



# Portland City Auditor

Hearings Office

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## DECISION OF THE HEARINGS OFFICER

### I. GENERAL INFORMATION

**File Number:** LU 17-104402 CU (Hearings Office 4170009)

**Applicant:** Ricktor Ball  
Ball Ventures, LLC  
10241 NW Langworthy Terrace  
Portland, OR 97229

**Owner:** Shari and Terry Bradshaw  
18124 SE Richey Road  
Gresham, OR 97080-3317

**Applicant's  
Representatives:** Sean Clancy, Corinne Celko  
Emerge Law Group  
805 SW Broadway  
Portland, OR 97205

**Hearings Officer:** Joe Turner

**Bureau of Development Services (BDS) Staff Representative:** Amanda Rhoads

**Site Address:** 1166 NE 31<sup>st</sup> Avenue

**Legal Description:** BLOCK 5 LOT 1&2, GOODSSELLS ADD

**Tax Account No.:** R333800610

**State ID No.:** 1N1E36BA 03800

**Quarter Section:** 2933

**Neighborhood:** Kerns

**Business District:** None

**District Neighborhood Coalition:** Southeast Uplift

**Zoning:** CSd, j – Storefront Commercial Zone with “d” Design Overlay Zone and “j” Main Street Node Overlay Zone

**Land Use Review:** Type III, CU – Conditional Use Review

**BDS Staff Recommendation to the Hearings Officer:** Approval with conditions

**Public Hearing:** The hearing was opened at 1:30 p.m. on April 12, 2017, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 2:27 p.m. The record was held open until 4:00 p.m. on April 19, 2017, to allow the applicant an opportunity to submit a final written argument. The record was closed to all testimony and/or written submissions at 4:01 p.m. on April 19, 2017.

**Testified at the Hearing:**

Amanda Rhoads

Rick Ball

Sean Clancy

Kirk Gayton

Scott Frank

**Proposal:** The applicant proposes to use a portion of the existing commercial building on this site for indoor cultivation of marijuana, which is classified by the Zoning Code as an Agriculture use. Agriculture use in the CS zone is subject to Conditional Use review per Zoning Code Section 33.130.100.B.14. The remainder of the building will continue to be used by a separate bookbinding business already in operation, a Manufacturing and Production use that is allowed outright due to its limited size. No exterior alterations are proposed to the building or site.

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are in Zoning Code Section 33.815.115.A-D.

## **II. ANALYSIS**

**Site and Vicinity:** The 10,000-square-foot lot is developed with a one-story, 10,000-square-foot manufacturing building constructed in 1928, built out to the property edges. The area is a mix of zoning designations and uses, with the NE Sandy commercial corridor to the south, a residential area to the north and northeast, and the I-84 highway to the northwest. Across NE Sandy to the south is more residential development and several institutional uses like churches and Group Living uses. Both NE 31<sup>st</sup> Avenue and NE Multnomah Street are local service for all transportation modes.

**Zoning:** The Storefront Commercial (CS) zone is intended to preserve and enhance older commercial areas that have a storefront character. The zone intends that new development in these areas will be compatible with this desired character. The zone allows a full range of retail, service, and business uses with a local and regional market area. 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. The desired character includes areas predominately built-up, with buildings close to and oriented towards the sidewalk especially at corners. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged.

The “d” overlay promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development and exterior modifications to existing development are subject to design review. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review. In addition, design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

The Main Street Node “j” overlay encourages a mix of residential, commercial, and employment opportunities within identified centers of activity along identified main streets. The zone allows for efficient use of land at increased densities for the mutual reinforcement of public and private development. Allowing additional height and floor area for all uses encourages transit-supportive densities and a mix of uses and activities.

**Land Use History:** City records indicate no relevant prior land use reviews for the site.

**Agency Review:** A “Request for Response” was sent to City agencies on November 23, 2016. The following bureaus have responded:

- The Bureau of Environmental Services (BES) reviewed the proposal and raised no objections to the proposed Conditional Use (Exhibit E.1).
- The Portland Bureau of Transportation (PBOT) reviewed the proposal and found that the approval criterion related to the transportation system are met (Exhibit E.2).
- The Water Bureau reviewed the proposal and provided information about water service, but raised no objections to the proposal (Exhibit E.4).
- The Fire Bureau noted that Fire Code requirements will apply at the time of building permit review, but raised no objections to the proposal (Exhibit E.4).
- The Site Development Review Section of BDS responded with no objections to the proposal (Exhibit E.5).

- The Urban Forestry Division of Portland Parks & Recreation provided information on Tree Code requirements, but raised no objections to the proposed Conditional Use (Exhibit E.6).
- The Life Safety Review Section of BDS provided information on building code issues for consideration at time of building permit, but raised no objections to the proposed Conditional Use (Exhibit E.7).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on March 23, 2017. No written responses were received from either the Neighborhood Association or notified property owners in response to the proposal before the Staff Report was published. However, five comment letters were submitted prior to the hearing: Exhibits H-3 from Caroline Parker, H-4 from Frank Scott, H-5 from Jodi Levy, and H-6 From Caroline Parker.

The letters noted significant odor impacts from a prior medical marijuana grow facility in the same portion of the building where the current facility is proposed and expressed concerns that this facility will have similar impacts, which will impact existing businesses in adjacent buildings, including an existing winery. PCC 33.815.1154.A.

The letters also expressed concerns with potential health impacts from pesticides, fertilizers, and mold used or produced by the agricultural use. The applicant's product must pass strict testing requirements for mold and chemicals. Therefore, the applicant will minimize chemical use and install air conditioning and dehumidifiers to control humidity in the facility to prevent mold growth and enhance plant growth. In addition, as discussed in findings below regarding PCC 33.815.1154.A, the applicant will install a ventilation system within the warehouse portion of the facility that will collect and filter air within the facility before recirculating the air within the building or discharging it through a roof vent. The ventilation system will create a negative air pressure within the warehouse, which will prevent air from the facility from leaking into adjacent spaces and prevent the transport of mold spores or chemicals outside the facility as well as filtering out molds or chemicals.

The comment letters also expressed concerns that the use will alter the commercial character of the area due to potential increased crime and the "stigma" of marijuana businesses. Those concerns are addressed in findings below regarding PCC 33.815.115.B and C. In addition, as the applicant noted in Exhibit H-12, there are a number of existing marijuana related businesses in the area. This facility will not present any outward evidence of use as a marijuana facility.

At least one letter argued the use will violate Oregon Liquor Control Commission ("OLCC") regulations prohibiting a marijuana business in the same location as a liquor licensee; the building where the facility is proposed shares a common wall with a building housing an existing winery. Although the proposed use is subject to compliance with OLCC regulations, the OLCC regulations are not applicable approval criteria for this application. The Hearings Officer has no authority to determine compliance with OLCC regulations. However, the applicant

testified that the winery is not located on the same premises as the facility and this restriction is not applicable.

## **ZONING CODE APPROVAL CRITERIA**

### **33.815.010 Purpose of Conditional Use Regulations**

Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved.

### **33.815.115 Specified Uses in Commercial Zones**

These approval criteria apply to uses in the following categories and zones: Industrial Service uses and Agricultural uses in the CS, CG, and CX zones, and Warehouse And Freight Movement uses in the CS zone. The approval criteria allow these uses in commercial zones when they have a business or consumer orientation and are of a size and character to blend in with the other commercial uses. The approval criteria are:

- A.** The proposed use will not have nuisance impacts from noise, odor, and vibrations greater than usually generated by uses allowed by right in the zone;

**Findings:** The applicant proposes to use 3,000 square feet within an existing 10,000-square-foot building for a marijuana grow operation, a use that is categorized as an Agriculture use. The Agriculture use would involve growing marijuana plants in sealed rooms inside the existing commercial building on this site. The following information regarding how the applicant is addressing offsite impacts was gathered from the applicant's narrative, and the mechanical and acoustic analyses, and final argument (Exhibits A.5, A.6, and H-12a).

#### ***Noise and Vibrations***

The growing of plants in an indoor setting is unlikely to produce noise or vibrations beyond what would usually be generated by uses allowed in the zone. The mechanical equipment associated with the operation is comparable in size and operational aspects like noise and vibration to mechanical equipment such as exhaust vents and HVAC (Heating, Ventilation and Air Conditioning) equipment that would be associated with an allowed restaurant, retail coffee shop, store, or commercial office building.

Nevertheless, the applicant has proposed several steps to further reduce noise and vibrations from the equipment proposed. First, the applicant proposes only a single fan

for air filtration and exhaust. This fan is to be installed inside the applicant's space. It is oversized so as to run at lower revolutions per minute (rpm) and will be controlled by a "variable frequency drive" technology that will soften starts and stops and operate the fan at the lowest rpm. The required structural and seismic bracing for the air handler will "incorporate spring isolation using restrained springs at all support and brace points so all fan vibration will be dampened." Further, the ductwork will be isolated from the air handler with flexible collars so that no vibration is transmitted to either the ductwork or the structure (Exhibit A.6). The air conditioning unit proposed will be installed on the roof, 16 feet back from the northern edge of the building, while the exhaust port will be 34 feet back.

The acoustical analysis verified that the noise impacts of the proposed use will not exceed the maximum allowed noise thresholds for commercial uses at adjacent properties, even taking into account the lower thresholds for residential properties and for nighttime, steady-state noise such as the air conditioning unit proposed (Exhibit A.7).

### ***Odor***

The floor plan (Exhibit C.3) shows the internal divisions in the space separating the propagation and flowering areas from the entries, hallways, and common spaces. The growing areas will be sealed against air leakage to both control odor and to maintain a consistent growing environment (temperature, humidity, and carbon dioxide levels). The growing areas will be sealed with an air barrier material (Tyvek or similar) over the wall and ceiling framing. A plastic vapor barrier will be installed over the air barrier on the wall and ceiling as well as over the floor. "Seams in wall, floor, and ceiling vapor barriers will be lapped a minimum four inches and taped. Staples through the vapor barrier will be taped over." (Exhibit A.6). The applicant will install a fan system in the warehouse portion of the facility, outside the grow rooms. The fan system will collect, filter, and recirculate or exhaust through a roof vent the air outside of the growing spaces to maintain "negative pressure along the periphery so air from the warehouse is not transferred to the exterior or adjacent spaces" (Exhibit A.6). The fan system will operate at all times, changing or replacing the air within the warehouse space seven times per hour. The ventilation system will draw air from peripheral areas where there are openings to the outside and to adjacent spaces to replace the air vented through the filter system, creating negative pressure within the warehouse. (See the illustration attached to Exhibit H-12a). Air from the warehouse will flow through a 2-inch activated carbon honeycomb filter before it is recirculated or discharged through an elevated roof vent. Roughly 90-percent of the air will recirculate into the building after filtration. Ten percent will be discharged outside the building through the roof vent where it will be diluted in the atmosphere. The roof vent discharge will be located at a high point near the center of the roof. A sensor for volatile organic compounds (VOCs) will be located in the warehouse (non-growing) areas to detect and control for odors. That sensor will trigger the ventilation system to increase the fan speed, providing 14 air changes per hour in the warehouse and increasing the negative pressure within the

warehouse, whenever VOCs (odors) are detected in the warehouse space, outside of the grow rooms. The filtered ventilation system should prevent any detectable odors in adjacent commercial spaces or outside the building.

The applicant also notes that the proposal will meet Portland City Code 14B.130.180.D.2, which requires each marijuana business to “install and maintain an air filtration system to ensure odor impacts upon neighboring properties are minimized.” In order to ensure that odor is controlled to the greatest extent practical, a condition of approval will require the applicant to install the proposed sealed rooms and filters before any Agriculture use is established, with documentation submitted during permit review.

The City did not approve or regulate the prior medical marijuana growing facility in this building space. According to the applicant, the prior grow facility did not provide any ventilation. The grow lights heated the air in grow rooms, expanding the air volume and forcing air and odors into other areas of the building and adjacent structures. The proposed facility, with sealed grow rooms and negative pressure ventilation system, will not generate similar odor impacts within adjacent business spaces or outside the building.

With conditions of approval regarding installation of sealed rooms and the air filtration system as proposed in Exhibits A.5 and A.6, or comparable or better filtration systems, the Hearings Officer finds this criterion can be met. The proposed use will not cause noise, odor, or vibration impacts greater than usually generated by permitted uses in the CG zone

- B.** Based on the characteristics of the proposed use and its development, the proposal is consistent with the purpose of the commercial zone and with the character of the specific area;

**Findings:** The purpose of the commercial zone is identified at 33.130.010. The purpose includes implementation of the commercial policies and plan map designations of the Comprehensive Plan, but more generally to allow and support commercial areas which have a neighborhood and regional draw. The overall goal is to enhance the economic viability of both the specific commercial district in question, as well as the city as a whole.

More specifically, the Zoning Code states the following regarding the Storefront Commercial zone:

- F. Storefront Commercial zone.** The Storefront Commercial (CS) zone is intended to preserve and enhance older commercial areas that have a storefront character. The zone intends that new development in these areas will be compatible with this desired character. The zone allows a full

range of retail, service and business uses with a local and regional market area. 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. The desired character includes areas which are predominantly built-up, with buildings close to and oriented towards the sidewalk especially at corners. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged.

### ***Adverse Effects***

As addressed in the response to Criterion A above, possible impacts to the surrounding area are unlikely to be greater than allowed commercial uses or are addressed through mitigation. Unlike a traditional outdoor agricultural use, such as farming field crops or a livestock operation for cattle or pigs, the proposed use is not likely to generate significant noise, dust, odor, or other noxious impacts traditionally associated with farming and raising of animals in an urban setting. The operation will more closely resemble a Manufacturing and Production use, which would be allowed outright in this building. With the air filtration and sealed indoor growing environment of this specific use, any potential noxious impacts to the surrounding area will not be significant or noticeable to the surrounding commercial or residential district. With the condition of approval that the grow rooms be sealed as proposed and the air filtration system be installed as described and maintained, adverse effects will be avoided.

### ***Character of the Area***

The surrounding area has a mixed character, with a variety of commercial, office, and light industrial uses, and residential uses to the north and south. This particular commercial segment of NE Sandy Boulevard has a combination of older storefront commercial buildings, apartment buildings with retail on the ground floor, some smaller warehouse, auto repair, and other manufacturing firms. Some older industrial buildings have been transformed into retail shops, like the Bindery immediately to the south of the building, which now hosts more than a dozen retail and office uses. The commercial uses cluster in the first block or so immediately abutting NE Sandy Boulevard, and then quickly change to residential just beyond a block or two from NE Sandy Boulevard.

The proposed marijuana grow operation is technically an Agricultural use, but the specialized equipment, indoor-only operation supported by mechanical equipment, and the inherent security issues which keep the operation largely out-of-sight from passersby on the street, will prevent this particular operation from having any significant impact on the intent to support the economic viability of the area. The outside of the building will remain as it is today, with the appearance of a manufacturing building, including the windows and roll-up door.

### ***Ground Floor Windows / Storefront Character and Pedestrian Orientation***



The applicants have agreed to remove the reflective coating on the windows on the north side that look into the proposed hallway, which appears to have been applied without the benefit of permit and which brought that façade further from conformance with the Ground Floor Windows standard of Zoning Code Paragraph 33.130.230.B.3 on that façade. The applicant states that removing the reflective coating “has improved the compatibility of the building, its pedestrian orientation, and the outward facing character of the building” (Exhibit A.5, page 22).

The acoustic analysis indicates the applicants will “keep all windows boarded up and sealed from the inside.” It is likely this is referring to the windows along the western wall, which open into one of the flowering rooms. State law requires that the operations inside a grow facility cannot be visible from the street. However, boarding up or otherwise covering existing windows, even from the inside, would bring the site further out of conformance with the Ground Floor Windows standard referenced above, because covered windows are not qualifying windows that meet the standard.

Per PCC 33.258.070.C, proposed changes to a site that are not in conformance with the Zoning Code or do not move closer to conformance require approval through an Adjustment review.

The purpose for the Ground Floor Window standard (PCC 33.130.230.A) speaks to similar goals as the purpose for the Storefront Commercial zone (PCC 33.130.030.F) regarding pedestrian orientation and storefront character. The purpose for the standard includes the following: providing a pleasant, rich, and diverse pedestrian experience; restricting fortress-like façades at street level; and avoiding a monotonous pedestrian environment. In order to be consistent with the purpose for the Storefront Commercial zone, and to ensure the quality of the pedestrian environment in this rapidly developing area is not lessened, a condition of approval will require that the applicant demonstrate, at time of building permit application, how the tenant area’s existing windows are “Qualifying window features” per PCC 33.130.230.C, and how the proposal does not move the site further from conformance with the Ground Floor Window standard. Given OLCC restrictions, this will likely mean reconfiguring the floor plan to accommodate a hallway behind the windows, or constructing new display windows behind the window glass. The condition excludes the requirement that the bottom of the windows be no higher than 4 feet above the adjacent exterior grade, since the existing windows generally do not comply with this standard.

### ***Change of Occupancy Permit***

The applicant will be required to obtain a change of occupancy permit for the proposed use, as the structure was built for a prior use but has not applied for a change of occupancy permit for the proposed use. The mandatory review under this building permit for Life Safety/Building Code, Fire Code, and other regulatory issues will ensure

the building and facility are brought up to appropriate commercial standards, as found elsewhere in this commercial district. With a condition of approval ensuring that this occupancy permit occurs, there will be additional assurances that the proposed use will meet accepted commercial fire and building code standards.

### ***Kerns Neighborhood Action Plan***

There are several policies and objectives in the adopted Kerns Neighborhood Action Plan that relate to the proposal in terms of character. These are listed below.

- Policy 1 (Neighborhood Quality and Livability), Objective 2:  
Strengthen community identity within Kerns by taking advantage of all opportunities to upgrade appearance of both residential and commercial properties.
- Policy 2 (Land Use), Objective 1:  
Maintain land use designations which ensure the existing diversity and balance of residential, commercial, and industrial uses.
- Policy 4 (Safety and Security), Objective 1:  
Promote crime prevention through environmental design techniques to create a sense of place and reinforce a neighborhood identity.
- Policy 5 (Business and Industry):  
Maintain a healthy and viable environment for new and existing businesses that provide local and regional jobs and services.
- Policy 10 (North of Sandy/Mixed Use Area), Objective 3:  
Encourage reuse, rather than demolition, of the older structures in order to retain visual diversity and historic character.

This proposal would reuse an underutilized warehouse space for a new business in the North of Sandy area identified by the Plan. The business would improve the security of the area through the installation of cameras and meeting the high standards set by the State to limit potential crime associated with marijuana businesses. The proposal would further the goal of continuing a diversity of land uses by introducing a new industrial use to the area, in a building which would allow some industrial uses outright. And it would create jobs and provide products to other retail or medical marijuana businesses.

The applicant points out that one of the proposed long-range actions not adopted as part of the plan was to “attract wineries, microbreweries and entrepreneurial ventures to North of Sandy.” Another long-range action was to “find tenants for vacant storefronts and industrial buildings” (Kerns Neighborhood Action Plan, Appendix A). The proposal allows a new, entrepreneurial tenant to occupy what would otherwise be a vacant industrial tenant space.

The first objective listed regards the importance of upgrading the appearance of commercial properties to strengthen community identity. The applicant has committed to removing the reflective film on the windows to the north, in order to move that frontage closer to conformance with the Ground Floor Window standard of the commercial zones. Other exterior changes are not proposed, other than rooftop vents. Any further changes proposed to the exterior of the building would likely require a Design review or require use of the Community Design Standards of Zoning Code Chapter 33.218. This means the changes would receive a level of scrutiny or be required to meet standards that promote a positive pedestrian environment.

However, the windows on the west side are proposed to be “boarded over,” presumably in order to separate the growing area from the street as required by state law. As stated above, a condition of approval will ensure that the windows on the building within the area the applicant is leasing still meet the “Qualifying window features” criteria stated in PCC 33.130.230.C (excepting the maximum height for the bottom of the windows given the existing configuration). With this condition, the appearance of the commercial property will not be degraded.

Based on the specific project layout and location inside an existing building that will continue to hold a Manufacturing and Production use alongside the grow operation, and with the conditions that will require the applicant to install the sealed rooms and filtration and air circulation system as proposed; to maintain existing windows as qualifying window features; and to obtain a change of occupancy permit; the proposal is inherently consistent with the purpose of the commercial zones and the character of nearby commercial areas along NE Sandy Boulevard. Therefore, with the proposed conditions of approval, the Hearings Officer finds this criterion can be met.

- C. The proposed use will not significantly alter the overall commercial character of the area, based on the existing proportion of commercial and noncommercial uses and the effects of incremental changes; and

**Findings:** The surrounding commercial area has a diversity of commercial, light industrial, and institutional uses along NE Sandy Boulevard, both of an older storefront variety, as well as larger and newer single-use developments.

The proposed use is contained entirely within an existing building, which will continue to hold a bookbinding business in the balance of the building, a Manufacturing and Production use that is allowed outright in the CS zone. State law requires that the operations inside the grow facility cannot be visible from the street, eliminating any significant changes to the overall character of the existing building. The use will not serve the general public and will not provide any exterior evidence of the building’s use as a marijuana facility. “The operation will be deliberately inconspicuous to maintain security.” (Exhibit A.5). Given the mixed and evolving character of the nearby

commercially-zoned areas along NE Sandy Boulevard, the proposed use will not significantly alter the overall commercial character of the area. With the condition requiring the existing windows remain qualifying window features per PCC 33.130.230.C, the Hearings Officer finds this criterion can be met.

- D. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterials; truck impacts, connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; pedestrian, bicycle, and transit circulation; safety for all modes; and adequate transportation demand management strategies.

**Findings:** PBOT has reviewed the proposal and responded without concerns or objections (Exhibit E.2). PBOT's response with regards to this approval criterion was as follows:

**“Conditional Use Approval Criteria**

The transportation related approval criteria related to the proposed Conditional Use that must be addressed are found in Code Section 33.815.115.D ‘*Specified Uses in Commercial Zones*’. To address the transportation-related approval criteria the applicant submitted a professional traffic study prepared by Greenlight Engineering. Specifically, applicants must address the following:

*‘The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. **Evaluation factors** include street designations, capacity; level of service and other performance measures; access to arterials; truck impacts, connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; pedestrian, bicycle, and transit circulation; safety for all modes; and adequate transportation demand management strategies’.*

“Street Designations

The City's Transportation System Plan (TSP) classifies both NE 31<sup>st</sup> Ave and NE Multnomah St as Local Service Streets for all transportation modes. The TSP states that *Local Service Streets*, ‘provide local circulation for traffic, pedestrians, and bicyclists and (except in special circumstances) should provide on-street parking.’

“The site's surrounding streets will continue to accomplish the above referenced goals as the proposed use is supportive of the street designations of the Transportation Element of the Comprehensive Plan. *This criterion is met.*

“Capacity; Level of Service and other Performance Measures

The City of Portland (COP) defines the applicable intersection standards in **Administrative Rule TRN 10.27 – Traffic Capacity Analysis for Land Use Review Cases** as follows:

*1. For signalized intersections, adequate level of service is LOS D, based on a weighted average of vehicle delay for the intersection.*

*2. For stop-controlled intersections, adequate level of service is LOS E. Level of service for two-way stop-controlled intersections is based on individual vehicle movement, and all-way stop controlled intersections is based on a weighted average of vehicle delay for the intersection.*

*3. An amendment or other land use application that requires analysis of traffic capacity and allows development that either (1) may cause a transportation facility to perform below the standards established in sections 1 and 2, or (2) adds vehicle trips to a facility that is already performing below the standards established in sections 1 and 2 may be approved if:*

*a. Development resulting from the amendment or other land use application will mitigate the impacts of the amendment or other land use application in a manner that avoids further degradation to the performance of the facility by the time of development through one or more of the following:*

*(i) the development is limited to result in no net increase in vehicle trips over what is allowed by the existing zoning; OR*

*(ii) one or more combination of transportation improvements or measures are imposed to mitigate the transportation impacts of the amendment or other land use application in a manner that avoids further degradation to the performance of the facility by the time of any development.*

“As directed by PBOT’s traffic engineer during initial scoping discussions, the applicant’s traffic engineer utilized estimated vehicle trip rates for *Manufacturing* (140) land uses as found in the *Trip Generation Manual, 9<sup>th</sup> Edition* published by the Institute of Transportation Engineers (ITE) as it is the closest land use to the proposed development for which there are estimated trip rates available. Accordingly, the proposed 3,000 SQFT indoor cultivation of marijuana is expected to generate 2 vehicle trips in both the AM and PM peak hours with a total of 11 daily vehicle trips.

“The existing CS zoning of the site permits a range of nonresidential development including retail sales and service and office uses. Using ITE’s trip generation rates a 3,000 SQFT of office development (which represents a reasonable worst-case scenario), would generate 5 trips in the AM and PM peak hour and a total of 33 daily trips. *Accordingly, the proposed development would result in no net increase in vehicle trips over what is allowed by the existing CS zoning. This criterion is met.*

“Access to Arterials

The site is located approximately 150-ft north of NE Sandy, a Major City Traffic Street, which provides unrestricted access to the greater transportation system in the area. *This criterion is met.*

“Truck Impacts

As discussed herein and documented in the applicant’s traffic analysis, the proposed development will generate fewer vehicle trips than what is allowed by the site’s existing zoning and there is an adequate supply of on-street parking in the area. Accordingly, the proposed development is not anticipated to have any negative impacts on truck movements in the area. *This criterion is met.*

“Connectivity

The site is located at the intersection of two public streets and the immediate vicinity generally meets the City’s spacing goals. PBOT has no concerns regarding connectivity in relation to the proposed use. *This criterion is met.*

“Transit Availability

Transit facilities are available in the area with the closest bus stop located at NE Sandy & NE 31<sup>st</sup> (TriMet # 12). Transit availability will not be impacted by the proposed use. *This criterion is met.*

“On-Street Parking Impacts

To assess the existing supply/demand of on-street parking in the vicinity, the applicant’s traffic engineer evaluated parking conditions on the following street segments:

- Sandy Boulevard between 33<sup>rd</sup> & 31<sup>st</sup>
- 31<sup>st</sup> Ave from Pacific Street to Sandy
- 31<sup>st</sup> from Sandy to Wasco
- Multnomah from 31<sup>st</sup> to 33<sup>rd</sup>
- Wasco from 31<sup>st</sup> to 33<sup>rd</sup>

- Wasco from 33<sup>rd</sup> to Sandy
- 33<sup>rd</sup> from Sandy to Holladay

“Given the mix of commercial uses/zoning in the vicinity, the parking study was conducted during two periods (mid-morning and mid-afternoon) to capture peak parking demand periods during normal business hours. Based upon the results of the applicant’s analysis there are 168 total on-street parking spaces within the study area and at no time during the study periods did occupancy rates exceed 70%. PBOT does not consider an area heavily parked and in need of active parking management until occupancy rates exceed 85%.

“Additionally, based upon the specific operational characteristics of the proposed use, as detailed in the transportation analysis, the proposed use is expected to generate less demand for on-street parking than would be expected if the site was developed with traditional commercial use permitted under the CS zoning of the property. Accordingly, there is adequate on-street parking in the vicinity to support existing uses as well as any ancillary demand generated by the proposed use. *This criterion is met.*

#### “Access Restrictions

There are no access restrictions in relation to the subject site, however, as discussed below, the existing curb-cut/driveway on NE Multnomah does not meet Title 17 requirements for separation from a corner and will be required to be closed unless the applicant obtains formal approval through a Driveway Design Exception request. *This criterion is met.*

#### “Neighborhood Impacts

Project-related impacts resulting from increased trip generation and increased demand for on street parking translate directly to transportation-related neighborhood impacts. As documented in this response, there is an adequate supply of on-street parking in the vicinity to support the proposed use in addition to the existing uses in the area. Additionally, area intersections will continue to operate acceptably with the expected addition of project traffic. *This criterion is met.*

#### “Pedestrian, Bicycle, and Transit Availability

There are available transit facilities in the vicinity with the closest bus stop located at the intersection NE Sandy & NE 31<sup>st</sup> (TriMet #12) approximately 210-ft from the site. There are existing sidewalks that provide pedestrian access to said transit facilities and also provides adequate pedestrian circulation through the area. There are nearby identified bicycle facilities (City’s Bike/Walk Map) in the vicinity including NE Glisan to the south which has marked bike lanes and NE 32<sup>nd</sup> and NE Oregon to the south that are designated as shared roadways. *This criterion is met.*

“Safety for all Modes

The applicant’s Traffic Engineer analyzed data obtained from the Oregon Department of Transportation (ODOT) Crash Analysis and Reporting Unit. The crash history at the study intersections were analyzed from 2011 through 2015. Crash rates at the intersections were found to be low and the crash histories are not predictive of future crash patterns.

“Given the existing sidewalk system established in the area, the adequate operation of area intersections, and the minimal vehicle trips expected to be generated by the proposed development, the project will not result in negative impacts to overall safety in the vicinity. *This criterion is met.*

“Adequate Transportation Demand Management Strategies

Transportation Demand Management (TDM) plans are typically required to mitigate for adverse transportation-related adverse impacts created by new uses. As identified above, PBOT does not expect that the proposed agricultural production facility will result in any significant impacts, therefore, adequate transportation demand management strategies are unnecessary.”

Based on the above findings from PBOT, the Hearings Officer finds this criterion is met.

**DEVELOPMENT STANDARDS**

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

**III. CONCLUSIONS**

The applicant has proposed an Agriculture use (marijuana grow operation) inside a portion of an existing commercial building. The proposed use will not cause unusual noise or vibration impacts as it involves growing plants indoors in sealed rooms and carbon filters attached to the ventilation system will control odors associated with the plants. This proposal will have little impact on the surrounding commercial area since the use will not be visible from outside the building. Impacts to the transportation system will also be minimal. With conditions of approval requiring sealed rooms; filters to control odor; a change of occupancy permit; and verification that the existing windows will continue to meet the qualifying window feature standard of PCC 33.130.230.C; all relevant approval criteria can be met and the request should be approved.

**IV. DECISION**



Approval of a Conditional Use Review for the establishment of an Agricultural Use (marijuana grow operation) inside the existing commercial building at 1166 NE 31<sup>st</sup> Avenue, as identified on the approved site plan, floor plan, and other detail drawings submitted as Exhibits C.1 through C.3, and subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through D) must be noted on each of the four 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 17-104402 CU." All requirements must be graphically represented on the site plan, landscape, or other required plan, and must be labeled "REQUIRED."
- B. Prior to occupancy of the building by an Agricultural Use, the applicant must submit specifications and plans as part of either the building or mechanical permit process showing that the grow rooms are sealed as described in Exhibit A.6 and a 2-inch activated carbon honeycomb filter filtration system, or comparable or better filtration system, is installed at the facility. Filters must be maintained over time.
- C. At time of building permit, the applicant must demonstrate how the existing windows on the north and west façades within the applicant's lease area meet the standards for qualifying window features of PCC 33.130.230.C, excepting the maximum height of the bottom of the windows.
- D. The applicant must obtain an occupancy permit for the marijuana grow operation, prior to legal continued operation of the agricultural/marijuana grow use at the site.



Joe Turner, Hearings Officer

May 2, 2017  
Date

**Application Determined Complete:** February 23, 2017  
**Report to Hearings Officer:** March 30, 2017  
**Decision Mailed:** May 3, 2017

**Last Date to Appeal:** 4:30 p.m., May 17, 2017

**Effective Date (if no appeal):** May 18, 2017 Decision may be recorded on this date.

**Conditions of Approval.** 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.

**Appeal of the decision.** ANY APPEAL OF THE HEARINGS OFFICER’S DECISION MUST BE FILED AT 1900 SW 4<sup>TH</sup> AVENUE, PORTLAND, OREGON 97201. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue, Monday through Friday between 8:00 a.m. and 4:30 p.m. **An appeal fee of \$5,000.00 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

**Who can appeal:** You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

**Appeal Fee Waivers:** Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization’s bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

**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 the day following the last day to appeal. The mailed instructions will state that date.
- 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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

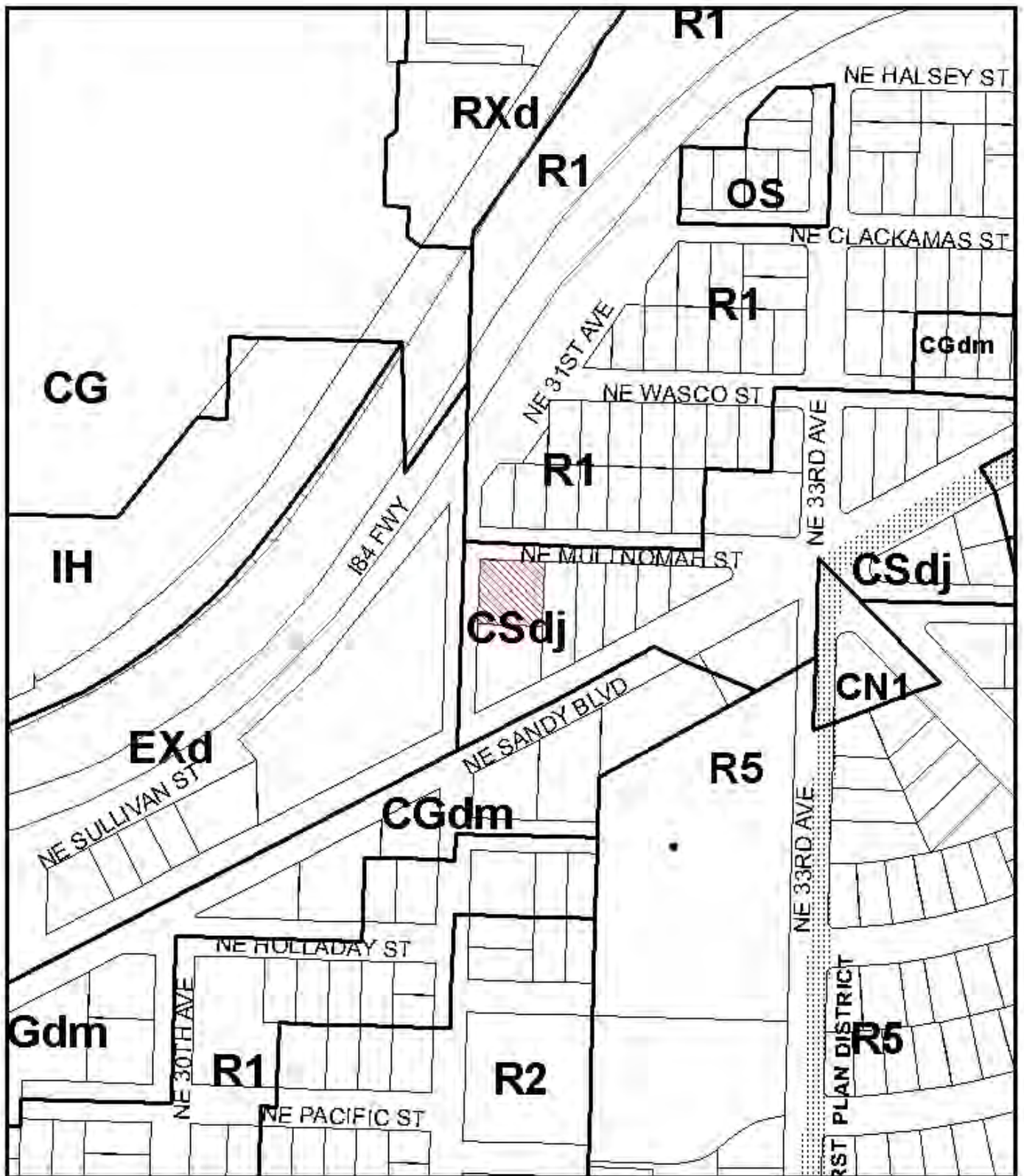
**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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. Cover letter
  - 2. Site Plan (superseded; see Exhibit C.1)
  - 3. Roof Plan
  - 4. Tax Map
  - 5. Applicant Narrative
  - 6. Mechanical Engineering Report
  - 7. Acoustical Analysis
  - 8. Traffic Analysis
  - 9. Pre-Application Conference Summary Report
  - 10. Letter Clarifying Proposed Operation, received February 6, 2017
  - 11. Email Clarifying Representative, March 8, 2017
  - 12. Email Clarifying Representative, March 9, 2017
  - 13. Email Regarding Odor Filtration, March 29, 2017
- B. Zoning Map (**attached**)
- C. Plans and Drawings
  - 1. Site Plan (**attached**)
  - 2. North and West Elevation Drawings (**attached**)
  - 3. Partial Floor Plan (**attached**)
- D. Notification information
  - 1. Request for Response
  - 2. Posting Letter Sent to Applicant. March 8, 2017
  - 3. Applicant's statement certifying posting
  - 4. Mailing list
  - 5. Mailed notice
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of Bureau of Development Services
  - 6. Bureau of Parks, Forestry Division
- F. Letters: none received
- G. Other
  - 1. Original Land Use Application and Receipt
  - 2. Email to Applicants with 120-Day Extension Form
  - 3. Request for Completeness Review, sent January 18, 2017
  - 4. Incomplete Letter, February 1, 2017
- H. Received in the Hearings Office
  - 1. Hearing Notice - Rhoads, Amanda

2. Staff Report - Rhoads, Amanda
3. Letter dated 4/12/17 - Parker, Caroline
4. Letter dated 4/12/17 - Frank, Scott
  - a. Letter - Frank, Scott
  - b. Duplicate Letters - Frank, Scott
5. Letter dated 4/11/17 - Levy, Jodi
  - a. Duplicate Letter (fax) - Levy, Jodi
  - b. Duplicate Letter (fax) - Levy, Jodi
6. Letter dated 4/12/17 (Duplicate) - Parker, Caroline
7. Photos (4 pages) 041217 - Emerge Law Group
8. Mechanical Engineering Report - Emerge Law Group
9. Letter to Neighbors from Rick Ball - Emerge Law Group
10. Record Closing Information Form - Hearings Office
11. Power Point Presentation Printout - Rhoads, Amanda
12. 4/19/17 letter with attachments - Emerge Law Group
  - a. 4/15/17 Mechanical Engineering - Elaboration on Odor Control - Emerge Law Group
  - b. 4/13/17 letter - Emerge Law Group

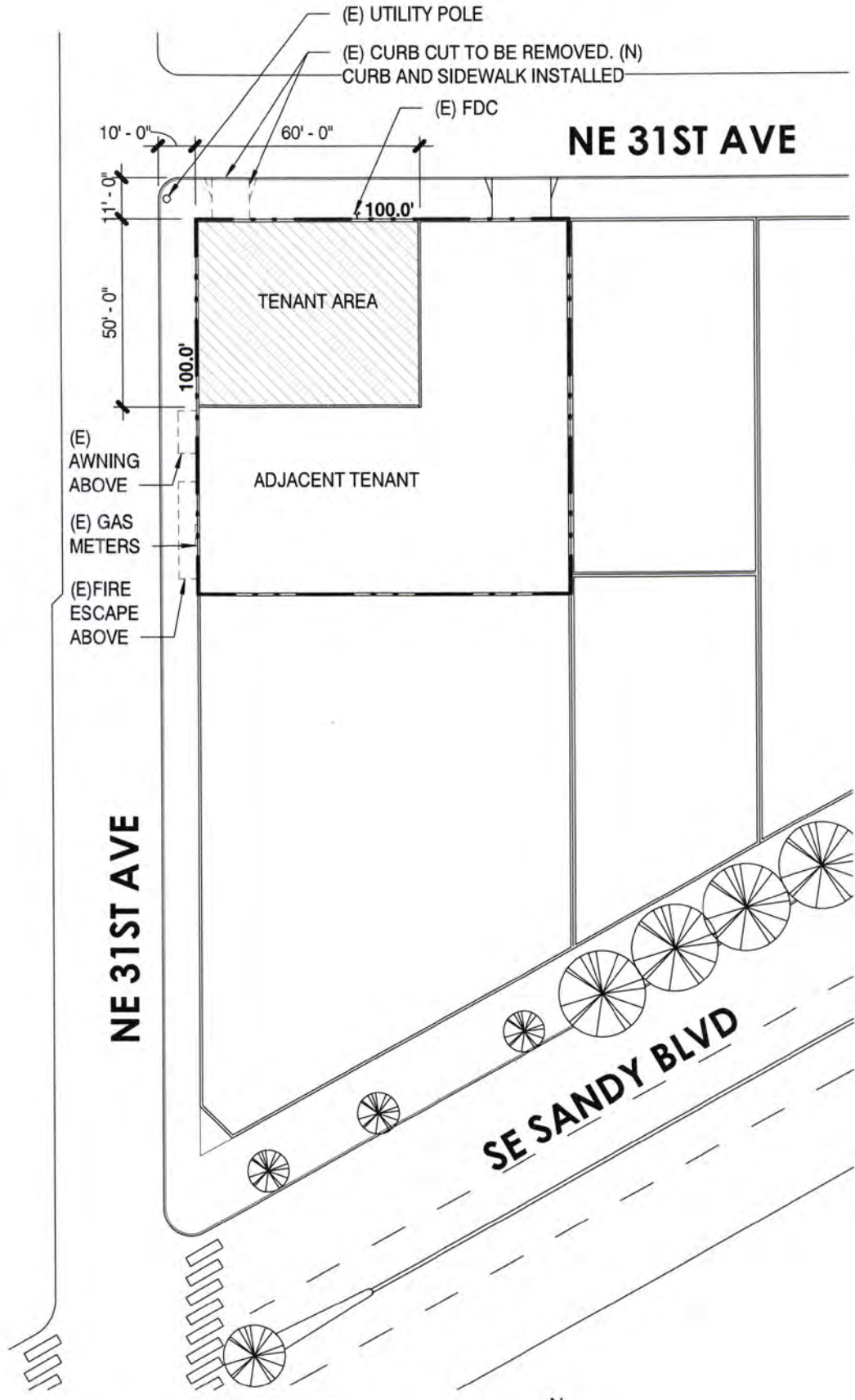


# ZONING

-  Site
-  Historic Landmark



File No. LU 17-104402 CU  
 1/4 Section 2933  
 Scale 1 inch = 200 feet  
 State Id 1N1E36BA 3800  
 Exhibit B (Jan 13, 2017)



**SITE INFO**

ADDRESS	1166 NE 31ST AVE
COUNTY	MULTNOMAH
LEGAL	GOODSELLS ADD, BLOCK 5, LOT1&2
PROPERTY ID	R171988
LOT SIZE	0.23 ACRES (10,000 SF)
TENANT AREA	2,870 SF
BASE ZONE	CS - STOREFRONT COMMERCIAL
OVERLAY	d - DESIGN ZONE, j - MAIN STREET NODE

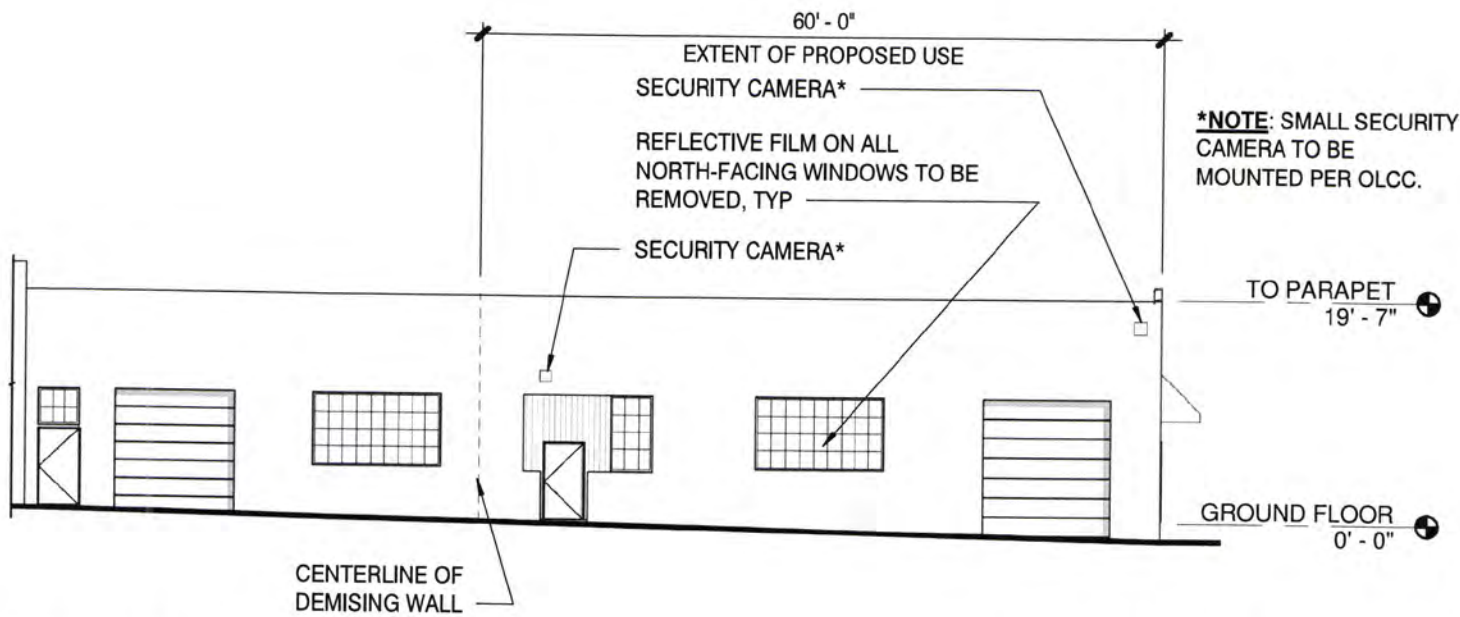
SITE PLAN  
SCALE: 1" = 40'-0"



107 SE WASHINGTON STREET, SUITE 740  
PORTLAND, OR 97214 - HARKAHQ.COM

**Bindery Grow**

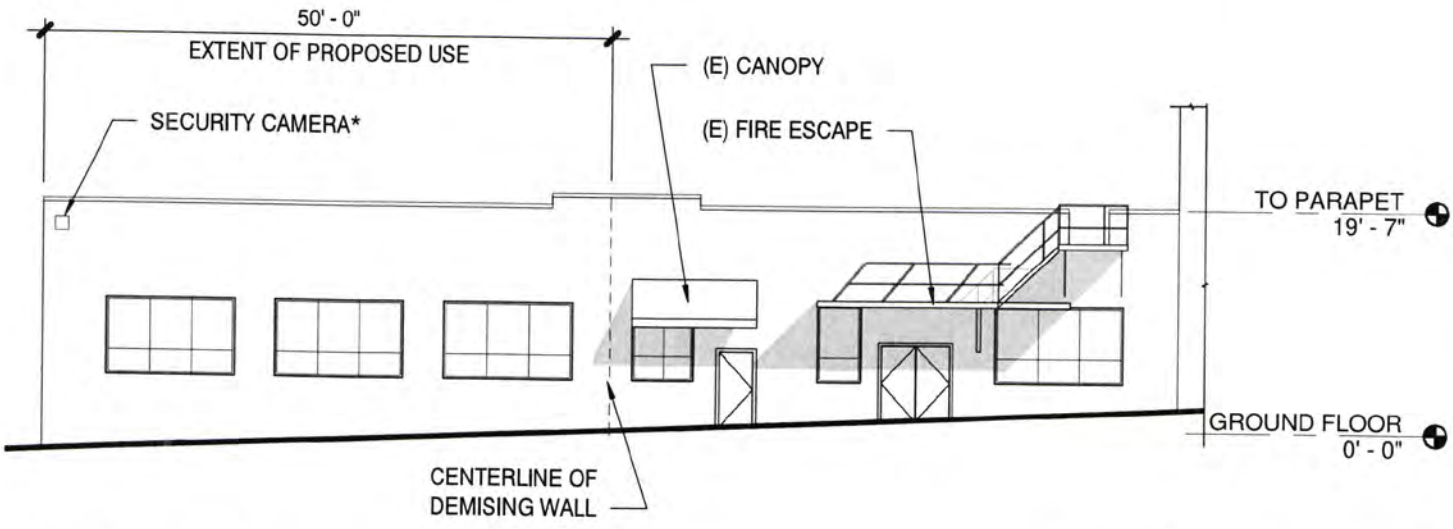
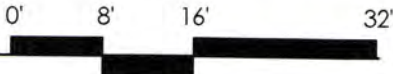
CASE NO. LU17-10440 02.22.17  
EXHIBIT C.1 cu



**\*NOTE:** SMALL SECURITY CAMERA TO BE MOUNTED PER OLCC.

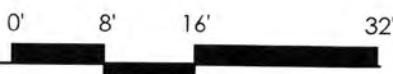
**NORTH ELEVATION**

SCALE: 1/16" = 1'-0"



**WEST ELEVATION**

SCALE: 1/16" = 1'-0"

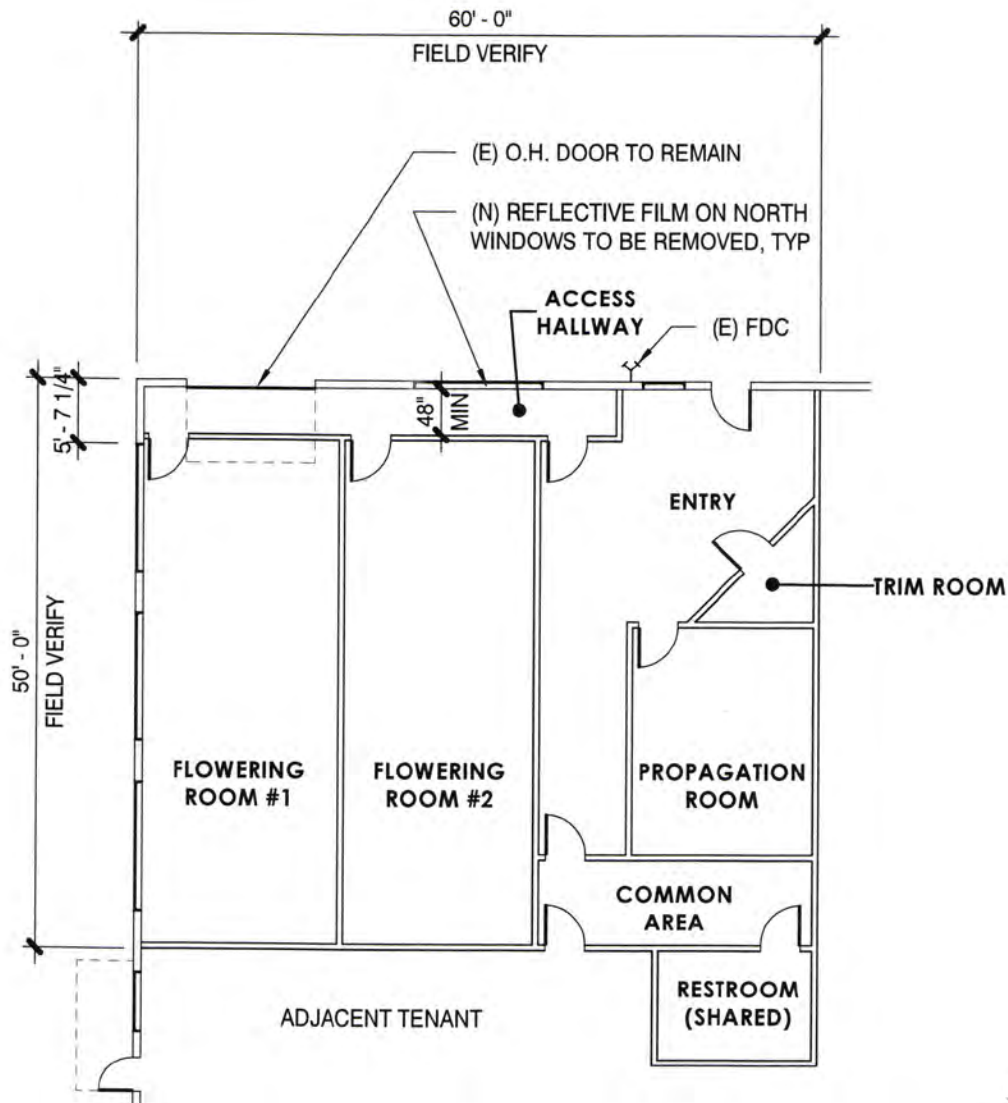


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**Bindery Grow**

CASE NO. Lu17-104402 CU 03.07.17  
EXHIBIT C.2





FLOOR PLAN

SCALE: 1/16" = 1'-0"



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Bindery Grow

CASE NO. LU17-104402 CU 02.22.17  
 EXHIBIT C.3

2/22/2017 6:24:05 PM