	City Walkway	Local Service
SW Huber Street	Neighborhood Collector	Community Transit Street	City Bikeway	City Walkway	Local Service

The Adjustment to the maximum setback requirement does not, in itself, affect the type or intensity of the commercial use allowed on the site, so the Adjustment will not affect traffic levels or demand for transit, bike, pedestrian, or freight facilities. The Portland Bureau of Transportation reviewed the proposal and responded with no objections (Exhibit E-2). Therefore, staff finds the proposal is consistent with the adjacent street classifications.

Desired Character of Area

The “desired character” of an area is defined in Zoning Code Section 33.910.030 as the preferred or envisioned character based on the purpose statement or character statement of the zone and any adopted area plans. The site is designated with the CG zone and is within the boundaries of the Southwest Community Plan.

The character statement for the CG zone in Section 33.130.030.G reads:

The General Commercial (CG) 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.

As discussed in the findings for approval criterion A, conditions of approval will require new landscaping abutting the north lot line and a new pedestrian connection between the building and SW Huber Street. Staff finds these improvements will enhance the street presence of the development along SW Huber Street, even though the building to be expanded is set back a substantial distance (118 feet) from this street. As envisioned in the character statement above, the new landscaping and pedestrian connection will make the site more aesthetically pleasing for motorists, transit users, and pedestrians than the existing condition. Therefore, with conditions of approval for new landscaping and a pedestrian connection to SW Huber Street, staff finds the proposal is consistent with the desired character of the CG zone stated in Zoning Code Section 33.130.030.G.

The following elements of the Southwest Community Plan are found to be relevant:

Land Use and Urban Form, Objective I.1: *Ensure compatibility of new development with Southwest Portland's positive qualities.*

Land Use and Urban Form, Objective II.A.8: *Enhance the environment for pedestrians in Southwest Portland's town centers, main streets, and transit corridors.*

The new landscaping to be installed along the north lot line will include trees, shrubs, and ground cover plants, and will soften the appearance of the development by adding new greenery. Since tree canopy and greenery are some of the most positive qualities of Southwest Portland, staff finds the proposal will be consistent with Objective I.1 with the condition of approval for new landscaping.

The conditions of approval for new landscaping and a new pedestrian connection will enhance the pedestrian environment along the transit corridor by creating a more pleasant experience for users of the sidewalk along SW Huber Street and a new connection from that sidewalk to the building on this site. Therefore, with these conditions of approval, staff finds the proposal will also be consistent with Objective II.A.8.

With conditions of approval for new landscaping and a pedestrian connection to SW Huber Street, staff finds the proposal is consistent with the relevant aspects of the Southwest Community Plan.

Summary

The proposal is found to be consistent with the adjacent street classifications. With conditions of approval for new landscaping and a pedestrian connection to SW Huber Street, the proposal is also found to be consistent with the desired character of the area. 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: As only one Adjustment is requested, this criterion is not applicable.

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

Findings: City-designated scenic resources are identified on the official zoning maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

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

Findings: As discussed in the findings for approval criteria A and B, any impacts from placing the addition more than 10 feet from the transit street will be effectively mitigated by the new landscaping and walkway to be required with conditions of approval. These improvements will enhance the street presence of the development along SW Huber Street, even though the building to be expanded is set back a substantial distance (118 feet) from this street. With conditions of approval for new landscaping and a pedestrian connection to SW Huber Street, 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: Environmental overlay zones are designated on the official zoning maps with either a lowercase “p” (Environmental Protection overlay zone) or “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on the site, 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 equally meets the intent of the maximum setback regulation and is consistent with the adjacent street classifications and the desired character of the area. New landscaping and a new pedestrian connection will enhance the street presence of the development along SW Huber Street even though the building to be expanded is set back a substantial distance (118 feet) from this street. The applicant has demonstrated that the applicable approval criteria are met. Since the approval criteria are met, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.130.215.C.2 to increase the maximum setback from the north lot line from 10 feet to 118 feet for the proposed addition, per the

approved site plan, Exhibit C-1, signed and dated September 28, 2016, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 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 through C-3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-221975 AD."
- B. A minimum 5-foot-wide landscaping buffer is required abutting the north lot line. This landscaping buffer must include trees, shrubs, and ground cover plants meeting the L2 (low screen) standard detailed in Zoning Code Section 33.248.020.B. Landscaping is not required where it would conflict with a driveway entrance into the site or with the pedestrian connection required in Condition C.
- C. A minimum 6-foot-wide pedestrian connection is required between the building on this site and the public sidewalk along SW Huber Street. This pedestrian connection must comply with the pedestrian standards detailed in Zoning Code Section 33.130.240.

Staff Planner: Andrew Gulizia

Decision rendered by:  **on September 28, 2016.**
By authority of the Director of the Bureau of Development Services

Decision mailed: October 3, 2016

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 11, 2016, and was determined to be complete on August 31, 2016.

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 11, 2016.

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: December 29, 2016.**

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 October 17, 2016**, at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 **October 18, 2016**.
- 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:

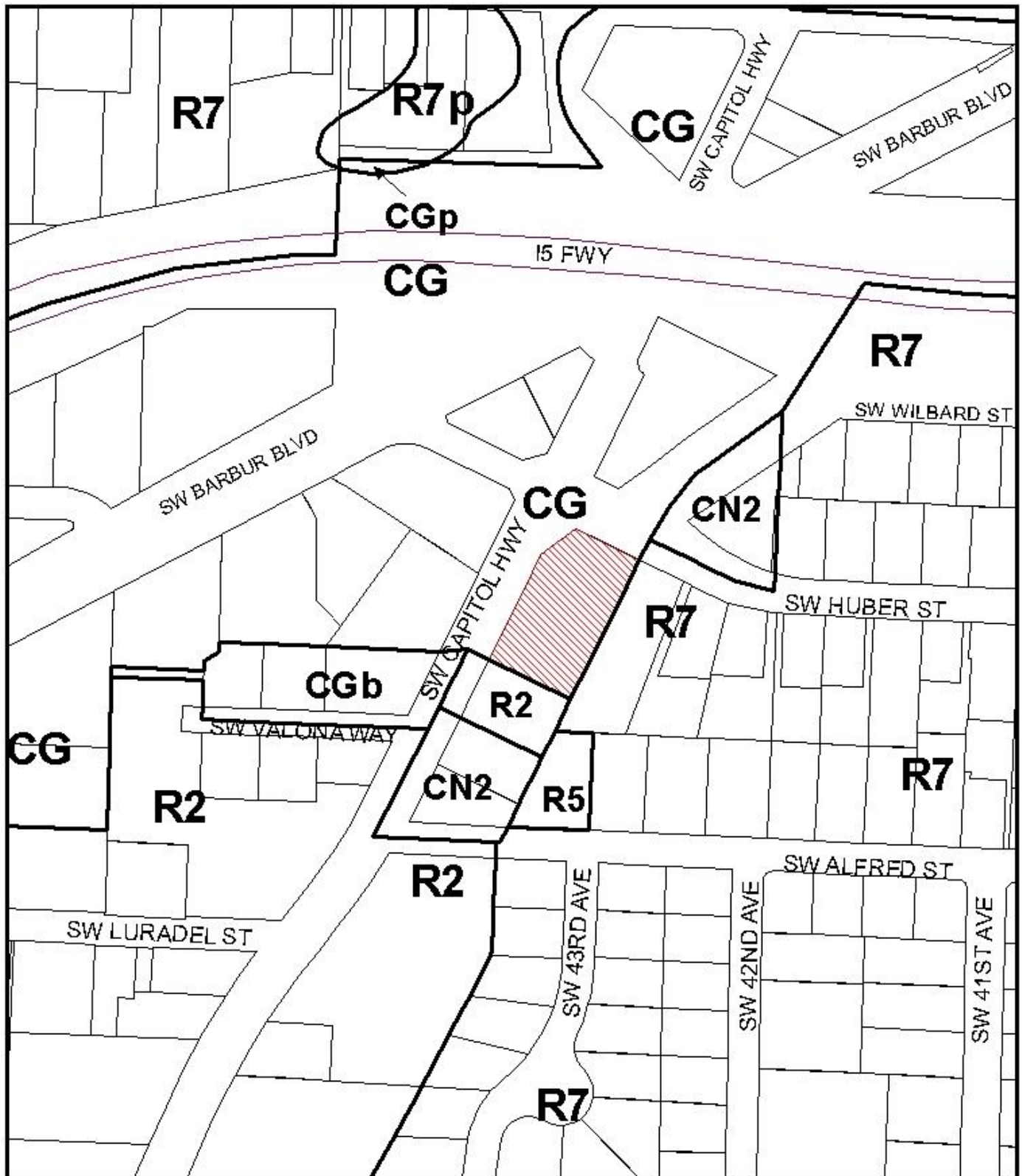
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Applicant's narrative
 - 2. Applicant's revised narrative, received August 31, 2016
 - 3. Photos
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan (attached)
 - 2. West, south, and north building elevations
 - 3. East building elevation
 - 4. Preliminary landscaping plan
 - 5. Large, scalable plan set (4 pages)
- D. Notification Information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Bureau of Transportation
 - 3. Water Bureau
 - 4. Site Development Review Section of BDS
 - 5. Life Safety Review Section of BDS
- F. Correspondence – none received
- G. Other:
 - 1. Original LU application form and receipt
 - 2. Incompleteness determination letter, dated August 24, 2016

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
 NORTH

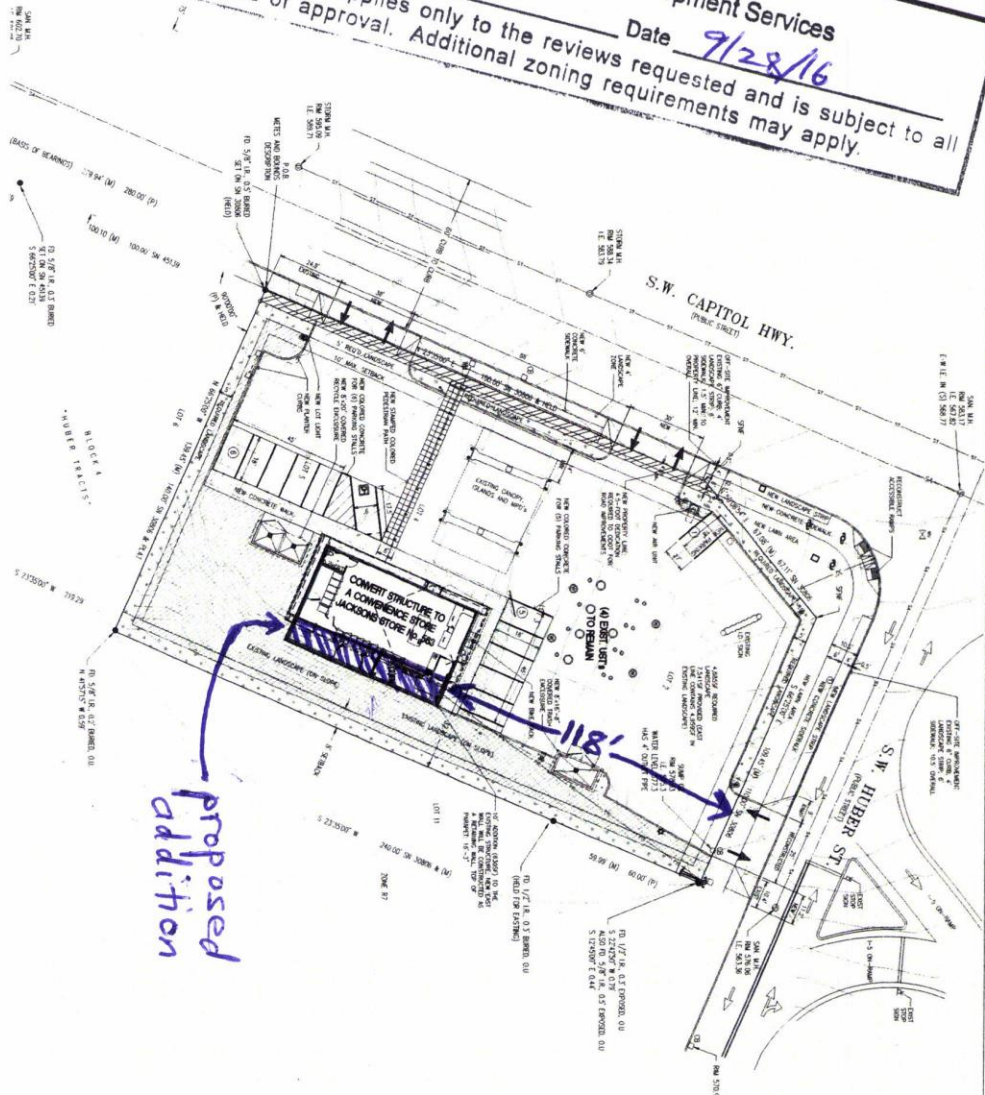
File No. LU 16-221975 AD
 1/4 Section 4025
 Scale 1 inch = 200 feet
 State_Id 1S1E29CB 4300
 Exhibit B (Aug 15, 2016)

Planner A Gulzig *Approved*
 City of Portland - Bureau of Development Services
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.
 Date 9/28/16

PRELIMINARY SITE PLAN



proposed addition



SITE DATA
 ADDRESS/LOCATION: 10120 SW CAPITOL HWY, PORTLAND, OREGON 97219
 MAPSHEET: CITY OF PORTLAND
 DATE: 09/28/16
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]

DISCLAIMER
 THIS PRELIMINARY SITE PLAN IS A CONCEPTUAL DESIGN AND NOT A CONTRACT. THE CLIENT AGREES TO HOLD THE ENGINEER HARMLESS FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF OR FROM THE USE OF THIS PRELIMINARY SITE PLAN. THE CLIENT'S USE OF THIS PRELIMINARY SITE PLAN IS LIMITED TO THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER. THE ENGINEER'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED HEREIN AND DOES NOT INCLUDE ANY OTHER SERVICES, WHETHER OR NOT SUCH SERVICES ARE SPECIFICALLY MENTIONED IN THIS PRELIMINARY SITE PLAN. THE ENGINEER'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED HEREIN AND DOES NOT INCLUDE ANY OTHER SERVICES, WHETHER OR NOT SUCH SERVICES ARE SPECIFICALLY MENTIONED IN THIS PRELIMINARY SITE PLAN.

2016-221975 AD
 Exhibit C-1

Job Number 17608	Client BARGHAUSEN CONSULTING ENGINEERS, INC.	Address 18215 72ND AVENUE SOUTH BENT, WA 98032 (425)251-6222 (425)251-8782 FAX	City BENT, WA	Scale Horizontal	Date 02.23.15	For Jacksons 3450 E COMMERCIAL COURT MERIDIAN, ID 83642 www.jacksons.com	Title PRELIMINARY SITE PLAN JACKSONS STORE No. 563 10120 SW CAPITOL HWY PORTLAND, OR 97219																								
Drawn By PS.3	Checked By	Civil Engineering, Land Planning, Surveying, Environmental Services																													
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