



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

Dan Ryan, Commissioner
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portland.gov/bds

Date: December 13, 2022
To: Interested Person
From: Andrew Gulizia, Land Use Services
503-865-6714 / Andrew.Gulizia@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 21-103945 NU AD

GENERAL INFORMATION

Applicant: Sandra Fox
Barghausen Consulting Engineers, Inc.
409 Pine St., Ste 200
Klamath Falls, OR 97601
425-251-6222 x7356
sfox@barghausen.com

Tenant: Dutch Bros. LLC
110 SW 4th St
Grants Pass, OR 97526

Owners: Rich's/Angel LLC
PO Box 230968
Tigard, OR 97281

Pacific Outdoor Advertising
715 NE Everett St
Portland, OR 97232

Site Address: 430 NE Lloyd Blvd.

Legal Description: BLOCK 111 TL 500 LAND & IMPS SEE R150157 (R226507481) FOR BILLBOARD, EAST PORTLAND; BLOCK 111 TL 500 BILLBOARD SEE R150156 (R226507480) FOR LAND & IMPS, EAST PORTLAND; N 94.67' OF E 1/2 OF BLOCK 111 EXC PT IN STS, EAST PORTLAND

Tax Account No.: R226507480, R226507481, R226507500
State ID No.: 1N1E35CB 00500, 1N1E35CB 00500A1, 1N1E35CB 00400
Quarter Section: 3031

Neighborhood: Lloyd District Community, contact at president@lcapdx.org

Business District:	Lloyd District Community Association, contact at admin@lloyddistrict.org
District Coalition:	Northeast Coalition of Neighborhoods, contact at info@necoalition.org
Plan District:	Central City - Lloyd District
Zoning:	CXd – Central Commercial with Design (“d”) overlay
Case Type:	NU AD – Nonconforming Situation Review and Adjustment Review
Procedure:	Type II, an administrative decision with appeal to the Hearings Officer

Proposal: The applicant proposes to modify an existing drive-through facility on this site to create two parallel stacking lanes (where vehicles queue for service) where a single stacking lane was approved previously. Drive-through customers would continue to use the single service window on the south side of the building. After this drive-through facility was approved in 2015 (case file LU 14-164344 DZ AD), Zoning Code regulations changed to prohibit drive-through facilities at this location (Zoning Code Sections 33.130.260.B and 33.510.240). Since the existing drive-through facility is now a legally nonconforming condition, approval of a Nonconforming Situation Review is required for the proposed change (Zoning Code Section 33.258.050.D.2.a).

The applicant also requests approval of two Adjustments to Zoning Code requirements for the site:

- To reduce the minimum distance between the drive-through facility entrance and the intersection of NE Martin Luther King, Jr. Blvd. and NE Lloyd Blvd. from 50 feet to 21.6 feet (Zoning Code Section 33.224.040). The existing drive-through facility entrance is 19.7 feet from the intersection. This Adjustment is necessary because the configuration approved in the site plan from LU 14-164344 DZ AD, which approved the drive-through facility, is proposed to change.
- To reduce the minimum width of the landscaped setback between the vehicle area and the north lot line from 5 feet to between 2.32 feet and 4.62 feet (Zoning Code Section 33.266.130.G.2.c). The existing vehicle area is not moving closer to the north lot line, but the vehicle area is being modified in other ways, and this Adjustment will formally legalize the existing setback distance.

The applicant has also applied for Design Review (case file LU 21-104135 DZ) for changes to the building façade. The Design Review will be subject to a separate public notice and review process.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria specified in the Portland Zoning Code. The relevant approval criteria are:

- Zoning Code Section 33.258.080.B (Nonconforming Situation Review)
- Zoning Code Section 33.805.040.A-F (Adjustment Review)

ANALYSIS

Site and Vicinity: The subject property is a full city block bounded by NE Martin Luther King, Jr. Blvd. to the west, NE Lloyd Blvd. to the north, NE Grand Ave. to the east, and the I-84 freeway to the south. The site is about 0.8 acres in area. The northern part of the site is developed with a single-story, approximately 2,000-square-foot building used as a coffee shop and a surface parking lot with a drive-through. The southern part of the site is undeveloped. The site is at the south end of the Lloyd District, and the Oregon Convention Center is on the opposite corner of NE Martin Luther King, Jr. Blvd. and NE Lloyd Blvd. The Central Eastside neighborhood is just south of the site, on the opposite side of the I-84 freeway.

Zoning: The CX zone is intended to provide for commercial and mixed-use development within Portland's most urban and intense areas. A broad range of uses is allowed in order to reflect Portland's role as a commercial, cultural, residential, and governmental center. Development is intended to be very intense with high building coverage, large buildings, and buildings placed close together.

The Design ("d") overlay zone is intended to promote the conservation, enhancement, and continued vitality of areas with special scenic, architectural, or cultural values. The "d" overlay regulations require a separate Design Review for proposed alterations to the building façade (LU 21-104135 DZ).

The site is also within the Central City Plan District (Lloyd Subdistrict). The Central City Plan District implements the Central City Plan and other plans applicable to the Central City area. The district implements portions of these plans by adding code provisions which address special circumstances existing in the Central City area.

Land Use Review History: City records include the following prior land use reviews for this site:

- LU 14-164344 DZ AD: 2015 Design Review and Adjustment Review approval for alterations to the building on this site and for a new drive-through facility.
- LU 13-128042 DZM: 2013 Design Review approval with Modifications for alterations to the building on this site.
- LU 07-142539 AD: 2008 Adjustment Review approval for a new driveway from NE Martin Luther King, Jr. Blvd.

Agency Review: A "Notice of Proposal" was sent May 27, 2022 (Exhibit D-2). The following Bureaus responded with no concerns about the proposal:

- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4);
- Site Development Section of the Bureau of Development Services (BDS) (Exhibit E-5); and
- Life Safety Review Section of BDS (Exhibit E-6).

The Bureau of Environmental Services (BES) initially requested more information about stormwater management, and upon further review BES expressed no objections to the proposal (Exhibit E-1).

The Portland Bureau of Transportation (PBOT) reviewed transportation-related approval criteria and found them to be met (Exhibit E-2). References to PBOT's response are in the approval criteria findings below.

Neighborhood Review: No written responses to the mailed "Notice of Proposal" were received from either the Neighborhood Association or notified neighbors.

ZONING CODE APPROVAL CRITERIA

Nonconforming Situation Review

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 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: Approval criterion B.1 requires the proposal to have no net increase in detrimental impacts on the neighborhood compared to the existing condition. Each of the factors listed in approval criterion B.1 is analyzed below.

Hours of operation

The store is open nearly 24 hours a day, 7 days a week, and this proposal will not change the existing hours of operation.

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

The existing coffee shop has both indoor and drive-through service, and there is no on-street parking on any of the abutting street frontages. This proposal will not expand the existing store, and drive-through customers will continue to use a single service window on the south side of the building. The proposal will create two parallel stacking lanes in place of the single stacking lane approved in LU 14-164344 DZ AD, but this is intended to better organize the existing traffic through the site rather than expand the number of vehicles visiting the site. The applicant submitted a transportation analysis (Exhibit A-13) which indicates the proposal is likely to increase safety without increasing the number of vehicle trips associated with the use. PBOT reviewed the applicant's transportation analysis and found the proposal will not increase detrimental impacts related to vehicle trips with the following conditions of approval (Exhibit E-2):

- At least one "line buster" must be assigned exclusively to traffic management and queue control between 5:00am and 8:00pm daily.
- Additional employee training must be conducted to reinforce and prioritize traffic management policies and procedures.
- A "DO NOT BLOCK SIDEWALK" or similar sign must be installed at the driveway entrance on NE Martin Luther King, Jr. Blvd. The sign must be placed on the private property and not within the public right-of-way.
- The bollards between the queuing lanes and parking area shown on the site plan (Exhibit C-1) must be removed to prevent delivery vehicles from queuing into the right-of-way.

Noise, vibration, dust, odors, fumes, glare and smoke

Since the store will not be expanded and the proposed changes are unlikely to increase the number of vehicles driving through the site, the proposal is unlikely to increase detrimental impacts related to noise, vibration, dust, odors, fumes, glare, or smoke.

Potential for increased litter

Since the store will not be expanded and the proposed changes are unlikely to increase the number of customers served, the proposal is unlikely to increase detrimental impacts related to litter.

Amount, location and nature of outside displays, storage or activities

A drive-through facility can be considered an outside activity. The parallel stacking lanes will be in the same location on the site as the previously approved, single stacking lane, and the proposal is intended to better manage traffic and prevent disorganized queuing in the parking area or on the street. Therefore, staff finds the proposal will reduce rather than increase detrimental impacts related to the outside activity.

Summary

For the reasons discussed above, and with the conditions of approval recommended by PBOT, staff finds the proposal will not increase detrimental impacts on the neighborhood compared to the existing condition. With the conditions of 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, R, or IR 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: Since the site is not in an OS, R, or IR zone, criterion B.2 is not applicable.

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: The desired function and character of the CX zone is described in Zoning Code Section 33.130.030.F:

The Central Commercial (CX) zone is intended to provide for commercial and mixed use development within Portland's most urban and intense areas, specifically the Central City and the Gateway Regional Center. A broad range of uses are allowed to reflect Portland's role as a commercial, cultural, residential, and governmental center. Development is intended to be very intense with high building coverage, large buildings, and buildings placed close together. Development is intended to be pedestrian-oriented with a strong emphasis on a safe and attractive streetscape. The Design overlay zone is applied to this zone.

A drive-through facility is not an intensely urban, pedestrian-oriented development type, and consistent with the character statement above, new drive-through facilities are prohibited in the CX zone (Zoning Code Section 33.130.260.B). By creating two parallel stacking lanes in place of the single stacking lane approved in LU 14-164344 DZ AD, the proposal removes some existing landscaping and expands the amount of site area dedicated to the drive-through facility. However, the proposal is intended to better manage the existing traffic through the site, and PBOT expects the proposal to increase safety (Exhibit E-2). The applicant also agreed to the following site upgrades to create a more attractive environment for pedestrians (Exhibit C-2):

- Near the corner of NE Martin Luther King, Jr. Blvd. and NE Lloyd Blvd., one existing parking space will be removed, and new landscaping including two new trees will be planted in its place. No off-street parking is required in the Central City Plan District (Zoning Code Section 33.510.261.G.3), and this change will improve the pedestrian environment at the intersection of two streets designated Major City Walkways in the City's Comprehensive Plan.

- Along the north side of the existing parking area, and adjacent to the NE Lloyd Blvd. sidewalk, the existing curb will be removed and replaced by wheel stops at the head of each parking space. The wheel stops will be located one foot further south than the existing curb, which will allow the width of the existing landscaped area to be expanded by more than 20%. The increased width of the green space, along with existing trees to be maintained and low, evergreen shrubs to be planted, will create a more pleasant pedestrian environment along a Major City Walkway. Zoning Code requirements for the parking spaces will still be met (Zoning Code Sections 33.266.130.D.3 and 33.266.130.F.4).
- New landscaping including 16 new trees will be planted on the south side of the drive-through facility. Though most of this new landscaping will not be adjacent to sidewalks, the new tree canopy will improve views of the site from the abutting sidewalks and help to reduce the visual prominence of the drive-through facility.

For these reasons, and with a condition of approval for the new landscaping plan in Exhibit C-2 to be implemented, staff finds that on balance, the proposal will not detract from the desired function and character of the CX zone. With the condition of approval, criterion B.3 is met.

Adjustment Review

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

- A. Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The applicant requests two Adjustments:

- To reduce the minimum distance between the drive-through facility entrance and the intersection of NE Martin Luther King, Jr. Blvd. and NE Lloyd Blvd. from 50 feet to 21.6 feet (Zoning Code Section 33.224.040).
- To reduce the minimum width of the landscaped setback between the vehicle area and the north lot line from 5 feet to between 2.32 feet and 4.62 feet (Zoning Code Section 33.266.130.G.2.c).

Consistency with the purpose of each requirement to be modified is discussed below.

Drive-through facility entrance

The purpose statement for the drive-through facility regulations, including the minimum distance between drive-through facility entrances and intersections, is in Zoning Code Section 33.224.010:

The regulations of this chapter are intended to allow for drive-through facilities by reducing the negative impacts they may create. Of special concern are noise from idling cars and voice amplification equipment, lighting, and queued traffic interfering with on-site and off-site traffic and pedestrian flow. The specific purposes of this chapter are to:

- *Reduce noise, lighting, and visual impacts on abutting uses, particularly residential uses;*
- *Promote safer and more efficient on-site vehicular and pedestrian circulation;*
- *Reduce conflicts between queued vehicles and traffic on adjacent streets.*

The drive-through facility entrance is on NE Martin Luther King, Jr. Blvd., a one-way street with southbound traffic. The existing drive-through facility entrance is 19.7 feet from the intersection, and an Adjustment for this standard was approved in LU 14-163344 DZ AD. The current proposal moves the drive-through entrance 1.9 feet further from the intersection than the existing condition, but a new Adjustment is necessary because the proposal will vary from the site plan approved in LU 14-164344 DZ AD.

In LU 14-163344 DZ AD, BDS and PBOT staff found the drive-through entrance location on the one-way street would be consistent with the purpose of the requirement, with conditions of approval that were intended to prevent queuing in the street near the intersection. These conditions of approval from LU 14-163344 DZ AD continue to apply to the operation:

- An additional dedicated espresso machine will be employed for drive-through orders.
- An additional staff person will be located on-site to expedite drive-through orders.
- A runner will be used during peak operational periods (6:00-9:00 AM, weekdays) and at all other times when there is a sustained drive-through queue in excess of five vehicles. The runner will be connected wirelessly to the kiosk and may also be able to complete wireless financial transactions without returning to the kiosk.
- A runner will be used to direct any vehicles queued on the MLK Jr. driveway into the parking lot.
- A reserved “order waiting” area will be established in the parking lot for large orders.

With the drive-through entrance located slightly further from the intersection in the current proposal, vehicles will still access the drive-through facility safely, and noise, lighting, and visual impacts on neighboring lots will be minimal. The property across NE Martin Luther King, Jr. Blvd. from the drive-through facility entrance is used for surface parking, and there are no residential uses in the immediate vicinity.

The current proposal for two on-site stacking lanes will expand the queuing capacity on the site to create a better-managed drive-through facility with fewer conflicts associated with disorganized queuing. PBOT reviewed the proposal and found the proposal will improve safety and efficiency in conformance with the purpose of the standard, and recommended the following conditions of approval in addition to those imposed in LU 14-164344 DZ AD (Exhibit E-2):

- At least one “line buster” must be assigned exclusively to traffic management and queue control between 5:00am and 8:00pm daily.
- Additional employee training must be conducted to reinforce and prioritize traffic management policies and procedures.
- A “DO NOT BLOCK SIDEWALK” or similar sign must be installed at the driveway entrance on NE Martin Luther King, Jr. Blvd. The sign must be placed on the private property and not within the public right-of-way.
- The bollards between the queuing lanes and parking area shown on the site plan (Exhibit C-1) must be removed to prevent delivery vehicles from queuing into the right-of-way.

Based on these findings, and with the conditions of approval listed above, staff finds the proposed Adjustment is equally consistent with the purpose of the regulation.

Vehicle area setback

The purpose statement for motor vehicle area requirements is in Zoning Code Section 33.266.130.A. This section of the purpose statement is relevant to the setback Adjustment:

The setback and landscaping standards:

- *Improve and soften the appearance of parking areas;*
- *Reduce the visual impact of parking areas from sidewalks, streets, and especially from adjacent residential zones;*
- *Provide flexibility to reduce the visual impacts of small residential parking lots;*
- *Direct traffic in parking areas;*
- *Shade and cool parking areas;*
- *Reduce the amount and rate of stormwater runoff from vehicle areas;*
- *Reduce pollution and temperature of stormwater runoff from vehicle areas; and*
- *Decrease airborne and waterborne pollution.*

The parking area will be set back 4.62 feet from the north lot line, except at the northwest corner of the parking lot where the setback is only 2.32 feet (Exhibit C-1). These setbacks are an existing condition, but since changes are proposed to the on-site vehicle area, this Adjustment is necessary to formally legalize the setback. The parking area will not move any closer to the north lot line.

As discussed in the findings for the Nonconforming Situation Review, above, the existing curb on the north side of the parking area will be removed and replaced by wheel stops located one foot further south (Exhibit C-2). This will allow the width of the existing landscaped area on the north side of the parking lot to be expanded by more than 20%. While the new landscaped area cannot count toward the perimeter landscaping requirement (Zoning Code Section 33.266.130.F.4.c), the larger green space will help to soften views of the parking lot from the sidewalk, as intended by the standard. In addition, existing trees to be maintained and low, evergreen shrubs to be planted on the north side of the parking lot (Exhibit C-2) will provide shading and cooling, intercept stormwater, and help to mitigate pollution.

The dimensions of the parking spaces and drive aisle will meet the requirements in Zoning Code Section 33.266.130.F outright, so circulation within the parking area will be as intended by the Zoning Code and will not be affected by the Adjustment request.

For these reasons, and with a condition of approval for the landscaping plan in Exhibit C-2 to be implemented, staff finds the proposed Adjustment is equally consistent with the purpose of the regulation.

Summary

With conditions of approval, staff finds both Adjustment requests are equally consistent with the purpose of the regulation to be modified. With the conditions of approval mentioned above, criterion A is met.

- B. If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: Since the site is in a commercial/mixed use zone, the Adjustments must be consistent with the classifications of the adjacent streets and the desired character of the area.

Street classifications

The classifications of the adjacent streets in the Transportation Element of the Comprehensive Plan are as follows:

	Traffic	Transit	Bikeway	Pedestrian	Freight
NE Martin Luther King, Jr. Blvd.	Major City Traffic Street	Major Transit Priority Street	City Bikeway	Major City Walkway	Major Truck Street
NE Lloyd Blvd.	Traffic Access Street	Local Service	Major City Bikeway	Major City Walkway	Truck Access Street
NE Grand Ave.	Major City Traffic Street	Major Transit Priority Street	City Bikeway	Major City Walkway	Major Truck Street

The drive-through facility on this site is existing, and PBOT approved the retention of the existing driveways from adjacent streets (Exhibit G-5). PBOT found the proposal to better organize traffic through the existing drive-through facility will reduce motor vehicle queues in the street right-of-way, and therefore improve conditions for all transportation modes (Exhibit E-2). Therefore, staff finds the proposal is consistent with the adjacent street classifications.

Desired character of area

Pursuant to the definition of “desired character” in Zoning Code Chapter 33.910, the desired character for this site is determined by:

- the character statement for the CX zone
- the purpose statement for the Design (“d”) overlay zone
- the purpose statement for the Central City Plan District
- the Central City 2035 Plan
- the Portland Citywide Design Guidelines

CX zone

The character statement for the CX zone is in Zoning Code Section 33.130.030.F:

The Central Commercial (CX) zone is intended to provide for commercial and mixed use development within Portland's most urban and intense areas, specifically the Central City and the Gateway Regional Center. A broad range of uses are allowed to reflect Portland's role as a commercial, cultural, residential, and governmental center. Development is intended to be very intense with high building coverage, large buildings, and buildings placed close together. Development is intended to be pedestrian-oriented with a strong emphasis on a safe and attractive streetscape. The Design overlay zone is applied to this zone.

A drive-through facility is not an intensely urban, pedestrian-oriented development type, and consistent with the character statement above, new drive-through facilities are prohibited in the CX zone (Zoning Code Section 33.130.260.B). By creating two parallel stacking lanes in place of the single stacking lane approved in LU 14-164344 DZ AD, the proposal removes some existing landscaping and expands the amount of site area dedicated to the drive-through facility. However, the proposal is intended to better manage the existing traffic through the site, and PBOT expects the proposal to increase safety (Exhibit E-2). The applicant also agreed to the following site upgrades to create a more attractive environment for pedestrians (Exhibit C-2):

- Near the corner of NE Martin Luther King, Jr. Blvd. and NE Lloyd Blvd., one existing parking space will be removed, and new landscaping including two new trees will be planted in its place. No off-street parking is required in the Central City Plan District (Zoning Code Section 33.510.261.G.3), and this change will improve the pedestrian environment at the intersection of two streets designated Major City Walkways in the City’s Comprehensive Plan.
- Along the north side of the existing parking area, and adjacent to the NE Lloyd Blvd. sidewalk, the existing curb will be removed and replaced by wheel stops at the head of each parking space. The wheel stops will be located one foot further south than the

existing curb, which will allow the width of the existing landscaped area to be expanded by more than 20%. The increased width of the green space, along with existing trees to be maintained and low, evergreen shrubs to be planted, will create a more pleasant pedestrian environment along a Major City Walkway. Zoning Code requirements for the parking spaces will still be met (Zoning Code Sections 33.266.130.D.3 and 33.266.130.F.4).

- New landscaping including 16 new trees will be planted on the south side of the drive-through facility. Though most of this new landscaping will not be adjacent to sidewalks, the new tree canopy will improve views of the site from the abutting sidewalks and help to reduce the visual prominence of the drive-through facility.

For these reasons, and with a condition of approval for the landscaping plan in Exhibit C-2 to be implemented, staff finds that on balance, the proposal is consistent with the character statement for the CX zone.

Design (“d”) overlay zone

The purpose statement for the “d” overlay zone is in Zoning Code Section 33.420.010:

The Design overlay zone ensures that Portland is both a city designed for people and a city in harmony with nature. The Design overlay zone supports the city’s evolution within current and emerging centers of civic life. The overlay promotes design excellence in the built environment through the application of additional design standards and design guidelines that:

- *Build on context by enhancing the distinctive physical, natural, historic and cultural qualities of the location while accommodating growth and change;*
- *Contribute to a public realm that encourages social interaction and fosters inclusivity in people’s daily experience; and*
- *Promotes quality and long-term resilience in the face of changing demographics, climate and economy.*

The proposed Adjustments will not significantly change the appearance of the existing development on the site, but staff finds the new expanded perimeter landscaping areas and new trees illustrated in Exhibit C-2 will create a higher-quality, more climate-friendly development. Proposed changes to the existing building facades will be considered in a separate Design Review (LU 21-104135 DZ). For these reasons, and with a condition of approval for the landscaping plan in Exhibit C-2 to be implemented, staff finds the proposal is consistent with the purpose of the “d” overlay zone.

Central City Plan District

The purpose statement for the Central City Plan District is in Zoning Code Section 33.510.010:

The Central City plan district implements the Central City 2035 Plan. The regulations address the unique role the Central City plays as the region’s premier center for jobs, health and human services, tourism, entertainment and urban living. The regulations encourage a high-density urban area with a broad mix of commercial, residential, industrial and institutional uses, and foster transit-supportive development, pedestrian and bicycle-friendly streets, a vibrant public realm and a healthy urban river.

A drive-through facility is not generally considered a transit-supportive or pedestrian- or bicycle-friendly development type. However, the drive-through facility on this site is existing rather than new, and the proposal will improve the function of the existing drive-through by reducing problems associated with disorganized queuing. Landscaping improvements near the sidewalks will create a more pedestrian-friendly development compared to the existing condition. For these reasons, and with a condition of approval for the landscaping plan in

Exhibit C-2 to be implemented, staff finds the proposal is consistent with the purpose of the Central City Plan District.

Central City 2035 Plan

The following statements from the Central City 2035 Plan are found to be relevant:

Policy 3.3: Optimized street network. Improve street design and function to increase efficiency and safety for all transportation modes and the ability of the existing network to meet the access needs of businesses, shoppers, residents and visitors. Establish a system and standards that emphasize walking, bicycling, transit use and freight access while continuing to provide automobile access.

Policy 5.LD-3: Pedestrian-oriented development. Discourage new automobile-oriented uses and encourage the eventual redevelopment of large surface parking lots with development that is oriented to the street and enhances the pedestrian environment.

A drive-through facility is an auto-oriented development type, but the drive-through facility on this site is existing rather than new, and the proposal will improve the function of the existing drive-through without requiring major physical changes to the site. PBOT found the proposal will support the efficient and safe operation of adjacent streets (Exhibit E-2), and the proposal will not prevent redevelopment of the site to a less auto-oriented use in the future. For these reasons, staff finds the proposal is consistent with the Central City 2035 Plan.

Portland Citywide Design Guidelines

Staff finds the following Portland Citywide Design Guidelines to be relevant to the Adjustment Review proposal:

Guideline 02: Create positive relationships with surroundings.

Guideline 06: Integrate and minimize the impact of parking and necessary building services.

The proposed Adjustments will not significantly change the appearance of the existing development on the site, but staff finds the new expanded perimeter landscaping areas and new trees will create a more positive relationship with the surrounding area and help mitigate impacts from the existing vehicle area. For these reasons, and with a condition of approval for the landscaping plan in Exhibit C-2 to be implemented, staff finds the proposal is consistent with these Design Guidelines.

Summary

With the conditions of approval mentioned above, the Adjustment requests are consistent with the adjacent street classifications and the desired character of the area. With the conditions of approval, criterion B is met.

- C. If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: The purpose of the CX zone is described in Zoning Code Section 33.130.030.F:

The Central Commercial (CX) zone is intended to provide for commercial and mixed use development within Portland's most urban and intense areas, specifically the Central City and the Gateway Regional Center. A broad range of uses are allowed to reflect Portland's role as a commercial, cultural, residential, and governmental center. Development is intended to be very intense with high building coverage, large buildings, and buildings placed close together. Development is intended to be pedestrian-oriented with a strong emphasis on a safe and attractive streetscape. The Design overlay zone is applied to this zone.

The characteristics of a drive-through facility are not consistent with the purpose of the CX zone, but the drive-through facility already exists, and the proposal is intended to better manage the existing traffic through the site. As discussed previously in these findings, PBOT expects the proposal to increase safety (Exhibit E-2), and several landscaping improvements at the perimeters of the vehicle area will create a more attractive environment for pedestrians (Exhibit C-2). For these reasons, and with a condition of approval for the new landscaping plan in Exhibit C-2 to be implemented, staff finds that on balance, the proposal is consistent with the purpose of the CX zone.

- D. City-designated scenic resources and historic resources in Historic, Conservation and National Register Districts and within the boundaries of Historic, Conservation and National Register Landmarks are preserved; and

Findings: City-designated scenic resources are identified on the official zoning maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic resources or historic resources mapped on the subject site, this criterion is not applicable.

- E. Any impacts resulting from the Adjustment are mitigated to the extent practical; and

Findings: Potential impacts from the drive-through facility entrance less than 50 feet from the intersection will be mitigated by the conditions of approval listed previously in this report which were recommended by PBOT to prevent queuing near the intersection. Impacts from the slightly reduced setback between the existing parking area and the north lot line will be mitigated by new landscaping that will significantly improve the appearance of the site from the NE Lloyd Blvd. sidewalk. With the conditions of approval recommended by PBOT and for the landscaping plan in Exhibit C-2 to be implemented, staff finds that potential impacts will be mitigated to the extent practical, and that criterion E is met.

- F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: Environmental overlay zones are designated on the official zoning maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on the site, this criterion 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. 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 requests Nonconforming Situation Review and Adjustment Review approval to modify an existing drive-through facility to create two parallel stacking lanes in place of the single stacking lane approved in the previous land use review. The service capacity of the existing coffee shop will not be expanded because all drive-through customers will continue to use a single service window on the south side of the building. Staff finds the proposed modification will not increase detrimental impacts on the surrounding area, and that landscaping improvements will support the desired character of the CX zone. The two Adjustments requested for this proposal are found to be consistent with the purpose of the requirements to be modified and with the character intended for the area. With the conditions

of approval listed below, staff finds the approval criteria for the Nonconforming Situation Review and Adjustment Review are met.

ADMINISTRATIVE DECISION

Approval of a Nonconforming Situation Review to modify the existing drive-through facility on the subject site.

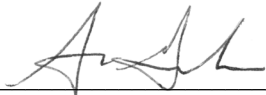
Approval of the following Adjustments for the proposal:

- To reduce the minimum distance between the drive-through facility entrance and the intersection of NE Martin Luther King, Jr. Blvd. and NE Lloyd Blvd. from 50 feet to 21.6 feet (Zoning Code Section 33.224.040). The existing drive-through facility entrance is 19.7 feet from the intersection. This Adjustment is necessary because the configuration approved in the site plan from LU 14-164344 DZ AD, which approved the drive-through facility, is proposed to change.
- To reduce the minimum width of the landscaped setback between the vehicle area and the north lot line from 5 feet to between 2.32 feet and 4.62 feet (Zoning Code Section 33.266.130.G.2.c). The existing vehicle area is not moving closer to the north lot line, but the vehicle area is being modified in other ways, and this Adjustment will formally legalize the existing setback distance.

Both approvals are per the approved plans, Exhibits C-1 and C-2, signed and dated December 6, 2022, and subject to the following conditions:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 and C-2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 21-103945 NU AD."
- B. The new landscaping illustrated in Exhibit C-2 must be installed and maintained. On the north side of the parking area, the entire area between the wheel stops and the NE Lloyd Blvd. sidewalk must be planted. Only ground cover plants are allowed within 1 foot of the wheel stops.
- C. Conditions of approval from LU 14-163344 DZ AD continue to apply.
- D. At least one "line buster" must be assigned exclusively to traffic management and queue control between 5:00am and 8:00pm daily.
- E. Additional employee training must be conducted to reinforce and prioritize traffic management policies and procedures.
- F. A "DO NOT BLOCK SIDEWALK" or similar sign must be installed at the driveway entrance on NE Martin Luther King, Jr. Blvd. The sign must be placed on the private property and not within the public right-of-way. The new sign must comply with applicable Sign Code (Title 32) requirements.
- G. The bollards between the queuing lanes and parking area shown on Exhibit C-1 must be removed to prevent delivery vehicles from queuing into the right-of-way.

Staff Planner: Andrew Gulizia

Decision rendered by:  **on December 6, 2022**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 13, 2022

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 November 5, 2021 and was determined to be complete on May 4, 2022.

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 November 5, 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 requested that the 120-day review period be extended by a total of 179 days (Exhibits A-15, A-21, A-24, A-25, A-32, and A-34). Unless further extended by the applicant, **the 120-day review period will expire on February 27, 2023.**

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, and if appealed a hearing will be held. The appeal application form can be accessed at https://www.portland.gov/sites/default/files/2020/lu_type2_2x_appeal_form_071116.pdf. Appeals must be received **by 4:30 PM on December 27, 2022. 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 email, 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 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>.

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 **December 27, 2022** 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. For further information on 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 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:

Original submittal

1. Project narrative
2. Nonconforming Situation Review narrative
3. Stormwater narrative
4. Early Assistance meeting summary
5. Transportation memo
6. Plan set
7. Planting plan
8. Photos

9. Sign drawings

4/17/2022 submittal

- 10. Letter from applicant
- 11. Revised project narrative
- 12. Revised plan set
- 13. Supplemental transportation memo

5/4/2022 submittal

- 14. Email from applicant
- 15. Request to extend 120-day review period by 30 days

5/18/2022 submittal

- 16. Revised Adjustment Review narrative
- 17. Revised planting plan

7/14/2022 submittal

- 18. Letter from applicant
- 19. Revised plan set
- 20. Revised stormwater narrative

7/20/2022 submittal

- 21. Request to extend 120-day review period by 60 days

9/8/2022 submittal

- 22. Memo from applicant
- 23. Revised site plan

9/21/2022 submittal

- 24. Request to extend 120-day review period by 45 days

10/25/2022 submittal

- 25. Request to extend 120-day review period by 14 days

10/28/2022 submittal

- 26. Email from applicant
- 27. Revised site plan
- 28. Revised planting plan
- 29. Queuing plan
- 30. Garbage and recycling enclosure drawings

11/16/2022 submittal

- 31. Revised planting plan

11/18/2022 submittal

- 32. Request to extend 120-day review period by 16 days

11/28/22 submittal

- 33. Revised planting plan

12/5/22 submittal

- 34. Request to extend 120-day review period by 14 days

- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Approved site plan (attached)
 - 2. Approved planting plan (attached)
- D. Notification Information:

1. Mailing list
 2. Mailed notice
- E. Agency Responses:
1. Bureau of Environmental Services
 2. Portland Bureau of Transportation
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of BDS
 6. Life Safety Review Section of BDS
- F. Correspondence (none received)
- G. Other:
1. Land use application form
 2. Incompleteness determination letter, dated November 24, 2021
 3. Status update email, dated April 20, 2022
 4. September 28, 2022 meeting agenda
 5. Driveway Design Exception approval (file # 22-189889 TR)

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).