



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

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Portland, Oregon 97201  
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TTY 503-823-6868  
[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** August 29, 2011  
**To:** Interested Person  
**From:** Kathleen Stokes, Land Use Services  
503-823-7843 / [Kathleen.Stokes@portlandoregon.gov](mailto:Kathleen.Stokes@portlandoregon.gov)

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

The Bureau of Development Services has approved a proposal in your neighborhood. The 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 11-104414 NU**

#### **GENERAL INFORMATION**

**Applicant:** Kevin Partain  
223 NE 56th Ave  
Portland, OR 97213-3705

Nita C Cheung  
805 NE 236th Pl  
Troutdale, OR 97060

**Site Address:** 8535 SE POWELL BLVD

**Legal Description:** BLOCK 5 LOT 13, JOHNSTON AC; BLOCK 5 LOT 14-16, JOHNSTON AC

**Tax Account No.:** R432101730, R432101750

**State ID No.:** 1S2E09BC 02500, 1S2E09BC 02600

**Quarter Section:** 3339

**Neighborhood:** Powellhurst-Gilbert, Mark White at 503-761-0222.

**Business District:** Eighty-Second Avenue, Ken Turner at 503-484-6225.

**District Coalition:** East Portland Neighborhood Office, Richard Bixby at 503-823-4550.

**Zoning:** R2a (R2,000, Low Density Multi-Dwelling Residential, with an Alternative Design Density Overlay), CN2 (Neighborhood Commercial 2)

**Case Type:** Nonconforming Situation Review

**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

**Proposal:** The applicant is proposing to enclose an existing shed roof overhang that extends, over a portion of the parking lot, from the eastern wall of the commercial building on this site. The building and the parking area that is immediately to the north of the building are located in the CN2 or Neighborhood Commercial 2 zone. The northern 2 rows of parking and the parking area to the east of the building are all located in the R2 or R2,000, Low Density Multi-Dwelling Residential zone. Retail uses are allowed in the commercial zone but commercial activities, including any sales, storage or parking area, are not allowed in the residential zones. When a commercial use or an activity related to a commercial use is located on a site that does

not currently allow the use or activity, it may remain and can be approved for proposed extensions, if it was legally established and has been maintained over time. The parking area was established, as allowed under the Multnomah County Zoning Code, prior to annexation to the City. Therefore, the applicant is requesting approval of a Nonconforming Situation Review to allow the addition of an enclosed storage area, of 960 to 1000 square feet, in a portion of the property that currently contains a legal nonconforming parking lot.

**Relevant Approval Criteria:** Nonconforming Situation Review, 33.258.080 B.

## ANALYSIS

**Site and Vicinity:** The applicant's site consists of three parcels, with a combined area of 41,822 square feet. One parcel is located on the northeast corner of SE 85<sup>th</sup> and Powell Boulevard. A second parcel is located immediately to the east on Powell and the third parcel is located to the north on SE 85<sup>th</sup> Avenue. The corner lot is developed with a single-story commercial structure that currently contains two retail stores, a café and a delicatessen. The lots to the east and to the north of the corner parcel are developed for use as parking lots. The area around the site is developed with a variety of commercial and high density multi-dwelling uses along Powell Boulevard and lower density multi-dwelling and single-dwelling residential uses to the north of the commercial area. The Department of Motor Vehicles maintains an office, in the R1 residential zone on the south side of Powell, one block farther to the east. Southeast Powell is classified as a Major City Traffic Street and is also State Highway 26.

**Zoning:** The portion of the site that contains the primary building is zoned CN2, Neighborhood Commercial 2. The CN2 zone is intended for small commercial sites and areas in or near less dense or developing residential neighborhoods. Emphasis of the zone is on uses that provide services for the nearby residential areas, and on other uses that are small scale and have little impact. Uses are limited in intensity to promote their local orientation and limit adverse impacts on nearby residential areas. Development is expected to be predominantly auto accommodating, except where the site is adjacent to a transit street. The development standards reflect that the site will generally be surrounded by more spread out residential development.

The north and east parking areas are located in the R2 or R2,000, Low Density Multi-Dwelling Residential zone. This zone allows approximately 21.8 dwelling units per acre. Density may be as high as 32 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one to three story buildings, but at a slightly larger amount of building coverage than the R3 zone. The major type of new development will be duplexes, townhouses, rowhouses and garden apartments. These housing types are intended to be compatible with adjacent houses. Generally, R2 zoning will be applied near neighborhood collector and district collector streets, and local streets adjacent to commercial areas or major streets.

The residentially-zoned portion of the site also has an "a" or Alternative Design Density Overlay. This zone provides the opportunity for additional residential density in some situations, when design standards are met. The provisions of this zone are not applicable to this proposal.

**Land Use History:** City records include two prior Multnomah County reviews for this site:

MCF 24-74 approved a Zoning Map Amendment, from R-7 and C-3 to R-7, C-S and C-3, C-S. MCF 78-020227 approved location of an office and lease space.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed on May 2, 2011. The following Bureaus have responded to indicate that there are no issues or concerns. Agencies that provided written comments regarding permit requirements are noted with exhibit numbers:

- Transportation Engineering noted that the addition of a storage area is not expected to generate any noticeable additional traffic to the site. Any modifications to curb cuts will be

subject to the regulations of the City's Title 17 (Exhibit E-1).

- Water Bureau provided information on the water service to the site (Exhibit E-2).
- Fire Bureau advised that fire codes must be met for building permit review (Exhibit E-3).
- Life Safety Plan Review Section of BDS notes that a building permit will be required and provided information on requirements for meeting fire codes (Exhibit E-4).
- Environmental Services
- Site Development Section of BDS
- Parks-Forestry Division

**Neighborhood Review:** One written response was received from a notified property owner in response to the proposal. The owner of a neighboring property states that the shed roof of the storage area was added without approval of a building permit. This neighbor also indicated that the use on the site generated additional traffic, including a number of semi-trucks and trailers. The neighbor states that the trucks park in areas where no parking is allowed, block access to his driveway and break up the paving on SE 85<sup>th</sup> Avenue. He also described a storage container that had been illegally placed on the property (Exhibit F-1).

*(Note: This review is part of the process that the applicant must follow, in order to attempt to obtain a permit to legalize this addition. On the advice of BDS staff, the cargo containers that were located on the property are reported to have been removed. Traffic and parking impacts are discussed in the findings below).*

## ZONING CODE APPROVAL CRITERIA

### NONCONFORMING SITUATION REVIEW

#### 33.258.010 Purpose of Nonconforming Situation Regulations

Nonconforming situations are created when the application of a specific zone to a site changes, or a zoning regulation changes. As part of the change, existing uses, density, or development might no longer be allowed. The intent of the change is not to force all noncomplying situations to be immediately brought into conformance. Instead, the intent is to guide future uses and development in a new direction consistent with City policy, and, eventually, bring them into conformance.

Legal nonconforming status is based on whether the situation was allowed when established, and if it has been maintained over time. This chapter also provides a method to review and limit nonconforming situations when changes to those situations are proposed. The intent is to protect the character of the area by reducing the negative impacts from nonconforming situations. At the same time, the regulations assure that the uses and development may continue and that the zoning regulations will not cause unnecessary burdens.

Nonconforming situations that have a lesser impact on the immediate area have fewer restrictions than those with greater impacts. Nonconforming uses in residential zones are treated more strictly than those in commercial, employment or industrial zones to protect the livability and character of residential neighborhoods.

#### 33.258.050 Nonconforming Uses

**C. Expansions.** Nonconforming uses may expand under certain circumstances. Exterior improvements may expand by increasing the amount of land used. Changing the exterior use, for example from parking to storage, is an expansion of exterior storage. Adding parking spaces to an existing lot is also an expansion.

Expansion of nonconforming uses and development is generally limited to the area bounded by the property lines of the use as they existed two years before the use became nonconforming. The property lines are the lines nearest to the land area occupied by the nonconforming use and development and its accessory uses and development, moving in an outward direction. Property lines bound individual lots, parcels, and tax lots; a site or ownership may have property lines within it. The applicant must provide evidence to show the location of property

lines as they existed two years before the use became nonconforming. In OS and R zones, expansions of floor area or exterior improvements, when proposed within the property lines as they existed two years before the use became nonconforming, may be approved through a nonconforming situation review.

**Nonconforming use status for this site and purposes for review requirements:** This proposal is to allow the legalization of an addition to the existing structure for an enclosed storage space.

This site has documented legal nonconforming status for retail uses. A trade school (NW Technical Institute) was allowed to be located on the site by Multnomah County and building permits were approved by the City of Portland in 1998 and 1999, which showed the parking areas as being accessory to the trade school. Trade schools are considered to be retail uses under the Portland Zoning Code, Section 33.920.250. The site was subsequently converted to other retail uses (stores and restaurants), as is allowed by right under the regulations for nonconforming uses.

### **33.258.080 Nonconforming Situation Review**

**A. Procedure.** A nonconforming situation review is processed through a Type II procedure.

**B. Approval criteria.** The request will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:

1. With mitigation measures, there will be no net increase in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:
  - a. The hours of operation;
  - b. Vehicle trips to the site and impact on surrounding on-street parking;
  - c. Noise, vibration, dust, odor, fumes, glare, and smoke;
  - d. Potential for increased litter; and
  - e. The amount, location, and nature of any outside displays, storage, or activities; and

**Findings:** No changes to hours of store operation, vehicle trips to the site or changes to onsite parking are being proposed. The store will continue to operate as it has in the past, except that the outdoor vending of products which had started to occur illegally, under a shed canopy in the parking lot, will be discontinued. Negative impacts to the residential area from the truck traffic and loading activities will be addressed through a condition of approval that will require that deliveries be made on-site, unless or until such time as the property owner is able to secure approval from the Portland Office of Transportation for the designation of an on-street loading space on the street frontage on SE 85<sup>th</sup> Avenue that abuts the site. The proposed enclosure of the space that is located under the canopy projection from the roof will allow additional storage without the potential for any additional noise, vibration, dust, odor, fumes, smoke or litter. There will be no outside displays, storage or activities allowed. Therefore, with the conditions regarding requirements for truck loading and removal of outdoor storage that were described above, this criterion can be met.

2. If the nonconforming use is in an OS or R zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the OS or R zoned area. This is based on taking into account factors such as:
  - a. Building scale, placement, and facade;
  - b. Parking area placement;
  - c. Buffering and the potential loss of privacy to abutting residential uses; and
  - d. Lighting and signs, and

**Findings:** Three changes are proposed to the development on the site. One small addition to the building is proposed on the north side, within the CN2 zone. A new garbage collection shelter, with the required drainage for pollution control, will also be located on the north side of the building in the commercial zone. A second addition is to the east side of the building, within the R2 zone. As discussed previously, this addition will contain activities to the interior of the building, which will help to preserve the residential character of the area. Finish materials and paint color for the addition will be required to match the existing building, which will help to preserve a tidy appearance on the site. Outdoor storage must be discontinued on the site. There will be no changes to parking area placement, to buffering or to lighting and signs. Therefore, the appearance of the proposed changes to the development of the site will not lessen the residential character of the R zone and this criterion is met.

3. If the nonconforming use is in a C, E, or I zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

**Findings:** The proposal is in a residentially zoned area. This criterion does not apply.

## **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 retail uses on this site have legal nonconforming status. All of the relevant approval criteria can be met for the request to expand the floor area of the portion of the structure that contains the grocery store by the enclosure of a 1,000 square-foot area on the east end of the building. There will be no change in the hours or in the other aspects of the operation. The proposed addition will allow the area to be improved to reduce visual impacts on the residential area. A condition of approval will require deliveries and unloading activities to be conducted in a way to reduce impacts. The proposal can be approved, in accordance with the site plan, building elevations and the conditions of approval that were discussed in the findings, above.

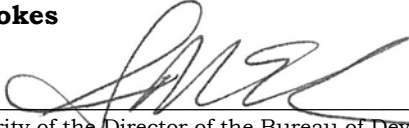
## **ADMINISTRATIVE DECISION**

Approval of a Nonconforming Situation Review, to allow an addition to a structure that contains a nonconforming retail use in an R2 zone, in general compliance with the approved site plan and elevation drawings, Exhibits C-1 through C-2, signed and dated August 25, 2011, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through D) 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 11-104414 NU." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The addition to the building must have the same exterior finish materials and colors as the existing structure.
- C. Deliveries and unloading activities must be conducted onsite, unless an on-street loading zone is designated by the Portland Office of Transportation on the street frontage that abuts the site on SE 85<sup>th</sup> Avenue.

D. The site must be maintained free of cargo containers and the exterior storage of pallets, boxes or other items, unless explicitly approved through a subsequent land use review.

**Staff Planner: Kathleen Stokes**

**Decision rendered by:**  **on August 25, 2011**

By authority of the Director of the Bureau of Development Services

**Decision mailed: August 29, 2011**

**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 19, 2011, and was determined to be complete on **February 2, 2011**.

*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 19, 2011.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended and then waived, as stated with Exhibits A-2 and A-5. Unless further extended by the applicant, **the 120 days will expire on: November 18, 2011**.

**Some of the information contained in this report was provided by the applicant.**

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on September 12, 2011** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, 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 Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 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 Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the final decision.**

If this Land Use Review is approved the final decision 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 **September 13, 2011– (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.

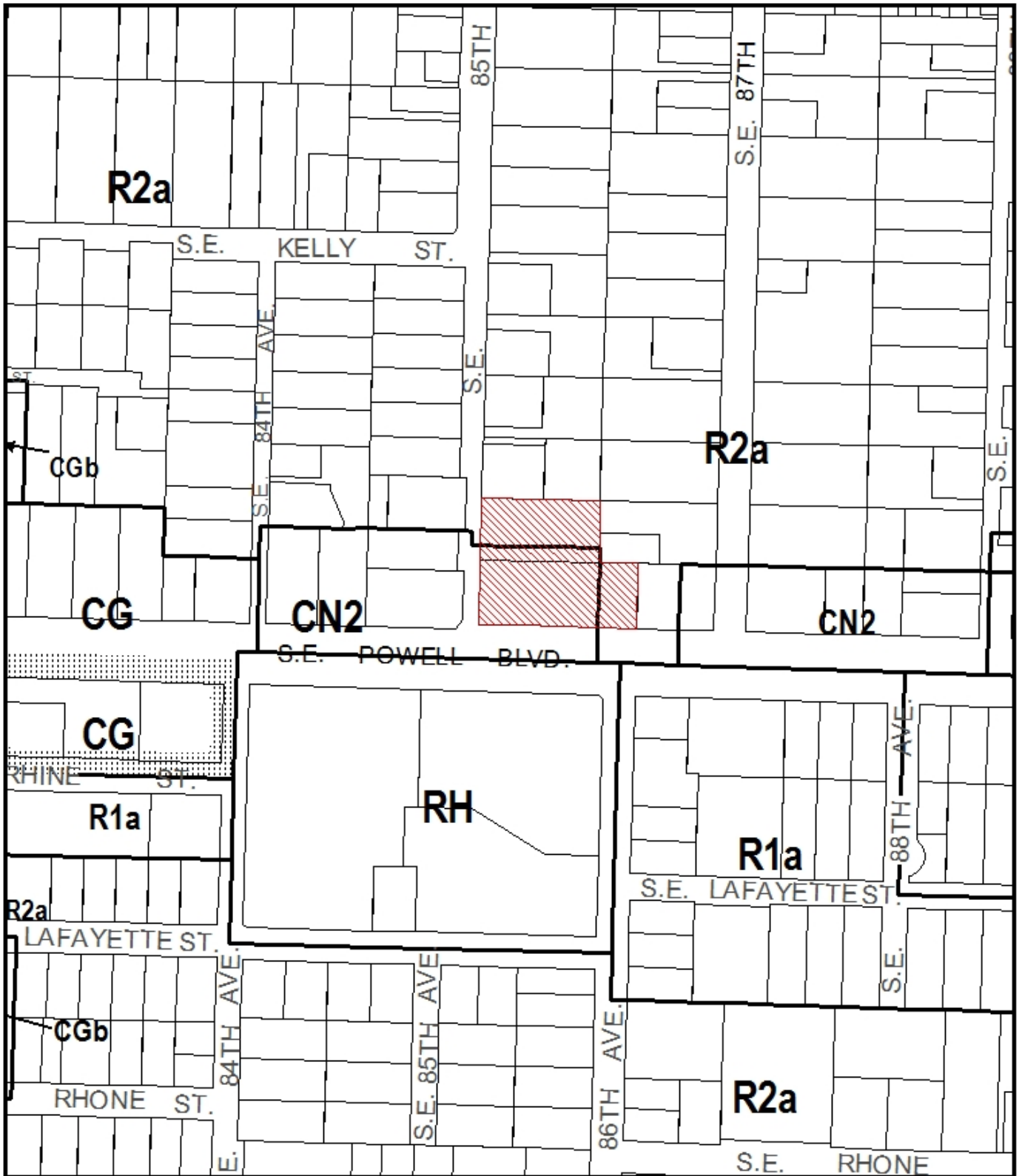
### **EXHIBITS**

#### NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Application and original plans and narrative
  2. Request to extend 120 days for final decision, February 2, 2011
  3. Supplemental information, dated April 7, 2011
  4. Supplemental information, received April 19, 2011
  5. Request to waive 120 day requirement for final decision, May 31, 2011
  6. Revised site plan, showing relocated trash enclosure, received August 19, 2011
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. Elevation Drawings (attached)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Transportation Engineering and Development Review
  2. Water Bureau
  3. Fire Bureau
  4. Life Safety Plan Review Section of BDS
  5. Summary of electronic responses from City agencies
- F. Correspondence:
  1. William J. Cahill, received May 16, 2011
- G. Other:
  1. Site History Research
  2. Copies of historical zoning and building permit documents for site

**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).**





# ZONING

 Site



File No.	LU 11-104414 NU
1/4 Section	1623,3339,3439
Scale	1 inch = 200 feet
State_Id	2N1E30C 1100
Exhibit	B (Aug 24,2011)

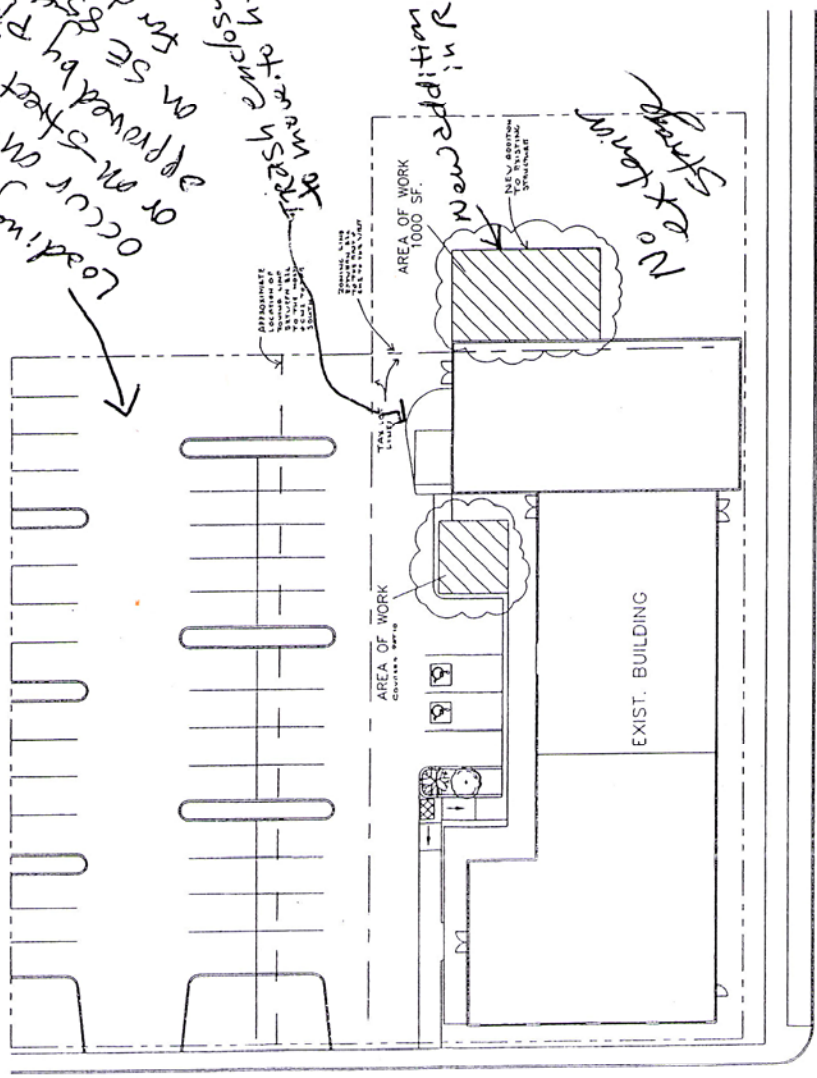
Exhibit C-1  
 LU 11-104414 NV

Received 8-19-11  
 Loading to  
 occur on-site  
 approved by PLOT  
 on SE 85th Avenue  
 for designated  
 space in tenting  
 site.

Trash enclosure  
 to match new one

New addition in R2 zone

No extension  
 Storage



SE POWELL BLVD.

SITE PLAN  
 1/16" = 1'-0"

City of Portland - Bureau of Development Services  
 Planner: *Arthur A. Stone*  
 Date: *August 25, 2011*  
 \* This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

SE 85TH AVE

\*Approved\*

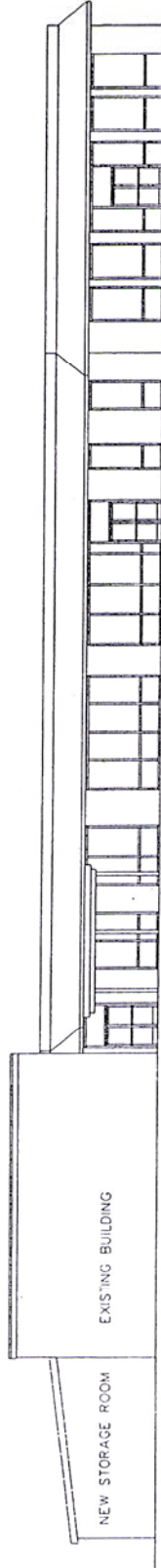
City of Portland - Bureau of Development Services

Planner Kathleen A. Stokes Date August 25, 2011

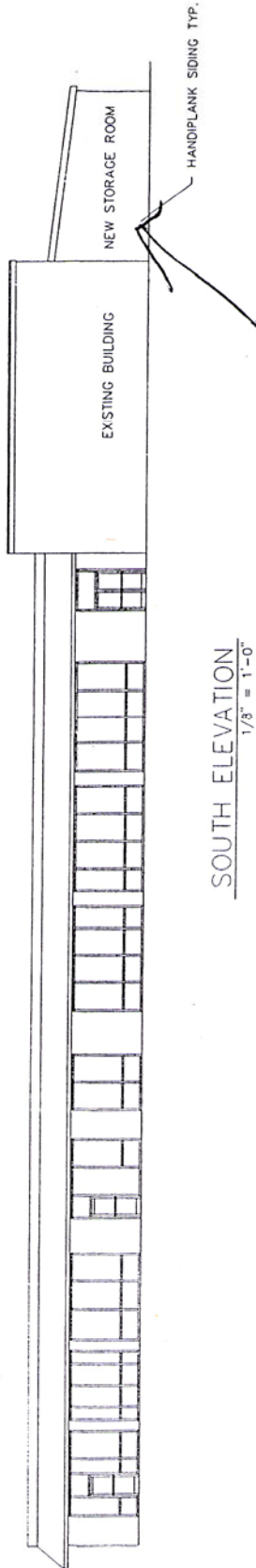
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Received 4-19-11

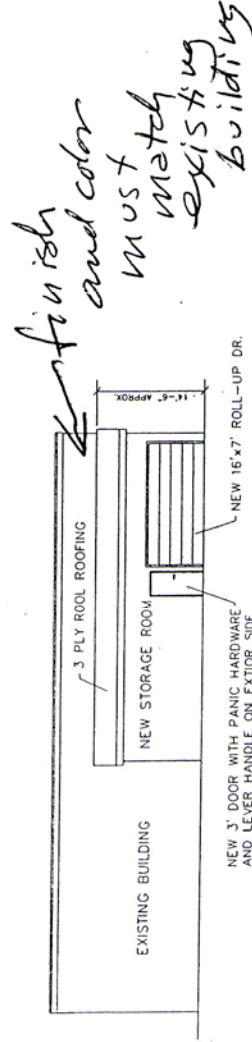
FXNIB+C-a  
LV11-167414 NU



NORTH ELEVATION  
1/8" = 1'-0"



SOUTH ELEVATION  
1/8" = 1'-0"



EAST ELEVATION  
1/8" = 1'-0"

KALY CONSTRUCTION & DESIGN INC.  
2738 SE 82ND AVE SUITE 201-D  
Portland, Oregon 97266  
PHONE: 503 348-0712 FAX: 503 775-2117



COVER PATIO FOR FOOD DEPOT  
6535 SE POWELL BLVD.  
PORTLAND, OR  
ELEVATION

115AMDP

D

1/4/2011