



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

Date: October 17, 2016
To: Interested Person
From: Matt Wickstrom, Land Use Services
 503-823-6825 / Matt.Wickstrom@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 16-206460 NU

GENERAL INFORMATION

Applicant: Larry Nutt
 Larry Nutt Design Service
 3632 NE Webster St
 Portland, OR 97211

Owner: Baker's Building LLC
 207 NW Park Ave
 Portland, OR 97209

Site Address: 1403-1415 & 1421 SE STARK ST

Legal Description: BLOCK 302 LOT 3&4 W 1/2 OF LOT 5&6, BURNELLS ADD; BLOCK 302, CANCEL INTO R124417 / BURNELLS ADD, BLOCK 302, W 1/2 OF LOT 5&6

Tax Account No.: R120900080, R120900100, R120900080
State ID No.: 1N1E35DC 16300, 1N1E35DC 16400, 1N1E35DC 16300
Quarter Section: 3031

Neighborhood: Buckman, contact Zachary Brooks at 503-482-8252
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010

Zoning: R1 (Residential 1,000)

Case Type: NU (Nonconforming Situation Review)
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:
 The applicant and property owner are in the process of obtaining permits to renovate the existing single-story building at this site. The applicant is proposing the location of a variety of Retail Sales and Service uses in the renovated building. Legal nonconforming status for a variety of Manufacturing and Production, Retail Sales and Service and Office uses in the

building has been established through the building permit. The site is zoned R1 (Residential 1,000) and the proposed retail use in the building is prohibited in this zone; however, because the applicant has documented nonconforming rights to other prohibited uses, the proposed retail uses may be approved through a Nonconforming Situation Review. The building layout includes a common corridor for small retail uses at the rear of the building as well as some basement area. Through the Comprehensive Plan Update, the zoning of the site will change to commercial and the proposed Retail Sales and Service uses will then be allowed by right; however, the update will not become effective until early 2018 and the applicant would like to proceed with work and permits before then. In summary, the applicant proposes a Nonconforming Situation Review to convert the established nonconforming uses in the building to Retail Sales and Service.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:

- 33.258.080.B Nonconforming Situation Review

ANALYSIS

Site and Vicinity: The 15,000 square foot site is developed with two buildings. Both buildings are single-story with a small amount of basement area and a small office/mezzanine level. One building was constructed in 1929 for the Luxury Bread Company. The other building, a reinforced concrete structure, was added in 1945 to house manufacturing space for a printing company. The buildings housed a variety of commercial enterprises up to recent times.

The immediate vicinity is developed with office and retail uses including the former Washington High School building. In the greater vicinity, single-dwelling residential development is located to the north of the site. An apartment building is located to the east of the site. An elementary school is located one block further east. Development further south is primarily single-dwelling residential. Development further west is more industrial in character.

Zoning: The site is zoned R1 (Residential 1,000). The R1 zone is a multi-dwelling residential zone. These zones are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing. City Council adopted the Comprehensive Plan Update on June 15, 2016. The update will change the zoning on this site to Commercial and the retail uses proposed will be allowed by right; however, the zoning changes will not go into effect until approximately January 2018 and as such, in the interim, the applicant is proceeding with the proposed Nonconforming Situation Review.

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

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **August 3, 2016**. The following Bureaus have responded:

- The Fire Bureau responded that all applicable Fire Code requirements shall apply at the time of permit review and development. The response states no objections to the proposal (Exhibit E-1);
- The Life Safety Section of BDS (Bureau of Development Services) responded that a building permit has been submitted and is currently under review (Exhibit E-2);
- The Bureau of Environmental Services responded that the project will not trigger the requirements of the Stormwater Management Manual; however, a safe stormwater disposal location that does not impact adjacent properties must be shown at time of building permit review. The response notes that the Bureau does not object to the requested Nonconforming Situation Review (Exhibit E-3);
- The Water Bureau responded with information about water service (Exhibit E-4);

- The Portland Bureau of Transportation (PBOT) reviewed the application for potential impacts on the right-of-way and traffic impacts and responded with no objections to the Nonconforming Situation Review (Exhibit E-5); and
- The Site Development section of BDS and the Urban Forestry section of Portland Parks and Recreation responded with no concerns (Exhibit E-6).

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the Notice of Proposal; however, the applicant submitted a letter of support from the Buckman Community Association with the land use review application (Exhibit A).

ZONING CODE APPROVAL CRITERIA

33.258.010 Overall Purpose of Regulations for Nonconforming Situations

Nonconforming situations are created when the application of a specific zone to a site changes, or a zoning regulation changes. As part of the change, existing uses, density, or development might no longer be allowed. The intent of the change is not to force all noncomplying situations to be immediately brought into conformance. Instead, the intent is to guide future uses and development in a new direction consistent with City policy, and, eventually, bring them into conformance.

This chapter provides methods to determine whether situations have legal nonconforming status. This is based on whether they were allowed when established, and if they have been maintained over time. This chapter also provides a method to review and limit nonconforming situations when changes to those situations are proposed. The intent is to protect the character of the area by reducing the negative impacts from nonconforming situations. At the same time, the regulations assure that the uses and development may continue and that the zoning regulations will not cause unnecessary burdens.

Nonconforming situations that have a lesser impact on the immediate area have fewer restrictions than those with greater impacts. Nonconforming uses in residential zones are treated more strictly than those in commercial, employment or industrial zones to protect the livability and character of residential neighborhoods. In contrast, nonconforming residential developments in residential zones are treated more liberally because they do not represent a major disruption to the neighborhood and they provide needed housing opportunities in the City.

33.258.080 Nonconforming Situation Review

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 previous use or development) on the surrounding area taking into account factors such as:
 - a. The hours of operation;

Findings: The applicant has established nonconforming rights for the existing tenant spaces in the building, meaning that those uses were shown to have been allowed when established (prior to the application of residential zoning on the site) and have been maintained over time. The uses include a mix of office, manufacturing and production, and retail. This assortment of uses has a greater potential to operate during a wide-range of hours than the proposed retail-only use of the building. Based on this information, there will be not net increase in detrimental impacts on the surrounding vicinity due to the hours of operation of

the proposed retail uses. Furthermore, Portland Zoning Code Section 33.258.050.A notes that the hours of operation for nonconforming uses cannot extend into the period of 11 PM to 6 AM. Based on this criterion is met.

b. Vehicle trips to the site and impact on surrounding on-street parking;

Findings: PBOT reviewed the application against the transportation-related approval criteria and provided the following response:

To address the transportation related approval criteria the applicant submitted a professional Transportation Impact Analysis (TIS) prepared by Charbonneau Engineering, LLC. The scope of the analysis was reviewed and approved by PBOT.

The building is current utilized for a mix of office, retail, and manufacturing uses. As proposed, the building will undergo a major renovation which will include a conversion to Retail Sales and Service uses.

Vehicle Trips to the Site

To evaluate the impact of vehicle trips to the site, the applicant conducted traffic counts during the AM and PM peak hour periods at the following intersections:

- SE Stark @ SE 11th Ave
- SE Stark @ SE 12th Ave
- SE Stark @ SE 14th Ave

Utilizing estimated trip rates published by the Institute of Transportation Engineers (ITE) *Trip Generation Manual, 9th Edition*, the applicant's traffic engineer evaluated the study intersections under existing conditions and with the proposed development. To obtain a complete understanding of existing conditions, the analysis included in-process trips for two residential projects in the immediate vicinity that are currently under permit review.

As demonstrated by the TIS, the existing mix of uses in the building generate an estimated 314 total trips per day with a total of 18 trips in the AM peak hour and 27 trips in the PM peak hour. Assuming the entire building is utilized for retail uses, the proposed development is estimated to generate 716 trips per day with 16 trips in the AM peak hour and 42 trips in the PM peak hour. Accordingly, the proposed development is estimated to generate a net increase of 402 trips per day and 15 trips in the PM peak hour. The AM peak hour is expected to experience two fewer trips under the redevelopment scenario.

Based upon the applicant's capacity analysis provided in the TIS, the study intersections will continue to operate at level of service (LOS) D or better through the year 2019 with the additional traffic generated by the proposed development. ***Accordingly, intersections will continue to meet/exceed the City's established LOS standards and there will be no net increase in overall detrimental impacts associated with intersection operations. No mitigation measures are required/warranted.***

Impact to On-Street Parking

To address this criterion, the applicant's traffic engineer conducted a parking capacity and demand analysis within a study area that included:

- SE Stark Street from SE 13th Ave to SE 16th Ave

- SE Oak Street between SE 14th Ave and SE 15th Ave
- SE 14th and SE 15th Aves from SE Oak St to 350-ft south of SE Stark

The analysis demonstrated that within the study area there is a supply of approximately 101 on-street parking spaces. The applicant's traffic engineer conducted parking surveys in February/March 2016 to estimate current demand for on-street parking. The surveys were conducted on weekdays during four peak periods (5:45AM, Noon, 3:30PM, and 7:00PM) to capture the peak parking periods associated with the variety of uses in the area. It is important to note that the parking surveys were conducted when the subject building was occupied and operating with a mix of office/retail/manufacturing uses and therefore contributing to the demand for parking in the area. The existing building has on-site loading facilities but no on-site parking opportunities.

The results of the survey demonstrated that the current demand for on-street parking is highest during the noon hour when approximately 80% of the spaces within the study area were occupied and the 3:30 period during which approximately 71% of the spaces were occupied. Utilizing parking demand rates available in ITE's *Parking Generation Manual, 4th Edition*, and adjusting for the on-street parking demand generated by the existing uses on-site, the additional demand for on-street parking generated by the proposed development is expected to result in an 86% occupancy rate (15 spaces available) during the noon peak period and 73% occupancy during the 3:30PM peak period (30 spaces available). While the proposed development will result in a marginal increase in demand for on-street parking within the study area, the applicant's analysis indicates that there will continue to be at least 15 spaces available during the peak demand period.

Significantly, it should be noted that the estimated parking rates published by ITE are based upon a 100% single-occupancy vehicle mode split. Given the site's location within an area that is well served by existing transit facilities (closest bus stop located at SE 12th Ave & SE Stark, approximately 525-ft from the site), bike facilities (SE 16th Ave is identified as a Neighborhood Greenway-Portland Bike/Walk Map), a robust system of sidewalks throughout the surrounding neighborhood, and available City mode split data for this area, the vehicle trips to the site are expected to be less than the estimated ITE values. Accordingly, actual on-street parking occupancy rates are anticipated to be less than those calculated.

Based on the information above, this criterion is met.

- c. Noise, vibration, dust, odor, fumes, glare, and smoke;

Findings: The existing uses at the site include manufacturing and production, specifically a glass studio, frame shop and other manufacturing business. These uses create a greater amount of noise, vibration, dust, odor, fumes, glare and smoke than retail uses; therefore, the proposed use will not result in increased detrimental impacts. This criterion is met.

- d. Potential for increased litter; and

- e. The amount, location, and nature of any outside displays, storage, or activities; and

Findings for d and e: A primary intention behind the approval criteria related to increased litter and exterior display, storage or activities is to ensure that when materials are stored or displayed outside, they will not blow onto other sites and result in litter. In this situation, the building occupies the entire site and

therefore exterior display, storage or activities are not possible. Another point regarding litter is the retail uses, other than fast food, typically do not generate a greater amount of litter than other uses. Because the building occupies the entire site and due to the layout in small tenant spaces, it is not suitable for a typical fast food use and therefore the potential for increased litter associated with a fast food tenant is not realistic. Finally, the existing allowed uses in the building include manufacturing and production uses. These types of uses can generate litter when scraps and byproducts and carried to dumpsters or loaded into trucks. As the applicant proposes for the building to only include retail uses, the potential for increased litter associated with manufacturing and production uses is eliminated. 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 applicant does not propose any changes to the site other than improvements to the façade of the building. The building currently appears to be a former single-story retail building. Upgrading the façade will only make it more attractive for neighbors, customers and passerby. These improvements will not change the building scale or placement. The building does not contain any parking area and therefore no changes will be made in that regard. The building abuts three residential uses to the north and one to the east; however, no windows are located on the north or east building façade and therefore privacy for those uses will be maintained. No buffering currently exists because the building walls extend to the property line and therefore no additional buffering is possible; however, the proposal will not result in a loss of buffering. The Portland Zoning Code regulates off-site impacts and does not allow lighting over a certain level to spill onto adjacent properties; the proposed uses will be required to comply with these off-site impact standards. Signs are regulated by Title 32 Sign Code. This code allows modestly sized signs for retail uses so they do not overwhelm the building. The proposed uses will be required to comply with Title 32 or apply for an Adjustment Review if a larger sign than allowed is requested. Based on this information, 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 a Residential (R) zone. This criterion does not apply.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant has established legal nonconforming rights for a mix of Manufacturing and Production, Retail Sales and Service and Office uses in the building at this site. Through this

Nonconforming Situation Review, the applicant proposes to change the allowed uses so that the building is composed entirely of Retail Sales and Service uses. The application demonstrates that the proposed uses will result in no net increase in overall detrimental impacts related to hours of operation, vehicle trips, on-street parking, as well as, noise, odors and litter. Applicable approval criteria are met and this proposal should be approved.

ADMINISTRATIVE DECISION

Approval of a Nonconforming Situation Review to change the allowed nonconforming use in the building and at the site to Retail Sales and Service (33.258.050.B and 33.258.080.B), per the approved floor plans, Exhibits C-1 through C-3, signed and dated October 13, 2016, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-206460 NU."

Staff Planner: Matt Wickstrom

Decision rendered by:  **on October 13, 2016**

By authority of the Director of the Bureau of Development Services

Decision mailed: October 17, 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 July 15, 2016, and was determined to be complete on July 29, 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 July 15, 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 requested that the 120-day review period be extended by 60 days, as stated in Exhibit A-2. Unless further extended by the applicant, **the 120 days will expire on: January 25, 2017.**

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 31, 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 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 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 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 **November 1, 2016 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder’s office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

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:

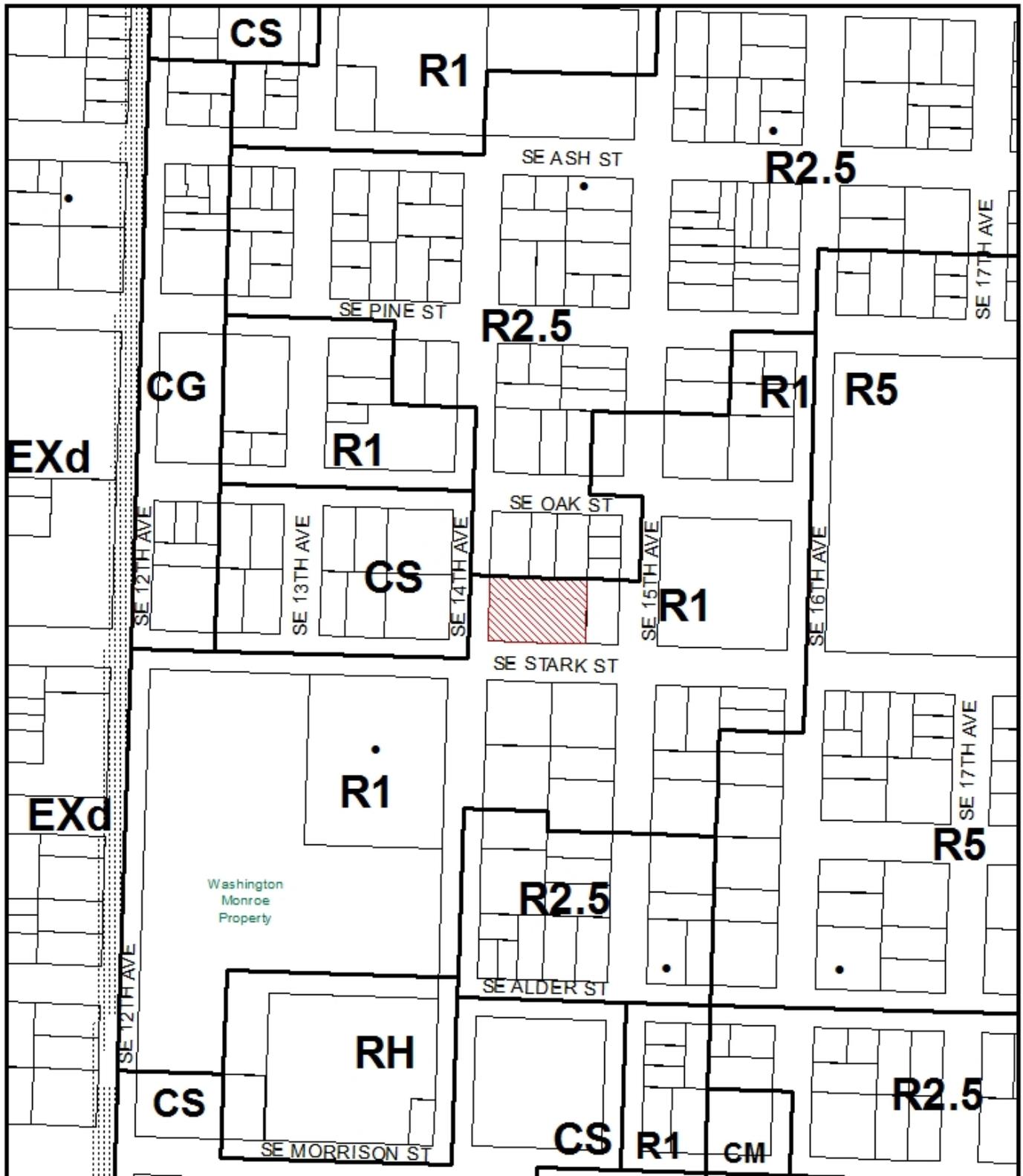
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
 - 1. Supplemental Submittal dated September 2016
 - 2. Request by Larry Nutt to extend 120-day decision deadline by 60 days dated October 12, 2016
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. South and West Elevation Drawings (attached)
 - 2. First Floor Approved Uses (attached)
 - 3. Basement Approved Uses (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Fire Bureau
 - 2. Life Safety Section of BDS
 - 3. Bureau of Environmental Services
 - 4. Water Bureau
 - 5. Portland Bureau of Transportation
 - 6. Summary of agency responses
- F. Correspondence: None

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

NORTH

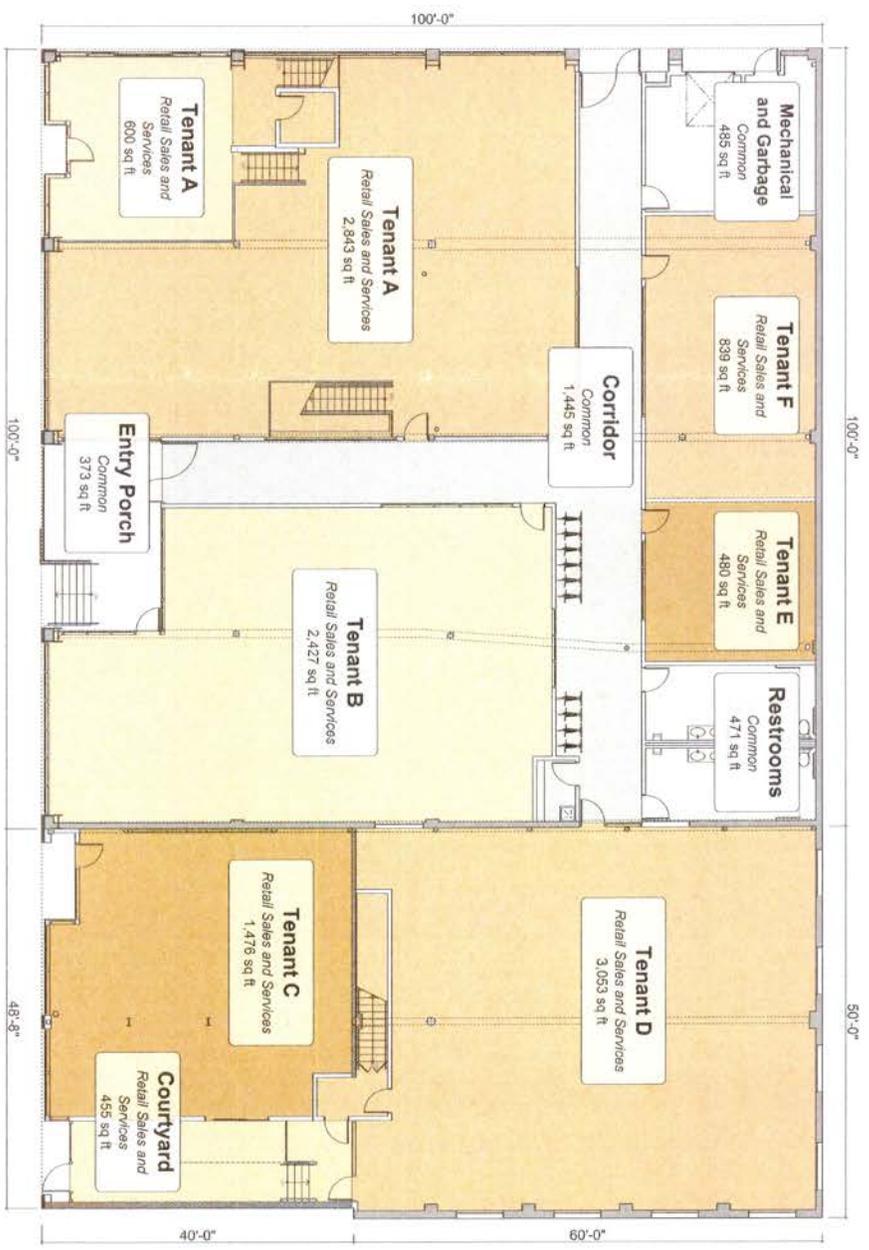
-  Site
-  Historic Landmark

File No. LU 16-206460 NU
 1/4 Section 3031
 Scale 1 inch = 200 feet
 State_Id 1N1E35DC 16300
 Exhibit B (Jul 19, 2016)

Approved
 City of Portland - Bureau of Development Services
 Planner Wickstrom Date 10/13/16
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning restrictions may apply.

Drawing Key

- Manufacturing + Production
- Office
- Retail Sales + Service
- Vacant/ Non-leased



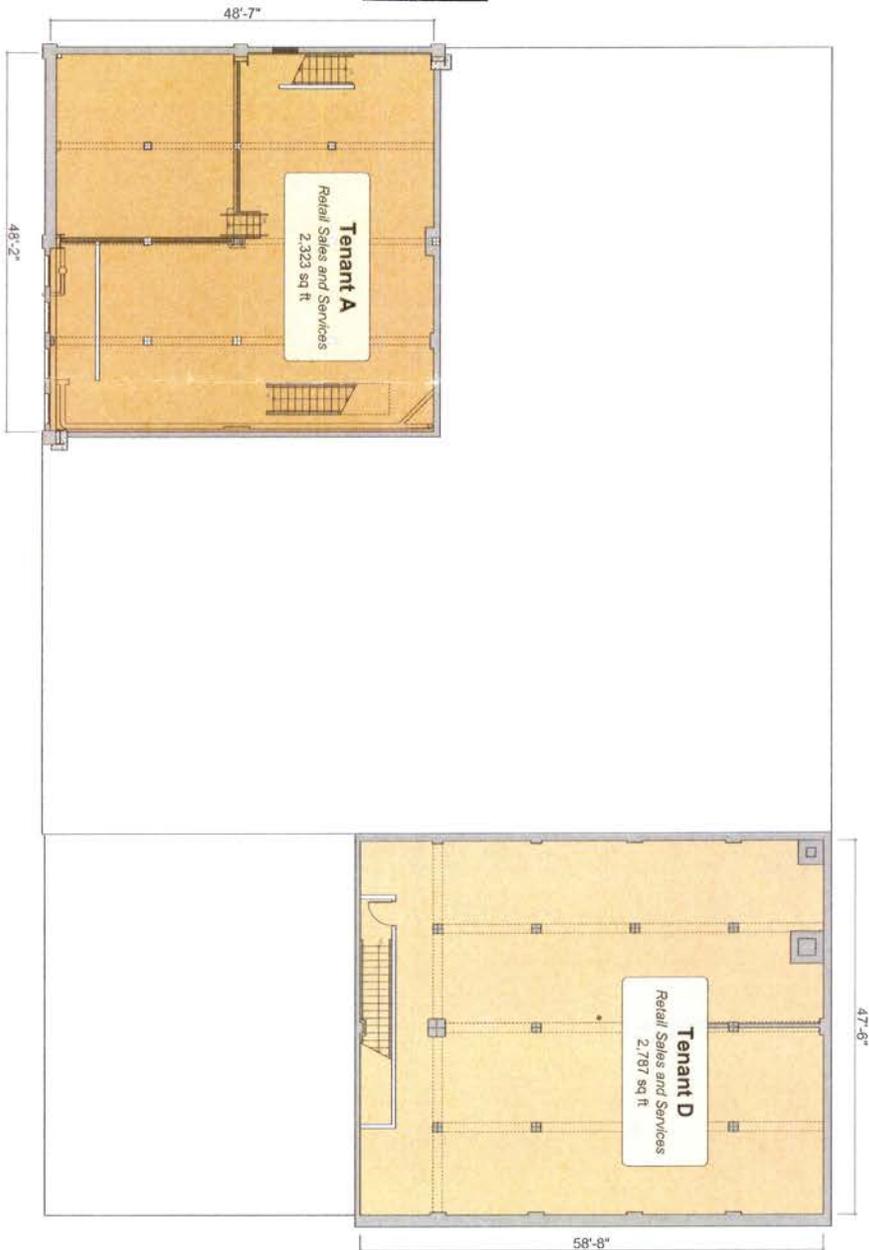
1 First Floor, Proposed Uses
Approved
 Scale: 1/16" = 1'-0"

16-206460 NV

Approved
 City of Portland - Bureau of Development Services
 Planner: Wickstrom Date: 10/13/16
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

Drawing Key

Manufacturing + Production	
Office	
Retail Sales + Service	
Vacant/ Non-leased	



1 **Basement, Proposed Uses** *Approved*
 Scale: 1/16" = 1'-0"

16-206460 NV