



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

Dan Ryan, Commissioner  
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www.portland.gov/bds

**Date:** July 22, 2021  
**To:** Interested Person  
**From:** Amanda Rhoads, Land Use Services  
503-865-6514/Amanda.Rhoads@portlandoregon.gov

## **NOTICE OF A TYPE II PROPOSAL IN YOUR NEIGHBORHOOD**

Development has been proposed in your neighborhood. The proposed development requires a land use review. The proposal, review process, and information on how to respond to this notice are described below. A copy of the site plan and zoning map is attached. I am the staff person handling the case. Please call me if you have questions regarding this proposal. Please contact the applicant if you have questions regarding any future development on the site.

Because we must publish our decision within 28 days, **we need to receive your written comments by 5 p.m. on August 12, 2021. Your comments must be e-mailed to the assigned planner listed above;** please include the Case File Number, LU 21-025649 NE, in your e-mail. If you do not have access to e-mail, please telephone the planner listed above about submitting comments. Please note that all correspondence received will become part of the public record.

### **CASE FILE NUMBER: LU 21-025649 NE**

### **DETERMINATION OF LEGAL NONCONFORMING STATUS REVIEW FOR THE STORAGE OF HAZARDOUS MATERIALS**

**Owner/Applicant:** Rick Barnes | Eagle Trailer Manufacturing | SB Northwest Investments LLC  
7813 Luther Road | Portland OR 97206

**Attorney:** Brandon Thornburg | Cosgrave Vergeer Kester LLP  
900 SW Fifth Ave, 24th Floor | Portland OR 97204

**Site Address:** 7813 SE LUTHER RD

**Legal Description:** TL 5700 1.12 ACRES, SECTION 20 1S 2E  
**Tax Account No.:** R992203650  
**State ID No.:** 1S2E20DD 05700  
**Quarter Section:** 3838  
**Neighborhood:** Brentwood-Darlington, contact bdlanduse@gmail.com.  
**Business District:** None  
**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010 x313  
**Plan District:** Johnson Creek Basin  
**Zoning:** EG2c,p – General Employment 2 with Environmental Conservation and Environmental Protection Overlay Zoning

**Case Type:** NE – Determination of Legal Nonconforming Status Review  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

**Proposal:**

A Determination of Legal Nonconforming Status Review is a land use review to evaluate if an existing use and/or situation that does not conform to the Zoning Code was lawfully established, has not been discontinued and has Non-Conforming Situation rights (Portland Zoning Code Section 33.258.075). The review is required where a land use review or building permit is requested, and the applicant does not provide standard evidence under 33.258.038, or the Director of the Bureau of Development Services (BDS) does not find the evidence to be satisfactory.

In this case, the applicant seeks a Land Use Compatibility Statement (LUCS) from BDS as part of their application for an air contaminant discharge permit from the Oregon Department of Environmental Quality for an existing spray coating booth. The site is fully within the environmental overlay zones. Under Zoning Code Section 33.430.090.A, the use, packaging, transportation, or storage of hazardous substances like those used in the operation of the spray coating booth, are all prohibited.

In order for the site to be granted Legal Non-Conforming Status, the applicant must demonstrate that the spray booth operated (and therefore the site was storing and using hazardous substances) prior to the environmental overlay zoning going into effect in 1991, and that the use has not been discontinued. The City approved and finalized four permits to rebuild a paint booth in 2008 after a fire damaged the building, establishing a rebuttable presumption that the paint booth use and use of hazardous materials lawfully existed at the time the environmental overlay zone went into effect; therefore, this evaluation is from 2008 forward.

**Relevant Approval Criteria:**

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

**33.258.075.D. Approval criteria.**

1. The legal status of the nonconforming situation will be certified if the review body finds that:
  - a. The nonconforming situation would have been allowed when established; and
  - b. The nonconforming situation has been maintained over time.
2. The review body will determine, based on the evidence, what the current legal use is, using the definitions in Chapter 33.910 and the use categories in Chapter 33.920.

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. This application was submitted on March 16, 2021 and determined to be complete on July 14, 2021.

**DECISION MAKING PROCESS**

The Bureau of Development Services will make a decision on this proposal. After we consider your comments we will do one of the following:

- Approve the proposal;
- Approve the proposal with conditions; or
- Deny the proposal.

The neighborhood association listed on the first page of this notice may take a position on this application. They may also schedule an open meeting prior to making their recommendation to the Bureau of Development Services. Please contact the person listed as the neighborhood contact to determine the time and date of this meeting.

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 extended at the request of the applicant.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email 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>.

#### **APPEAL PROCESS**

If you disagree with the Bureau of Development Services administrative decision, you can appeal the decision to the Hearings Officer. This review body will hold a public hearing for the appeal. When the decision is mailed, the criteria used to make the decision and information on how to file an appeal will be included. If you do not send any comments, you can still appeal the decision. There is a 14-day deadline to file an appeal beginning on the day the decision is mailed. The reason for the appeal must be specifically defined in order for the review body to respond to the appeal. If an appeal is filed, you will be notified of the time and location of the appeal hearing.

There is a fee charged for appeals. Recognized neighborhood associations may qualify for an appeal fee waiver.

#### **APPEAL OF THE FINAL CITY DECISION**

After an appeal hearing, the review body decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283. The phone number for LUBA is 1-503-373-1265. Issues that may provide the basis for an appeal to LUBA must be raised prior to the comment deadline or prior to the conclusion of the hearing if a local appeal is requested. If you do not raise an issue with enough specificity to give the Bureau of Development Services an opportunity to respond to it, that may also preclude an appeal to LUBA on that issue.

**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).**

#### **Enclosures:**

Zoning Map  
Site Plan