



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

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**Date:** February 3, 2015  
**To:** Interested Person  
**From:** Kathleen Stokes, Land Use Services  
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## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has **approved** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, 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 14-222120 NU AD**

#### **GENERAL INFORMATION**

**Applicant:** Michael Callahan  
PO Box 12345 / Portland, OR 97212

**Owner:** Santha Cassell  
PO Box 12345 / Portland, OR 97212  
Brian Murtagh / Studio Coop Architecture  
5901 N Borthwick Ave / Portland OR 97217

**Site Address:** 722 N SUMNER ST

**Legal Description:** BLOCK E 1/2 L LOT 1 EXC S 37' & EXC N 53' W 17' OF LOT 2 EXC S 37' & EXC N 53', M PATTONS & SUB; BLOCK E 1/2 L E 33' OF LOT 2 LOT 3, M PATTONS & SUB

**Tax Account No.:** R520705120, R520705150

**State ID No.:** 1N1E22BA 11200, 1N1E22BA 11000

**Quarter Section:** 2529

**Neighborhood:** Humboldt, Brian Murtagh at 503-962-9194.

**Business District:** North-Northeast Business Assoc, Joice Taylor at 503-841-5032.

**District Coalition:** NE Coalition of Neighborhoods, contact [info@necoalition.org](mailto:info@necoalition.org).

**Zoning:** R1, R2.5a

**Case Type:** Nonconforming Situation Review, Adjustment Review

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

**Proposal:** The applicants have provided documentation of nonconforming rights for retail uses on this site. The current retail uses include the Red Fox Bar and the Cherry Sprout Produce Market. The owners of the market are proposing to build an addition that would house a commercial kitchen, which is a manufacturing and production use. The kitchen would be leased to vendors for the preparation of food, for sale, both on-site and at other, off-site locations. The market's business hours (9:00 AM, to 9:00 PM, Monday through Saturday, and 10:00 AM to 9:00 PM on Sunday) are not proposed to change at this time. However, the kitchen would begin operating weekdays at 7:00 AM and continue operation until 11:00 PM.

Weekends, operations would begin at 10:00 AM and continue until 11:00 PM. The public hours would not start before the market opens at 9:00 AM but it is anticipated that some cooking classes may be offered at the kitchen and these may occasionally extend into the evening after the market's 9:00 PM closing time.

The number of employees at the market would increase by 1 to 6, spread throughout the day evening, based on varied use of the kitchen and related facilities. The applicants state that the number of customers is not expected to change, but that the purpose of the proposed expansion is to provide additional products on-site to help to maintain the current customer base for the market and to encourage them to spend more at this location. Vehicle trips would likely see a slight increase, which is estimated as follows:

- Small car or van deliveries, from 9-10 to 11-13 deliveries, per weekday.
- Large truck deliveries would not change in numbers or times.
- Employee daily round trips for the market and the kitchen would increase from the current 8 automobile trips and 3 bicycle trips to about 20 auto trips and the same number of bicycle trips.
- Market customer trips are expected to remain unchanged at about 176 per day.
- Red Fox deliveries, employee trips and customer trips will remain unchanged.

Kitchen range vents are proposed to be on the north side of the roof, directed away from adjacent residential properties.

Title 33, the Portland Zoning Code allows legal nonconforming uses to expand, through the addition of floor area and also allows the addition of other nonconforming uses, when these proposals are approved through a Nonconforming Situation Review. Therefore, the applicants are requesting approval to add a Manufacturing and Production Use, in addition to the existing Retail Uses and construction of a 2,506 square-foot building to serve the uses.

The proposal includes removal of 1,805 square feet of building area. The proposed 2,506 square-foot addition, for kitchen, meeting area and offices, plus a 72 square-foot trash enclosure would result in a net increase of 773 square feet in the existing 2,362 square feet of building coverage on the eastern, R2.5-zoned portion of the site. The regulations for the R2.5 zone limit the maximum allowed building coverage to 2,250 square feet for this portion of the site. Exceptions to this standard are approved through Adjustment Reviews, when all of the relevant approval criteria are met or if the criteria can be met through conditions of approval. Therefore the applicants are also requesting an Adjustment to Zoning Code Section 33.110.225, to increase the allowed building coverage in the R2.5 zoned portion of the site, from 2,250 square feet to 3,135 square feet.

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Code Sections 33.258.080 B (Nonconforming Situations) and 33.805.040 A- F (Adjustments).

## ANALYSIS

**Site and Vicinity:** The site includes two pieces of property, an 8,300 square-foot property that is located on the south side of North Sumner Street and a 670 square-foot parcel that connects from the Sumner property through to the west, to North Albina Avenue. The Albina Avenue property is only 10 feet wide and is 67 feet deep and is developed with a covered walkway and seating area that connects to an entrance on the west side of the building that is located on the Sumner Street property. The development on the Sumner Street portion of the site consists of the produce market, which has its entry from North Sumner and The Red Fox Bar, which occupies the southwestern portion of the same building, but is primarily accessed from the walkway from North Albina Avenue. The east portion of the site, where the addition is proposed to be located, is currently a service yard that is enclosed by a tall fence to screen the area.

The site abuts residential properties on all sides, except for the property lines in the northwest corner. On this side, the site abuts the south and the east edges of a small public Open Space-

zoned property that is situated on the southeast corner of the intersection of Sumner with North Albina Avenue. There are also other nonconforming retail businesses on the northeast side corner of this intersection. The remainder of the block is dedicated to a mixture of single and multi-dwelling residential uses. One block to the east, however, is the location of Jefferson High School, a four-year public school on a campus in the IR (Institutional Multi-Dwelling) zone. One block to the north is the beginning of a two-block wide commercial corridor that straddles North Albina Avenue. A similar, but smaller commercial corridor begins two blocks to the south. This southern area starts at North Webster Street and extends from the center line of Albina Avenue for one lot depth (about 100 feet) to the east. At the intersection with North Alberta Street, the commercial area widens to extend about 200 feet to the east on the north side of the street and to extend out about 100 feet on either side of Albina on the block south of Alberta Street.

**Zoning:** The site has split zoning. The western portion of the site (approximately one-third of the property) is zoned Residential 1,000 (R1, Medium Density Multi-Dwelling). The remaining portion of the site is zoned Residential 2,500 (R2.5, Attached Single-Dwelling).

*Staff Note:* The City of Portland, Bureau of Planning and Sustainability (BPS), is currently working on a project that is revising the zoning for many of the nonconforming sites in the City. In this project, this site is shown as proposed for rezoning to a new zoning designation, Mixed Commercial – Dispersed. Please contact BPS with any questions regarding this proposed change.

**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 **December 11, 2014**. Due to a printing error, a second copy of the notice was mailed on December 22, 2014. The following Bureaus have responded with no issues or concerns:

- Environmental Services stated there is no objection to the proposal. The response provided information about the existing sanitary infrastructure and noted requirements for stormwater management and pollution source control (Exhibit E-1).
- Transportation Engineering provided an analysis of the proposal and noted that no significant impacts are expected on the transportation system or on the availability of on-street parking (Exhibit E-2).
- Water Bureau stated there is no objection to the proposal. The response provided information on the existing water service and noted requirements for requests for any expansion of the service (Exhibit E-3).
- Fire Bureau stated that a building permit will be required and that all applicable Fire Code requirements will apply at the time of permit review and development (Exhibit E-4).
- Life Safety Plan Review Section of BDS notes that a building permit is required and provided general information on permit review requirements (Exhibit E-5).
- Parks-Forestry Division provided information on requirements for street trees and other pertinent tree preservation and planting requirements (Exhibit E-6).
- Site Development Section of BDS sent a response of “no concerns,” (included in Exhibit E-7).

**Neighborhood Review:** One written response was received from notified property owners in response to the proposal. The letter from this neighbor stated that she was opposed to the parking of delivery trucks on North Sumner Street and was concerned that the proposal would exacerbate a situation where the on-street parking situation is already difficult for the residents in the area. (Exhibit F-1).

*Staff Note:* The applicant was provided with a copy of this letter and sent a letter to staff (Exhibit G-2), stating that he had conferred with the concerned neighbor and her husband to discuss possible solutions to this problem. The letter stated that he had clarified the scope of the proposal, including a misunderstanding that the neighbors had thought it included a full restaurant, rather than just a kitchen for creating products that were to be taken away from the site. He stated in the letter that he was initiating a policy that would require employees and future kitchen tenants to park vehicles in a more acceptable location, rather than on the block of North Sumner, which is a Local Service Street.

## **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**

The applicant provided a copy of **95-107541 PR** (Zoning Confirmation Letter, part of Exhibit A-2), which was issued by the City of Portland, Bureau of Planning, on April 19, 1995, and confirmed that there is legal nonconforming status for Retail Sales and Service Uses for this site. The letter states that standard evidence was provided to show that the use was allowed when established, based on a building permit that was issued in 1958. The letter further states, “another building permit (#436872) dated September 6, 1967, for 5120 N. Albina which was part of the site identifies a nonconforming use. The permit also describes the building occupancy group as F2, which included retail and wholesale stores.” The letter also states that, prior to 1980, at least a portion of the site was zoned C2, General Commercial. The letter confirms that additional standard evidence was provided to show that a nonconforming retail use continued over time, from 1980 until the letter was issued, thus providing legal nonconforming status for Retail Sales and Service Uses for the site, to that date.

With the current application, standard evidence in the form of building permit history and business licenses, was provided that showed that retail uses had continued to legally occupy the site between 1995 and the present. Therefore, the legal nonconforming status for these retail uses is documented through to the time of this current review.

**Nonconforming Use Status and Purposes for Review Requirements:** This proposal is to expand the development for the nonconforming use to create a commercial kitchen, and also to add another nonconforming use (Manufacturing and Production) to the site, in the nature of small enterprises that would lease the kitchen to create food items that would be sold on-site in the market, and also taken to other off-site clients of these food vendors. Because the proposal includes an expansion of the development on the site that is part of the Retail Sales and Service use and the addition of another use that is prohibited in the R1 and R2.5 zones, it requires approval through a Nonconforming Situation Review.

#### **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:** The proposal includes maintaining the two retail uses that currently occupy this site, the Cherry Sprout Produce Market and the Red Fox Bar. In addition, a commercial kitchen would be added to the market so that “grab and go” take-out products can be created onsite, in what the applicant states is an effort to retain the customer base of the market, against other retail competitors who are moving into the area and offering these sorts of items to the public.

The Red Fox Bar is located in the southwestern portion of the existing building on the site. The main entrance to the bar is on the west side of the building and is reached by use of a covered walkway that connects to North Albina Avenue through the ten-foot-wide property that abuts the south side of the adjacent public open space area. The Cherry Sprout Market, is the second Retail Sales and Service Use that occupies the site and it is located in the northern and northwestern portion of the building, with an entrance that fronts onto North Sumner Street.

Hours of operation: The Red Fox Bar currently operates seven days per week, with hours on Sundays from 10 AM to 3 PM and other days of the week, from 3 PM to 1:00 or 1:30 AM. The Cherry Sprout Market is open Monday through Saturday, from 9:00 AM to 9:00 PM and Sunday, from 10:00 AM to 9:00 PM. Hours of operation are not proposed to change for either establishment, but the tenants who are the prospective kitchen lessees will be allowed access to the commercial kitchen each weekday from 7:00 AM to 11:00 PM and 10:00 AM until 11:00 PM on weekends. The use of the facility by the prospective tenants during these extended hours will not involve large numbers of persons or noticeable levels of activity, because it will usually be only the employees or lessees who are there and not the general public. This is expected to be no more than six persons, and usually less, so there is not expected to be any increase in impacts from this aspect of the proposal. The only time that the hours for the public would be extended is when the occasional offering of cooking classes extend beyond the 9:00 PM closing time for the market. As the kitchen use is proposed to extend only until 11:00 PM and nonconforming uses may not be extended later than that time, this would create an absolute curfew, even for these occasional activities that would occur later in the evening.

Vehicle trips to the site and impact on surrounding on-street parking: The applicant provided the following information regarding the current number of vehicle trips to and from the site:

Red Fox Bar has two daily employees and averages approximately 75 customers per day. Most deliveries are shared with the market but the bar has an additional two to three deliveries per week. The estimated daily round trips for the bar is 46. This is based on an estimation by the bar managers that 30% of their customers drive and the remainder walk or ride bicycles.

Cherry Sprout Market has seven daily employees and averages approximately 350 customers per day at their highest season (May through July), and about 215 customers per day at their lowest season (January). Deliveries to the market generally are nine to ten times per day from small cars and vans (about 70 per week); eight times per week from 20-foot box trucks, and two times per week from semi-trucks.

The prospective tenants for the kitchen are expected to add one to six daily on-site employees that will have hours spread throughout the day. There are also expected to be times during regular business hours when the kitchen is not being used.

The additional trips that would be generated from this small increase in employees and deliveries are not expected to be significant enough to impact the capacity of the adjacent rights-of-way.

Parking along the street frontage on North Sumner Street is generally heavily used but each usage is characteristically of short duration. Some of the spaces on the street are already designated with 30 minute limits. This street does not extend further to the east, beyond this block, because it butts into the Jefferson High School campus at the intersection with North Kerby Avenue. Parking spaces are more frequently available along the street frontages on North Albina Avenue, which is a through street with greater dispersal of the vehicles and parking demands. A condition of approval will require the applicant to follow the effort that he volunteered to address the neighbors concerns about parking, which is to direct employees and the lessees of the new commercial kitchen to park along that street, rather than occupying spaces on North Sumner Street.

The Portland Bureau of Transportation (PBOT) noted in their response for this proposal:

Additional information supplied by the applicant includes the following:

- Tenant (kitchen users) agreements will be long term.
- The owner intends on limiting the total number of tenant to 4 and that each tenant can utilize the facility for 30 hrs/week at varying times (estimate).
- There will be a limit of 6 people at any time in the kitchen.
- The owner will have a kitchen manager to ensure proper use of the kitchen, oversee the users and implement the leases/limitations.
- The applicant estimates that 1-3 van deliveries/day during the week will occur in relation to the kitchen use.

The above referenced information is valuable to PBOT given that there is no other resource to refer to for the proposed kitchen use on the site. Typically, PBOT will refer to the Institute of Transportation Engineers Trip Generation Manual (ITE Manual) when researching the expected number of vehicles trips associated with any land use proposal. In this instance there is no relative use category (or similar category) and therefore no trip generation data available in the ITE Manual for reference in relation to the proposed kitchen use.

In the course of reviewing land use proposals with the specific transportation-related evaluation factor concerning vehicle trips, the intent is to determine whether or not the additional vehicle trips associated with a new use will adversely impact the performance of area intersections. The City's performance measures related to intersection operations is based on levels of service. Given the information cited above and provided by the applicant, no more than 6 individuals are anticipated to utilize the proposed kitchen facility at one time. In the worst case scenario, all 6 individuals would arrive at the site in single occupancy vehicles during either the traditional AM peak period of travel (7:00-9:00 AM) or PM period of travel (4:00-6:00 PM). In this scenario, the 6 additional vehicle trips would be traveling through area intersections at the same time during the peak periods. In this case PBOT would consider the intersections that would potentially experience the greatest impacts as those at N Sumner/N Albina, N Albina/N Alberta (south of the site) and N Albina/N Killingsworth (north of the site). PBOT has no evidence of any of these nearby intersections operating under capacity. Further, it is extremely unlikely that in the worst case scenario, that the 6 additional vehicle trips would result in the degradation of any of the intersections to below acceptable levels of service. It should also be noted that PBOT does not expect that the maximum number of users of the proposed kitchen will arrive at the site at the same time during either of the

traditional peak hour periods. In conclusion, there will be a minimal increase in trip generation associated with the kitchen use; it is a new use on the subject site that does not currently exist. The minimal increase in trip generation will not result in detrimental impacts to area intersections, which is the impact potentially attributed to increased trip generation in relation to new uses.

With regard to the second transportation-related evaluation factors, PBOT is also not expecting an adverse impact from the proposed kitchen use to on-street parking. Additional information supplied by the applicant includes the mode split for means of travel by current employees of the site's produce market and bar. The majority of these employees arrive to the site by means other than vehicles (most walk, bike or use nearby transit). The existing uses on the site therefore, do not contribute to a significant adverse impact to on-street parking. PBOT acknowledges that students and/or faculty of the nearby Jefferson High School campus may add to the demand for on-street parking along N Sumner. However, given that there are numerous other streets that the school has direct frontage along (N Kerby, N Alberta and N Commercial) and that there are other nearby street on either side of the campus that offer additional on-street parking opportunities, that a focused or specific adverse impact to on-street parking along N Sumner is not attributed to the nearby high school.

Referring to the worst-case scenario identified above in relation to the trip generation assessment, PBOT will consider the potential impact to on-street parking *if* all 6 (maximum number of users at one time) users of the kitchen arrived to the site via single occupancy vehicles. The predominant development along N Sumner (between N Albina and N Kerby, the subject block) is residential in nature. The recognized highest demand period for weekday parking (on-street or off-street) in relation to residential development is during the early morning (6:00 AM-8:00 AM), prior to conventional work hours or late in the evening and into early morning (10:00 PM to 12:00 AM) when residents are expected to be home. The applicant has indicated that the proposed kitchen hours during the week will be from 7:00 AM to 11:00 PM. While there may be a slight overlap between the traditional high demand for (residential) parking needs with the proposed operational hours of the new kitchen, there appears to be sufficient on-street parking supply along N Sumner to accommodate even the worst case scenario increase in demand associated with the new kitchen. Nonetheless, as with the trip generation assessment noted above, PBOT does not expect that all (maximum) 6 kitchen users will be arriving at the site at the same time and during the morning peak period for parking. Kitchen users will more than likely be arriving throughout the day, at various times of the day when more on-street parking supply will be more readily available. With regard to the expected deliveries associated with the new kitchen use, the applicant has indicated that this activity will occur on-site, as accessed by an existing driveway along N Sumner. Even if the new loading activities were to occur along the street, said activities typically happen for a short duration of time, minimizing impacts to longer term parking needs. In conclusion, while there will be an increase in on-street parking demand associated with the proposed use, PBOT does not expect that there will be a detrimental impact to the on-street parking supply in the area.

It must also be noted that additional on-street parking opportunities will result from the proposed project. In association with the expected Building Permit for the proposed construction on the subject site, the existing lengthy curb cut/driveway that spans most of the site's frontage will be closed. Accordingly, with the closure of this driveway and the construction of a new curb (replacing the current curb cut), additional on-street parking opportunities will become available. The existing narrower driveway at the east end of the subject site that serves as access to an on-site loading area will remain. Parking opportunities appear to be available in the general area to accommodate the existing uses on the site, as well as for the proposed kitchen use on the subject site.

Noise, vibration, dust, odor, fumes, glare, and smoke: There will not be a change in these factors, due to approval of this proposal. The activities of the existing businesses do not generate these types of impacts. The proposed Manufacturing and Production Use would not generate noise, vibration, dust, glare or smoke. If the proposed use generates any fumes, these would be from the commercial cooking equipment which will be required, through a condition of approval, to be vented toward the interior of the property and away from adjacent residences. If there are any odors from these vented fumes they would also be directed away from the residential properties and, further, the odors would be expected to be pleasant smells of cooking food that would not create negative impacts.

Potential for increased litter; and the amount, location, and nature of any outside displays, storage, or activities: The businesses currently maintain the site to be free of litter and will continue this practice. There are no outdoor displays, storage or activities that are currently occurring or that are proposed

Summary:

The approval criterion requires that there will be no net increase in overall impacts from the proposed new use(s) over the impacts felt from the previous use. This proposal calls for the addition of a new nonconforming Manufacturing and Production Use, which would work in conjunction with the existing produce market. A fairly large addition would be constructed on the site to accommodate this use, in addition to a portion of the activities of the existing use. The proposal does not include any changes in public hours for the facilities and the expected increase in the amount of traffic will be very minimal. A condition of approval will require the applicant to instruct employees and users of the kitchen to park along North Albina Avenue, rather than along North Sumner Street, which should ensure that there is no increase in impacts on the on-street parking for the adjacent residents. No increase is expected in other impacts because there will be no additional noise, vibrations, dust, glare or smoke. Any increase in fumes from cooking will be mitigated by a condition that requires the appropriate direction for venting and this should also dispel any odors which are, regardless, not expected to be unpleasant. No additional litter would be generated by this proposal and any there is no proposal for exterior storage or display or activities. There is no proposal for new signs and any future request for additional signs will be subject to the City's sign regulations in Title 32. The analysis that has been conducted is specific to the proposal to add the commercial kitchen. Other uses in the Manufacturing and Production Use category could have greater impacts so approval of this nonconforming use would be only for this proposed use and not for all of the uses in this use category. Therefore, with the previously mentioned conditions to appropriately direct any fumes and odors from the proposed kitchen, to limit impacts on on-street parking and a condition that limits Manufacturing and Production use to the proposed commercial kitchen, there are not expected to be any detrimental impacts from the proposed expansion of the development for the nonconforming use on this site and 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:** The proposal includes a major addition to the existing structure. The building includes several architectural features that are proposed to be compatible with the adjacent residential structures, including an overall building scale that is compatible with residential structures and a gable roof with residentially styled windows. In addition, the proposed design was modified at the suggestion of BDS staff



so that the building is one and one-half stories tall, with dormers providing additional space on the second level, rather than being a full two stories as originally proposed.

The site has not and still does not include a parking area. There is nothing proposed that would impact the privacy of abutting residential uses.

No lighting is proposed beyond that which might be needed for safety and security. Any lighting such as this would have to meet the requirements of offsite impacts (Zoning Code Section 33.252.080), which will also ensure that there are no detrimental impacts on abutting residents. Signs that are placed on the site will be subject to the requirements of Title 32, the Portland Sign Code, which are intended to ensure that signs do not impact safety or lead to visual clutter.

Based on these findings, the proposed expansion of the development for this nonconforming use 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.

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

#### **33.805.040 Adjustment Approval Criteria**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated 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 approval of an Adjustment to Zoning Code Section 33.110.225, Building Coverage, to increase the maximum allowed building coverage, in the R2.5-zoned portion of the site, from 2,250 square feet 3,135 square feet.

Building coverage is the area that is covered by buildings or other roofed structures. A roofed structure includes any structure more than 6 feet above grade at any point, and that provides an impervious cover over what is below. Building coverage also includes uncovered horizontal structures such as decks, stairways and entry bridges that are more than 6 feet above grade. Eaves are not included in building coverage.

The building coverage standards, together with the height and setback standards control the overall bulk of structures. They are intended to assure that taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses. Additionally, the standards help define the character of the different zones by limiting the amount of buildings allowed on a site.

The proposed building addition will increase building coverage beyond the allowed maximum for the residential development standards, but the addition will be located in the area that is now devoted to use as a service yard that is enclosed by a tall fence. The 1.5-story addition will be lower in height than some of the houses in the immediate area. The

appearance of the building addition will be more attractive than the development that currently exists on this portion of the site and will not be out of keeping with a commercial use which is what has existed on this site for many decades, at least since a permit was issued for a building on the site in 1958. The addition has been crafted to minimize any impacts on the adjacent residential properties and the overall appearance of the structure, with the glazing creating a lighter appearance and the dormers lowering the profile of the building. Due to these elements, the addition will not give a sense of bulk that should overwhelm the houses on those lots, to the south and the east of the site. Based on these considerations, the proposal is equally meeting the purpose for this standard 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:** Approval of the request to increase the allowed building coverage in the R2.5 portion of the site will not significantly detract from the appearance or the livability of the residential area.

The portion of the site where the addition is proposed to be located has been enclosed with a tall wooden fence that screens the service yard for the market. The building addition will actually enhance the appearance of this portion of the site by offering a view of an architecturally interesting structure that is in keeping with the residential scale of the neighborhood. Potential impacts to livability do not seem to result from the bulk of the structure, which has been mitigated by lowering the height of the addition, through the use of dormers. Other potential impacts from the general project have also been mitigated, by directing the vents for the kitchen exhaust toward the interior of the site and away from the closest neighbors. Based on these features of the proposal, no potential impacts on livability or appearance, based on the requested increase in the allowed building coverage, are anticipated. 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:** Only one adjustment is being requested. Therefore, this criterion does not apply.

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

**Findings:** City-designated scenic resources are shown on the City's zoning maps by an "s" or Scenic Overlay Zone. City-designated historic resources are shown on the City's zoning maps, either as an adopted landmark, or as a site that is located within the boundaries of a Historic Conservation or Historic Design District. 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.

**Findings:** Based on the architectural features of the proposed addition, as discussed above, no potential impacts from approval of the requested Adjustment have been identified by staff. Therefore, no additional mitigation is needed and 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:** Environmental zones are designated with either a lower case "c," for the Environmental Conservation Overlay, or "p," for the Environmental Protection Overlay. The site is not located 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.

### **TITLE 17 REQUIREMENTS (this is provided for informational purposes, only)**

The applicant is advised that in association with the Building Permit review for the proposed improvements to the existing building, that the existing dilapidated driveway (at the east end of the N Sumner frontage) that will serve as access for deliveries in association with the new kitchen use, will need to be re-constructed to current City standards. Additionally, the existing and lengthier curb cut/driveway that spans across the majority of the subject site will be required to be closed. Since this driveway does not serve to access a legal parking or maneuvering area on the subject site, City Title 17 does not permit the curb cut/driveway to remain. A Minor Improvement Permit must be obtained from PBOT for the required driveway improvements/closure.

## **CONCLUSIONS**

The applicant has provided appropriate documentation to show that the existing Retail Sales and Service Uses on the site were allowed when established and that these uses have continued over time, so they have legal nonconforming status. All of the relevant approval criteria for the Nonconforming Situation Review to add this specific proposed Manufacturing and Production Use to the site and to construct an addition to house the proposed commercial kitchen for the uses can be met, provided that conditions of approval are included that limit the allowed new use to the proposed kitchen, limit impacts for on-street parking on North Sumner Street and require the kitchen vents to direct fumes and odors away from the adjacent residences. All of the relevant approval criteria have also been met for the requested Adjustment to Zoning Code Section 33.110.225, to increase the allowed maximum building coverage in the R2.5 zoned portion of the site, from 2,250 square feet to 3,315 square feet. In order to ensure that the residential character of the area is not impacted by the scale and appearance of the proposed addition, these approvals are subject to general compliance with approved site plan and elevation drawings.

## **ADMINISTRATIVE DECISION**

Nonconforming rights exist on this site for uses in Retail Sales and Service Use category. Approval of a Nonconforming Situation Review is given here to add a commercial kitchen as a Manufacturing and Production Use, in addition to the existing Retail Uses on this site and approval of the construction of a 2,506 square-foot building addition to serve the uses.

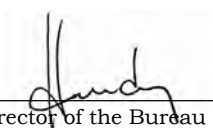
Approval of an Adjustment to Zoning Code Section 33.110.225, to increase the allowed building coverage in the R2.5 zoned portion of the site, from 2,250 square feet to 3,135 square feet.

Approvals are subject to general compliance with the approved site plans and elevation drawings, Exhibits C-1 through C-7, signed and dated January 30, 2015, and are also 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 14-222120 NU AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The approval of the addition of a Manufacturing and Production Use is limited to this proposal for a commercial kitchen and does not extend to other uses that are included in the use category in Zoning Code Section 33.920.310.

- C. The applicant must direct employees and tenant/lessees of the commercial kitchen to park their vehicles along the frontages on North Albina Avenue, rather than parking along the frontage on North Sumner Street or other local service streets in the surrounding residential area.
- D. Venting for the kitchen is to be situated so that fumes and odors are directed away from the adjacent residences.

**Staff Planner: Kathleen Stokes**

**Decision rendered by:**  **on January 30, 2015**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: February 3, 2015**

**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 October 7, 2014, and was determined to be complete on December 9, 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 October 7, 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.

**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 February 17, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> 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 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 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 **February 18, 2015– (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:

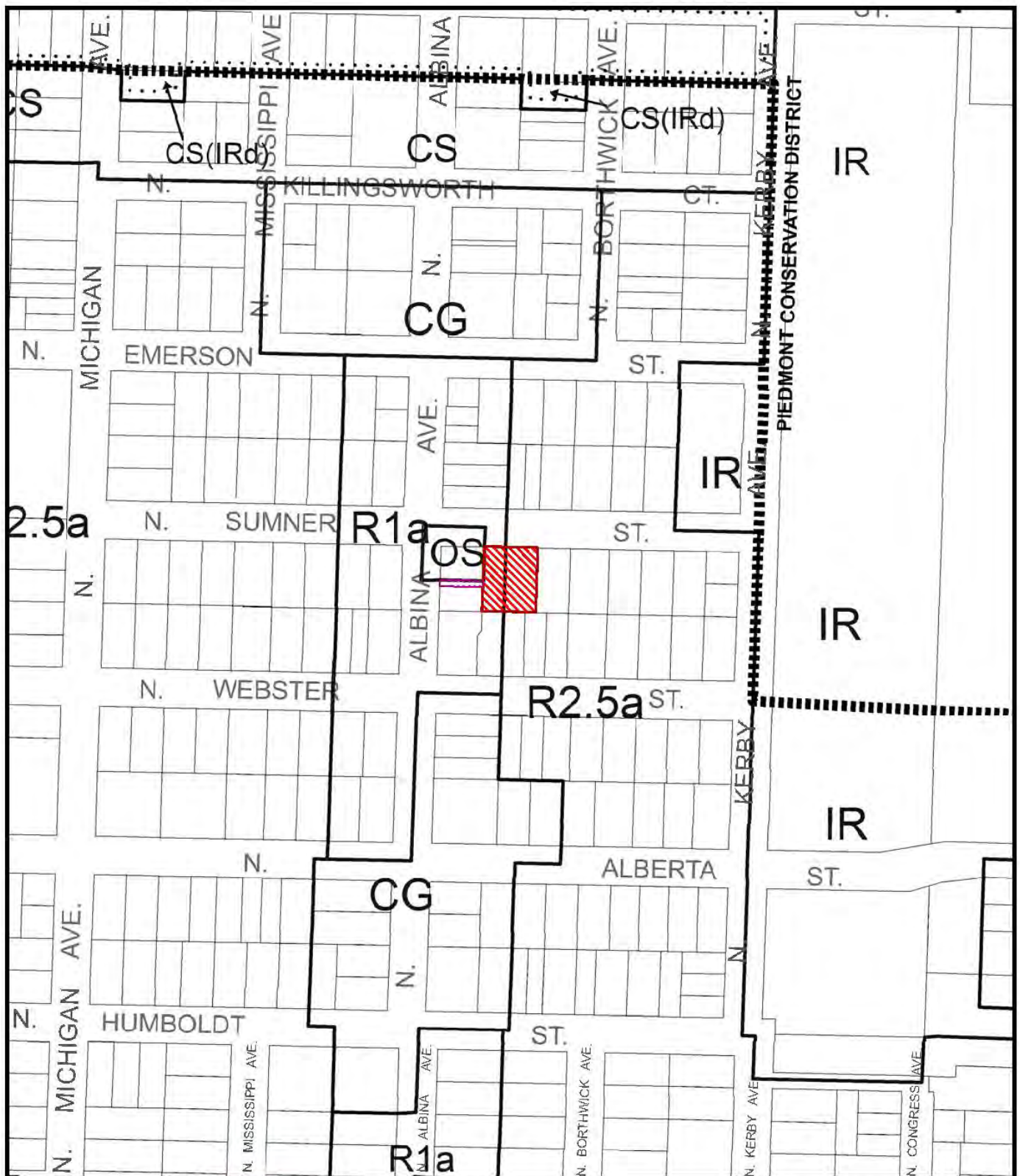
- All conditions imposed herein;

- 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 Statement
  - 1. Application and original plans and narrative
  - 2. Information provided to document legal nonconforming use status
  - 3. Supplemental information, dated October 29, 2014
  - 4. Supplemental information, dated November 11, 2014
  - 5. Supplemental information, dated November 16, 2014
  - 6. Supplemental information, dated December 4, 2014
  - 7. Supplemental information, dated January 27, 2015
  - 8. Supplemental information (updated site plan), dated January 28, 2015
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. General site plan – whole site (attached)
  - 2. Detail proposed site plan and ground floor plan (attached)
  - 3. Second level floor plan (attached)
  - 4. Existing building coverage in R2.5 zone (attached)
  - 5. Proposed building coverage in R2.5 zone (attached)
  - 6. Elevation drawings (east, north and south, attached)
  - 7. Elevation drawings (trash enclosure , attached)
- 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. Bureau of Parks, Forestry Division
- F. Correspondence:
  - 1. Edna Roads
- G. Other: (none)
  - 1. Letter from Kathleen Stokes to Brian Murtagh
  - 2. Letter from property owner, Michael Callahan, in response to issue raised by neighbor

**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

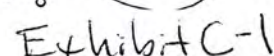


Site  
Also Owned

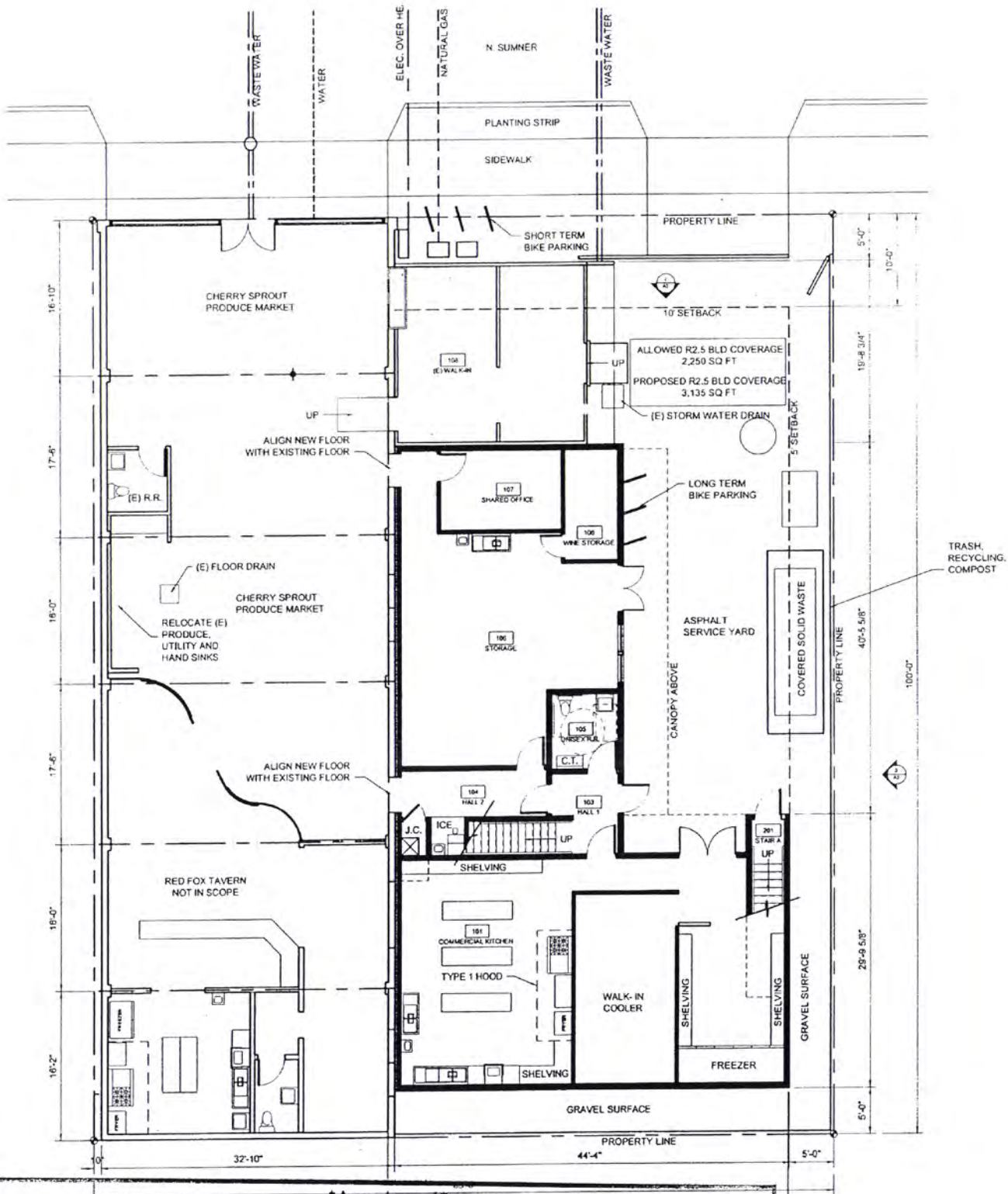


File No. LU 14-222120 NU,AD  
 1/4 Section 2529  
 Scale 1 inch = 200 feet  
 State\_Id 1N1E22BA 11000  
 Exhibit B (Oct 10, 2014)









\*Approved\*

City of Portland - Bureau of Development Services

Planner Kathleen A. Stokes Date January 30, 2015

This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

UPDATED SITE PLAN  
Scale: 3/32" = 1'-0"



Site plan &  
ground level  
floor plan

studio  
COOP

|       |                                    |       |         |
|-------|------------------------------------|-------|---------|
| sheet | 722 N. Sumner Ave. Portland Oregon | DATE  | 12.9.14 |
| 4     | Scale: 3/32" = 1'-0"               | DRAWN | BTM     |

studio coop  
architecture, llc  
5901 n borthwick  
portland or 97217  
503.962.9194

LU14-222120 NU AD

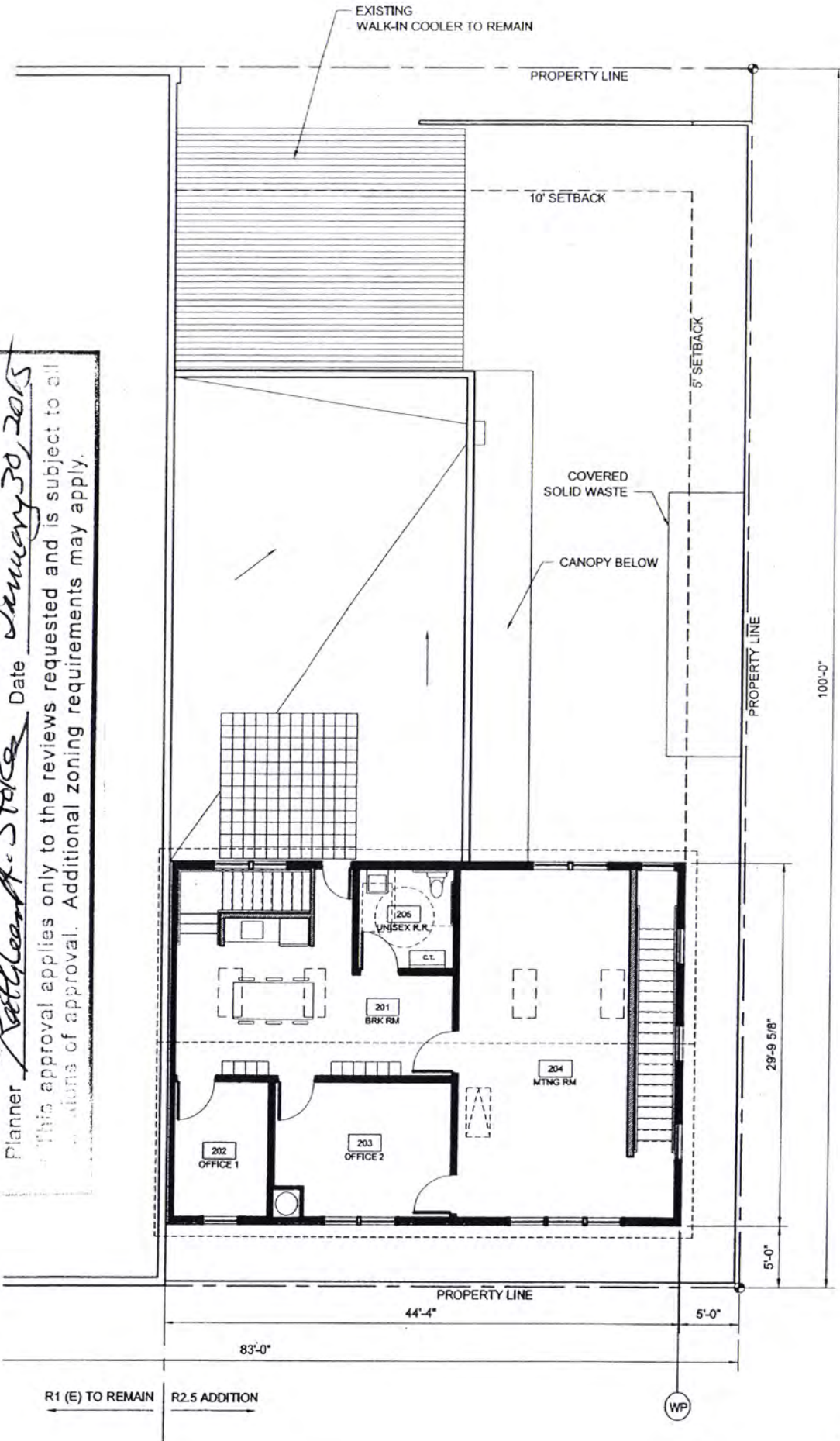
Exhibit C-2

\*Approved\*

City of Portland - Bureau of Development Services

Planner Kathleen A. Stokes Date January 30, 2015

This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



studio  
COOP

studio coop  
architecture, llc  
5901 n borthwick  
portland or 97217  
503.962.9194

722 N SUMNER ST.  
PORTLAND OR, 97217

|       |             |
|-------|-------------|
| SET   | LUR SET     |
| DATE  | 10.7.2014   |
| JOB#  | 722NS-14102 |
| DRAWN | BTM         |
| SHEET | A2          |

2nd level

LU 14-222120NU,AD Exhibit C-3



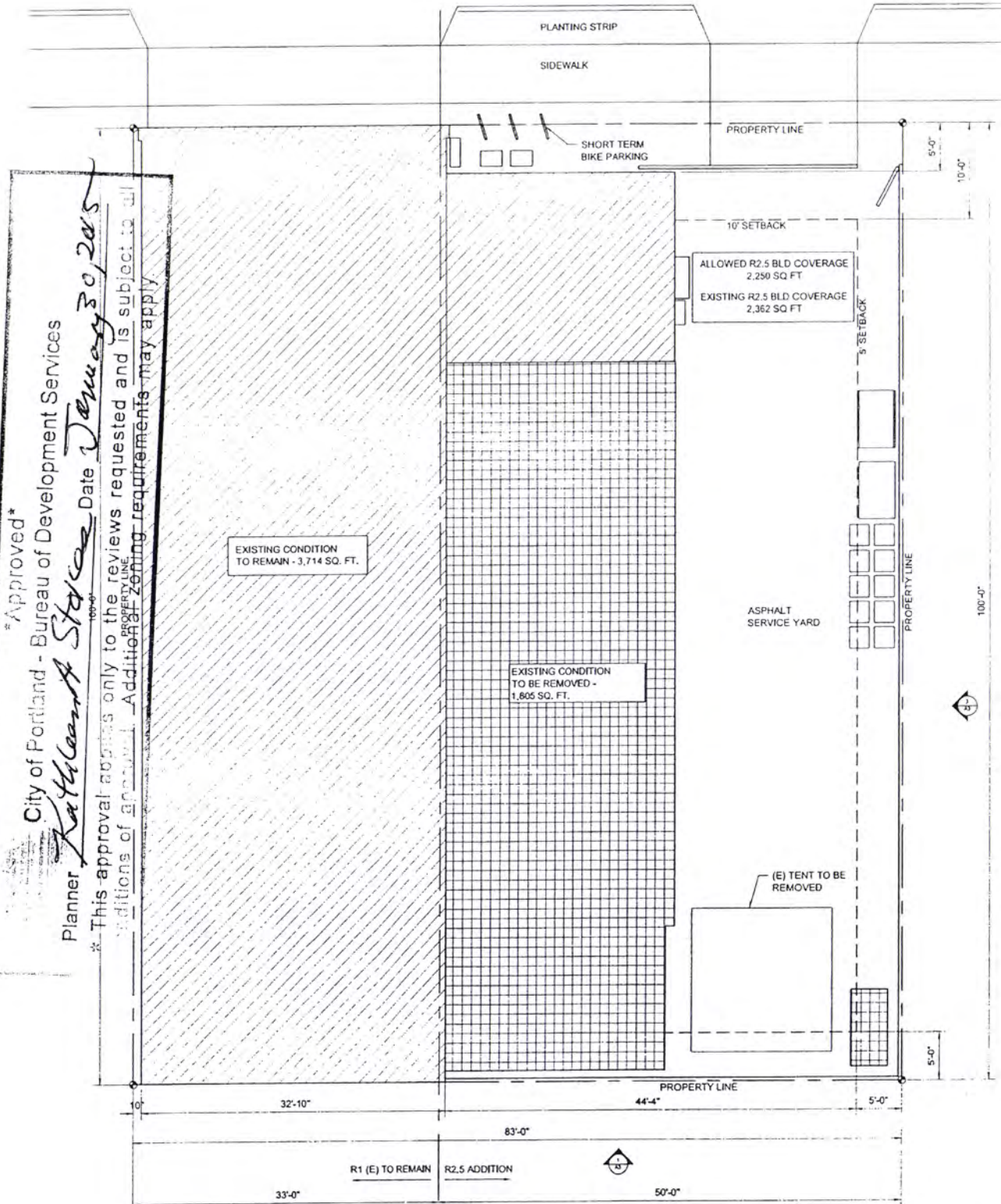
\* Approved \*

City of Portland - Bureau of Development Services

Planner *Kathleen A. Stiles*

Date *January 30, 2015*

\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



BUILDING COVERAGE DIAGRAM OF EXISTING CONDITION TO BE REMOVED  
Scale 3/32" = 1'-0"

LU14-222120 NU AD

|       |                                    |
|-------|------------------------------------|
| sheet | 722 N. Sumner Ave. Portland Oregon |
| 1     | Scale: 3/32" = 1'-0"               |

|       |         |
|-------|---------|
| DATE  | 12.3.14 |
| DRAWN | BTM     |

*Existing Bldg Cvg.*

studio coop  
architecture, llc  
5901 n borthwick  
portland or 97217  
503.962.9194

LU14-222120 NU AD Exhibit C-4

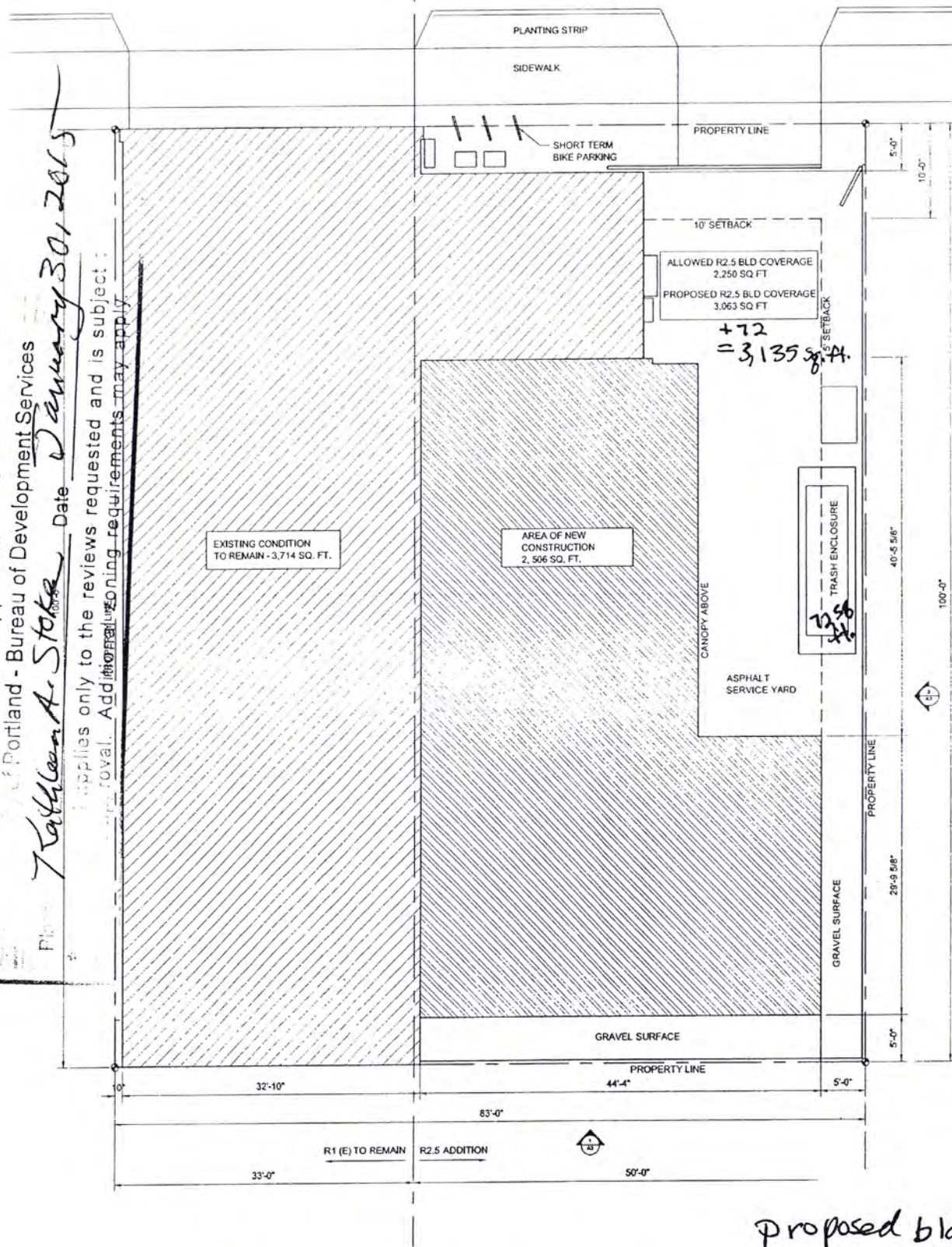


\*Approved\*

City of Portland - Bureau of Development Services

File # 722 N. Sumner Ave. Date January 30, 2015

Applies only to the reviews requested and is subject to final approval. Additional zoning requirements may apply.



proposed bldg. cov.

BUILDING COVERAGE DIAGRAM OF EXISTING CONDITION AND ADDITION  
 Scale: 3/32" = 1'-0"  
 Total bldg cov: 3714  
 $+ 3135$   
**6,849 SQ. FT.**



|          |                                    |       |         |
|----------|------------------------------------|-------|---------|
| sheet    | 722 N. Sumner Ave. Portland Oregon | DATE  | 12.3.14 |
| <b>2</b> | Scale: 3/32" = 1'-0"               | DRAWN | BTM     |

studio coop  
 architecture, llc  
 5901 n borthwick  
 portland or 97217  
 503.962.9194


LU14-222120 NU AD Exhibit C-5



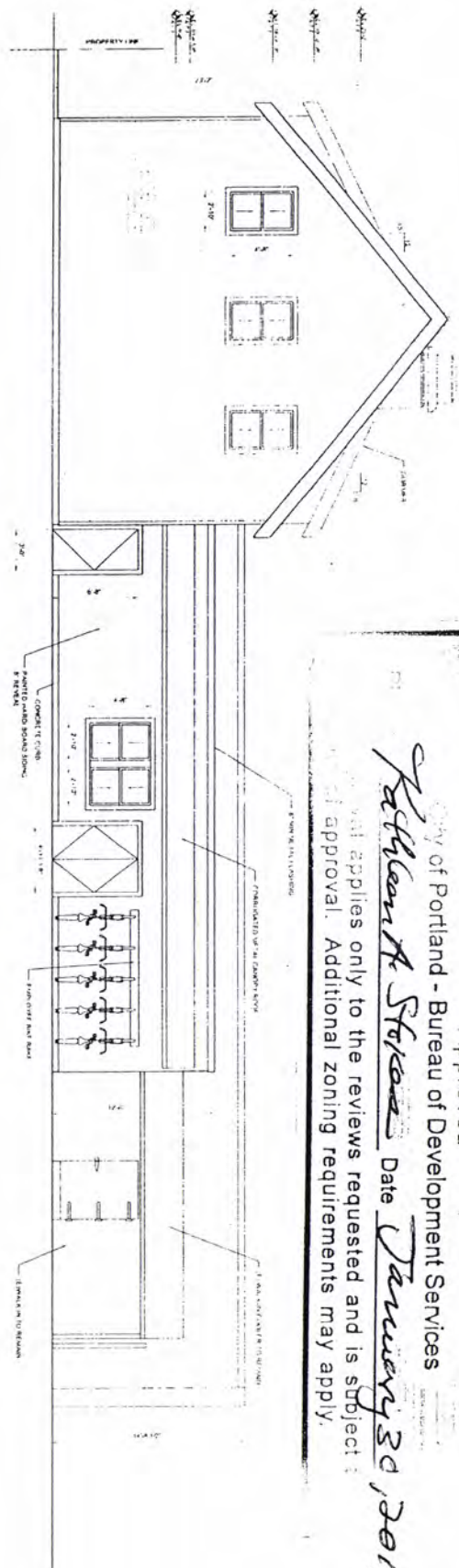
of Portland - Bureau of Development Services

approval. Additional zoning requirements may apply.

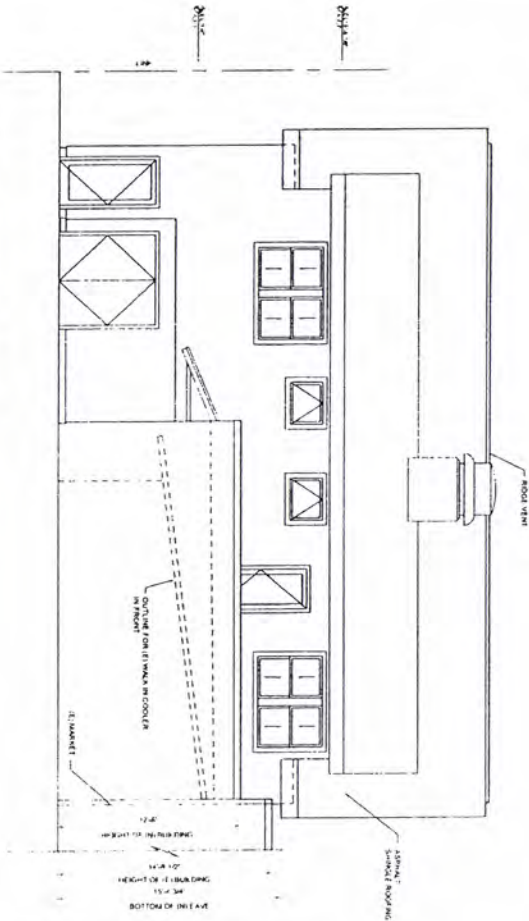
503.962 9194



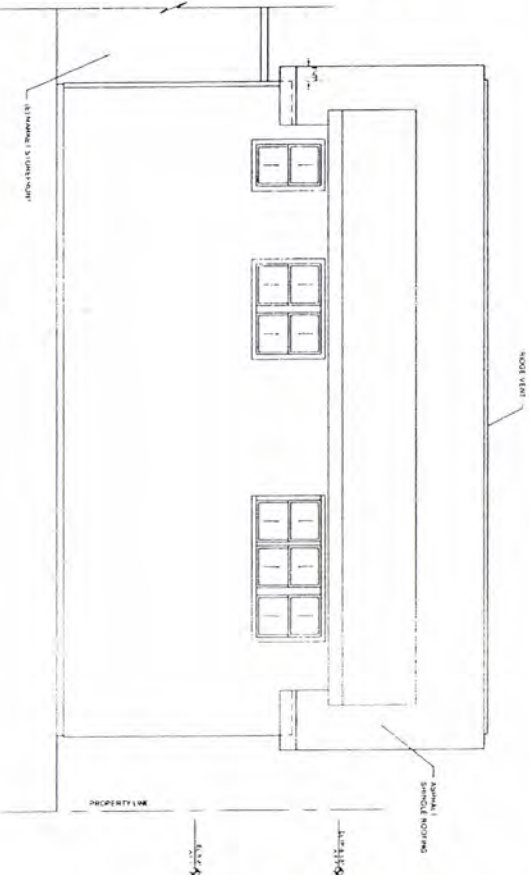
APPENDIX



PROPOSED EAS  
scale 1/8" = 1'-0"



PROPOSED NO  
scale 1/8" = 1'-0"



PROPOSED SOLUTION  
scale 1/8" = 1'-0"

722 N SUMNER ST.  
PORTLAND OR, 97217

LUR SET

DATE  
REV 11.21.14

722NS-14102

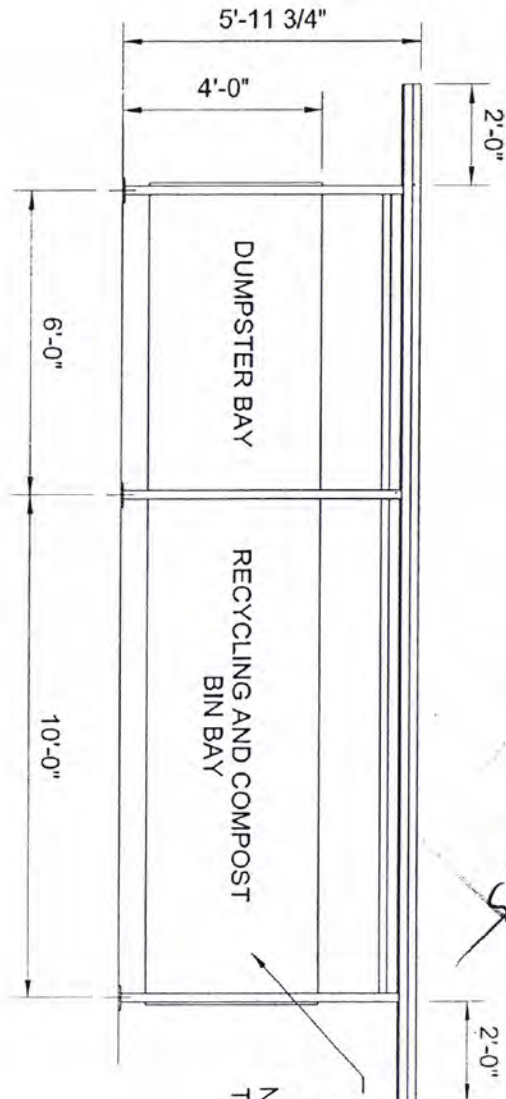
DRAWN  
BTM

SHEET

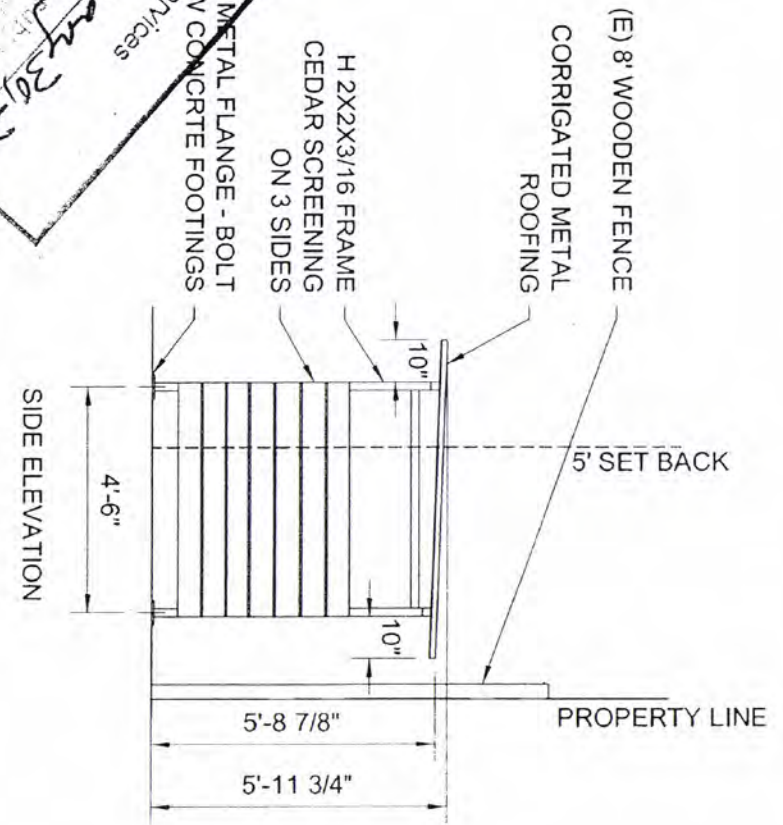
A3

LU/4-222120 NVAD

City of Portland - Bureau of Development  
*Approved*  
*William A. Stiles*  
 Date *January 30, 2015*  
 Approval applies only to the reviews requested and is not a guarantee of approval. Additional zoning requirements may apply.



FRONT ELEVATION

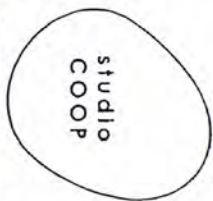


SIDE ELEVATION

NOTE: SLOPE ASPHALT BELOW COVERING TO DRAIN - CONNECT DRAIN TO WASTE LINE

CEDAR SCREENING BEYOND FRONT FACE IS OPEN

A TRASH ENCLOSURE ELEVATIONS  
 scale 1/4" = 1'-0"



studio coop  
 architecture, llc  
 5901 n borhwick  
 portland or 97217  
 503.962.9194

Cherry Sprout Produce Market  
 722 N Sumner St. Portland Oregon

|       |         |
|-------|---------|
| DATE  | 12.3.14 |
| DRAWN | BTM     |

2014-222120 NU AD Exhibit C-7