



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

FROM CONCEPT TO CONSTRUCTION

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Date: December 16, 2016
To: Interested Person
From: David Besley, Land Use Services
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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 16-246714 NU

GENERAL INFORMATION

Applicant: Bruce Vincent
Bedsaul Vincent Consulting LLC
416 Laurel Avenue #3
Tillamook, OR 97141

Owner: Stacey Squires
Bronko LLC
657 SE Yamhill St
Portland, OR 97214-2326

Site Address: 1100 NE 21ST AVE

Legal Description: TL 12000 0.36 ACRES, SECTION 35 1N 1E
Tax Account No.: R941350570
State ID No.: 1N1E35AA 12000
Quarter Section: 2932

Neighborhood: Sullivan Gulch, contact Kathy Hansen at 503-221-4845
District Coalition: Northeast Coalition of Neighborhoods, contact Zena Rockowitz at 503-388-5070

Zoning: R2.5 (Single Family Residential 2,500)

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

Proposal:
The applicant is requesting a Nonconforming Situation Review in order to convert a 5,541 square foot portion of an existing 13,350 square foot non-conforming Industrial Service use (Squires Electric) to a different industrial use - Manufacturing and Production (Gabriel's Bakery, a wholesale manufacturer of baked goods) - on a residentially zoned site. Gabriel's

Bakery produces and ships bread products to grocery stores, specialty shops, restaurants, and cafes throughout the Portland metro area; the bakery will not be a commercial operation that is open to the public. Gabriel's Bakery space will occupy the westernmost portion of the building with frontage along NE 21st Avenue and will use the two existing curb cuts and garage doors as loading bays. The easternmost portion of the building will continue to be used by Squires Electric. No new construction or improvements to the exterior are proposed as part of this application.

Because the site is residentially-zoned, a Nonconforming Situation Review is required to add a Manufacturing and Production use (Section 33.920.310) to the existing Industrial Service use (Section 33.920.300). The existing industrial use has been established as a legal nonconforming use through documentation that the use was established and has been maintained over time (case file 13-240146 PR).

Relevant Approval Criteria:

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

- 33.258.080.B Nonconforming Situation Review

ANALYSIS

Site and Vicinity: The 15,750 square foot lot is on the east side of NE 21st Avenue between Interstate 84 and NE Multnomah Street. The relatively flat site contains a 13,350 square foot non-conforming industrial service use building (Squires Electric). The site is separated from Interstate 84 by a vacant parcel to the south, which includes mature trees. The surrounding vicinity is developed with a mix of primarily single-dwelling residences and multi-dwelling residential buildings to the north, and commercial and industrial buildings to the south.

Two existing curb cuts exist on site, which are perpendicular to and lead to garage doors, which are used as loading bays.

Zoning: The R2.5 zone is a single-dwelling zone that is intended to preserve land for housing, and to provide housing opportunities for individual households. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

Land Use History:

VZ 161-61: 1961 Variance approving the increase the floor area of a non-conforming mattress factory, to waive the required off-street parking of one space, and to waive the required rear yard of 6' to permit construction of a 11' by 60' addition to an existing building which will abut the rear (east) property line;

VZ 292-69: 1961 Variance approving the enlargement of a non-conforming use by 1922 square feet or 19.9% of the existing floor area of 9614 sq.ft. of the existing mattress factory;

VZ 198-90: 1990 Variance approving the non-conforming upgrade from a mattress factory to an office print shop in a residential zone; and

13-240146 PR: 2013 Nonconforming Situation Review confirming that the existing industrial use has been established as a legal nonconforming use through documentation that the use was established and has been maintained over time (Exhibit G-3).

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **November 9, 2016**. The following Bureaus have responded with the following information:

- The Portland Fire Bureau responded with no concerns and included Fire Code information (Exhibit E-1);

- The Life Safety Section of the Bureau of Development Services (BDS) responded with no concerns and included Building Code information (Exhibit E-2);
- The Portland Bureau of Transportation (PBOT) responded with no concerns and noted that, as a condition of building permit approval, the applicant is required to close driveways and curb cuts that do not provide access to a legal parking or loading space and the applicant is required to reconstruct driveways and curb cuts to provide driveway access that is perpendicular to the right-of-way, and in compliance with current ADA standards. The driveways and curb cuts appear to comply with these standards; however, the PBOT will evaluate further and verify during the permit review. Additionally, this location has been identified as a possible location for a protected bikeway and forward ingress/egress from all driveways is recommended (Exhibit E-3); and
- The Bureau of Environmental Services responded with no concerns and included stormwater management information (Exhibit E-4).

The following Bureaus have responded with no concerns (Exhibit E-5):

- The Water Bureau; and
- Site Development Review Section of BDS.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 9, 2016. One written responses was received from a neighboring property owner in support of the proposal itself, but noted issues with the garbage container, which obstructs views from the driveway and attracts homeless people. The neighbor notes an increase in vandalism and recommends locking the dumpster (Exhibit F-1).

Staff Response: The applicant has stated that they will install a dumpster and recycling bin inside the building, which will be required as a condition of approval. Additional issues with regards to litter and exterior activities on the site are discussed further in the findings below.

ZONING CODE APPROVAL CRITERIA

33.258.010 Purpose of Nonconforming Situation Regulations

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.

Legal nonconforming status is based on whether the situation was allowed when established, and if it has 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.

33.258.080 Nonconforming Situation Review

B. Approval criteria. The request will be approved if the review body finds that the applicants 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;
- b. Vehicle trips to the site and impact on surrounding on-street parking;
- c. Noise, vibration, dust, odor, fumes, glare, and smoke;
- d. Potential for increased litter; and
- e. The amount, location, and nature of any outside displays, storage, or activities; and

Findings:

Hours of operation – The applicant has established nonconforming rights for the existing tenant space in the building, meaning the industrial use was shown to have been allowed when established (prior to the application of residential zoning on the site) and has been maintained over time. The existing Industrial Service use (Squires Electric) uses this site primarily for storage of tools and equipment, and is not open to the public. Employees use the site from 8 AM to 6 PM Monday through Friday. Business hours of the proposed Manufacturing and Production use (Gabriel’s Bakery), which will also be closed to the public, will be from 6 AM to 8 PM Monday through Friday. The bakery use involves preparation and baking as well as delivering baked goods via delivery vans. Despite the increase in operational hours, there will not be a net increase in detrimental impacts on the surrounding vicinity due to the hours of operation of the proposed new industrial use; it will operate similarly to Squires Electric in that it is not open to the public and is used in part as a staging/storage area for items that will be delivered. 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. This criterion is met.

Vehicle trips and impact on surrounding on-street parking – Squires Electric employees will visit the site an average of 5 times per week (total, not per employee) to pick up and drop off material and equipment. Gabriel’s Bakery will have, on average, six to seven employees on-site during the hours specified above. Trips include 2-3 daily trips per employee via delivery vans, which will be parked inside the building.

TENANT	TRIP GENERATION	TOTAL DAILY TRIPS
Squires Electric employees	5 trips/week	One trip
Gabriel’s Bakery employees	2 trips/employee	Maximum 14 trips
TOTAL		14-15 trips

Utilizing estimated trip rates published by the Institute of Transportation Engineers (ITE) Trip Generation Manual, the applicant’s traffic engineer evaluated the study intersections under existing conditions and with the proposed development. Based on the ITE trip generation rates, the 13,500 square foot of gross floor area would generate 14 trip ends, or 28 daily trips to and from the site. The actual trips of 14-15 trips/day are nearly half of those predicted by the ITE trip generation rates. The site is located on a Neighborhood Collector Street, which is intended to handle larger volumes of traffic.

The proposed trip generation for the two industrial uses is significantly lower than the trip generation that occurred in the past at this site (as estimated by the applicant’s transportation engineer):

PAST USE	CLASSIFICATION	TRIP GENERATION	TOTAL DAILY TRIPS
Rose Garage	Car repair garage/auto parts and service center	3.11-4.46 trips/1,000 square feet	84-120 trips
Western Specialty	Print Shop	.97 trips/1000 square feet	28 trips
King Fisher & Western Mattress	Manufacturing	.97 trips/1,000 square feet	28 trips

The site contains three parking spaces behind (to the east of) the building which are used by Squires and two garage bays in front of the building (fronting NE 21st Ave), which will be

used by Gabriel's Bakery to pick up baked goods. There is also available curb side parking directly adjacent to the north and west of the site.

PBOT staff analyzed the potential impacts of the current proposal and responded with no concerns about the proposed alteration to the industrial use, but noted that, as a condition of building permit approval, the applicant is required to close driveways and curb cuts that do not provide access to a legal parking or loading space and the applicant is required to reconstruct driveways and curb cuts to provide driveway access that is perpendicular to the right-of-way, and in compliance with current ADA standards. PBOT will evaluate further during permit review. As conditioned, this criterion is met.

Noise, vibration, dust, odor, fumes, glare, and smoke – The previous uses at the site include a vehicle shop and mattress factory. These uses create a greater amount of noise, vibration, dust, odor, fumes, glare and smoke than the wholesale bakery. Additionally, the bakery is located along a busy neighborhood collector street that crosses over I-84 just south of the site, so this is an area heavily impacted by noise and the bakery use, interior to the structure, will be minimal. the proposed use will not result in increased detrimental impacts. This criterion is met.

Potential for increased litter &

Outside displays, storage, or activities - 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 almost all of the site and exterior display, storage or activities are not possible or proposed. All work activities and storage will be enclosed within the building .The applicant has stated that they will install a dumpster and recycling bin inside the building and that the site will be maintained to be free of litter, so there should be no increase in impacts. A condition of approval will require this. As conditioned, 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 exterior or configuration of the site, and includes only interior changes. The building is a single-story industrial building. Gabriel's Bakery space will occupy the westernmost portion of the building with frontage along NE 21st Avenue and will use the two existing curb cuts and garage doors as loading bays. No new parking or changes to the existing parking are proposed. The only residential use abutting the site is to the east (Sullivan's Village Condominiums); however, the easternmost portion of the building and site will continue to be used by Squires, so there will be no additional impacts to privacy. There has not been buffering between these uses and no new buffering is proposed because the eastern edge of the site is used to access the vehicle parking area behind the building. The Nonconforming Situation Review does not include plans to add outdoor security lighting or illuminated signs that would have an impact on the nearby residential neighbors. 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 if proposed in the future. Similarly, signs are regulated by Title 32 Sign Code and any future signs will be required to comply with these standards. 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 proposal is in a residentially zoned area. 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 an industrial use in the building at this residentially zoned site. Through this Nonconforming Situation Review, the applicant proposes to convert a portion of an existing Industrial Service use building to a Manufacturing and Production use. 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 and odors. Conditions of approval are imposed to address transportation and litter concerns. With the noted conditions of approval, applicable approval criteria are met and this proposal should be approved.

ADMINISTRATIVE DECISION

Approval of a Nonconforming Situation Review to convert a 5,541 square foot portion of an existing 13,350 square foot non-conforming Industrial Service use (Squires Electric) to a Manufacturing and Production Use (Gabriel's Bakery) on a residentially zoned site, per the approved site plan, Exhibit C-1, signed and dated December 13, 2016, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) 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 16-246714 NU." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Before building permit approval, the applicant is required to close driveways and curb cuts that do not provide access to a legal parking or loading space and the applicant is required to reconstruct driveways and curb cuts to provide driveway access that is perpendicular to the right-of-way, and in compliance with current ADA standards.
- C. Trash dumpsters and recycling bins must be kept inside the building except for trash pickup.

Staff Planner: David Besley



Decision rendered by: _____ **on December 13, 2016.**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 16, 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 September 21, 2016, and was determined to be complete on October 27, 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 September 21, 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 further extended by the applicant, **the 120 days will expire on: February 24, 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 December 30, 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 **January 2, 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:

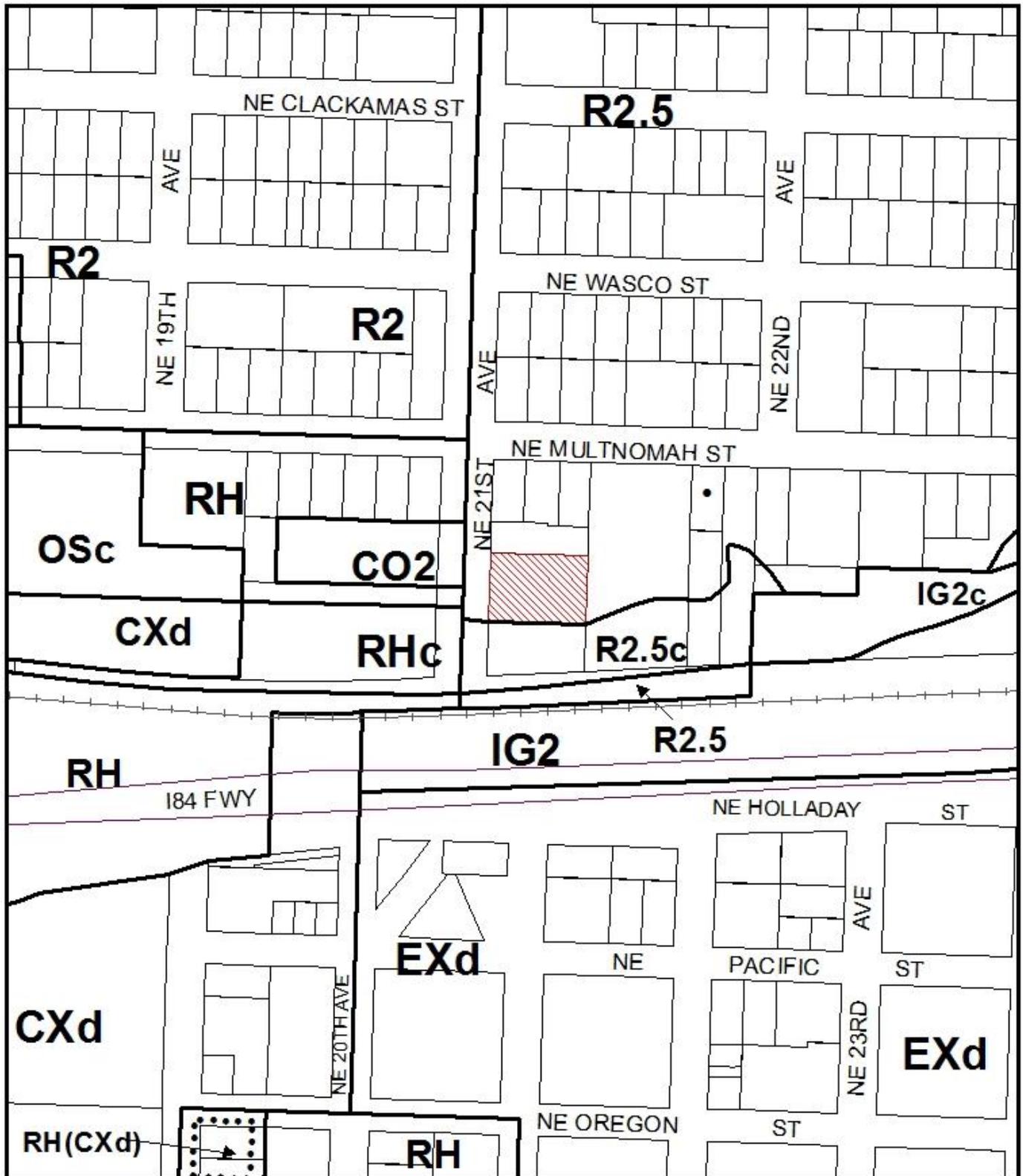
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan/floor plan (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 Transportation Engineering and Development Review
 - 4. Bureau of Environmental Services
 - 5. Water Bureau and Site Development Review Section of BDS
- F. Correspondence:
 - 1. Richard Finn, November 30, 2016, Letter of support/concerns
- G. Other:
 - 1. Original LU Application Form and Receipt
 - 2. Incomplete letter from staff to applicant, sent October 4, 2016
 - 3. Nonconforming Situation Review Letter (13-240146 PR)

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).



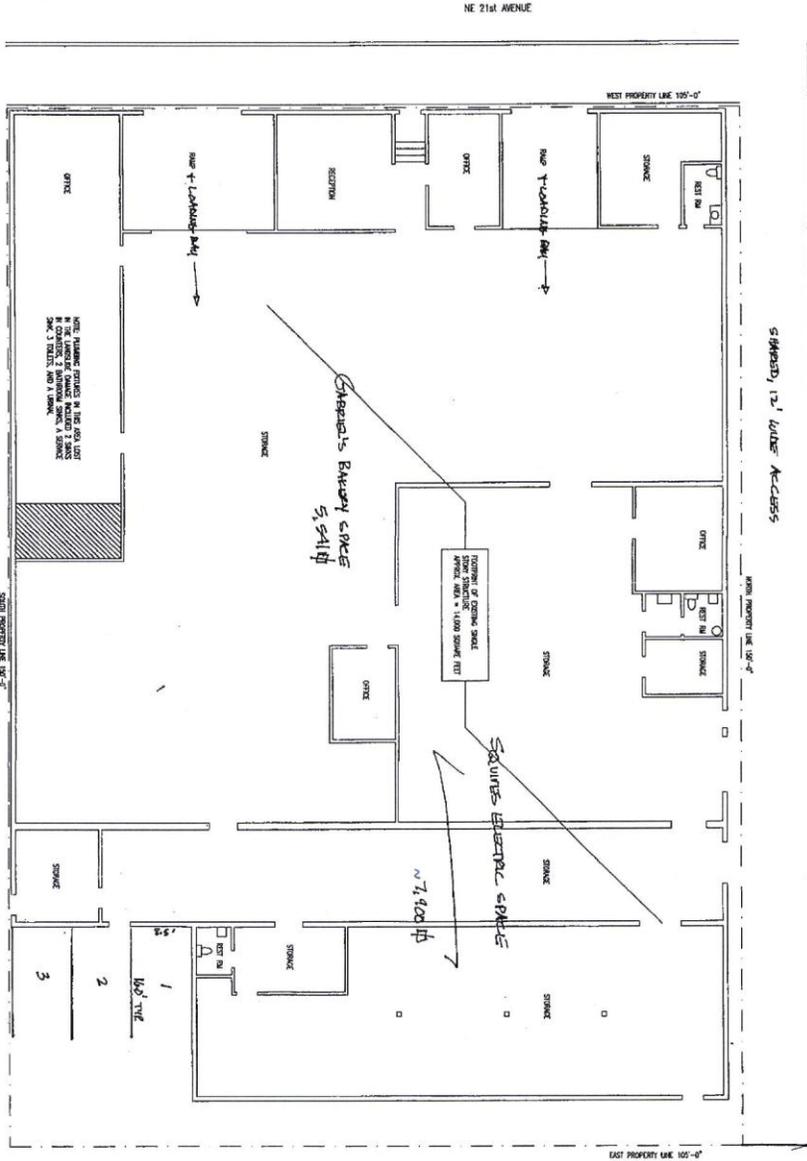
ZONING



- Site
- Historic Landmark

File No. LU 16-246714 NU
 1/4 Section 2932
 Scale 1 inch = 200 feet
 State_Id 1N1E35AA 12000
 Exhibit B (Sep 26, 2016)

OFFICE COM PLAN



1 SITE PLAN
 SCALE 1/8" = 1'-0"
 1/16"

INDICATES AREA OF PROPOSED REGIONAL SUPERSTORE

Approved
 City of Portland
 Bureau of Development Services
 Planner *David Bailey*
 Date *12-15-16*

* This approval applies only to the review requested and is subject to all conditions of approval
 Additional zoning requirements may apply

CASE NO. *16-28674-NJ*
 EXHIBIT *C-1*