



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

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Date: March 26, 2012
To: Interested Person
From: Mark Walhood, Land Use Services
503-823-7806

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 12-107452 AD

GENERAL INFORMATION

Applicant: Bob Schatz
2118 SE Division St.
Portland, OR 97202

Property Owner: Division Street Food Mart LLC
2505 SE Cesar E Chavez Blvd
Portland, OR 97202

Site Address: 2505 SE CESAR E CHAVEZ BLVD

Legal Description: BLOCK 1 LOT 13 N 66 2/3' OF LOT 14 LOT 15 EXC PT IN ST; N 66 2/3' OF LOT 16 EXC PT IN ST, RICHMOND ADD

Tax Account No.: R703800120

State ID No.: 1S1E12AA 17600

Quarter Section: 3334

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

Business District: Division-Clinton Business Association, contact Darice Robinson at 503-233-1888.

District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.

Zoning: **CSm, R2.5 (UCb)** (Storefront Commercial base zone with Main Street Corridor or 'm' overlay zone on north portion, Single-Dwelling Residential 2,500 base zone with an Urban Commercial with Buffer overlay Comprehensive Plan Map designation on the south portion)

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

Procedure: **Type II**, an administrative decision by BDS staff that can be appealed to the Adjustment Committee.

Proposal:

The applicant has proposed alterations to an existing gas station at the southwest corner of the intersection of SE Division Street and SE Cesar E. Chavez Boulevard/39th Avenue. The office/repair building on the site, just west of the gas station canopy and pumps, will be demolished and replaced with a new 2,200 square foot auto supply store in approximately the same location. A new flow-through stormwater planter will be provided directly south of the new building, and a new concrete pedestrian walkway will be provided connecting to both adjacent streets, as required by the base zoning.

Regulations of the CS zone impose a maximum building setback of ten feet from the street lot line (33.130.215.C). Because this site is also within the Division Street Main Street Corridor overlay zone, the maximum setback regulations are those for a Pedestrian District (33.460.310.A.1). Facing SE Division Street, 100% of the street-facing façade must be within 10 feet of the street lot line. Facing SE Cesar E. Chavez Blvd., 50% of the street-facing façade must be within 10 feet of the street lot line. As proposed, the majority of the building wall facing SE Division is within 10 feet of the lot line, but portions of the building are set back from approximately 12 to 23 feet from the lot line. Along SE Cesar E. Chavez Blvd., the majority of the building wall is located 58 feet 11 inches from the lot line. In order to approve the building placement as proposed, the applicant has requested an Adjustment to increase the maximum building setback for portions of the building facing SE Division Street from 10 to approximately 23 feet, and to increase the maximum building setback facing SE Cesar E. Chavez Blvd. from 10 feet to 58 feet, 11 inches. **NOTE:** In order to meet the Main Entrance standard from the 'm' overlay zone (33.460.310.A.2), the applicant revised the building plan slightly to make both building entry doors the same width, and eliminated the stairs for the door facing SE Division.

Regulations regarding the location of vehicle areas generally prohibit the placement of vehicle areas between a building and a street in the CS zone (33.266.130.C.1/Table 266-3). However, for sites where an existing building already has vehicle area between the building and the street, as occurs at this site, vehicle area between the building and the street is allowed if approved through an Adjustment. In order to allow existing vehicle areas to be located between the new building and the street, the applicant has requested this second Adjustment.

The southern portion of the site has legal nonconforming status (grandfather rights) in its' current configuration. The site was built as a gas station in 1967, and a building permit was issued creating the current site configuration in 1983. Since 1983, the southern portion of the site in the R2.5 zone has remained in the same layout. With the exception of a new pedestrian walkway over existing asphalt in this area, no site changes are proposed. Provided no expansions of exterior improvements (paved areas) or new floor area are proposed in the R2.5 zone, no additional reviews or zoning requirements are triggered at this time.

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

- **33.805.040.A-F, Adjustment Approval Criteria;**
- (relevant sections by reference) **33.130.215.A, CS zone Setback – Purpose Statement;** and
- (relevant sections by reference) **33.266.130.A, Parking Standards – Purpose Statement.**

ANALYSIS

Site and Vicinity: The site includes approximately 15,000 square feet of land on a single parcel at the intersection of SE Division Street and SE Cesar E. Chavez Boulevard (formerly SE 39th Avenue). The site is developed with a gas station, with the small office and storage building on the west portion of the site, and the primary covered canopy and gas pumps located near the center of the site, adjacent to the sidewalk in SE Cesar E. Chavez Boulevard. The property is mostly paved for vehicle circulation and parking, although a narrow landscape strip runs along the south lot line and the southern half of the west lot line, interior to the site.

Two landscaped beds with low shrubs are located between the fueling areas under the canopy and the sidewalk, and adjacent to the street corner, underneath a freestanding sign.

The surrounding area is characterized by a mix of commercial and residential uses. Commercial activity is located primarily to the east and west of the site, along SE Division Street. North and south of the commercial activity along SE Division are found a mix of older single-family homes and apartments.

Both adjacent streets are improved with paved two-way roadways, curbing, and paved public sidewalks. The adjacent intersection is a signalized intersection.

Zoning: The site is a split-zoned site, with Storefront Commercial (CS) base zoning on the north portion, and Single-Family Residential 2,500 (R2.5) on the south portion. The commercially-zoned area also includes the Main Street Corridor (m) overlay zone. The residentially-zoned area also includes an Urban Commercial with Buffer overlay zone Comprehensive Plan map designation. This Comprehensive Plan map designation would allow the southern portion of the site to be re-zoned to CSb or CMb, following a successful Zoning Map Amendment process.

The CS zoning allows for the proposed auto parts store as a permitted Retail Sales and Service use. The CS zone is one of several zones that implement the commercial policies and plan map designations of the Comprehensive Plan. The CS zone is intended to preserve and enhance older commercial areas that have a storefront character, ensuring that new development and alterations will be compatible with this desired character. In this case, the CS zone requires an Adjustment to allow the building to be placed back from the street lot lines as much as proposed. Similarly, the 'm' overlay zone regulations promote development that fosters a pedestrian- and transit-oriented main street character consistent with the pattern of older buildings in the area.

The residential zoning on the southern portion of the site creates a nonconforming situation at this property. The gas station, however, was legally established at the site in the late 1960's, and since then has received building permit approval (1983) for the current site configuration on a split-zoned site. Because this use has been maintained over the years since then, and because no new floor area or other expansions are proposed in this area, no additional land use reviews or standards are triggered at this time.

Land Use History: City records indicate one prior land use review for this site. In 1967, prior to the development of the gas station that exists today, a Variance (VZ 223-67) was approved to reduce the east setback along SE 39th Avenue (now Cesar E. Chavez Boulevard) from 15 feet to 6 inches, in order to construct the gas station canopy.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **February 21, 2012**. The following Bureaus have responded with comments:

The *Bureau of Environmental Services* (BES) has reviewed the proposal and provided informational comments, but no objections to the specific Adjustments in this application. The proposed development will be subject to BES standards and requirements during the building permit review process. These include compliance with the City of Portland Stormwater Management Manual, provision of detailed site utility plans during permitting, connection fees, and other issues. Exhibit E.1 contains staff contact and additional information.

The *Development Review Section of Portland Transportation* (PBOT) has reviewed the proposal for 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. Portions of this response directly address the Adjustment approval criteria, and are included in the findings later in this report. The PBOT also raises several additional issues that will need to be addressed by the applicant during the permit review,

since the applicant has protested the idea of resolving these issues prior to the mailing of this Adjustment decision. The PBOT narrative on these issues is included below for reference and public information purposes:

TITLE 17 REQUIREMENTS

Transportation System Development Charges (Chapter 17.15)

System Development Charges (SDCs) may be assessed for this development. The applicant can receive an estimate of the SDC amount prior to submission of building permits by contacting Rich Eisenhauer at (503) 823-6108.

Driveways and Curb Cuts (Section 17.28)

Curb cuts and driveway construction must meet the requirements in Title 17. The Title 17 driveway requirements will be enforced during the review of Building Permits. **NOTE:** The applicant has been previously advised of a prior concern from PBOT. Said concern stems from the location of the existing curb cut/driveway along SE Division and the northern-most curb cut/driveway along SE Cesar E Chavez Jr Blvd. Code Section 17.28.110.B states that "no portion of a driveway, excluding ramps if required, shall be located closer than 25-ft from the corner of a lot where two streets intersect". The site plan PBOT staff has reviewed is not full size or to scale, and it appears that the noted driveways are close to the 25-ft minimum distance from the corner, especially the northern-most curb cut/driveway along SE Cesar E Chavez Jr Blvd. Accordingly, PBOT requested that the applicant submit a survey to include, among other information, enough detail to confirm the location of said driveways. If the driveways don't satisfy the distance requirement, the applicant was advised that one/both would be required to either be relocated/reconfigured appropriately, or the applicant would need to seek approval via an appeal to retain the current location(s). Additional analysis (turning movements and a letter from a traffic consultant) may also be required to demonstrate that the driveway(s) (if they don't meet the standard) will not result in impacts to the public right-of-way, including, but not limited to, operations of the intersection. To date, the applicant has not submitted the requested survey. This issue will need to be resolved with PBOT (permit review) staff prior to the issuance of any Building Permits for the proposed project.

Street Improvements (Section 17.88.010)

It is typical Portland Transportation procedure to review existing roadway configurations by referring to City GIS database resources in order to determine the necessary dedications and/or improvements related to proposed land use cases. City staff *may* receive different information from the applicant's engineer with regard to the existing condition of the subject roadways based on the actual survey of the site.

According to City GIS, at this location, SE Division is improved with 36-ft of paving within a 60-ft right-of-way. This site frontage is also improved with a 0-10-2 sidewalk configuration (in essence, a 12-ft wide curb-tight sidewalk). A review of Google Maps however, also shows that aside from the bus stop/cover at the western end of the frontage, there are a couple of street trees that have been planted within tree wells. At this location, SE Cesar Chavez Jr Blvd is improved with between 50 to 51-ft of paving within an approximate 70-ft right-of-way. This site frontage is also improved with a "0-10-varies" sidewalk corridor (a 10-ft wide curb tight sidewalk with a variable width frontage zone).

The Transportation System Plan classifies SE Division as a Neighborhood Collector street, Major Transit Priority street, Local Service Bikeway, City Walkway and a Community Main street. SE Cesar E Chavez Jr Blvd is classified as a Major City Traffic street, Transit Access street, Local Service Bikeway, City Walkway and a Regional Corridor.

Based on the City Walkway classifications of both streets, the City's Pedestrian Design Guide recommends that the sidewalk corridors along both site frontages measure 12-ft in width and comprised of the following elements: 0.5-ft curb, 4-ft planter area, 6-ft sidewalk, 1.5-ft frontage zone. For properties with commercial zoning, in lieu of the 4-ft wide planter area, appropriately sized and located planters boxes are sufficient.

The applicant has been previously advised of the following. In association with the proposed project on the subject site, PBOT will be requiring that one, and possibly both site frontages will need to be brought up to current City standards. The SE Cesar E Chavez Jr Blvd frontage, at least a portion of it, will need to be widened to satisfy the 12-ft corridor referenced in the Pedestrian Design Guide. The SE Division St sidewalk corridor widening is potentially required. This may be so because although City GIS mapping data indicates that this frontage is improved

with a 0-10-2 corridor as noted above, recent experience with a nearby project revealed that this information was inaccurate. During the construction stage of the project at the opposite end of the block (along SE Division St), a survey was prepared and showed that the right-of-way width behind the curb was actually only 11-ft. Without the benefit of a survey for the subject site, PBOT should assume that the same condition noted with regard to the nearby site, applies to the subject site. To ensure that this site frontage will/will not have to be brought to City standards and whether or not a property dedication will be required to accommodate the potential improvements, and to accurately determine the amount of property dedication necessary to accommodate the frontage improvements along potentially both site frontages, PBOT requested that the applicant submit a site survey, including the existing right-of-way widths and improvements along the site's frontages. As mentioned previously, the applicant has not submitted the requested survey. This issue will also need to be resolved with PBOT (permit review) staff prior to the issuance of any Building Permits for the proposed project.

The applicant was also previously advised that the requested survey was also necessary and critical to refer to with regard to other existing on site improvements that may/may not be impacted by whatever property dedications will/might be necessary. For example, the Conoco Phillips 76 sign at the north-east corner of the site, the existing canopy and the location of existing site driveways (noted above), may be impacted by any necessary dedications. These issues will also need to be resolved with PBOT (permit review) staff prior to the issuance of any Building Permits for the proposed project.

The applicant was also previously advised of the City's Division Street Project. In relation to this project, the City will be filling in one of the tree wells (one of the trees has died or was removed) and placing a new tree along the west end of the frontage. The Division Street Project also includes full pavement rehabilitation on SE Division up to SE Cesar E Chavez Jr Blvd. This is critical information to be aware of because if the redevelopment of the site with the proposed building has any utilities to be brought in from SE Division, this work will need to be done before the pavement moratorium is in place. The Division Street Project will be going out to bid in late spring and construction should commence this summer. The project's duration will be approximately one year. The moratorium will be in effect once the contractor paves but that's not going to happen until later on in the project. The timing of (subject) project's on-site work, if it involves extending any utilities to/from SE Division, will need to coincide with the paving related to the Division Street Project. Failure to address the improvements prior to the paving project along SE Division may result in significant additional construction costs.

There are numerous and critical elements associated with the redevelopment of the site that are unresolved because of the lack of the requested survey from the applicant. Until PBOT can make a definitive determination on the extent of the frontage improvements and dedications, a determination on the type of Public Works review/permit that will be necessary for said frontage improvements cannot be made. Said process is separate from the land use review and building permit processes. These will all need to be coordinated, to some extent, as the Public Works permit will be tied to the Building Permit. Another matter of importance, the applicant will be able to appeal any/all of PBOT's requirements relative to the right-of-way, and this will involve some coordination as well.

The matters noted above were brought to the applicant's attention prior to the deadline for public response on this land use proposal. PBOT's intentions on requesting the applicant to submit additional information and address the issues previously mentioned were to provide as much coordination as possible, given the potential for several related processes; to avoid any unnecessary delays; and, to identify any potential conflicts and resulting necessary and additional land use reviews. PBOT's affirmative recommendation on the requested Adjustments in no way suggests that the aforementioned outstanding issues have been adequately addressed or resolved. As noted above, there are numerous issues that will need to be resolved with PBOT prior to the issuance of any Building Permits.

In summary, PBOT has no objections to the requested Adjustments. However, there remain numerous unaddressed issues as noted above, and the applicant will need to address these issues with PBOT staff prior to the issuance of any building permits. Exhibit E.2 contains staff contact and additional information.

The *Water Bureau* has reviewed the proposal and provided informational comments regarding water service to the site, but no objections to the requested Adjustments. City code 21.12.010

will require any new building construction, or any construction that will need water, to have a water service and meter of appropriate size installed within the public right-of-way and within the specific property boundary/frontage for which it will serve. A Water Bureau review for fixture count will need to be submitted by the applicant at the time of submittal of the building permit to appropriately size the water service and meter for this location. If a water service and/or meter size upgrade is required, all applicable costs will be the responsibility of the applicant. Exhibit E.3 contains staff contact and additional information.

The *Fire Bureau* has reviewed the proposal and responded with information regarding Fire Codes that apply to the project, but no specific objections to the requested Adjustments. All current 2007 Oregon Fire Code requirements apply and must be met. If these requirements cannot be met, an appeal providing an alternative method is an option for the applicant. All applicable Fire Code requirements will apply to the development and will be reviewed at the time of permit review. Exhibit E.4 contains staff contact and additional information.

The *Life Safety Section of the Bureau of Development Services* has reviewed the proposal and provided preliminary Building Code information, but no specific objections to the two requested Adjustments in this application. A separate building permit is required for the work proposed, and the proposal must be designed to meet all applicable building codes and ordinances. The written response includes specific information on required fire-rating construction standards for exterior walls near property lines, as well as restrictions on openings in exterior walls that are within 3 feet of a property line. These comments may not identify all potential conflicts between the Adjustment proposal and the building codes, and a full Life Safety plan review will be provided at the time of building permit submittal. Exhibit E.5 contains staff contact and additional information.

The following two agencies have reviewed the proposal and responded without objections or comments (Exhibit E.6):

- The *Site Development Section of the Bureau of Development Services*; and
- The *Urban Forestry Division of Portland Parks and Recreation*.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on February 21, 2012. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of Adjustment Reviews

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

The approval criteria for signs are stated in Title 32. All other 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. Adjustments to the ground floor window requirements of this Title must also meet the additional requirements stated in the ground floor window sections in the base zones.

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

Findings: Findings below for the two adjustments are grouped into two categories; one section each for the maximum transit street setback and for the vehicle area restriction.

Maximum transit street setback: In order to approve the building placement as proposed, the applicant has requested an Adjustment to increase the maximum building setback for portions of the building facing SE Division Street from 10-ft to approximately 23-ft, and to increase the maximum building setback facing SE Cesar E. Chavez Blvd. from 10-ft to 58 ft-11 inches (33.130.215.C.1).

The identified purpose(s) for setbacks are found in Zoning Code Section 33.130.215.A, which states as follows: *“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”.*

With regards to the maximum transit street setback adjustment, the proposal is somewhat unusual in that a small service building structure at an existing gas station is being replaced by an expanded retail structure in the same location. The existing gas station function at the site will remain, which includes a freestanding sign at the corner, the gas pumps and canopy, and vehicle areas with driveways along the street frontage and closer to the street than the building. The proposed new building will move closer to SE Division Street, and include a main entrance door facing and within 25'-0" of Division Street, as required by the Zoning Code (33.460.310.A.2). To accommodate the existing driveway to SE Division Street, the building has a stepped street-facing façade that pulls back partially from the sidewalk, but this is partially necessary to maintain the minimum requirement of a 6'-0"-wide pedestrian walkway connection to the sidewalk. The area between the building and SE Division Street also includes a small landscaped area to remain, as well as the required short-term bicycle parking rack for the new building.

The larger setback requested facing SE Cesar E. Chavez Blvd. is necessary because the existing gas station pumps, canopy, and vehicle areas are to remain operational with the new auto parts store. In order to meet pedestrian standards for the new building, a 6'-0" wide concrete pedestrian walkway will connect the new building to SE Cesar E. Chavez Blvd., via a new walkway in front of the building. The new building is set almost the same distance from the street as the previous building, and will include a secondary entrance facing this new walkway.

There are no transportation-related issues that must be addressed relative to the maximum building setback Adjustment request. With the gas station function remaining on the site, the new building orientation and pedestrian walkways to adjacent streets create a generally inviting condition for pedestrians and transit users, consistent with the intent of the maximum setback regulation. *For the maximum transit street setback adjustment, therefore, criterion A is met.*

Vehicle area restriction: Regulations regarding the location of vehicle areas generally prohibit the placement of vehicle areas between a building and a street in the CS zone (33.266.130.C.1/Table 266-3). However, for sites where an existing building already has vehicle area between the building and the street, as occurs at this site, vehicle area between the building and the street is allowed if approved through an Adjustment. In

order to allow existing vehicle areas to be located between the new building and the street, the applicant has requested this second Adjustment.

The identified purpose(s) for vehicle areas are found in Zoning Code Section 33.266.130.A, which states as follows:

“The development standards promote vehicle areas which are safe and attractive for motorists and pedestrians. Vehicle area locations are restricted in some zones to promote the desired character of those zones. Together with the transit street building setback standards in the base zone chapters, the vehicle area restrictions for sites on transit streets and in Pedestrian Districts:

- *Provide a pedestrian access that is protected from auto traffic;*
- *Create an environment that is inviting to pedestrians and transit users;*
- *The parking area layout standards are intended to promote safe circulation within the parking area, provide for the effective management of stormwater runoff from vehicle areas, and provide for convenient entry and exit of vehicles.*
- *The setback and landscaping standards improve and soften the appearance of parking areas; reduce the visual impact of parking areas from sidewalks, streets, especially from adjacent residential zones; provide flexibility to reduce the visual impacts of small residential parking lots; direct traffic in parking areas; shade and cool parking areas; reduce the amount and rate of stormwater runoff from vehicle areas; reduce pollution and temperature of stormwater runoff from vehicle areas; and, decrease airborne and waterborne pollution.”*

With regards to the **vehicle area restriction** adjustment, the existing gas station function is to remain, including the gas pump service areas and canopies, the vehicle circulation areas, and driveways. The new building does include the code-required 6'-0" wide pedestrian walkway connection from the building to both adjacent streets. This will allow pedestrians and transit users to reach the new auto parts store from adjacent sidewalks with a safer, more protected route than exists to the current building today. The building façade has been stepped as it faces SE Division Street to maintain a wide pedestrian walkway connection, as well as the required short-term bicycle parking rack.

Portland Transportation staff has responded that the only applicable transportation related purpose for vehicle area location as identified above is with regard to “providing for a convenient entry and exit of vehicles”. To this factor, it is PBOT’s understanding that the gasoline sales function of the current use on the site will remain with the proposed new building (and new use). The City’s Zoning Code defines vehicle area as: “all the area on a site where vehicles may circulate or park including parking areas, driveways, drive-through lanes, and loading areas. Each of these areas currently exist between the street(s) and the small snack shop/register structure on the site. The proposed building will be situated on the site such that it will be towards the western property line, similar to the current building, therefore, the location of the vehicle area on the subject site will remain the same. The new building will not impact the convenience of vehicles entering or exiting the site, from/onto either abutting street. PBOT, therefore has no objections to this proposed Adjustment request, as none of the existing driveways are expected to be modified.

For the reasons cited above, the Adjustment to allow vehicle areas between the new building and the street meets the relevant pedestrian- and transit-oriented portions of the purpose statement above, and criterion A can be met.

- 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 in a commercial (CS) zone. Portland Transportation staff has reviewed the proposal and found the requested adjustments to be consistent with the local street classifications (although additional non-Adjustment issues remain at the time of this decision). The proposal is also generally consistent with the desired character of the area. *Therefore, 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 overall purpose of the zone is to enhance the economic viability of the neighborhood, and to preserve and enhance older commercial areas that have a storefront character. The CS zone seeks to create areas which are predominantly built-up, with buildings close to and oriented to the sidewalk, especially at corners.

In this case, because an existing gas station function is to remain on the site, the new auto parts store building will be located on the west half of the property, away from the corner and even pulled somewhat back from the SE Division Street frontage. In this unique situation, while the new building does not embrace the corner or present a storefront-like, built-up character, the building does include main entry doors, pedestrian walkways, and bike parking in a manner that improves the character of the site for pedestrians and transit users.

The cumulative impact of the maximum transit street setback and vehicle area restriction Adjustments is negligible, and the project is still consistent with the overall purpose of the CS zone. *Therefore, this criterion is met.*

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

Findings: There are no City-designated scenic or historic resources on the site. *Therefore, this criterion does not apply.*

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

Findings: There are no significant impacts resulting from the requested adjustments, which are necessary primarily because the existing gas station pumps, canopy, and vehicle area are to remain on the site and continue in their present function. The building will be required to comply with Ground Floor Window standards and other zoning regulations during permitting, and a new pedestrian walkway is provided between the building and both adjacent streets. *Therefore, 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 in an environmental zone. *Therefore, 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.

Specific outstanding zoning issues that must be addressed during building permit review include, but are not limited to, the following:

- **Ground Floor Windows** (33.130.230): Windows must be provided along the Division Street façade for 50% of the length and 25% of the area of the street-level façade. Windows must allow views into working areas or lobbies, pedestrian entrances, and the bottom of the windows must be no more than 4'-0" above adjacent grade;
- Two **long-term bike parking** spaces are required (33.266.200), in addition to the short-term bike parking spaces shown on the site plan;
- **Exterior finish material** requirements for the building from the 'm' overlay zone (33.460.310.C), limiting the amount of certain materials on the exterior façade; and
- **Upgrades to nonconforming development**, if the project value exceeds \$141,900, may require additional plantings in perimeter landscaping, screening, or other improvements (33.258.070.D.2).

Various outstanding concerns and code issues from several agencies were also raised, and must be addressed during the building permit review process. All applicable Building Codes, the Fire Code, the Stormwater Management Manual, and water service connection standards must be satisfied. Portland Transportation staff has addressed specific outstanding issues with regards to a required survey and street dedications, the distance of an existing driveway to the corner, frontage improvements, the location of the existing sign, canopy and drive aisle in context of any required street dedications, and other issues as identified in their agency response.

CONCLUSIONS

The applicant has proposed the construction of an auto parts store in the location of a former gas station accessory building. The gas station function and gas pumps, canopy, etc. will remain functioning on the site. Given the limited space in which to build within the commercial zoning on the site, the applicant has requested adjustments to maximum transit street setbacks and vehicle area restrictions. With a main entrance oriented to SE Division Street, and new pedestrian walkways to both adjacent streets, the proposal is able to meet the applicable Adjustment criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an **Adjustment** to increase the maximum building setback (33.130.215.C.1) for portions of the building facing SE Division Street from 10'-0" to as much as 23'-2", and to increase the maximum building setback facing SE Cesar E. Chavez Boulevard from 10'-0" to 58'-11"; and

Approval of an **Adjustment** to allow vehicle areas to be located between the proposed building and SE Cesar E. Chavez Boulevard (33.266.130.C.1/Table 266-3).

Both of the above approvals are granted based on the approved, revised site plan, Exhibit C.1, as signed and dated March 21, 2012, and subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the building footprint and location approved by this land use review as shown on Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 12-107452 AD. No field changes to building footprint or location allowed."

Staff Planner: Mark Walhood

Decision rendered by:  **on March 21, 2012.**

By authority of the Director of the Bureau of Development Services

Decision filed March 22, 2012**Decision mailed March 26, 2012**

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 26, 2012, and was determined to be complete on **February 15, 2012**.

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 26, 2012.

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 12, 2012**.

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 Monday, April 9, 2012** 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.

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 **Tuesday April 10, 2012 – (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.

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

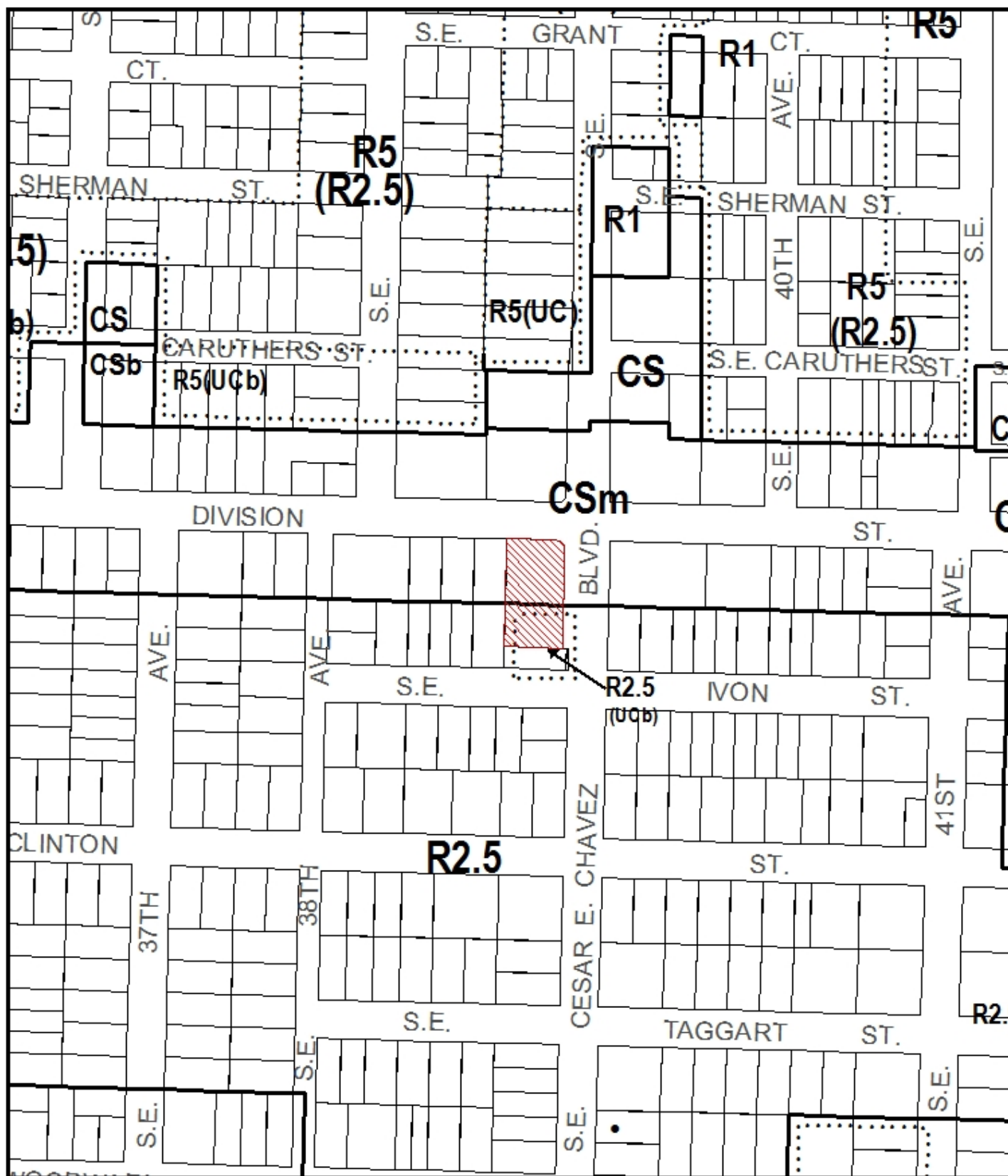
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statements
 - 1. Original narrative and site plan – site plan not approved
 - 2. Revised narrative and site plan, rec'd. Feb. 15, 2012 – site plan not approved
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Final Revised Site Plan, rec'd. March 15, 2012 (attached)
- D. Notification information:
 - 1. Mailing list and mailed notice
 - 2. Copy of postmark and mailing date for notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Development Review Section of Portland Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Life Safety Section of BDS
 - 6. No concerns responses from Urban Forestry and BDS Site Development
- F. Correspondence:
 - 1. *(none received at time of decision mailing)*
- G. Other:
 - 1. Original LU Application
 - 2. Original Incomplete Letter, sent Feb. 9, 2012
 - 3. Updated Incomplete Letter, sent Feb. 10, 2012
 - 4. E-mail from Portland Transportation to applicant with issues, sent March 2, 2012
 - 5. Nonconforming use documentation for area in R2.5 zone

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



File No. LU 12-107452 AD

1/4 Section 3334

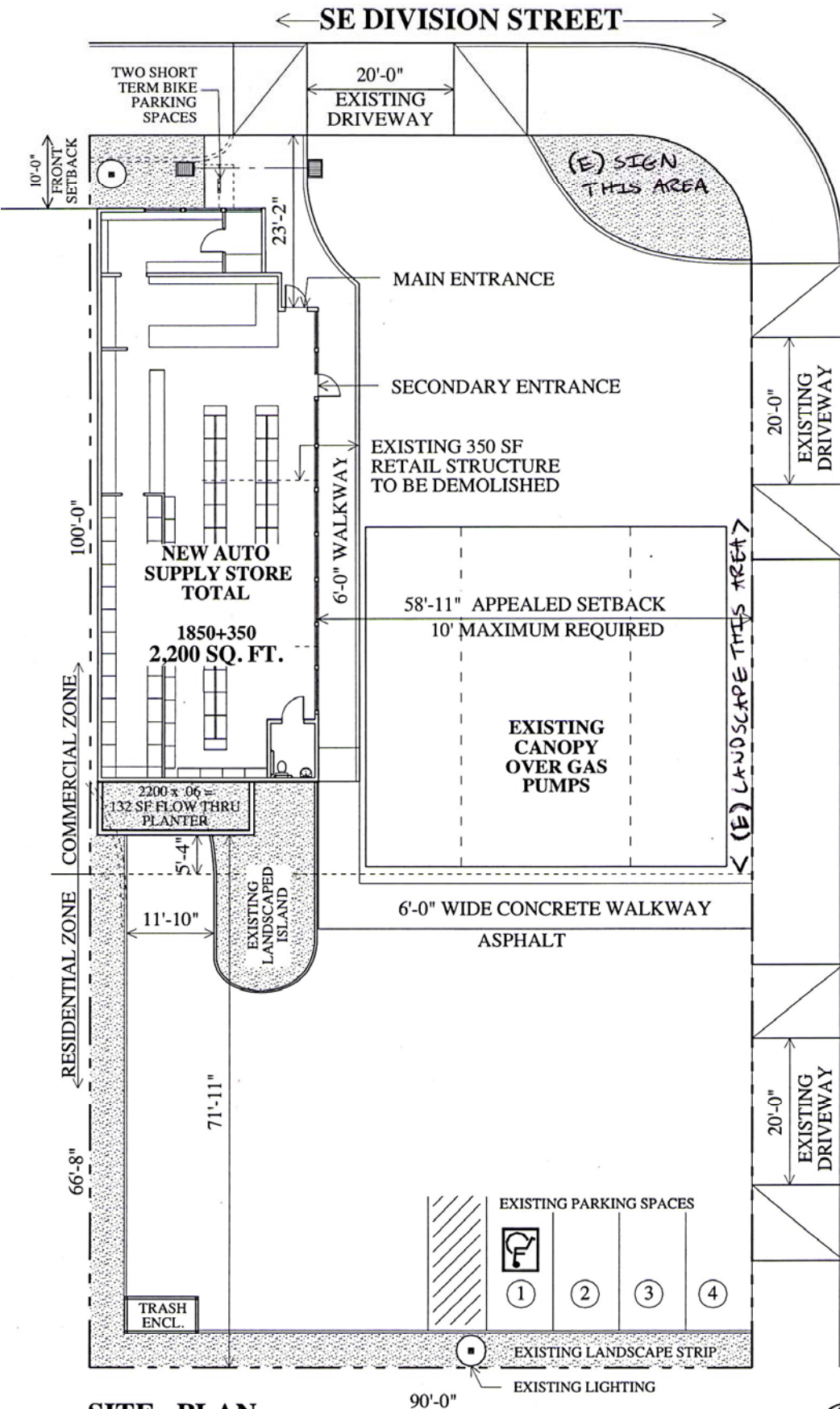
Scale 1 inch = 200 feet

State_Id 1S1E12AA 17600

Exhibit B (Feb 02,2012)



NORTH



SITE PLAN

SE CESAR CHAVEZ BLVD.

PROPOSAL AND DESIGN AS APPROVED IN
CASE FILE # LU 12-107452 AD. NO FIELD
CHANGES TO BUILDING FOOTPRINT/LOCATION ALLOWED.

Approved
City of Portland - Bureau of Development Services
Planner MARK WALHOOD Date MARCH 21, 2012
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

76 STATION
2505 SE 39TH

ALLUSA
ARCHITECTURE

2118 SE Division street Portland, OR 97202
Phone (503) 235-8585 Fax (503) 235-0835 Allusaarchitecture.com

DATE: 3.15.12

CASE NO. W 12-107452 AD
EXHIBIT C.1