



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

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Date: May 5, 2023
To: Interested Person
From: Matt Wickstrom, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

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

CASE FILE NUMBER: LU 23-013453 AD

GENERAL INFORMATION

Owner/Applicant: Sam Wampler | 32 Division LLC
9220 SW Barbur Blvd #119 PMB 205 | Portland, OR 97219-8878
Phone: 503-515-9365 | Email: info@32div.com

Site Address: 3232 SE DIVISION ST

Legal Description: BLOCK 8 LOT 2, EAST PORTLAND HTS; BLOCK 8 LOT 3, EAST PORTLAND HTS

Tax Account No.: R226701230, R226701240

State ID No.: 1S1E12BA 02900, 1S1E12BA 01700

Quarter Section: 3333

Neighborhood: Richmond, contact at richmond.pdx.lutc@gmail.com

Business District: Division-Clinton Business Association, contact at info@divisionclinton.com

District Coalition: Southeast Uplift, contact Matchu Williams at matchu@seuplift.org

Plan District: Division Street

Zoning: CM2dm (MU-U. The site is located in the Commercial/Mixed Use 2 with Design Overlay and Centers Main Street Overlay zoning. It is located in the Division Street Plan District and has a Mixed Use – Urban Center Comprehensive Plan Map designation.

Case Type: AD – Adjustment Review – 1 Adjustment

Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant proposes to develop a food cart pod at this site with 12 food carts, landscaping and seating along SE Division Street, an internal seating area, a trash enclosure and a building

with on-site bathrooms. An existing building in the southwest corner of the site is proposed to remain as well. Food carts are considered vehicles, even if they are non-motorized and stationary on a site, and therefore need to be placed in locations where vehicle area is allowed. In this location, the Centers Main Street Overlay zone limits the amount of vehicle area to no more than 30 percent of any transit street frontage. The purpose of the regulation is to minimize conflicts between vehicles and pedestrians on transit streets and to create a pleasant, pedestrian-oriented environment by limiting the areas where parking and vehicular activity may be located. Based on the proposal the amount of vehicle area devoted to food carts will occupy 83 percent of the transit street frontage. The applicant proposes one Adjustment to Portland Zoning Code Section 33.415.330 Location of Vehicle Areas to increase the allowed amount of transit street frontage for vehicle area from 30 percent to 83 percent for the food cart pod.

Relevant Approval Criteria:

To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The 10,000 square foot site is located along SE Division St. between SE 32nd Ave. and SE 33rd Ave., although it does not have frontage on either of those side streets. The site contains two houses one of which was formerly occupied by a restaurant located within a primary building with many accessory structures, accessory buildings and building additions. As part of the proposal, the site will be cleared with the exception of an accessory building located on the west side of the site.

For the purpose of this review, the surrounding vicinity is defined as the area within 400 feet of the site. The vicinity along SE Division St. is developed with older single-story commercial buildings and newer four-story mixed use buildings with commercial spaces on the ground floor and dwelling units above. The surrounding vicinity off of SE Division St. is developed primarily with older single-dwelling homes. The lot to the south of the site facing SE 32nd Ave. is developed with a single-story home built in the early 1900s and constructed close to the property line shared with the site. The lot to the south of the site facing SE 33rd Ave. is developed with a one-and-a-half story home with an accessory dwelling unit located close to the property line shared with the site.

Zoning: The site is zoned CM2dm(MU-U) – Commercial Mixed Use 2 with a Design Overlay zone and a Centers Main Street Overlay zone. The site also has a Comprehensive Plan Map designation of Mixed Use – Urban Center which doesn't factor into this land use review.

The CM2 zone is a medium scale zone intended for sites in a variety of centers, along corridors, and in other mixed use areas that have frequent transit service. Development is intended to be pedestrian-oriented, provide a strong relationship between buildings and sidewalks, and complement the scale of surrounding residentially zoned areas.

The “d” or Design Overlay zone supports design excellence through the application of additional design standards and guidelines that build on locational context, contribute to the public realm, and promote quality and long-term resilience.

The “m” or Centers Main Street Overlay zone encourages a mix of commercial, residential and employment uses on the key main streets within town centers and neighborhood centers identified in the Comprehensive Plan. The regulations are intended to encourage a continuous area of shops and services, create a safe and pleasant pedestrian environment, minimize conflicts between vehicles and pedestrians, support hubs of community activity, and foster a dense, urban environment with development intensities that are supportive of transit.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **March 14, 2023**. The following Bureaus have responded:

- The Life Safety Section of BDS responded with no objections stating that building code requirements may impact the final building design (Exhibit E.1).
- The Portland Bureau of Transportation (PBOT) responded with no objections and noted that there are no specific portions of the Location of Vehicle Areas purpose statement that relate to the right-of-way or transportation functions. The response also includes information about street classifications, street width and improvements noting that the site is located within a pedestrian district. The PBOT reviewer also included a summary of the building permit (22-191390 CO) requirements for the project and which includes closing the existing driveway approaches and providing a 3-foot right-of-way dedication. (Exhibit E.2).
- The Bureau of Environmental Services (BES) responded that the request does not appear to have an impact on the location of stormwater management system or sanitary connections for the current project, therefore BES does not object to the requested Adjustment. The response notes that the project permit (22-191390 CO) is currently being reviewed by BES (Exhibit E.3).
- The Fire Bureau responded that a separate building permit is required for the project and all applicable Fire Code requirements must be met (Exhibit E.4).
- The Site Development Section of BDS and the Water Bureau responded with no concerns (Exhibit E.5).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on March 14, 2023.

One written response has been received from a neighbor in response to the proposal and notes that they contacted the applicant to share their concerns. The response states:

- The proposal would result in a 53% increase in allowed vehicle area without mitigation or good neighbor provisions to reduce impacts the residential area;
- Twelve food cart pods are excessive and will impact the peaceful enjoyment and livability of residential properties to the south;
- The proposed food cart pod and request to increase the amount of vehicle frontage along SE Division St. will have aesthetic impacts and increase conflicts between vehicles and pedestrians who live south of the site;
- A compromise is needed between the requested increase in vehicle area. The neighbor requests the Adjustment proposal be denied, suggesting six food carts and an increase from 30% vehicle area to 50% vehicle area would be more appropriate;
- The proposed CMU wall along the south property line should also include a 10-foot continuous landscape buffer along that property line;
- The placement of the restrooms for the food carts is most concerning since the restrooms would be located against the south property line and in close proximity to a bedroom window;
- The City of Portland’s Zoning Code lacks clear oversight of food carts because they’re regulated as vehicles and suggests that the 30 percent allowance for vehicle frontage in the Centers Main Street Overlay zone be applied to the full site;
- “Adjacent residents would be impacted by increased noise pollution, visual impacts, and odor impacts from the excessive vehicles (food carts), adjacent restroom and trash facilities”;
- Sanitation workers will have to access the south property line due to the location of the restrooms and trash enclosure and these facilities should be moved closer to SE Division in order to improve sanitation worker access; and
- Hours of operation should be limited to reduce noise pollution, 11am to 9pm are mentioned as suggestions.

The applicant provided a response to the neighbor’s comments. The response states:

- The development standard requested for Adjustment relates to the allowed amount of vehicle frontage along SE Division St., the purpose of which is to limit vehicle and pedestrian interaction and to create a pleasant pedestrian-oriented environment;

- The vehicle frontage requirement refers to the area adjacent to the right-of-way along SE Division St. not the amount of vehicle area proposed for the site. When measured directly adjacent to the right-of-way along SE Division, the proposed amount of vehicle area is much less than the 30 percent allowed;
- Typically, when larger buildings are constructed along a site's frontage, the building occupies the majority of the street frontage and the building shields any vehicle area from the street because it is located behind the building; however, for this proposal since only a small building will remain, the amount of frontage along SE Division St. extends further back and includes area occupied by food carts (vehicles) even though this vehicle area is separated from the street by seating area and landscaping which will create a pedestrian environment that is consistent with the 33.415.330.A purpose statement;
- The neighbor requests that the allowed amount of vehicle area be limited to 50 percent of the site area when the total vehicle area (not vehicle frontage) is proposed to be less than 30 percent of the site area;
- The Portland Zoning Code does not require a continuous visual screen along the south property line; however, an 8-foot continuous concrete wall is proposed. The wall is also planned along portions of the west and east property lines. The wall is intended as a good neighbor provision because typically only a wood fence or landscape screen would be provided which wouldn't provide the same level of privacy as a concrete wall;
- The restrooms are proposed in a brick and mortar building and are not port-a-potties. Locating the restrooms in a building provides further buffering from activity within the site and neighbors. Food cart pods typically rely on port-a-potties for restrooms which makes the provision of a constructed building with restrooms atypical;
- Conversations with other neighbors have been positive and a previous well-liked food cart pod with 25 food carts located at SE Division St. and SE 28th Ave. was removed to construct an apartment building; and
- A 2008 study by Portland State University, the Bureau of Planning and Sustainability and Urban Vitality Group found that food cart pods provide a significant benefit to livability by fostering social interaction and improving neighborhood walkability.

Staff response: The neighbor and the applicant's comments help further an overall understanding of the project. Staff has the following responses to the comments:

- *It is important to note that the applicant is proposing to modify the amount of frontage devoted to vehicle area along the SE Division St. property line, not the amount of vehicle area allowed on the site. The Portland Zoning Code limits the overall amount of vehicle area on a site in the CM2 zone through parking setback requirements and minimum landscaped area requirements and other zoning regulations. Regulations related to the overall amount of vehicle area are met for this proposal;*
- *Comments received from the neighbor address the restrooms being located adjacent to the south property line and in proximity of a bedroom window. Portland Zoning Code Section 33.130.215.B.2.b.(2) states the buildings that are 15 feet or less in height are exempt from required setbacks; therefore, because the proposed accessory building containing restrooms is less than 15 feet in height, it is allowed in the setback and it cannot be addressed as part of this review;*
- *Comments received from the neighbor address the "livability and appearance" of the proposal, a portion of Approval Criterion B reserved for sites in Residential, Campus Institutional 1 and Institutional Residential zone. This site is located in the Commercial Mixed Use 2 (CM2) zone so the portion of Approval Criterion B that applies to this proposal refers instead to the consistency of the proposal with the classification of adjacent streets and the desired character of the area. That portion of criterion is addressed in findings below; and*
- *The request to limit the hours of operation for the business does not relate to the intent of the regulation or the purpose statement or the characteristics of the Commercial Mixed-Use 2 zoning designation which allows Retail Sales and Service uses by right. The*

request cannot be addressed as part of this land use review proposal to increase the vehicular area frontage along SE Division St.

ZONING CODE APPROVAL CRITERIA

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 purpose of the requirement for the amount of transit street frontage along SE Division St. to be composed of no more than 30 percent vehicle area is stated in Zoning Code Section 33.415.330.A:

33.415.330 Location of Vehicle Areas

The vehicle area regulations help minimize conflicts between vehicles and pedestrians on transit streets, and create a pleasant, pedestrian-oriented environment by limiting the areas where parking and vehicular activity may be located on site.

In order to address this purpose statement, it is necessary to describe how the purpose statement and certain terms and regulations relate to the proposal:

- The Portland Zoning Code categorizes food carts as vehicles. The Portland Zoning Code also defines many different types of vehicles from heavy trucks to utility trailers. The food carts proposed for this site are categorized as utility trailers because they will be under 16 feet in length and non-motorized (Portland Zoning Code 33.910). Only non-motorized food carts may currently be located at this site because no curb cut to SE Division St. is proposed.
- Utility trailers must be located on vehicle area (defined in Portland Zoning Code 33.910 as area where vehicles may circulate or park) but because utility trailers do not have motors, the vehicle area where they are placed does not need to connect to the street by a driveway and vehicle maneuvering areas are not required.
- The Portland Zoning Code defines Site Frontage in 33.910 as “the part of a site that abuts a street”. For this proposal, it is important to understand the portion of the site where the transit street frontage is proposed to be used for vehicle area and the portion where it is not.
 - The portion of the frontage where food carts are located behind the existing building is not considered to be devoted to vehicle area because a building will occupy that portion of the transit street frontage. In other words, no vehicle area is proposed between the existing building and the transit street frontage. This portion of the frontage is 17 feet in length or 17 percent of the site’s frontage.
 - The portion of the frontage where food carts are not located behind an existing or proposed building is considered to be used for vehicle area. This includes those areas where food carts are separated from the transit street frontage by customer seating, circulation and landscaping. This portion of the frontage is 83 feet in length or 83 percent of the site’s frontage.

Staff finds the proposal to increase the allowed amount of transit street frontage that can be occupied by vehicle area from 30 percent to 83 percent for the food cart proposal equally or better meets the purpose statement above for the following reasons:

- The purpose statement states that the vehicle area frontage limitations help minimize conflicts between vehicles and pedestrians on transit streets. Vehicle area is proposed to occupy 83 percent of the site frontage; however, only a 10-foot portion of vehicle area actually connects to the pedestrian corridor of the transit street frontage (and no curb cut onto SE Division St. is proposed). This 10-foot entry apron will be used to place food

carts so they can be maneuvered to their location on the site. It also serves as the ADA entrance to the site.

- More than 70 percent of the transit street frontage will be devoted to customer seating, circulation and landscaping, although vehicle area for the placement of food carts is proposed to be located behind these areas. After a required right-of-way dedication, the customer seating, circulation and landscaping area will be approximately 15 feet in depth. The remaining 30 feet of frontage is proposed to be occupied by the 10-foot entry apron and a single food cart located on vehicle area. If landscaping and customer seating and circulation counted toward frontage requirements rather than only buildings, the frontage requirements would be met.
- The amount of landscaping and pedestrian circulation and seating area proposed along the transit street frontage as well as the visual interest of an active food cart pod will result in a pleasant, pedestrian-oriented environment. This is in part because food cart pods provide a walkable destination for nearby residents and in part because vehicular activity on the site is nonexistent because no onsite customer parking is provided and all food carts will be nonmotorized. In order to ensure the proposed amount of landscaping and customer seating and circulation area remains, a condition of approval is necessary. The condition states that no more than 30 percent of the area located within the first 15 feet of the site as measured from the SE Division St. may be devoted to food carts and the entry apron. The other 70 percent of this area must be devoted to customer seating, circulation and landscaping. In addition, the width of area devoted to food carts and the entry apron may be no more than 30 feet wide.
- The condition of approval also limits the amount of transit street frontage devoted to food carts because adding more food carts along the SE Division St. frontage, would obscure views into the site and could result in a less pleasant pedestrian environment due to onsite activity flowing out onto the sidewalk.

Based on the information above and with the condition of approval that limits the amount and width of area devoted to food carts and the entry apron within the first 15 feet of the site to 30 percent, the proposal equally or better meets the purpose statement and rationale for limiting the amount of frontage devoted to vehicle areas in the Centers Main Street Overlay zone. This criterion 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: The proposal is in a C zone (the CM2 zone is within the C or Commercial Mixed Use base zone category) which means the portion of Approval Criteria B that must be met reads:

The proposal will be consistent with the classifications of the adjacent streets and the desired character of the area.

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

	Traffic	Transit	Bikeway	Pedestrian	Freight	Emergency Response
SE Division St.	Neighborhood Collector	Major Transit Priority Street	City Bikeway	Major City Walkway	Truck Access Street	Major Emergency Response

The site is also located in a Pedestrian District and is designed as a Neighborhood Main Street. PBOT notes in their response that no specific portions of the purpose statement relate to the public right-of-way or transportation functions and as such PBOT has no

objection to the requested Adjustment to increase the allowed amount of vehicle area frontage along the transit street from 30 percent to 83 percent for the food cart pod (Exhibit E.2). As PBOT has no objections to the proposal to increase the maximum allowed vehicle area frontage along the portion of the site abutting the street, SE Division St., the proposal is consistent with the classification of the adjacent street.

The Desired Character of the area is defined in Portland Zoning Code Section 33.910 as:

The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.

Based on the definition of Desired Character as applied to this site, the proposal needs to meet the following:

- The Characteristics of the Zone statement for the CM2 (Commercial/Mixed Use 2) zone found in Portland Zoning Code Section 33.130.30.C;
- The Purpose statement for the Centers and Main Street Overlay zone found in Portland Zoning Code Section 33.415.010;
- The Purpose statement for the Design Overlay zone found in Portland Zoning Code Section 33.420.010;
- The Purpose statement for the Division Street Plan District found in Portland Zoning Code Section 33.520.010.A: and
- The *Portland Citywide Design Guidelines*;
- The *Division Green Street/Main Street Plan*; and
- The *Richmond Neighborhood Plan*.

CM2 Zone

The Characteristics of the Zone statement for the CM2 zone describes the zone as:

A medium scale zone intended for sites in a variety of centers, along corridors, and in other mixed use areas that have frequent transit service. The zone allows a wide range and mix of commercial and residential uses, as well as employment uses that have limited off-site impacts. Buildings in this zone will generally be up to four stories tall unless height and floor area bonuses are used, or plan district provisions specify other height limits. Development is intended to be pedestrian-oriented, provide a strong relationship between buildings and sidewalks, and complement the scale of surrounding residentially zoned areas.

The food cart pod will provide a commercial destination along a transit street that has attracted a great deal of mixed use development over the past 10-15 years. The food cart pod is categorized as a Retail Sales and Service use which is allowed by right in the zone. As no new primary buildings are proposed, the project will comply with the height and floor area requirements of the zone. As described under Criterion A above, food cart pods are often a local destination for those living within walking distance. The proposed layout which includes landscaping and customer seating and circulation in proximity to the transit street frontage will result in pedestrian-oriented development and a strong relationship between the activity on the site and the adjacent sidewalk. The proposed accessory building at the rear of the site meets the zoning setback requirements for a CM2 zoned lot that is adjacent to a residentially zoned lot. For these reasons, staff finds the proposal is consistent with the purpose of the CM2 zone.

Centers and Main Street Overlay (“m”) zone:

The Purpose Statement for the Centers and Main Street Overlay zone is as follows:

The Centers Main Street overlay zone encourages a mix of commercial, residential and employment uses on the key main streets within town centers and neighborhood centers identified in the Comprehensive Plan. The regulations are intended to encourage a continuous

area of shops and services, create a safe and pleasant pedestrian environment, minimize conflicts between vehicles and pedestrians, support hubs of community activity, and foster a dense, urban environment with development intensities that are supportive of transit.

The food cart pod will provide a commercial use along SE Division St. which is categorized by the Transportation Element of the Comprehensive Plan as a Major Transit Priority, a Neighborhood Main Street and a Major City Walkway – markings of a key main street within a neighborhood center. Although no new primary buildings are proposed, the Retail and Sales use and amount of activity which traditionally accompany food cart pods will contribute to a continuation of pedestrian oriented uses along SE Division St. and provide visual interest from the public realm. As described above under Criterion A, the lack of a curb cut along SE Division St. which only allows for non-motorized food carts on the site will greatly reduce potential for conflicts between vehicles and pedestrians. Food cart pods with a great deal of customer activity typically are designed with customer seating and circulation and tend to be a hub of community activity providing support for the denser urban environment and development intensities found elsewhere along the neighborhood main street. Based on this information, the proposed food cart pod and request to increase the allowed frontage for vehicle area from 17 percent to 83 percent is consistent with the purpose of the Centers and Main Street Overlay zone.

Design Overlay (“d”) zone

The Purpose statement for the Design Overlay zone reads:

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 permit for the new food cart pod (#22-191390 CO) is currently under review and has been found to comply with any applicable regulations from the Design Overlay zone. Nevertheless, the proposed food cart pod will provide a destination that contributes to the public realm due to the visual interest of the activity that will occur on the site as well as the pedestrian activity it will generate, both of which encourage social interaction and the potential to foster inclusivity. Developing the food cart pod with customer seating and circulation as well as landscaping also promotes a quality of design and long-term resilience as opposed to a food cart pod placed in an existing parking lot without those amenities, even despite the request to increase the allowed transit street frontage devoted to vehicle area. This purpose statement is met.

Division Street Plan District

The Purpose statement for the Division Street Plan District states the following:

The Division Street plan district promotes development that fosters a pedestrian- and transit oriented main street. The plan district provisions ensure that development:

- *Activates Division Street corners and enhances the pedestrian environment; and*
- *Is constructed with high quality materials in combinations that are visually interesting.*

The proposed food cart pod will result in development that contributes to the pedestrian and transit-oriented development along SE Division St. despite the Adjustment request to increase the allowed frontage that can be devoted to vehicle area. The design of the vehicle area such that only the entry apron connects to the sidewalk and not to SE Division St. as well as the

condition of approval which states that no more than 30 percent of the area within the first 15 feet of the site as measured from SE Division St. may be used for food carts or vehicle area (Exhibit C.1) ensures that the enhancements the food cart pod brings to the pedestrian environment along SE Division St. will continue into the future. As the alterations to the site to create the new food cart pod do not include new primary buildings, the portion of the purpose statement related to high quality construction materials is not applicable. Based on the information above, on balance, the proposal meets the purpose statement for the Division Street Plan District.

Portland Citywide Design Guidelines

The following statements from the Portland Citywide Design Guidelines are found to be relevant to this proposal:

Guideline 05: Provide Opportunities to Pause, Sit and Interact

The food cart pod is proposed to provide a prominent seating area along the SE Division St. frontage of the site that is publicly accessible and where customers can pause to sit and interact with others. The condition of approval which limits the amount of area within the first 15 feet of the site which can be used for food carts and the entry apron to 30 percent with no portion of that area being more than 30 feet wide helps ensure the customer seating area remains a prominent feature and isn't replaced by additional food cart pods in the future. Similarly, the proposed food cart pod provides a larger seating area which is more internal to the site. Therefore, staff finds the proposal is consistent with this guideline.

Division Green Street/Main Street Plan

The following objective statements from page 7 of the Division Green Street/Main Street Plan are found to be relevant:

Locate commercial areas in compact nodes of differing sizes and functions to serve the entire corridor.

Provide places for small businesses to thrive.

The food cart pod will provide a compact node of commercial activity in that a total of 12 separate food carts are proposed for the site, each of which can potentially provide an assortment of cuisines, beverages or services. Food carts are often seen as starting points for small businesses due to their small size and relatively lower rent compared to brick and mortar storefronts; therefore providing places for small businesses to thrive. For these reasons, staff finds the proposal is consistent with the Division Green Street/Main Street Plan.

Richmond Neighborhood Plan

The following statements from the Richmond Neighborhood Plan are found to be relevant:

Policy 1 (Business), Objective 1.3: Encourage complete utilization of all commercial property in Richmond when such development is compatible with the Richmond Neighborhood Plan.

Policy 4 (Housing), Objective 4.4: Accommodate anticipated population growth through "main street" development (mixed residential/commercial uses along major transit streets) or other construction methods that retain or enhance existing neighborhood character.

Policy 6 (Transportation), Objective 6.3: Make Richmond a more pedestrian-oriented neighborhood by emphasizing pedestrian safety and convenience.

The proposal will utilize a commercial property that has been unused for a number of years. Although the proposal does not include a residential component, it includes a proposed use (food cart pod) that helps enhance neighborhood character by providing an activity on the site that is visually stimulating for passersby and transit users and a convenient destination for nearby residents and workers which helps make the street more pedestrian-oriented. The

inclusion of only a 10-foot wide entry apron to assist with the placement of food carts and ADA access as well as the condition of approval that limits the amount of area within the first 15 feet of the site which can be used for food carts and the entry apron to 30 percent with no portion of that area being more than 30 feet wide in order to save space for customer seating and circulation helps promote pedestrian safety. For these reasons, staff finds that on balance, the proposal is consistent with the Richmond Neighborhood Plan.

Summary

The proposal is consistent with the classifications of the adjacent streets and the desired character of the area. 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: Only one Adjustment is requested, therefore this criterion is not applicable.

- D.** City-designated scenic resources and historic resources 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: Staff has not identified any negative impacts associated with the proposed Adjustment to increase the allowed amount of transit street frontage devoted to vehicle area, or on the neighborhood specifically resulting from this Adjustment request; however, staff identified the potential for impacts to the pedestrian environment were the customer seating area, circulation area and landscaping proposed along the transit street frontage to be replaced with additional food carts or if too much additional vehicle area was added in order to crowd the frontage with food carts rather than maintaining a pleasant balance between food carts and customer amenity space. Since no current negative impacts are identified which require mitigation and the condition of approval diminishes the potential for future impacts, this criterion 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: The site is not located in an environmental zone, therefore 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 proposes one Adjustment in association with plans to develop a food cart pod at this site. The Adjustment is to increase the amount of transit street frontage on the site that is devoted to vehicle area from the allowed 30 percent to 83 percent. Plans for the food cart pod show that only about 30 percent of the site frontage within the first 15 feet of the development will be devoted to food carts and the 10-foot wide entry apron. The remainder of the first 15 feet of transit street frontage is devoted to landscaping and customer seating and circulation

making for an attractive and visually interesting addition to the Richmond Neighborhood and the pedestrian corridor at this location on SE Division St. A condition of approval requires that no more than 30 percent of the area located within the first 15 feet of the site as measured from the SE Division St. may be devoted to food carts and the entry apron and the other 70 percent of this area must be devoted to customer seating, circulation and landscaping in order to ensure that the current balance between vehicle area (food cart area) and customer amenities and landscaping remain into the future. The proposal has shown to be consistent with all relevant plans, purpose statements and character statements for this location. Based on the information contained in the findings above and with the described condition of approval, the proposal meets the relevant approval criteria and is approved.

ADMINISTRATIVE DECISION

Approval of one Adjustment to increase the maximum allowed transit street frontage devoted to vehicle area from 30 percent to 83 percent, per the approved site plan, Exhibit C.1, signed and dated April 26, 2023, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 23-013453 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. No more than 30 percent of the area located within the first 15 feet of the site as measured from the SE Division St. may be devoted to food carts and the entry apron. The other 70 percent of this area must be devoted to customer seating, circulation, landscaping and customer amenities. In addition, the width of area devoted to food carts and the entry apron may be no more than 30 feet wide.

Staff Planner: Matt Wickstrom

Decision rendered by: M Wickstrom on April 27, 2023
By authority of the Director of the Bureau of Development Services

Decision mailed: May 5, 2023

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 14, 2023, and was determined to be complete on February 15, 2023.

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 14, 2023.

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: June 15, 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 Adjustment Committee, 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 19, 2023. 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 and IIx 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 Adjustment Committee 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 Adjustment Committee 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 19, 2023** 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 your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

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

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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Applicant submittal 4-13-23
 2. Applicant submittal 4-18-23
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Life Safety Section of BDS
 2. Portland Bureau of Transportation
 3. Bureau of Environmental Services
 4. Fire Bureau
 5. Site Development Review Section of BDS and Water Bureau
- F. Correspondence:
 1. Agnes Lut, April 1, 2023, opposition
- G. Other:
 1. Original LU Application

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).