



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

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**Date:** April 7, 2009  
**To:** Interested Person  
**From:** Suzanne Savin, 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 reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

**CASE FILE NUMBER: LU 09-105532 AD**

**GENERAL INFORMATION**

**Applicant:** Francis Dardis  
FBD Architecture LLC  
3435 NE 45th Ave, Ste E  
Portland, OR 97213

**Owners:** Avraham Ben-Saken, Cynthia Ben Zaken, Steven M. Pontes  
P. O. Box 14761  
Portland, OR 97293

**Also Notify:** Avi Ben-Zaken, Eric Cress  
Ud+P Urban Development Partners  
136 NE 28th Ave  
Portland OR 97232

**Site Address:** 3812 SE DIVISION ST; 3816 SE DIVISION ST

**Legal Description:** EXC PT IN SE 38TH AVE LOT 1 BLOCK 1 LOT 3 BLOCK 1,  
RICHMOND ADD; LOT 5 BLOCK 1, RICHMOND ADD

**Tax Account No.:** R703800010, R703800040

**State ID No.:** 1S1E12AA 17100, 1S1E12AA 17200

**Quarter Section:** 3334

**Neighborhood:** Richmond, contact Douglas Klotz at 503-233-9161.

**Business District:** Division-Clinton Business Association, contact Katherine Cosgrove at  
503-686-1027.

**District Coalition:** Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.

**Plan District:** None

**Zoning:** CSm (Storefront Commercial, with Main Street Corridor Overlay Zone)

**Case Type:** AD (Adjustment Review)

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

**Proposal:**

The site consists of two adjacent lots: the lot at the southeast corner of 38<sup>th</sup> Avenue and Division, with a site address of 3812 SE Division Street, and the abutting lot to the east, with frontage on Division Street only and a site address of 3816 SE Division Street. The property owners plan to construct a mixed-use building on the site, with approximately 5,000 square feet of retail space on the ground level and three stories of apartments above (approximately 23 residential units are proposed). Along the site's Division Street frontage, there will be a pedestrian plaza and a passageway through the building to a larger plaza at the south end of the site. All of the existing structures on the site will be demolished, with the exception of the residential structure that has been converted to commercial use at 3812 SE Division; this structure will be relocated to the southwest corner of the site, and will face SE 38<sup>th</sup> Avenue. The structure will continue to be used as a commercial building after its relocation.

Since the Notice of Proposal was mailed, the applicant revised the Site Plan and the North & West Elevation to add stormwater planters to the site, and to lengthen the front porch of the relocated building. The revisions to the Site Plan and the North & West Elevation do not change the location, size or configuration of the proposed buildings, and do not change any of the requested Adjustments. The Revised Site Plan and Revised North & West Elevation are attached to this Notice of Decision.

The applicant is requesting 3 Adjustments to Zoning Code standards for this development, as described below.

- 1) Adjustment to Section 33.460.310.A.1 (Main Street Corridor Overlay Zone – Division Street Regulations – Setbacks). This Zoning Code section requires buildings on sites that abut both Division Street and an intersecting street to comply with the requirements of Subparagraph 33.130.215.C.2.e (Commercial Zones – Setbacks in a Pedestrian District). That subparagraph specifies that when a site is adjacent to a transit street (in this case, Division Street) and an intersecting non-transit street (in this case, 38<sup>th</sup> Avenue), the following standards apply:
  - At least 50% of the length of the ground level street-facing façade of the building must be within the maximum setback of the non-transit street; and,
  - 100% of the length of the ground level street-facing façade of the building must be within the maximum setback of the transit street.

The proposed mixed-use building does not comply with the maximum setback requirements from SE Division Street. The north building façade is approximately 119 feet in length. The majority of the building's ground level north facade (approximately 87 feet) is within the 10-foot maximum street setback. However, there is a ground floor opening in the building, approximately 19 feet in length, that is beneath an upper story enclosed walkway connecting the two halves of the building. This opening and the enclosed walkway above it is set back approximately 24 feet from the north property line.

In addition, a portion of the north ground level façade of the building, approximately 13 feet in length and labeled "Lobby" on the First Floor Plan, is set back approximately 13 feet from the north property line.

Together, these two portions of the façade constitute approximately 27% of the north façade's 119-foot length. An Adjustment to Section 33.460.310.A.1 is requested, to allow the "Lobby" portion of the north ground-level building façade to be located at approximately 13 feet from the front (north) property line, and to allow the ground floor opening between the halves of the building to be located at 24 feet from the front (north) property line.

- 2) Adjustment to Section 33.130.220 (Setbacks). As noted above, the structure at 3812 SE Division will be relocated to the southwest portion of the site, and will face SE 38<sup>th</sup> Avenue.

The south wall of the structure will be set back approximately 8 feet from the south property line, as required by the setbacks standard. Minor projections, such as eaves and bay windows, may project a maximum of 20% (1.6 feet) into the 8-foot setback, which means that such items are required to be set back a minimum of 6.4 feet from the south property line. On its south side, the relocated structure will have eaves extending from the main roof, the attic dormer window, and the first floor bay window. These south eaves will be located as close as 5 feet from the south property line, which is less than the minimum setback required. Therefore, an Adjustment to Section 33.130.220 is requested, to allow the south eaves to have a 5-foot setback from the south property line.

- 3) Adjustment to Section 33.266.310 (Loading Standards). For buildings where any of the floor area is in uses other than Household Living, one loading space is required for buildings with 20,000 to 50,000 square feet of floor area. The total floor area of the proposed mixed-use building and the relocated structure will be within this floor area range, and therefore one on-site loading space is required. The minimum size of a required loading space, per Section 33.266.310.D, is 35 feet long by 10 feet wide, with an overhead clearance of 13 feet. Additionally, Section 33.266.310.F requires the loading facility to be designed so vehicles enter and exit the site in a forward motion.

The applicant is providing an on-site loading space, which will be located south of the proposed mixed-use building and north of the relocated structure; access to the loading space will be from SE 38<sup>th</sup> Avenue. However, the loading space will be approximately 20 feet in length, rather than 35 feet in length as required. Additionally, the location of the loading space will require vehicles to back into or out of the loading space from SE 38<sup>th</sup> Avenue, rather than being able to both enter and exit the site in a forward motion. Therefore, an Adjustment to Section 33.266.310 is requested, to allow the loading space to be approximately 20 feet in length, and to allow vehicles to enter or exit the loading space with a backing motion.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are the Adjustment Approval Criteria of Zoning Code Section 33.805.040.A – F.

## ANALYSIS

**Site and Vicinity:** The site is located at the southeast corner of SE 38<sup>th</sup> Avenue and SE Division Street, and consists of two abutting tax lots that total approximately 12,472 square feet in size. The site is developed with 4 structures. Three of the structures will be demolished. The structure at 3812 SE Division, currently housing a hair salon, will be relocated to the southwest corner of the site, and will face SE 38<sup>th</sup> Avenue.

To the north of the site, on the north side of SE Division Street, are properties zoned CSm, developed with detached single-dwelling residences, multi-dwelling structures, and a variety of retail sales and service uses (restaurants, a nightclub, a guitar repair shop, and a tax preparation office).

To the east of the site, on the south side of SE Division Street, are properties zoned CSm, developed with large residential structures that have been converted to retail sales and service uses: a real estate office, a travel agency, and a gift shop.

To the south of the site are properties zoned R2.5. Most are developed with detached single-dwelling residences. However, one of the properties to the south, which abuts the east side of the site's south property line, contains a community garden.

To the west of the site, on the south side of SE Division Street, are properties zoned CSm, developed with a variety of retail sales and service uses (including a print shop, a hardware store, and a mixed-use building with a ground floor wine bar and residences above).

**Zoning:** The site is zoned CSm, Storefront Commercial with Main Street Corridor Overlay Zone.

The Storefront Commercial (CS) zone is intended to preserve and enhance older commercial areas that have a storefront character. The zone intends that new development in these areas will be compatible with this desired character. The zone allows a full range of retail, service and business uses with a local and regional market area. Industrial uses are allowed but are limited in size to avoid adverse effects different in kind or amount than commercial uses and to ensure that they do not dominate the character of the commercial area. The desired character includes areas which are predominantly built-up, with buildings close to and oriented towards the sidewalk especially at corners. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged.

The Main Street Corridor Overlay Zone, designated with an “m”, encourages higher density residential uses by allowing greater building heights, reducing required building coverage for residential development; and allowing more flexibility in site design. The intent of the zone is to provide transit-supportive levels of residential and mixed-use development along identified main streets.

**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 11, 2009**. The following Bureaus have responded with no issues or concerns:

- Water Bureau
- Fire Bureau
- Bureau of Parks-Forestry Division

The Bureau of Environmental Services (BES) responded that BES has no objection to the proposed adjustments, as sanitary and stormwater requirements do not appear to be directly impacted by these adjustments. The response included additional information applicable at the time of building plan review, for the benefit of the applicant. (Exhibit E-1)

The Bureau of Transportation Engineering (PBOT) responded that PBOT has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services. PBOT has no objection to the proposed adjustments. (Exhibit E-2)

The Police Bureau responded with recommendations to enhance the safety of the developed project. A copy of the recommendations was forwarded to the applicant. (Exhibit E-3)

The Site Development Section of BDS responded that Site Development has no objections to the proposed adjustments. The response included additional information applicable at the time of building plan review, for the benefit of the applicant. (Exhibit E-4)

The Life/Safety Plan Review Section of BDS responded that a separate building permit is required for the work proposed and the proposal must be designed to meet all applicable building codes and ordinances. (Exhibit E-5)

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on March 11, 2009. A total of two written responses, expressing concerns about the proposed development, have been received from notified property owners in response to the proposal.

The concerns, which were unrelated to the requested Adjustments, included the following:

- 1) The lack of proposed on-site parking for the residential and retail components of the development is a concern. The proposed development includes 23 apartments. If apartment residents can't park on the site, they'll park on the street within the neighborhood, making on-street parking even more tight.
- 2) The proposed development will add more retail customers and residents to the area, and this will increase congestion and negatively impact traffic safety along Division Street. The traffic is already bad at rush hour, and it's difficult for customers of the existing retail establishments to cross Division Street at that time.
- 3) The proposed development is going to abut a community garden, which located to the south of the site. The proposed 4-story building will negatively impact the amount of sunlight available to the garden. Also, if the construction of the proposed development begins during the crucial growing season of the garden, it will affect the produce planted in the garden.
- 4) When the owners/developers purchased the subject site, they did not notify the neighbors of their plans.
- 5) The owners/developers met with the Richmond Neighborhood Association, but when citizens who attended the meeting offered ideas such as limiting the number of building stories to 2 or 3, rather than 4 stories, the owners/developers said limiting the number of building stories wasn't financially feasible.

**Staff Response:** Regarding Item #1, although Staff understands the concerns about the development's street parking impacts, the Zoning Code does not require the proposal to provide any on-site parking. The Zoning Code contains an exception to the minimum parking requirements (Section 33.266.110.B.3), which states that there is no minimum parking requirement for sites located less than 500 feet from a transit street with 20-minute peak hour service. This site is located less than 500 feet from a transit street (Division Street) with 20-minute peak hour service (the #4 bus). In addition, this site is zoned CS (Storefront Commercial), and there is no minimum parking requirement in the CS zone. Therefore, provision of on-site parking is not required, and may be included or not at the developer's option.

Regarding Item #2, Retail Sales and Service uses and Household Living uses are allowed on CSm-zoned sites by right, per Zoning Code Table 130-1. There is no limit to the number of Retail Sales and Service uses or Household Living units allowed on the site, although the proposed development is subject to height, setback, and building coverage requirements that limit the overall size of buildings. The proposed development complies with the Zoning Code's height and building coverage requirements, and the requested setback Adjustments involve increasing a portion of the front building setback (thus resulting in a smaller building footprint than what would be allowed by right), and decreasing a rear building setback only to allow eave projections. Therefore, there is no Zoning Code basis for Staff to deny the requested Adjustments on the grounds that the proposed development could increase retail customers, residents, and traffic congestion.

Regarding Item #3, the proposed new building on the site will be set back approximately 25 feet from the south property line and the community garden, which is a significant setback distance. The relocated structure that will be in the southwest portion of the site will be closer to the south property line, but will be located west of the community garden, rather than directly abutting the garden to the north. Due to the sun's position in the sky throughout the day, the direction of sunlight is from the east, south, and west. Because the site itself is north of the garden, no proposed structure on the site, no matter how close to the south property line, would block sunlight for the community garden. Lastly, because construction activity will take place on the site, and not within the boundaries of the community garden, the construction activity is unlikely to affect the garden's plants or produce.

Regarding Item #4, for properties within the Division Main Street Overlay Zone, there is a Neighborhood Contact requirement prior to submittal of a building permit, when the proposal meets the following conditions (Zoning Code Section 33.460.310.E):

- 1) The proposed development has not been subject to a land use review, and
- 2) The proposed development will add more than 5,000 square feet of gross building area to the site.

In this case, the proposed development is the subject of a land use review – which is the present land use review for the Adjustment requests. Therefore, a Neighborhood Contact is not required. However, the applicant stated that the proposal was presented to the Richmond Neighborhood Association on January 15, 2009 and February 9, 2009.

Regarding Item #5, a concern was expressed that although the proposal was presented at meetings of the neighborhood association, the developer chose not to revise the plans to accommodate some of the suggestions offered at those meetings, such as limiting the number of building stories to a total of 2 or 3 stories. As noted in Item #4, the Zoning Code standards did not require the applicant to present this proposal to the neighborhood association. In addition, when an applicant chooses to, or is required to, present a development proposal to a neighborhood association, the Zoning Code does not require an applicant to revise the proposal in accordance with suggestions offered by meeting attendees. It should also be noted that the height of the proposed 4-story building on this site complies with the height requirement for the zone, so there is no Zoning Code basis for requiring the applicant to reduce the number of proposed building stories.

## **ZONING CODE APPROVAL CRITERIA**

### **33.805.010 Purpose of Adjustments**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

### **33.805.040 Adjustment Approval Criteria**

Adjustment requests will be approved if the review body finds that the applicant has shown 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 development standards requested for adjustment are:

- 1) Division Street Regulations - Setbacks: The purpose of these regulations, as set forth in Section 33.460.300, are:

*These regulations promote development that fosters a pedestrian- and transit-oriented main street and reinforces the pattern of older industrial, commercial, and residential buildings along the street. These regulations ensure that development:*

- *Activates Division Street corners and enhances the pedestrian environment;*
- *Steps down building heights to reduce the negative impacts of larger scale buildings on the adjoining single-dwelling zones;*
- *Is constructed with high quality materials in combinations that are visually interesting;*

- *Consists of retail that primarily serves the surrounding neighborhood, is small in scale and promotes pedestrian activity; and*
- *Provides neighbors with the opportunity to give early input to developers on significant projects.*

The proposal complies with the Division Street Regulations for height, materials, scale of retail, and neighborhood contact. The only Division Street Regulation with which the proposal does not comply is the building setback from the front property line – a portion of the proposed building will be further from the front property line and Division Street than required by the standard. Therefore, only the introductory paragraph and first bullet point in the above purpose statement are relevant to the requested Adjustment.

The applicant is requesting an Adjustment to Section 33.460.310.A.1, to allow the “Lobby” portion of the north ground-level building façade to be located at approximately 13 feet from the front (north) property line, and to allow the ground floor opening between the two halves of the building to be located at approximately 24 feet from the front property line.

The applicant states that the proposal will equally meet the purpose of the regulation by creating street presence via activity and motion, rather than sheer building mass along the street. The setback of the “Lobby” and the ground floor opening between the two halves of the proposed building is intended to create a plaza area between the two halves of the building. This plaza area will open up the site for more small-scale retail spaces than just those along the Division Street and 38<sup>th</sup> Avenue street frontages, thus creating a vibrant and inviting pedestrian environment at the street level.

Staff concurs with the applicant’s findings. This criterion is met, for the first Adjustment.

- 2) Commercial Zone Regulations - Setbacks: The purpose of these regulations, as set forth in Section 33.130.215, are:

*The required building setbacks promote streetscapes that are consistent with the desired character of the different commercial zones. The CN1, CM, CS, and CX setbacks promote buildings close to the sidewalk to reinforce a pedestrian orientation and built-up streetscape. The setback requirements for areas that abut residential zones promote commercial development that will maintain light, air, and the potential for privacy for adjacent residential zones. The setback requirements along transit streets and in Pedestrian Districts create an environment that is inviting to pedestrians and transit users.*

The applicant is requesting an Adjustment to Section 33.130.220, to allow the south eaves of the relocated structure to have a reduced setback of 5 feet from the south property line (rather than 6.4 feet). The south property line abuts a residentially-zoned property. Thus, the portion of the above Purpose Statement that applies to the request is, *“The setback requirements for areas that abut residential zones promote commercial development that will maintain light, air, and the potential for privacy for adjacent residential zones.”*

The applicant states that the adjustment will equally meet the purpose of the regulation for several reasons:

- The south wall of the relocated structure complies with the applicable 8-foot minimum setback from the south property line; only the south eaves have a reduced setback. Therefore, adequate air and separation distance between the relocated structure and the adjacent property to the south will be maintained.

- The regulations allow for a 35-foot tall building at 8 feet along the entire length of the south property line. However, for more than 50% of the length of the south property line, the proposed location of buildings on the site maintains a setback of at least 25 feet from abutting residentially-zoned property.
- The south eaves do not prevent the installation of the required 5-foot wide buffer of L3 landscaping along the south property line.
- The sunlight to the adjacent residential property to the south will be coming from the east, south, and west. The relocated structure will be located to the north, and therefore neither the relocated structure nor its south eaves will negatively impact the light access of the adjacent property to the south.
- The eaves' 5-foot setback from the south property line will not result in privacy impacts to the adjacent property to the south.

Staff concurs with the applicant's findings. This criterion is met, for the second Adjustment.

- 3) Loading Standards: The purpose of these regulations, as set forth in Section 33.266.310.A, are:

*A minimum number of loading spaces are required to ensure adequate areas for loading for larger uses and developments. These regulations ensure that the appearance of loading areas will be consistent with that of parking areas. The regulations ensure that access to and from loading facilities will not have a negative effect on the traffic safety or other transportation functions of the abutting right-of-way.*

The applicant is requesting an Adjustment to Section 33.266.310 to allow the loading space to have a reduced length of 20 feet, and to allow vehicles to enter or exit the loading space with a backing motion.

The applicant states that the adjustments to the loading standard will equally meet the above purpose of the regulation for several reasons:

- Allowing a backing motion into or out of the loading space from SE 38<sup>th</sup> Avenue will negate the need to place a curb-cut on the site's Division Street frontage, which is desirable for several reasons. Additional curb-cuts on Division Street create interruptions in the flow of pedestrian traffic, and reduce the amount of on-street parking. Furthermore, due to traffic on Division, it's already difficult to turn onto Division Street from the side streets. Additional curb-cuts on Division Street would further aggravate the existing traffic congestion.
- There is already an existing curb-cut along the site's 38<sup>th</sup> Avenue frontage that is in the same approximate location where the new, rebuilt curb cut for the loading space will be located.
- By reducing the length of the loading space to 20 feet rather than 35 feet, the turning radius required to back into the loading area or turn out of the loading area is greatly reduced, resulting in a more feasible entry/exit strategy.
- Street parking is currently allowed only on the west side of 38<sup>th</sup> Avenue, and is not allowed along the site's 38<sup>th</sup> Avenue frontage. Therefore, no on-street parking would be eliminated as a result of granting the adjustment.

The Bureau of Transportation (PBOT) has reviewed the request and provided a response (Exhibit E-2 of the casefile record). The response states that PBOT has reviewed the request for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services. PBOT has no objection to the loading adjustment.



The PBOT response states that given the relatively small size of the project, and the narrow roadway on SE 38<sup>th</sup> Avenue, a 20-foot deep loading space should be adequate to serve the site.

The PBOT response notes that a vehicle longer than 20 feet could not back into the space without restricting parking on both sides of SE 38<sup>th</sup> Avenue. Currently, on-street parking is allowed only on the east side of the street. Any vehicles longer than 20 feet would illegally block the sidewalk and would be subject to enforcement and fines. Therefore, PBOT recommends that the loading space be signed, limiting the use of the space to vehicles 20 feet in length or less. The sign must be placed on private property and not within the right-of-way.

Based on the applicant's findings and the PBOT response, Staff concludes that allowing vehicles to enter or exit the loading space in a backing motion will equally meet the purpose of ensuring that access to and from loading facilities will not have a negative effect on the traffic safety or other transportation functions of the abutting right-of-way.

Based on the applicant's findings and the PBOT response, Staff also concludes that a reduction on loading space length equally meets the purpose of providing an adequate area for loading, with imposition of a condition of approval requiring the loading space to be signed, limiting the use of the space to vehicles 20 feet in length or less.

With imposition of the PBOT recommended condition, requiring the loading space to be signed, this criterion is met for the third Adjustment.

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

**Findings:** The site is within a commercial (C) zone. The adjacent streets and their classifications are SE Division Street (a Major Transit Priority Street, Neighborhood Collector, and City Walkway) and SE 38<sup>th</sup> Avenue (a local service street for all modes). The desired character of the area, as stated in the Purpose Statement for the Division Street regulations cited under Criterion A above, is a pedestrian- and transit-oriented main street and new development that reinforces the pattern of older industrial, commercial and residential buildings along the street.

The proposal is for a mixed-use development (retail and residential), with Adjustment requests for the following:

- An increased building setback from the front (north) property line, so as to create a pedestrian plaza area adjacent to Division Street;
- A reduced building setback from the south property line to allow the eaves of a relocated building to be 5 feet from the south property line, and
- A reduced-length loading space and the ability to back into or out of the loading space from SE 38<sup>th</sup> Avenue.

This proposal as a whole, including the requested Adjustments, is consistent with the classifications of the adjacent streets and the desired character of the area. This criterion 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 site is zoned CSm, Storefront Commercial with Main Street Corridor Overlay Zone. The purpose of the Storefront Commercial Zone is to preserve and enhance older commercial areas that have a storefront character. The zone intends that new development in these areas will be compatible with this desired character. The desired character includes areas that are predominately built-up, with buildings close to and oriented towards the sidewalk, especially at corners. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged.

The purpose of the Division Street Main Street Corridor Overlay Zone is to promote development that fosters a pedestrian- and transit-oriented main street and reinforces the pattern of older industrial, commercial, and residential buildings along the street.

The three requested Adjustments will not have a cumulative or overlapping effect, as they each relate to different portions of the property. And, taken together, the adjustments will allow a proposal that complies with the pedestrian-oriented character set forth in both the CS zone and the Division Main Street Corridor Overlay Zone. This criterion is met.

**D.** City-designated scenic resources and historic resources are preserved; and

**Findings:** The site does not contain any City-designated scenic resources or historic resources, therefore this criterion is not applicable.

**E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

**Findings:** No impacts are expected to result from the first Adjustment, an increase in building setback between the front (north) property line, and the “Lobby” and ground floor opening between the two halves of the building. The increase in building setback in these specific areas will create a plaza area adjacent to Division Street that will enhance the pedestrian environment equally to a building that complied with the maximum setback requirements.

No impacts are expected to result from the second Adjustment, a decrease in building setback to allow the south eaves of the relocated structure to be 5 feet from the south property line. The eaves’ location at 5 feet, rather than the minimum 6.4 feet, from the south property line will equally maintain light, air, and the potential for privacy for adjacent residential zones.

For the third Adjustment (loading adjustment), one potential impact of reducing the loading space length was noted by PBOT. The PBOT response noted that if a vehicle longer than 20 feet were to park in the proposed loading space, the vehicle would illegally block the sidewalk. In that case, said vehicle would be subject to PBOT enforcement and fines. To prevent that potential occurrence, PBOT recommended a condition of approval, requiring that the loading space be signed to limit use of the space to vehicles 20 feet or less in length. With compliance with that recommended condition, that potential impact of the reduced loading space size will be mitigated.

This criterion is met, for the three Adjustments.

**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 within 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 has requested Adjustments to the following Zoning Code standards:

- 1) Section 33.460.310.A.1, to increase the setback of a portion of the building from the north property line and SE Division Street;
- 2) Section 33.130.220, to reduce the setback of the south eaves of the relocated structure from the south property line; and
- 3) Section 33.266.310, to reduce the length of the loading space, and to allow vehicles to enter or exit the loading space in a backing motion.

The applicant has provided information to demonstrate that these Adjustments will comply with the Adjustment Approval Criteria. Therefore, the Adjustments can be approved, per the plans and elevations. Approval of building permits is still required, after the decision is final and has been recorded with Multnomah County.

## ADMINISTRATIVE DECISION

Approval of:

An Adjustment to Section 33.460.310.A.1, to allow the "Lobby" portion of the north ground-level building façade to be located at approximately 13 feet from the north property line, and to allow the ground floor opening between the two halves of the building to be located at approximately 24 feet from the north property line;

An Adjustment to Section 33.130.220, to allow the south eaves of the relocated structure to have a setback of approximately 5 feet from the south property line;

An Adjustment to Section 33.266.310, to allow the loading space to be approximately 20 feet in length, and to allow vehicles to enter or exit the loading space with a backing motion;

per the approved site plan, Exhibit C-1, signed and dated April 3, 2009, subject to the following condition:

- A. As part of the building permit application submittal, the following development-related condition (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 09-105532 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Post a sign for the loading space, stating that use of the space is limited to vehicles 20 feet in length or less. The sign must be placed on private property and not within the right-of-way.

**Staff Planner: Suzanne Savin**



**Decision rendered by:** \_\_\_\_\_ **on April 3, 2009.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: April 7, 2009**

**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 January 30, 2009, and was determined to be complete on March 6, 2009.

*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 January 30, 2009.

*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.

**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, which will hold a public hearing. Appeals must be filed **by 4:30 PM on April 21, 2009** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be

approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

**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 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, 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 must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **April 22, 2009 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

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

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

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

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

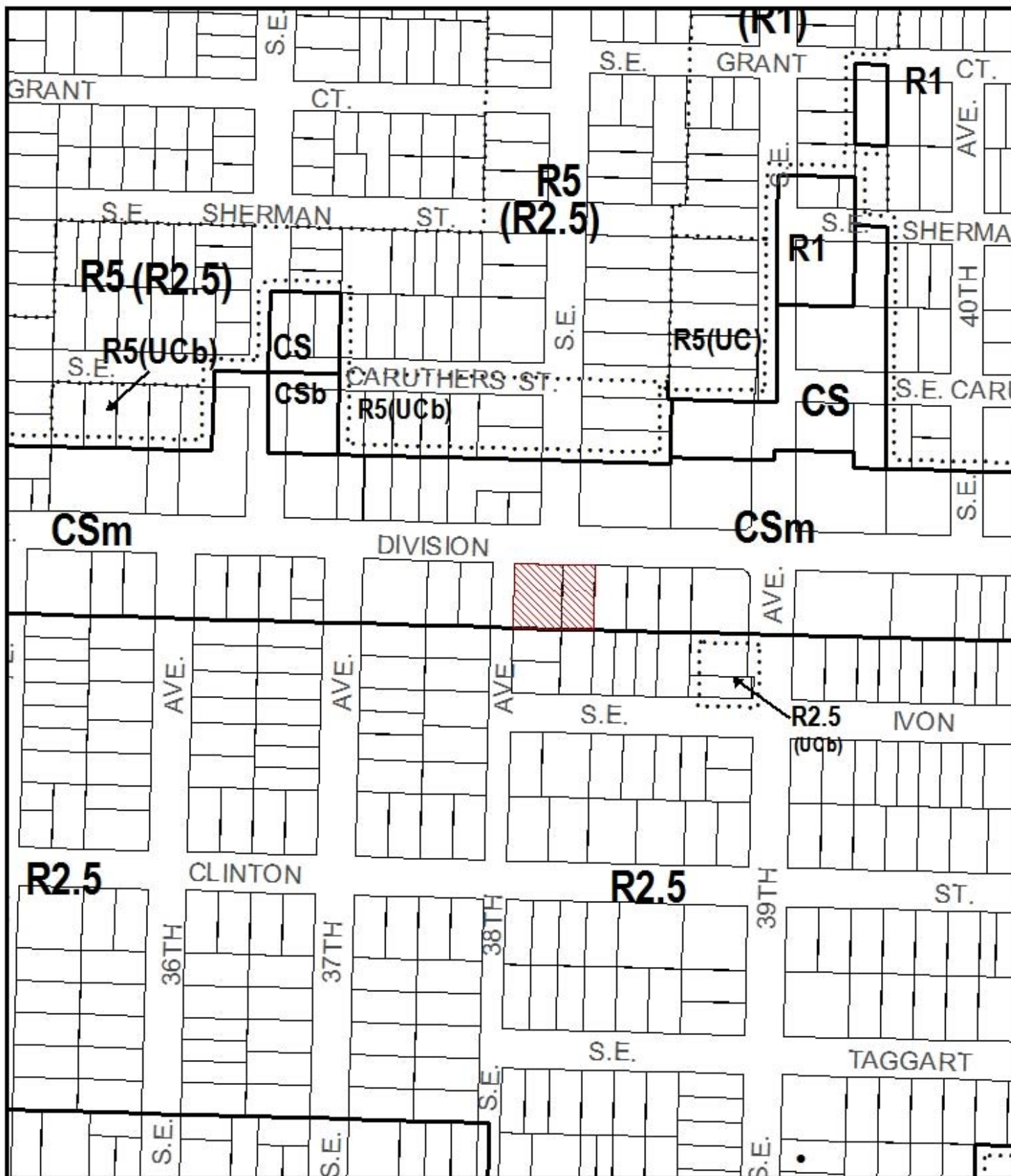
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
  - 1. Applicant's Narrative
  - 2. Color Renderings of Proposed Building
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Revised Site Plan (attached)
  - 2. Revised North & West Elevation (attached)
  - 3. South & East Elevation (attached)
  - 4. Original Site Plan
  - 5. Original North & West Elevation
  - 6. Demolition Plan
  - 7. Site Utilities Plan
  - 8. Partial East & West Elevations
  - 9. Retail Storefront Window Schedule
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Police Bureau
  - 4. Site Development Review Section of BDS
  - 5. Life/Safety Plan Review Section of BDS
  - 6. Water Bureau
  - 7. "No concerns" responses from the Fire Bureau, Bureau of Parks - Forestry Division
- F. Correspondence:
  - 1. Gabe Leavitt, March 12, 2009, expressed concerns about the proposal
  - 2. Kathryn L. Lambert, Division Hardware Inc., March 13, 2009, expressed concerns about the proposal
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-7300 (TTY 503-823-6868).**



# ZONING

 Site

File No. LU 09-105532 AD

1/4 Section 3334

Scale 1 inch = 200 feet

State Id 1S1E12AA 17100

Exhibit B (Feb 02,2009)





Portion of north facade:  
Subject of setback Adjustment #1  
(Adjustment #1)

\*Approved\*  
and - Bureau of Development Services  
Planner: Suzanne Gwin Date: April 3, 2009  
\* This condition is subject to the reviews requested and is subject to all applicable zoning requirements may apply.

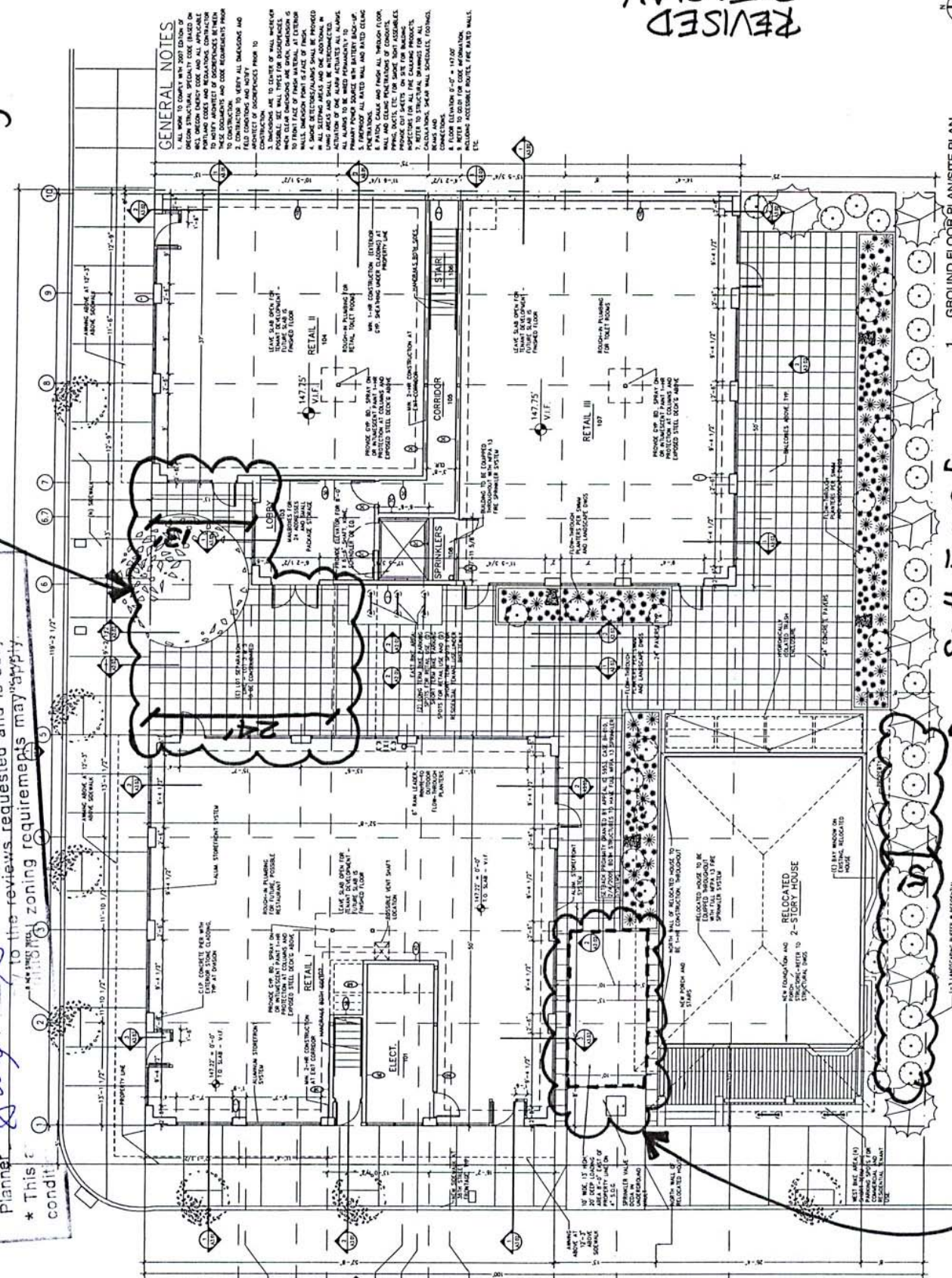


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Portland, OR 97202

FIRST FLOOR PLAN  
REVISED  
SITE PLAN

AS NOTED  
March 22, 2008  
A1.01



1 GROUND FLOOR PLAN SITE PLAN  
Scale: 3/16" = 1'-0"

South Eaves of Relocated Structure:  
Subject of Adjustment #2 (Setback)

Loading space:  
Subject of Adjustment #3



