



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

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Date: May 13, 2021
To: Interested Person
From: Andrew Gulizia, 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 with conditions** 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 21-016842 NU

GENERAL INFORMATION

Applicant: Luis A. Lopez
16164 NW Spartan Way
Portland, OR 97229

Owner: Melquiades T. Montes De Oca
PO Box 66407
Portland, OR 97290

Site Address: 11328 SE Harold St.

Legal Description: BLOCK 1 N 558' OF LOT 1, GARBADE
Tax Account No.: R304100050
State ID No.: 1S2E15DB 03100
Quarter Section: 3542, 3642
Neighborhood: Powellhurst-Gilbert, contact at pgnaboard@gmail.com
Business District: Midway, contact info@midwaybusiness.org
District Coalition: East Portland Community Office, contact at 503-823-4550
Plan District: Johnson Creek Basin
Zoning: R7 – Single-Dwelling Residential 7,000
Case Type: NU – Nonconforming Situation Review
Procedure: Type II, an administrative decision with appeal to the Hearings Officer

Proposal: Nonconforming uses are those that are not allowed under current zoning regulations for a property, but which were allowed when originally established and which have continued over time. In 1996, the zoning designation on this site changed from EG1 (General Employment 1) to R7 (Single-Dwelling Residential 7,000). An Industrial Service use (auto salvage/parts exchange) was legally established on the site at that time, and therefore had nonconforming rights to continue operating after the re-zoning. The business later ceased operating on the site for a period exceeding three continuous years but fewer than five continuous years. The applicant is requesting Nonconforming Situation Review approval to re-establish the auto salvage/parts exchange business in two specified areas of the property, pursuant to Zoning

Code Section 33.258.050.E.1. The proposal is only to re-establish the auto salvage/parts exchange business to the extent that nonconforming rights for that use have been documented. The applicant is not attempting to re-establish past business activities on the property that did not have nonconforming rights.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are in Zoning Code Section 33.258.080.B.

ANALYSIS

Site and Vicinity: The subject site is located in Southeast Portland on the south side of SE Harold Street, just west of SE 115th Avenue. The southeast corner of the site also abuts the right-of-way for SE Reedway Street. The site is 1.36 acres in area and is developed with a single-dwelling house in the northern part of the property (accessed from SE Harold Street), a detached garage, a shop building in the central part of the property, and paved and graveled areas. Much of the property is undeveloped grassy area, and there are a number of existing trees and shrubs. Neighboring properties to the north and east are developed with single-dwelling houses. Undeveloped, City-owned property abuts the subject site to the west and south.

Zoning: The R7 single-dwelling residential zone is intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. Commercial uses are generally not allowed unless they are legally nonconforming.

Land Use Review History: City records include one prior land use review for this site. In 1999, an application to divide the site into 2 parcels was denied (LUR 98-00033 MP VZ).

Neighborhood Review: A “Notice of Proposal” was mailed to neighbors and recognized organizations on April 15, 2021. Five written responses from neighbors were received by the 5pm deadline on May 6, 2021 (Exhibits F-1 through F-5). These neighbors raised the following objections:

- SE Reedway Street is a dead-end, gravel road, and putting industrial traffic on this street would worsen the condition of the road and create more dust. The business should use SE Harold Street instead.
- This area is in the Johnson Creek flood plain and the business would harm the environment and wildlife.
- The business would lead to noise, fumes, crime, and visual impacts that detract from the residential character of SE Reedway Street.
- The applicant might not limit the business activities as indicated.

Staff response: The R7 zoning that applies to this property would not allow a new Industrial Service use to be established. However, this request is to re-establish a specific Industrial Service use that is limited to that which existed when the zoning designation changed from EG1 to R7 in 1996, and which continued over time. Zoning Code Section 33.258.050.E.1 allows the applicant to re-establish a legally nonconforming use through a Nonconforming Situation Review if that use has not been discontinued for a period exceeding five continuous years. Only certain parts of the most recent commercial use on the site had documented nonconforming rights, and this review is only to re-establish the parts of the business that were legally established prior to 1996 when the zoning designation changed.

After considering neighbors’ concerns, the applicant agreed to only use SE Harold Street for access to the business and use SE Reedway Street only as an exit for emergencies. This will

limit impacts on SE Reedway Street and homes along that street, and a condition of approval will require access to the business to be from SE Harold Street only. This condition of approval is also appropriate because SE Harold Street is classified as a Neighborhood Collector street, while SE Reedway Street is a local service street intended for lower levels of traffic.

No new buildings are proposed, and the existing buildings on the site will not be expanded. Also, no increase in the existing paved or graveled areas on the site (identified in Exhibits C-1 and C-2) is proposed. Since the business will use the existing development on the site and two defined areas that are already paved or graveled, environmental impacts will not increase compared with the prior, nonconforming condition.

The applicant has also proposed a new, 6-foot-tall, fully sight-obscuring wood fence along the majority of the length of the east lot line to screen views of the business activities from neighboring residential properties (Exhibit C-2). A condition of approval will require this fence to be built and will require it to be fully sight-obscuring and maintained over time.

The approved site plans in Exhibits C-1 and C-2 and the conditions of approval listed at the end of this decision place clear limits on the commercial activities to be allowed on this property. The applicant intends to live in the house on the property and is willing to address neighbors' concerns as they arise (Exhibit F-3, page 2). If neighbors observe activity that does not conform with the limitations from this decision in the future, they can call (503) 823-CODE, and the Bureau of Development Services' Code Compliance Section would investigate and enforce these requirements.

ZONING CODE APPROVAL CRITERIA

33.258.038 Documenting A Nonconforming Situation

Nonconforming uses are those which were allowed when established and which have continued over time. Nonconforming rights are lost when a use is discontinued for 3 years but may be re-established through Nonconforming Situation Review within 5 years (Zoning Code Section 33.258.050.E.1).

The subject site is currently designated with the R7 residential zone, but prior to 1996, this site was designated with the EG1 employment zone. In the EG1 zone, Industrial Service uses such as the auto salvage/parts exchange business on this site were allowed outright.

In a prior Zoning Confirmation Letter (PR 16-183629, Exhibit G-3), the City reviewed evidence and determined that an auto salvage/parts exchange use was legally established on this site prior to the 1996 re-zoning and had continued over time, therefore retaining rights as a nonconforming use. The analysis was based partly on a 1993 building permit for this site (permit 93-105669, Exhibit G-4). The Zoning Confirmation Letter determination specified that nonconforming rights for the auto salvage/parts exchange use had been documented through May 16, 2016. Because the use had been discontinued for more than three continuous years, but fewer than five, the Zoning Confirmation Letter stated that nonconforming rights could be re-established through Nonconforming Situation Review if the Nonconforming Situation Review decision is issued by May 16, 2021.

The proposal in this review is to re-establish the auto salvage/parts exchange business to the extent that nonconforming rights for that use have been documented in the prior Zoning Confirmation Letter (PR 16-183629, Exhibit G-3) and building permit (CO 93-105669, Exhibit G-4).

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 last legal 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: The proposal is to re-establish an Industrial Service use (auto salvage/parts exchange) that existed when the zoning designation for this site changed from EG1 to R7 in 1996 and which was discontinued for a period of more than three continuous years but fewer than five continuous years. The proposal is limited to commercial activities that were legally established prior to 1996, as documented in Zoning Confirmation Letter PR 16-183629 (Exhibit G-3) and building permit 93-105669 (Exhibit G-4).

The applicant states the hours of operation prior to 1996 were 8am to 5pm on weekdays and 8am to noon on Saturdays, with no work on Sundays (Exhibit A-3, page 1). The current proposal is limited to these hours of operation. The proposal also limits commercial activity on the site to the two shaded areas shown in Exhibits C-1 and C-2: the salvage and parts exchange area in the central part of the property and the exterior storage area in the southern part of the property. This reflects the commercial use areas illustrated in building permit 93-105669 from 1993 (Exhibit G-4). With conditions of approval to limit the hours and the physical extent of the commercial activity as described above, the proposal will not increase detrimental impacts related to hours, vehicle trips, parking, noise, vibration, dust, odor, fumes, glare, smoke, litter, or outdoor activities compared to the prior, legally nonconforming auto salvage/parts exchange operation.

To further minimize dust impacts, and in response to neighbors' concerns, the applicant has agreed that cars and trucks will access the property only from SE Harold Street, a paved road abutting the site to the north. Southeast Reedway Street, a gravel road abutting the southeastern part of the site, will be used only as an emergency exit. A condition of approval will limit vehicle access to the site to SE Harold Street only.

The applicant states the only exterior lighting proposed for the business will be on the west side of the shop building (Exhibit C-2) and will not be directed toward neighboring homes, which are to the east. Noise-producing equipment will be used only during the hours of operation mentioned above, and therefore not representing an increase in noise levels over the previous operation of this legal nonconforming use (Exhibit A-3, page 2). Conditions of approval will require these limitations to be maintained.

Another condition of approval will limit the operation to auto salvage and parts exchange activities only, since these are the only commercial activities with documented nonconforming rights (Exhibit G-3). In recent years, parts of the site were used by another owner for vehicle sales, vehicle repair, and painting. However, these activities did not have documented nonconforming rights and are prohibited in this decision due to the potential for increased negative impacts.

For these reasons, and with the conditions of approval mentioned above, staff finds the proposal will not increase detrimental impacts compared to the prior, legally nonconforming condition. With the conditions of approval, staff finds approval criterion B.1 is met.

2. If the nonconforming use is in an OS, R, or IR 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: No physical changes to the existing buildings on the site or the existing paved and graveled vehicle areas are proposed. The only exterior lighting for the business will be on the west side of the shop building (Exhibit C-2), where impacts on neighboring residential property will be minimal, and the only signage proposed is a small speed limit sign in the interior of the site that will not be visible from neighboring property (Exhibit C-2 and Exhibit A-3, page 5).

The main physical change proposed by the applicant for the site is the addition of a 6-foot-tall, wooden fence along the part of the east lot line illustrated in Exhibit C-2. The new fence will increase buffering and privacy for abutting residential property, and a condition of approval will require the new fence to be fully sight-obscuring and maintained over time.

Buffering is also provided by existing trees and shrubs. Building permit 93-105669 (Exhibit G-4) required rows of trees and evergreen shrubs along the north and east sides of the salvage and parts exchange area and along the east side of the exterior storage area as screening. This L3 (high screen) landscaping will provide buffering and screening between the commercial use and neighboring residential properties, so a condition of approval will require these L3 landscaping buffers to be continuously maintained.

For these reasons, and with the conditions of approval mentioned above, staff finds that physical changes to the site will not lessen the residential character of the adjacent area. With the conditions of approval, staff finds approval criterion B.2 is met.

3. If the nonconforming use is in a C, E, I, or CI 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: Since the subject site is not in a C, E, I, or CI zone, approval criterion B.3 is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. 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

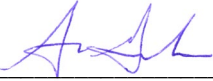
When a legally nonconforming use is discontinued, the Zoning Code allows the use to be re-established through a Nonconforming Situation Review within 5 years. On this site, the applicant requests to re-establish an auto salvage/parts exchange business to the extent that nonconforming rights for that use have been documented. Commercial activities will be limited to two designated areas of the site, and no physical changes to the existing buildings or paved and graveled areas are proposed. Staff finds that with limits on the hours and physical extent of the business, with a new screening fence along the east lot line, and with vehicle access allowed from SE Harold Street only, the approval criteria for the Nonconforming Situation Review are met. Since the approval criteria are found to be met, the proposal must be approved.

ADMINISTRATIVE DECISION

Approval of a Nonconforming Situation Review to re-establish the prior auto salvage/parts exchange business on the subject site, pursuant to Zoning Code Section 33.258.050.E.1, per the approved plans, Exhibits C-1 and C-2, signed and dated May 11, 2021, subject to the following conditions:

- A. Commercial activities may take place only within the two shaded areas shown in Exhibits C-1 and C-2: the salvage and parts exchange area in the central part of the property and the exterior storage area in the southern part of the property. The southern area is limited to storage only, and no salvage or parts exchange work can take place in the southern area.
- B. Commercial activities must be limited to auto salvage and auto parts exchange. No other commercial activities such as vehicle sales, vehicle repair, or painting are allowed anywhere on the site.
- C. Commercial activities on the site and the use of noise-producing equipment related to the business must be limited to the following days and hours:
 - Monday-Friday: 8am – 5pm
 - Saturday: 8am – noon
- D. Vehicle access to the site must be from SE Harold Street only. The site frontage on SE Reedway Street may be used only as an emergency exit.
- E. Prior to re-establishment of the auto salvage/parts exchange business on the site, the applicant must construct and continuously maintain for the life of the nonconforming use a 6-foot-tall, wood fence (meeting the “F2” fence standard of Zoning Code Section 33.248.020.G) along the portion of the east lot line where 6-foot-tall, wood fencing is shown in Exhibit C-2. This fence must be fully sight-obscuring.
- F. Outdoor light fixtures must be aimed away from neighboring residential properties and must meet the glare standards of Zoning Code Section 33.262.080.
- G. L3 (high screen) landscaping buffers meeting the requirements in Zoning Code Section 33.248.020.C must be continuously maintained in these locations, to the extent illustrated in Exhibit C-2:
 - along the north and east sides of the salvage and parts exchange area in the central part of the property; and
 - along the east side of the exterior storage area in the southern part of the property.

Staff Planner: Andrew Gulizia

Decision rendered by:  **on May 11, 2021**
By authority of the Director of the Bureau of Development Services

Decision mailed: May 13, 2021

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on February 19, 2021 and was determined to be complete on April 12, 2021.

Zoning Code Section 33.700.080 states that land use review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal or complete within 180 days. Therefore, this application was reviewed against the Zoning Code in effect on February 19, 2021.

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 August 10, 2021.**

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.

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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on May 27, 2021. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can e-mail you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

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 will be recorded with the Multnomah County Recorder. *Unless appealed*, the final decision will be recorded after **May 27, 2021** by the Bureau of Development Services. The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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 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. Original narrative (superseded by Exhibit A-3)
 - 2. Original site plan (superseded by Exhibits C-1 and C-2)
 - 3. Revised narrative
 - 4. E-mail from applicant, received May 3, 2021
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Overall site plan (attached)
 - 2. Enlarged/detail site plan (attached)
- D. Notification Information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses - none
- F. Correspondence:
 - 1. E-mail from John Edeline and Mary Edeline, received April 25, 2021
 - 2. E-mail from Patricia Gallegos, received April 26, 2021
 - 3. E-mail from Jon Dietz, received April 29, 2021
 - 4. E-mail from Minerva Campuzano, received May 3, 2021
 - 5. Letter from Donielle Augustson, received May 4, 2021
- G. Other:
 - 1. Land use application form
 - 2. Incompleteness determination letter, dated March 1, 2021
 - 3. PR 16-183629 nonconforming use letter, dated April 14, 2020
 - 4. Building permit 93-105669 site plan

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).