



City of Portland, Oregon

Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

Date: April 24, 2014 **To:** Interested Person

From: Andrew Gulizia, Land Use Services

503-823-7010 / Andrew.Gulizia@portlandoregon.gov

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

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

CASE FILE NUMBER: LU 14-112136 AD

GENERAL INFORMATION

Applicant: Brett Schulz, Architect

1111 E Burnside St #303 / Portland, OR 97214 / (503) 222-9099

Owner: Parker McNulty

Ankeny Building, LLC / 1300 SW Park Ave #408 / Portland, OR 97201

Site Address: 1424 E Burnside St

Legal Description: BLOCK 306 W 1/2 OF LOT 5&6, AIKENS; BLOCK 306 W 1/2 OF LOT

7 W 1/2 OF LOT 8 EXC PT IN ST, AIKENS

Tax Account No.: R005101140, R005101160, R005101160

State ID No.: 1N1E35DC 02100, 1N1E35DC 01700, 1N1E35DC 01700

Quarter Section: 3032

Neighborhood: Buckman, contact Matthew Kirkpatrick at 503-236-6350.

Business District: East Burnside Business Association, contact Matt Bender at 503-803-

4224.

District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.

Plan District: None

Zoning: CS – Storefront Commercial **Case Type:** AD – Adjustment Review

Procedure: Type II administrative decision with appeal to the Adjustment

Committee

Proposal:

The applicant proposes to construct a mixed-use building with retail space on the ground floor and 40 apartments above. The applicant's plan includes 18 parking spaces in a ground floor garage. (A minimum of 8 parking spaces is required.) Because the parking spaces illustrated in the applicant's plan do not comply with the parking space angle and dimensional requirements of Zoning Code Section 33.266.130.F, the applicant is requesting approval of an Adjustment to these standards.

<u>Note</u>: The applicant's original proposal was for 42 apartments. Since proposals with more than 40 dwelling units require a separate loading space (Section 33.266.310), and no loading space is shown in the applicant's plans, the applicant had requested an Adjustment to the loading

space requirement. However, the applicant has since revised the proposal to only 40 apartments. Therefore, no Adjustment to the loading requirement is necessary.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Section 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The 9,500 square-foot site is developed with a commercial building fronting on E Burnside Street which the applicant proposes to demolish. The southern portion of the site, which abuts SE Ankeny Street, is developed with a surface parking lot. The surrounding area is characterized by both residential and commercial development. A commercial corridor extends east and west of the site along E Burnside Street, while a mostly residential neighborhood abuts the site to the south along SE Ankeny Street. A church is directly south of the site across SE Ankeny Street.

Zoning: The site is designated with the CS (Storefront Commercial) zone. Commercial zones generally seek to promote uses and developments that will enhance the economic viability of both the City and neighborhood, and a wide variety of uses are allowed. The CS zone in particular is intended to preserve and enhance older commercial districts that have a storefront character, and to encourage pedestrian-oriented development.

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 21, 2014. The following Bureaus have responded with no concerns:

- Bureau of Environmental Services;
- Water Bureau;
- Fire Bureau:
- Site Development Section of BDS;
- Life Safety Review Section of BDS; and
- Bureau of Parks-Forestry Division.

The Bureau of Transportation Engineering responded with information on the adjacent street classifications and the Adjustment review approval criteria. The response states that the proposed parking space dimensions provide equivalent maneuvering clearances and usability to those required in the Portland Zoning Code. Please see Exhibit E-2 in the archived record of this application for additional details.

Neighborhood Review: One letter in opposition was received in response to the Notice of Proposal. The letter expressed concerns that too few on-site parking spaces are provided and that street parking in the area is inadequate. The letter states that the adjusted angles and dimensions of the on-site parking spaces would create a cramped parking area and lead to congestion on the street. Further, the letter argues that residential development in the CS zone is contrary to the purpose of the commercial zone, and that the existing commercial building on the site should be preserved because of its historic nature.

<u>Staff Response</u>: The proposal includes retail and residential uses, both of which are allowed in the CS zone pursuant to Section 33.130.100. Since the existing commercial building on the site is not designated a historic resource pursuant to Chapter 33.846, the City has no authority under the Zoning Code to deny the applicant a demolition permit. Pursuant to Section 33.266.110, no on-site parking is required for retail use in the CS zone, while at least 8 on-site parking spaces are required for the residential component of the proposal. Since the proposal includes more than the minimum number of on-site parking spaces, the scope of this Adjustment review is limited to the anticipated impacts of not complying with the specific parking space angle and dimensional requirements of Zoning Code Section 33.266.130.F. These impacts are discussed in the findings for criterion A, below.

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

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

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

Findings: The applicant is requesting an Adjustment to the parking angle and dimensional standards of Section 33.266.130.F.

The purpose of the parking standards is stated in Zoning Code Section 33.266.130.A:

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

Zoning Code Section 33.266.130.F allows a 45 degree parking angle with a 17-foot stall depth or a 60 degree parking angle with a 17.5-foot stall depth. However, the code does not provide for degrees of parking angle and stall depths in between these two options. The applicant's proposal is for a 53 degree parking angle, which is approximately the average of 45 and 60 degrees, and a 17'2" stall depth, which is just less than the average of 17 feet and 17.5 feet.

The parking will be entirely enclosed within the building, and the applicant's proposal to vary the parking angle and stall depth does not affect aesthetics, the pedestrian environment, landscaping, stormwater management, or pollution.

The Portland Bureau of Transportation (PBOT) has studied the applicant's proposal and found the proposed parking space dimensions provide equivalent maneuvering clearances and usability to those required in the Portland Zoning Code. The response states that "safe circulation and convenient entry and exit will be maintained." Furthermore, since the aisle width and the width of the parking spaces will meet the requirements of Section 33.266.130.F, the proposal will not make the parking garage more congested or difficult to use than it would be without the Adjustment.

Based on these reasons, the Adjustment equally meets the intent of the regulation and this criterion is 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: Because the site is located in the CS zone, the applicant must demonstrate that the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area.

Street Classifications

The site fronts on E Burnside Street and on SE Ankeny Street. The classifications of these streets, as identified in the Transportation Element of the Comprehensive Plan, are as follows:

Street	Traffic	Transit	Bikeway	Pedestrianway	Freight
E Burnside St	District Collector	Major Transit Priority Street	Local Service	City Walkway	Local Service
SE Ankeny St	Local Service	Local Service	City Bikeway	Local Service	Local Service

Because the Adjustment only applies to the angles and dimensions of parking spaces, and not to factors like the number of parking spaces or the overall scope of the development, the application would result in no changes to the density or intensity of any land use and would result in no changes to traffic levels or demand for transit, bike, pedestrian, or freight facilities. Therefore, this aspect of the approval criterion is not applicable.

Desired Character of Area

The "desired character" of an area is defined in Zoning Code Section 33.910.030 as the preferred or envisioned character based on the purpose statement or character statement of the base zone and any adopted area plans. The subject site is located within the CS zone and within the boundaries of the adopted Buckman Neighborhood Plan.

The character statement for the CS zone in Section 33.130.030.F reads:

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 proposed building includes retail storefronts abutting the sidewalk, and the placement of parking inside the building rather than in a surface parking lot will enhance the pedestrian-oriented, built-up character of the development. However, this Adjustment request relates specifically to the angles and dimensions of parking spaces rather than to the types of factors listed in the above character statement. Therefore, this aspect of the approval criterion is not applicable.

The Buckman Neighborhood Plan includes many policies related to the historic character of Buckman and to livability of the neighborhood in terms of safety, traffic, parking, family housing, and economic development. However, the Adjustment request is only for the angles and dimensions of interior parking spaces, rather to the overall size or design of the building. All other factors regulated by the Zoning Code, such as the size of the building

and the number of parking spaces provided, meet the requirements without the need for Adjustment. Therefore, this aspect of the approval criterion is not applicable.

Summary

As the classifications of adjacent streets are found to be irrelevant, and the specific Adjustment request does not impact the desired character of the area as described in the purpose statement of the CS zone and the Buckman Neighborhood Plan, this criterion is not applicable.

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: As only one Adjustment is being requested, this criterion is not applicable.

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

Findings: City-designated scenic resources are identified on the Official Zoning Maps with a lower case "s," and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

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

Findings: As discussed in the findings for approval criterion B, the proposal has no adverse impacts on the livability or appearance of the surrounding residential area. As there are no identified adverse impacts for which mitigation would be required, this criterion is not applicable.

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

Findings: Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase "p" (Environmental Protection overlay zone) or a "c" (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on the site, this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The proposed Adjustment to the angles and dimensions of parking spaces equally meets the intent of the parking standards and does not impact the adjacent streets or the desired character of the area. Since the applicant has demonstrated that the applicable approval criteria are met, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment for a mixed-use development containing up to 40 dwelling units to allow a 53 degree parking angle and a 17'2" parking stall depth (Zoning Code Section 33.266.130.F), as illustrated in the approved site plan and ground floor plan (Exhibits C-1 and C-2), signed and dated April 18, 2014, subject to the following condition:

A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 and C-2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 14-112136 AD."

Staff Planner: Andrew Gulizia

Decision rendered by:

By authority of the Director of the Bureau of Development Services

On April 18, 2014

Decision mailed: April 24, 2014

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 31, 2014, and was determined to be complete on March 6, 2014.

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 31, 2014. 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 extended by the applicant, **the 120 days will expire on: July 4, 2014.**

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 May 8, 2014** 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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision 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 May 9, 2014.
- 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;

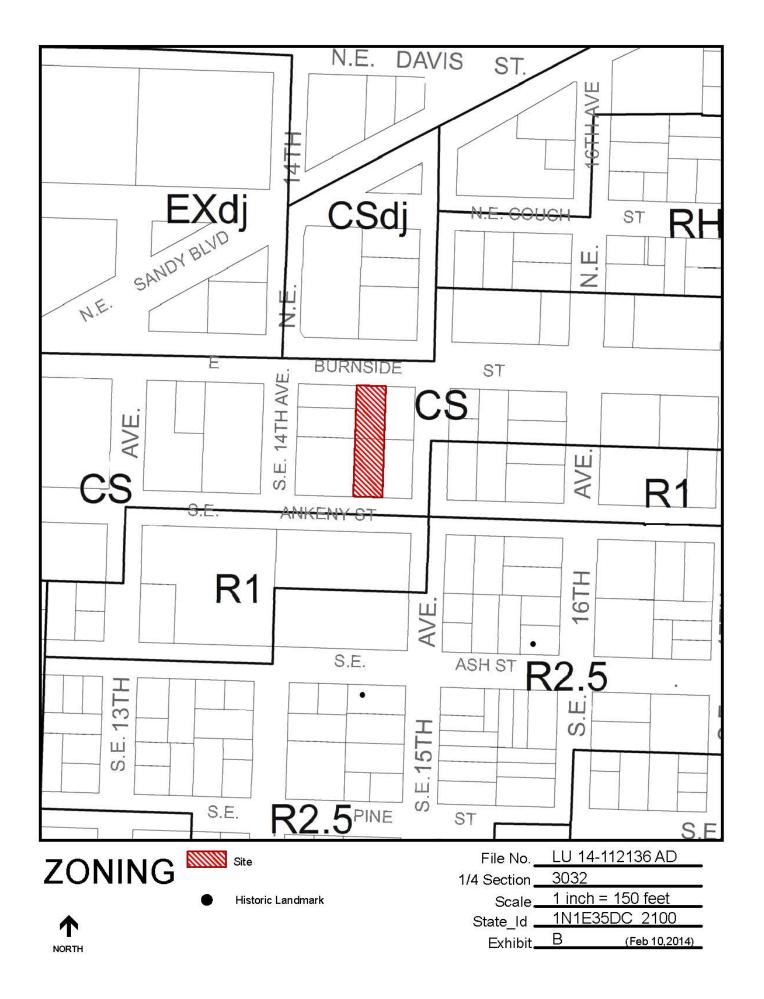
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan (attached)
 - 2. Ground floor plan (attached)
 - 3. East and north building elevations
 - 4. West and south building elevations
- 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. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Review Section of BDS
 - 7. Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. Letter in opposition from Daniel P. Atkinson, received April 10, 2014
- G. Other:
 - 1. Original LU application
 - 2. Incompleteness determination letter, dated February 11, 2014

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).



PERMIT ISSUE
APPLA
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NOT FOR
COMSTRUCTION 3RETT SCHULZ ARCHITECT 1424 E BURNSIDE PORTLAND, OR. 97214 ANKENY APARTMENTS DRAWN: BJS, MDE, BSC MORESTY LAC MOCHADE WELTSTENG BELON SUB VPT COCATION WITH AS SACE IS ANSWAY 35 FLOOR DRIVEN IN CHECKEE TRUP LEGEND D 111-0 D 121.-0. MOTE, UK MENT SADE ALONG PARENCE TO PROTECT NACTS. THE PART WEEK DEVEN 0 - III -0. only to the reviews requested and is subje Additional zoning requirements may ar ply City of Portland - Bureau of Development Services ADJACENT BURLDING BLAB ON GRADE 15 2 EROSION CONTROL DETAILS des transcents de l'uniones para transcents de l'uniones para constitute de l'uniones de l'union 1 SITE PLAN ADJACENT BULDING SLAB ON GRADE P. 10 17. \$ | · · · · · ·

LU-14-112136 AD

Exhibit C1

