



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: September 30, 2008
To: Interested Person
From: Nan Stark, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-112244 NE

GENERAL INFORMATION

Applicant: Robert E Granger
5940 NE 45th Ave
Portland, OR 97218-1426

Site Address: 5940 NE 45TH AVE

Legal Description: S 3' OF W 100' OF LOT 1 BLOCK 2 N 100' OF LOT 4 BLOCK 2, ENGLEWOOD PK

Tax Account No.: R252800460

State ID No.: 1N2E18CC 01500

Quarter Section: 2435

Neighborhood: Cully, contact Steve Yett at 503-282-3251.

Business District: None

District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

Zoning: R10, Single-Dwelling Residential 10,000 with 'h' Aircraft Landing overlay zone

Case Type: NE, Nonconforming Status Review

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

PROPOSAL:

The applicant seeks a Nonconforming Status Review in order to determine that the existing structures located at 5940 NE 45th Avenue have legal nonconforming status for an office use. To establish legal nonconforming rights, the applicant must demonstrate that the activity and development were allowed when established, and have continued over time without a lapse exceeding three consecutive years. The required approval criteria are found in Zoning Code Section 33.258.075 D.

In support of the request, the applicant has submitted information to document that the property has legally been in light industrial or commercial use since at least 1964, and has been maintained on the property over time. Documentation submitted includes past property tax records, utility bills, statements from neighbors, and historical photographs. With documentation of past office use as a legally permitted use on the site, the applicant would potentially use the space for offices.

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 33.258.075 D., Determination of Legal Nonconforming Status Review.

ANALYSIS

Site and Vicinity: The site is 14,300 square-feet in area, with 103 feet of frontage on NE 45th Avenue. The structure occupying the site is a 1½-story building that is approximately 40 feet wide and 70 feet long, with large windows facing the street. The gable end of the structure faces the street, with a large window in the gable wall of the partial second story. According to County records, the building was built in 1915. A detached two-car garage is at the rear corner of the lot.

Exterior development on the site is sparse. There is a small asphalted area in front of the structure parallel to the street, which can likely accommodate two vehicles. There is minimal landscaping around the site, with a grass lawn around the structure. The applicant owns the abutting vacant lot to the north, which is 10,200 square-feet in area. He intends to develop it in the future with a house. A large mature deciduous tree is in the middle of that lot.

The site is on the block of NE 45th Avenue bounded by Simpson Street to the south and Ainsworth Street to the north. Two houses face 45th Avenue across the street from the site. The houses on the corner lots are oriented primarily to the cross streets, resulting in only three developed lots that are on this portion of NE 45th Avenue. All of the lots on the block are fairly large, giving a low-density character to the area. The original lots of about one acre in size were developed in the first two decades of the 20th century, and the tax maps indicate that those were divided over time into the current platting, with houses built in subsequent decades, including recent infill development in the vicinity.

NE 45th Avenue is a graveled, unimproved street which slopes downward from north to south. The nearest collector streets are 42nd Avenue, three blocks to the west; Killingsworth Street, three blocks to the south; and Columbia Blvd, three blocks to the north. With the large lot pattern and unimproved street that serves only the most local traffic, the site has a somewhat insular quality in a lower-density area, even though the location is urban.

Zoning: The site is zoned R10h. The R10 zone is a lower-density single-dwelling zone, which corresponds to the designation of Low Density Single-Dwelling zone in the Comprehensive Plan. This zone is typically found in outlying areas of the city that were originally platted as larger tax lots, and in closer in areas such as this site where the City's public infrastructure has not been improved to full service levels due to the lower density development pattern. The allowed density in this zone is just over four lots per acre. The site and area has a Comprehensive Plan map designation of R5 (shown in parentheses on the zoning maps), which corresponds to the High Density Single-dwelling zone, allowing a maximum density of eight lots per acre.

The 'h' overlay indicates that the site is in the Aircraft Landing overlay zone, which limits height relative to proximity to Portland International Airport; this overlay has no impact on this proposal.

Land Use History: City records indicate that the site and surrounding vicinity between NE 42nd and 48th Avenue north of Sumner Street and up to an area approximately ¼ mile north of the Columbia slough was annexed to the City in July, 1966.

Summary of Applicant's Statement: The applicant is currently using the site as an office for his consulting business with two other people. His intent is to utilize this site as a localized community/neighborhood gathering space for various uses, including office uses by area residents, meetings, and potentially other uses such as a commercial kitchen, shared garden, studio space, and gatherings for neighbors. Through this review, the applicant has learned that such use of the site would require a Conditional Use review. Consequently, he has scaled back the project and wishes to be able to use the site as offices for his business and to allow the use

of two additional office or studio spaces in the building, ideally to be rented to residents of the immediate vicinity who can walk to the site.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **May 15, 2008**. The following Bureaus have responded with no issues or concerns:

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

The Bureau of Environmental Services responded with the following comment: BES has no objections to the proposal because it appears no new/redeveloped impervious area will be created. Any new or redeveloped impervious area must meet the requirements of the current City of Portland’s Stormwater Management Manual at the time of building plan review. Further development of the property would be subject to the Bureau of Environmental Services’ standards and requirements during the building plan review process.

The Bureau of Transportation Engineering responded with the following comment: At this location, NE 45th Avenue is only a 30-ft wide right-of-way improved with a gravel surface only and lacks curbs and sidewalks. If this land use review does not include a more intense commercial use over what has occurred in the past, PDOT will not require any dedications or street improvements. The applicant should be aware any additional square footage or change to a more intense use is likely to trigger the requirement to construct standard half street improvements. Those improvements would likely be 20-ft of pavement, curb 13-ft from the right-of-way centerline, 8-ft public stormwater swale, 5-ft wide sidewalk, street trees and street lighting as needed. In order to provide adequate right-of-way width for these improvements, a 12-ft dedication would also be required.

The Site Development Section of BDS responded that there are no requirements that would apply to the establishment of non-conforming use rights, with the understanding that no development or redevelopment of impervious surfaces is proposed or will be required. The applicant is advised that plumbing records show that the existing cesspool on the property was not required to be decommissioned at the time the shop building was connected to the public sewer system; a decommissioning permit may be required at the time of future development.

The Fire/Life Safety review section of BDS commented that it recommends that the applicant visit the Development Services Center to research the current occupancy classification and building code requirements associated with a possible change of occupancy including but not limited to seismic upgrades and systems development fees.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 15, 2008. Staff received one letter of support from the owners of one of the properties across the street from the site. They expressed support for the applicant’s long-term vision of a small-scale community or neighborhood center at the site. Attached to the letter were the signatures of ten neighbors from who support the concept.

ZONING CODE APPROVAL CRITERIA

33.258.075 Determination of Legal Nonconforming Status Review

Purpose. This review will determine if a use or site has legal nonconforming situation rights. In addition, it will determine what the current legal use is, based on the use categories in Chapter 33.920.

33.258.075 D. Approval Criteria

1. The legal status of the nonconforming situation will be certified if the review body finds that:
 - a. The nonconforming situation would have been allowed when established; and

Findings: The Multnomah County Assessment and Taxation records indicate that the primary structure was built in 1915. There are no building permits of any kind for that building, and no records that described it in any way. A residential building permit from 1996 was applied for to enlarge the detached garage from a 14' x 25' structure to a 24' x 24' structure as shown on a drawing, and described in the permit description as "add to existing storage building and carport to have a 24' x 42' attached garage and storage, and add storm lines." This permit was cancelled in 2001 as no further contact was made about the addition beyond the initial permit application.

The property was annexed to the City of Portland from Multnomah County in 1966. The historic zoning maps show that this area was zoned R10L prior to 1981, when the City's Comprehensive Plan and Zoning Maps were updated. The R10L zoning is equivalent to today's zoning of R10h, allowing maximum density of one lot per 10,000 square-feet, or 4.3 lots per acre. The "L" indicated the Airport Height overlay zone, which was changed in the 1981 code to 'h', for the same overlay zone and standards. It has been zoned R10h since 1981. At the time of annexation, it was zoned the equivalent of R10 in Multnomah County.

This analysis will focus on what uses appeared to have been on the site, and when those uses first began. First, staff will outline the zoning history found through research with Multnomah County.

The first Multnomah County zoning map and zoning code were adopted in 1953. The site was in the jurisdiction of Multnomah County until 1966. As indicated, the site was in the equivalent to the R10 zone from the inception of County zoning until 1966, when it became part of the City of Portland. The City's zoning code in effect in 1966 allowed residential and farming uses in the R10 zone. Some uses were allowed as Conditional Uses, similar to those allowed if approved through the Conditional Use process in the City's current zoning code. Those include such uses as institutional uses (religious institutions, schools, hospitals and other such institutions), community service uses, and others.

All of the information provided by the applicant that is clearly related to non-residential uses, with evidence to support dates for those uses, are from 1964 and later. Other information, such as a page showing the ownership of the site and abutting property to the north, does not provide any information about uses on the site. That information goes back to 1928, though there is no evidence attesting to that year.

The aerial photographs provided from 1936 and 1956 are, based on the report from NW EnviroSearch, from University of Oregon records and the 2004 aerial is from Portland Maps. In the 1936 aerial photograph, the site appears to be part of a farm or orchard; there is no building on it. In the 1956 aerial photograph, the existing building is visible; and in the 2004 photograph, there is clearly an addition to the rear of the building, as well as the detached garage, not visible in the 1956 photograph.

Staff researched the City's Sanborn Maps, which are from 1965, and found that the building was identified as "lt mfg" and the accessory building as "equipt stge": in other words, light manufacturing with equipment storage. "Parking" was noted south of the building. Development on all other lots in the immediate vicinity is labeled "D" for dwelling and "A" for accessory structure, usually a garage.

As indicated by a copy of the deed, the site was purchased in 1964 by Ajax Electric from Edward and Claire Jewett. No other information is provided about the Jewett's use of the property, but the purchase is an obvious indicator that the site was suitable for what appears to have been an electrical contractor company.

The report from NW EnviroSearch indicates that several more aerial photographs were examined for their report, and it was noted that the primary building on the site was visible on the 1948 aerial photograph. It also indicated that until 1980, the site was relatively unchanged except for

the appearance of the building, since the 1936 photographs. From the 1980 photograph it notes “more activity shown around the main building, with a gravel driveway and storage areas outdoors shown to be larger.”

With the information provided by the applicant, and staff review of City and County permit records and maps, the evidence shows that historical use of the site has been non-residential. The Sanborn Map designation is an important piece of information which indicates that some sort of light commercial or industrial use took place around the time that it was mapped (indicated as “light manufacturing”), and possibly for some time before and after. The NW EnviroSearch report showing little change in development for the 44 years between 1936 and 1980, in combination with the Sanborn Map labeling, leads staff to conclude that it is quite possible that the primary building was used for any number of possible non-residential uses, including agriculture-related, light manufacturing, such as a woodworker’s shop or similar craft trade that was occupied either by the same person who owned the site and abutting properties, or contracting such as that done by Ajax Electric.

Consequently, staff can conclude that the building was likely built as a shop building by an early owner of the lot, who also owned abutting lots and lived in a house on one of those lots. Over time the property was divided and the building became the primary structure, and was altered and added onto as needed by the occupants.

The applicant’s information provides two important pieces of information that substantiate that Ajax Electric occupied and owned the site since 1964, when it was sold to the company, and later property tax records showing Ajax Electric Co as the owner. Affidavits provided by two residents of the neighborhood help to substantiate this. One abutting neighbor lived there from 1976 through the 1980s, and again since 1990, and attests that Ajax Electric was located on the site for most of the 1980s. The rear yard was used for storage, as were both the primary and accessory structures, and there was a sign on the front of the building. The other neighbor of an abutting property who has lived there since 1982 made a similar statement, and identified the company as an electrical contractor.

Both of the affidavits also note that in the late 1980s or early 1990s the building was sold to a real estate company which used the property for storage and an office.

Staff can make the following conclusions from the information provided:

- The original “primary” structure was built as an accessory structure for a workshop, agricultural use or other similar use for the owner of a larger grouping of lots that have since been divided into separate lots.
- Ajax Electric Co. occupied the site probably since 1964 to 1989, when it was sold to Thomas Lawre. Based on information provided, this company would probably be classified as an Industrial Service use as described by the Descriptions of the Use Categories in the current zoning code.
- TLC Realty, the company owned by Mr. Lawre, occupied the site until 1997. Based on the information provided, this company was a property management business, which would be classified as Industrial Service use with an office component, which is typically an accessory use to an Industrial Service use. The company may have also operated as a separate office use, as there appears to have been real estate sales-related work, but there is very little documentation to support this, and legal establishment of an office use did not occur.
- Thomas Lawre owned the property under his and his wife’s names from 1997 through 2005.
- The applicant purchased the site in 2005 and has been using it as offices for his consulting firms, Granger & Granger and Thamel International, of which the latter he operates with two partners. This would be classified as Office use.

The zoning code in effect in 1966, when the site was annexed to the City of Portland, allowed only residential uses in the R10L zone. The analysis shows that the site was in non-residential use at the time of annexation to the City, and was likely always in non-residential use. The

primary structure on the lot was built prior to the County's zoning code, first in effect in 1953, when uses would have been limited by zone. Consequently, staff concludes that the use was nonconforming when the site was first zoned, and was nonconforming when it was annexed. Therefore, this criterion is met for classification of the use of the site as a nonconforming Industrial Service use, which occurred through 2005, but not as an Office use.

b. The nonconforming situation has been maintained over time.

Findings: The applicant is requesting nonconforming status for an office use at this site. He provided the following information to show the legal establishment and continued use of the property in non-residential uses:

- An Environmental Site Assessment done by NW EnviroSearch Inc. in November, 2005 which lists a chronology of development and possible uses based on aerial maps for several years since 1936, Sanborn maps, and "interview discussions" with the [then] current owner of the property. This report was completed for the owner for the apparent purpose of evaluating it for environmental hazards and underground storage tanks, in anticipation of selling the property.
- Copy of page (probably from Multnomah County) showing ownership of site and abutting lots to the north; dated by applicant as 1928.
- A warranty deed showing sale of the property to Ajax Electric on July 10, 1964.
- Property tax records for Ajax Electric Co. from 1977, 1980, 1982, 1986, 1988, 1989.
- PacifiCorp customer history showing Ajax Electric Co as a non-residential customer from June 1, 1968 to May 15, 1987, when it was disconnected.
- Multnomah County Dept of Environmental Service Systems permits section, report of subsurface sewage system showing replacement of cesspool in 1980 for Ajax Electric.
- Copies of Polk and Cole reverse directory pages for the property from 1975 (no addresses north of Beech St on NE 45th Ave), 1989 (no listing for this address), 1992 (TLC Realty), 1995 (TLC Realty), 1996 (TLC Realty) and 2000 (Thomas Lawre). Mr. Lawre owned the property during the years that it was listed as TLC Realty up to the time he sold it to the applicant in 2005.
- PacifiCorp customer history showing TLC Realty as a non-residential customer from September 25, 1989 to the disconnect date of August 7, 1997.
- Property tax records for Thomas Lawre from 1990, indicating he acquired the property in 1989; and from 1991 and 1994. A Multnomah Co. assessor appraisal detail from Jan 1, 1992 also showed Mr. Lawre and Roberta Lawre as owners. On these documents the owners' home address was in Vancouver, WA.
- Alarm Permit for TLC realty which expired Jan 15, 1998.
- Portland Water Bureau information showing TLC Realty as a non-residential customer with connect/disconnect dates of Sept. 25, 1989 through August 7, 1997; Thomas Lawre as a customer with connect/disconnect dates of August 7, 1997 through December 8, 2005; and Robert Granger as a customer since December 8, 2005.
- Aerial photographs from 1936, 1956 and 2004.
- Photos of exterior of site and interior of building.
- Written statements from two neighboring property owners.
- Written statement from a former employee of TLC Realty that he was one of five employees in 1989-1990 who worked at this address and that the previous owner had used it for property management.
- City of Portland Certificate of Compliance for Granger & Granger LLC, 2006-2008; and for Thamel International LLC from 2005, 2006 and 2008.

The chronology provided by the applicant, gleaned from various sources, shows a fairly consistent use of the site for non-residential use since it was annexed to the City. The aerial photographs show that there was little physical change to the site when it was in the ownership of Ajax Electric.

Affidavits provided with the application were written by two neighboring property owners who have resided on abutting properties since the 1980s. Those statements support the applicant's

contention that the site has been in non-residential uses for a long time, with changes from the Ajax Electric Co. industrial-related contracting use to property management and real estate company. There is no evidence that the site has been used as a residence over its existence. The property management company (TLC Realty), as indicated in the above finding, would be classified as an Industrial Service use, like the Ajax Electrical Co. A third affidavit by a former employee of TLC Realty supports that it was open by 1989. That affidavit also describes the use as an office for property brokerage or real estate.

While it appears that the site has been unused at various times, the evidence indicates that it was likely maintained over time without a lag of more than three years. It appears that since August 1997 TLC Realty no longer operated at the site, but the owner, Mr. Lawre, did not sell it until 2005, to the applicant/current owner. Photographs provided by the applicant, taken in 2005 prior to his purchase of the property, provide evidence that the site was used for storage of products that likely were for Mr. Lawre's property management business. The photos show that several of the rooms in the structure, as well as the outside and the garage were used for such storage. In addition, a desk with an open file cabinet showed evidence of office activity. The upstairs rooms also contained evidence of residential use, including beds, personal belongings, a television and similar items. The photographs and a brief description of the property by a real estate inspector provide supportive documentation to this effect.

The evidence also shows that the current owner has used the site as an office for the past three years. Prior to that, the electrical contracting company occupied it as an Industrial Service use, and TLC Realty as likely both a property management company and a real estate or brokerage office. As the previous finding shows, the nonconforming use that was allowed when established prior to annexation to the City of Portland was an Industrial Service use. That use continued, as the evidence suggests, through 1997 when it was occupied by TLC Realty.

Staff contacted Pacific Power & Light (PacifiCorp) to inquire whether there have been service disconnections. PP&L customer service was able to verify over the telephone that they could view records to the year 2000, and there has been no disconnection since that time. This is consistent with the information from the Water Bureau, which the applicant obtained, showing that the billing was changed in 1997 from TLC Realty to Mr. Lawre, and in 2005 from Mr. Lawre to the applicant, Mr. Granger.

The applicant/current owner wishes to continue to use the site as offices for his consulting businesses, and for two spaces for people in the area to use as offices. The question then becomes, was the site used as an office as an additional primary use while it was Ajax Electric Company and later as TLC Realty, and then by Mr. Lawre.

There is no substantive evidence to show that this was the case. From the affidavits by neighbors, it seems likely that while a realty company occupied the site and probably had real estate offices in it in the 1990s, the primary work of that company was property management. Both of those companies seemed to have had a storage component, and the information indicates that many of the property management storables and equipment were still there when the property was acquired by the current owner.

Unfortunately there is nothing to document that the site was ever legally established for office use as a primary use. When it operated as TLC Realty, it was likely an office use, at least as part of the company's operation. However, the evidence suggests that the legal classification of the site is Industrial Service, which is the appropriate category for an electrical contracting company as well as a property management company, which appears to be TLC Realty's and Mr. Lawre's primary activity. The evidence also shows that the nonconforming Industrial Service use was maintained over time, and thus this criterion is met for that use classification.

2. The review body will determine, based on the evidence, what the current legal use is, using the definitions in Chapter 33.910 and the use categories in Chapter 33.920.

Findings: The applicant, who is the current owner, is using the site as an office for his consulting business, which includes two other partners. The applicant wishes to continue to use the site for his business and to be able to allow use of the site for others in the neighborhood to use it for up to two additional office or studio spaces.

The applicant purchased the property in 2005. The evidence submitted indicates that his use of the site as an office is the first time in the site's history that it has clearly been an office as the primary use. There were likely offices associated with the previous industrial service uses, but those were accessory uses, not the primary use, which was industrial service. The zoning code states in 33.258.050 D., Loss of nonconforming use status, that "if a nonconforming use is discontinued for 3 continuous years, the nonconforming use rights are lost. If a nonconforming use ceases operations, even if the structure or materials related to the use remain, the use has been discontinued. If a nonconforming use changes to another use without obtaining all building, land use and development permits that would have been required at the time of the change, the legal nonconforming use has been discontinued. A nonconforming use that has been discontinued for more than 3 continuous years may request re-establishment through a nonconforming situation review. Re-establishment of a nonconforming use that has been discontinued for 5 or more continuous years is prohibited."

The zoning code gives these characteristics of Office use (33.920.240): Office uses are characterized by activities conducted in an office setting that focus on the provisions of goods and services, usually by professionals. Traditional Office uses are characterized by activities that generally focus on business, government, professional, medical or financial services. Industrial Office uses are characterized by activities that, while conducted in an office-like setting, are more compatible with industrial activities, businesses and districts. Their operations are less service-oriented than Traditional Office uses and focus on the development, testing, production, processing, packaging or assembly of goods and products which may include digital products such as internet home pages..." Examples of traditional office include lawyers, accountants, lenders, brokerage houses, real estate agents, medical and dental clinics. Exceptions:

1. Offices that are part of and are located with a firm in another category are considered accessory to the firm's primary activity. Headquarters offices, when in conjunction with or adjacent to a primary use in another category, are considered part of the other category.
2. Contractors and others who perform services off-site are included in the Office category if equipment and materials are not stored on the site and fabrication, services or similar work is not carried on at the site.

Accessory uses include cafeterias, parking, health facilities or other amenities for use of employees in the firm or building.

Further, the zoning code characterizes Industrial Service uses (33.920.300) as firms engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site. Accessory uses may include offices, parking, and storage. Examples: welding and machine shops; tool, electric motor and similar repair; vehicle-related storage and towing; storage of building materials; building, heating, plumbing or electrical contractors; janitorial and building maintenance services; etc.

While the applicant rightly feels that the site has been in non-residential use throughout its history, the zoning code is clear in the allowances and limitations of nonconforming uses. In this case, the evidence indicates that a legal nonconforming use for Industrial Service can be determined through 1997 and by inference from photographs taken in 2005 and other documentation that it continued through December, 2005 when it was sold to the applicant/current owner, Mr. Granger. There is no evidence to show that an Office use was legally established when TLC occupied the property, because no land use review was done to legalize such a use. Without additional information supporting substantively that the use of the site included both industrial service and office uses as primary uses, and not office uses as accessory uses, staff cannot conclude that the current office use has legal nonconforming

status. Thus, this criterion is met for the classification of Industrial Service use, but is not met for a classification of Office use on the site.

Staff notes that the zoning code allows an applicant to request a Nonconforming Situation Review to request a change from one type of use to another, if the legally-established use, in this case Industrial Service, has not been discontinued for more than three years. In this case, Mr. Granger purchased the property in December, 2005, at which time the property management activities (Industrial Service use) no longer occurred at the site, and consequently he has the option to pursue that review in order to change the use.

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

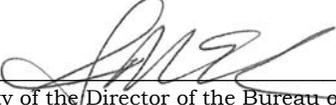
The evidence that the applicant was able to provide about use of the site over a span of more than forty years leads staff to conclude that the site has legal nonconforming status for Industrial Service use. The first documented use of the site was for an electrical contracting company, which began prior to Multnomah County zoning and continued when the site was annexed to the City of Portland in 1964. That business and two subsequent property management companies that located there all fall under the zoning code classification of Industrial Service use.

There is minimal evidence of office use of the site other than as accessory to the primary Industrial Service uses. If office uses had occurred, they were not legally established. Consequently, it cannot be determined that there is legal status for Office use of the property.

The applicant may request a Nonconforming Situation Review to request a change from one type of use to another, if the legally-established use, in this case Industrial Service, has not been discontinued for more than three years. In this case, he purchased the property in December, 2005, at which time the property management activities (Industrial Service use) ceased. Consequently, a request to change from the Industrial Service to Office or other use can be made if done so by the end of December 2008.

ADMINISTRATIVE DECISION

Approval of a Determination of Legal Nonconforming Status for Industrial Use for this site.

Decision rendered by:  **on September 25, 2008**
By authority of the Director of the Bureau of Development Services

Decision mailed: September 30, 2008

Staff Planner: Nan Stark

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 February 28, 2008, and was determined to be complete on May 9, 2008.

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 February 28, 2008.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended by 90 days until December 5, 2008.

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 October 14, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

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

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550

Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

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

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **October 15, 2008 – (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:

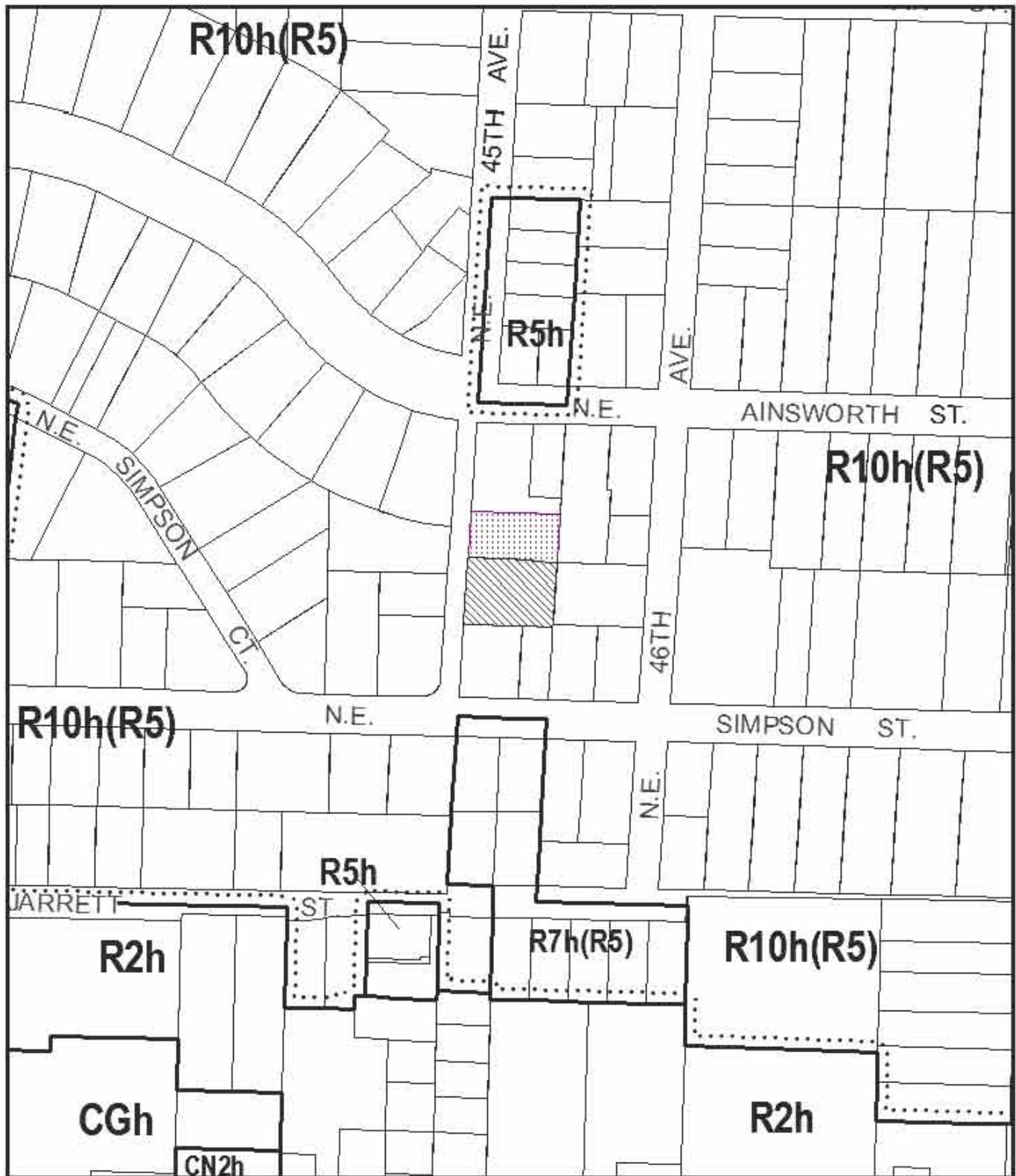
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original submittal
 - 2. Additional information submitted 4/23/08
 - 3. Additional information submitted 9/22/08
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Survey, existing conditions
- 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. Fire/Life Safety Review Section of BDS
 - 7. Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. Dan Petrillo and Sarah Granger, 6/5/08, in support, with attached letter of support signed by 10 residents of 8 properties in immediate vicinity
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Correspondence by email between N. Stark and R. Granger, May through Sept 2008
 - 4. Letter of incomplete status, March 12, 2008, N. Stark to R. Granger
 - 5. Sanborn map
 - 6. Extension of 120-day review period for additional 90 days

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



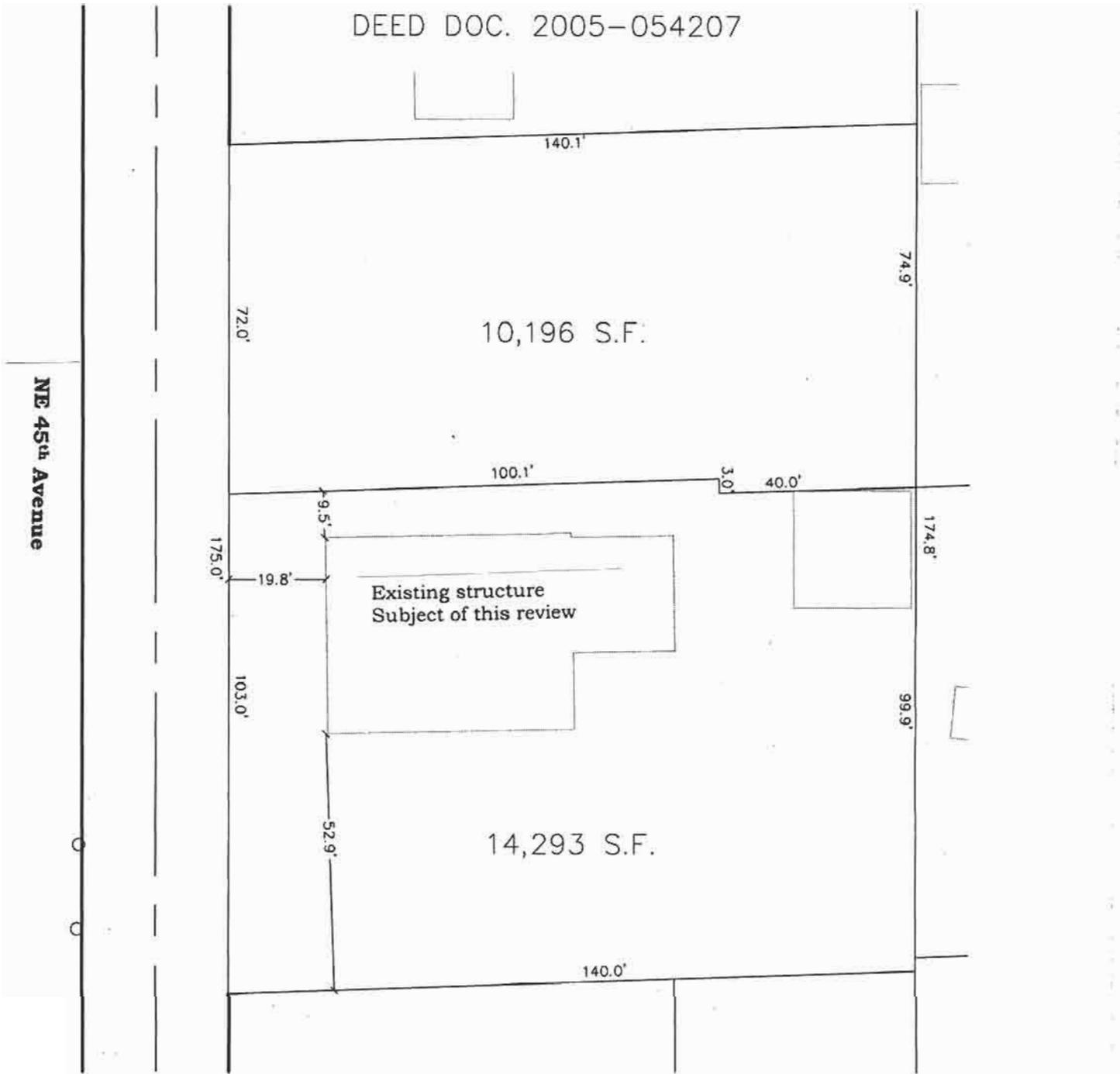
ZONING

-  Site
-  Also Owned



File No. LU 08-112244 NE
 1/4 Section 2435
 Scale 1 inch = 200 feet
 State Id 1N2E18CC 1500
 Exhibit B (Mar 04, 2008)

DEED DOC. 2005-054207

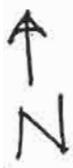


NE 45th Avenue

10,196 S.F.

Existing structure
Subject of this review

14,293 S.F.



SITE PLAN

in 08-112244 NE
EXHIBIT C-1