



City of Portland
Bureau of Development Services
Land Use Services Division

1900 SW Fourth Ave. Suite 5000
Portland, Oregon 97201
Telephone: 503-823-7300
TDD: 503-823-6868
FAX: 503-823-5630
www.portlandonline.com/bds

Date: July 29, 2008
To: Interested Person
From: Suzanne Savin, Land Use Services
503-823-5888 / Suzanne.Savin@ci.portland.or.us

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 08-111336 AD

GENERAL INFORMATION

Applicant: Brett Laurila
BKLA Architecture
1500 NE Irving Street #550
Portland OR 97232

Owner: Kim Dung Thi Vu
7223 NE Sandy Blvd
Portland, OR 97213-5740

Site Address: No address assigned. The site is located on the west side of SE 174th Avenue, between SE Powell Boulevard and SE Naegeli Drive.

Legal Description: LOT 4, SUTTER HILL SUBDIVISION
Tax Account No.: R813700230
State ID No.: 1S3E07CD 01900
Quarter Section: 3448

Neighborhood: Centennial, contact Louise Cody at 503-252-4302.
Business District: None
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Plan District: Johnson Creek Basin - South

Zoning: CG (General Commercial)

Case Type: AD (Adjustment Review)
Procedure: Type II, administrative decision with appeal to Adjustment Committee.

Proposal:

The property owner is planning to construct two one-story commercial buildings on the site. The first building will have a floor area of approximately 3,000 square feet and will be located in

the northeast portion of the site, adjacent to the east property line and the abutting SE 174th Avenue right-of-way. This building is proposed to contain three retail tenant spaces. The second building will have a floor area of approximately 11,000 square feet and will be located in the southwest portion of the site, approximately 85 feet west of SE 174th Avenue. This building is proposed to contain a restaurant and one retail tenant space.

Two Adjustments are requested for the proposed development.

The first requested Adjustment is to Section 33.130.240 (Pedestrian Standards). Section 33.130.240.B.1.a(1) requires a site with one street frontage to have a straight line pedestrian connection between one main entrance of each building on the site and the adjacent street. The straight line connection may not be more than 20 feet longer or 120 percent of the straight line distance, whichever is less. The distance of a straight line connection between the main entrance of the proposed restaurant building and SE 174th Avenue is approximately 160 feet. However, this straight line connection would remove some proposed vehicle parking for the restaurant, and would bisect an existing driveway lying between the site and SE 174th Avenue that provides access to another property under separate ownership. Due to these factors, the applicant is proposing a pedestrian connection of approximately 220 feet in length, which will extend from the restaurant main entrance to SE 174th Avenue while remaining within the boundaries of the site. This proposed pedestrian connection will be more than 20 feet longer than the straight line distance of 160 feet. Therefore, the applicant requests an Adjustment to Section 33.130.240.B, to allow the pedestrian connection from the restaurant main entrance to SE 174th Avenue to be approximately 220 feet in length.

The second requested Adjustment is to Section 33.537.140 (Johnson Creek Plan District – South Subdistrict Development Standards). Section 33.537.140.D states that no more than 50 percent of any site may be developed in impervious surface. The existing impervious surface on the site (paved vehicle parking and driveways) comprises approximately 37,814 square feet of the approximately 64,120 square foot site, which is approximately 59 percent of the site. The proposed development will involve the addition of impervious surface (the construction of two buildings), as well as the removal of impervious surface (replacement of some existing paving with landscaped area to the south of the restaurant, and landscape islands within the parking area). As stated in the Notice of Proposal for this request, the applicant originally proposed a total impervious surface area for the proposed development of approximately 44,333 square feet, which is approximately 69.1 percent of the site, and originally requested an Adjustment to Section 33.537.140.D, to allow the site to have approximately 69.1 percent impervious surface, rather than the maximum of 50 percent impervious surface required by the standard. However, during the review process, the Bureau of Environmental Services (BES) expressed concerns about the scope of this Adjustment, and BES responded that they could not recommend approval of the Adjustment as submitted. As a result, the applicant revised the proposal to reduce the amount of proposed impervious surface to approximately 58.1 percent of the site. The revised Adjustment request is an Adjustment to Section 33.537.140.D, to allow the site to have approximately 58.1 percent impervious surface.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are the Adjustment Approval Criteria of Section 33.805.040.A – F.

ANALYSIS

Site and Vicinity: The site is located on the west side of SE 174th Avenue, between SE Powell Boulevard and SE Naegeli Drive, and is approximately 64,120 square feet in size. The site is one portion of a multi-tenant shopping center that is comprised of several contiguous tax lots. The site is presently developed with surface parking and landscape islands. Shopping center retail buildings and additional surface parking and circulation areas are located on adjacent lots to the west, north and south.

To the immediate north of the site is a lot that is also part of the shopping center, which contains a video store and associated surface parking. Further north, on the north side of SE Powell Boulevard, is a CG-zoned property containing a gas station, and a CG-zoned property containing what appear to be residential accessory structures. To the east of the site, on the east side of SE 174th Avenue, are R2a-zoned properties containing single-dwelling residences and multi-dwelling structures, and EG2-zoned properties containing industrial-type uses, including a custom woodworking facility and a truck rental facility. To the immediate south of the site are two lots that are also part of the shopping center, which contain surface parking and circulation driveways. Further south, on the south side of SE Naegeli Drive, are R2a-zoned properties that are developed with single-family dwellings and multi-dwelling structures. To the west of the site are the other lots that comprise the shopping center area of which the site is a part. The closest of these lots, adjacent to the site, contains a vacant grocery store building and associated surface parking. The lots within the shopping center that lie further west contain additional attached and detached commercial structures, and additional surface parking.

Zoning: The site is zoned General Commercial (CG). The CG zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market. Industrial uses are allowed but are limited in size to avoid adverse effects different in kind or amount than commercial uses and to ensure that they do not dominate the character of the commercial area. Development is expected to be generally auto-accommodating, except where the site is adjacent to a transit street or in a Pedestrian District. The zone's development standards promote attractive development, an open and pleasant street appearance, and compatibility with adjacent residential areas. Development is intended to be aesthetically pleasing for motorists, transit users, pedestrians, and the businesses themselves.

The site is within the Johnson Creek Basin Plan District, South Subdistrict. The Johnson Creek Basin plan district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services. At certain locations, the density of development is limited by applying special regulations to new land division proposals. In addition, restrictions are placed on all new land uses and activities to reduce stormwater runoff, provide groundwater recharge, reduce erosion, enhance water quality, and retain and enhance native vegetation throughout the plan district. At other locations, development is encouraged and mechanisms are included that provide relief from environmental restrictions. This plan district is intended to be used in conjunction with environmental zoning placed on significant resources and functional values in the Johnson Creek basin, to protect resources and functional values in conformance with Goal 8 of the Comprehensive Plan and Statewide Planning Goal 5.

In the Johnson Creek Basin Plan District's South Subdistrict, there are numerous small streams that can quickly carry stormwater runoff to Johnson Creek. Zoning Code regulations for the South Subdistrict limit development density, tree removal, and impervious surface area to reduce stormwater runoff, provide groundwater recharge, reduce erosion, protect water quality, and retain native vegetation. These regulations work together to protect watershed health while allowing the safe and efficient development of unconstrained lands.

The site is not within an environmental zone. However, the South Subdistrict development standards include a standard that limits impervious surface to a maximum of 50 percent of a site. The applicant is requesting an Adjustment to this standard, to allow the proposal to have an impervious surface area of approximately 58.1 percent.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **March 21, 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 (BES) responded on April 11, 2008 that they do not support the proposal as shown. BES' primary concern is that the proposed stormwater management system does not follow the Stormwater Management Manual's (SWMM) Stormwater Destination/Disposal Hierarchy. The response also states that BES does not support the applicant's proposal to further exceed the maximum of 50 percent imperviousness for the site, because this requirement minimizes damages caused by flooding and is important for the health of the watershed and Johnson Creek. (Exhibit E-1).

The Site Development Section of BDS responded on April 3, 2008, and stated that to evaluate this proposal, Site Development will require sufficient information to confirm that stormwater treatment systems designed in accordance with the Stormwater Management Manual and stormwater disposal systems that conform to the stormwater destination and disposal hierarchy are feasible. To evaluate the proposed Adjustment to allow the applicant to exceed the maximum impervious area requirement, Site Development will require a stormwater report, a revised utility plan, and an addendum to the geotech report confirming that separation to groundwater requirements can be met for proposed on-site drywells and surface infiltration facilities. (Exhibit E-5).

Staff: In response to the written feedback from BES and Site Development, the applicant submitted storm drainage calculations and revised plans on April 28, 2008. In response to this additional information, BES provided a Land Use Response Addendum and Site Development provided a Revised Land Use Review Response.

The BES Land Use Response Addendum #1, dated May 9, 2008, stated that BES cannot yet support the proposal as shown, and additional information is requested. The addendum restated that BES does not support the applicant's proposal to further exceed the maximum of 50 percent imperviousness for the site. The addendum notes that, as stated in the SWMM (pages 2 – 47), "Pervious pavement systems are not considered to be impervious surfaces, and therefore, do not trigger pollution reduction and flow control requirements." BES recommends the use of pervious pavers for the parking lot or other methods for reducing the amount of lot coverage such that it is less than 50 percent of the site. (Exhibit E-2).

The Site Development Revised Land Use Review Response, dated May 2, 2008, stated that the new information regarding depth to ground water confirms that the use of drywells for stormwater disposal can be approved, subject to DEQ UIC requirements. The applicant proposes an infiltration pond with overflow to a public storm sewer for the new building and parking area west of the building. The stormwater from the low point of the parking area would be pumped to the infiltration pond for treatment and disposal. Site Development does not consider that reliance on a pumped system is desirable for stormwater where the hierarchy allows the use of mechanical treatment in the form of filtered catch basins connected to drywells, when no practical option of vegetated treatment is available. In this particular case, Site Development would have no objection to a Stormfilter type catch basin with a gravity drain to a drywell. If the applicant chooses to use this pond with an overflow, BES must first approve the storm sewer connection shown; however, BES has indicated that a piped overflow to the public storm sewer in SE Naegeli Drive would not be allowed. Given the high infiltration rates in this area, it may be possible to eliminate the need for an overflow connection. (Exhibit E-6)

Staff: After receipt of the BES Land Use Response Addendum and Site Development Revised Land Use Review Response, the applicant met with the case planner and with the BES staff reviewer on May 20, 2008. The applicant asked whether an Adjustment to allow a proposed amount of impervious area of approximately 58 percent (less than the 59 percent impervious area that presently exists on the

site) could potentially be approved by BES. BES staff indicated that such a request could be considered, with supportive information from the applicant.

The applicant submitted a revised site plan and narrative on July 11, 2008. The building locations, pedestrian connection, and parking layout remain substantially the same as on the original site plan that was attached to the Notice of Proposal. However, the revised site plan has reduced the proposed impervious surface area with the following changes: 1) the deletion of the proposed parking area on the west side of the restaurant building, and the placement of landscaping in this area; 2) the substitution of pervious pavers for the majority of the existing and proposed pedestrian circulation system on the site; and 3) the widening of a proposed landscaped bioswale within the existing parking area. With these revisions, the proposed impervious area is reduced to 37,308 square feet, which is approximately 58.1 percent of the site.

In addition, the revised site plan indicates that the stormwater overflow is no longer proposed to be piped to the storm sewer connection in SE Naegeli Drive, but instead will be handled on site with either a drywell or an infiltration pond at the rear (south) side of the restaurant. Site Development has indicated verbally to Staff that either of these methods of handling the stormwater is acceptable to Site Development.

BES provided a Land Use Response Addendum #2, based on the information submitted by the applicant on July 11, 2008. It should be noted that BES' consideration item #7, listed below, expresses BES' desire for the use of primarily native species in the landscaping of the site.

The BES Land Use Response Addendum #2, dated July 18, 2008, states that in summary, BES supports the proposed development as shown on the revised site plans, which were received by BES on July 14, 2008. The stormwater management system is acceptable, and it is acceptable for the development to exceed the 50 percent maximum impervious surface area on the site. The proposed total impervious surface area will be 58.1 percent, according to the submitted information. A number of unique circumstances exist for this site, and for the proposed development. The following considerations have been identified for this proposal:

- 1) The impervious area on the site already exceeds 50 percent;
 - 2) The applicant proposes to reduce the amount of impervious surface area that exists, from 59 percent to 58 percent;
 - 3) Infiltration tests, submitted by the applicant, show that the site has a good rate of infiltration;
 - 4) The site is relatively flat and has no potential for landslides;
 - 5) The seasonal high groundwater is fairly low, so infiltration can still occur during the wet season;
 - 6) The proposed changes to the site will increase the flood storage capacity of the site;
 - 7) The site will be enhanced with the planting of primarily native species, with an emphasis on evergreen species. Native vegetation not only filters stormwater, it is suited to our climate. Therefore, native vegetation needs less watering and does not require pesticides or fertilizers. BES would like to have a good portion of the species planted at this site be evergreen or coniferous, because they intercept stormwater throughout the rainy season.
- In conclusion, BES supports the proposed development as shown on the site plans that were received by BES on July 14, 2008. (Exhibit E-3)

The Bureau of Transportation Engineering (PDOT) responded that with regard to the proposed two adjustments, there are no transportation related approval criteria that need to be addressed, therefore PDOT has no objections to the said adjustments. The response stated that the existing condition of the site's street frontage does not satisfy current City standards. Given the classification of SE 174th Avenue as a City Walkway in the Transportation System Plan and the proposed development on the site, it is justifiable to require the applicant to provide improvements along the site's frontage. The City's Pedestrian Design Guide

recommends a 12-foot wide sidewalk corridor for sites that have frontage along a City Walkway. The applicant will be required to reconstruct the existing sidewalk corridor as follows: 0.5-foot curb (existing), 4-foot planter area, 6-foot sidewalk and a 1.5-foot setback to the property line. In order to accommodate the improvements along SE 174th Avenue, the applicant will need to dedicate 4-feet of property for right-of-way purposes. The dedication must occur prior to issuance of a building permit. (Exhibit E-4).

Staff: The applicant's revised site plan depicts the 4-foot right-of-way dedication that will be required by PDOT. The proposed retail building, which will abut the east property line and the SE 174th Avenue right-of-way, has been shifted 4 feet to the west, immediately abutting the relocated east property line.

The Life/Safety Plan Review Section of BDS responded that based on the information provided, there appears to be no conflicts between the proposal and applicable building codes. (Exhibit E-7)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on March 21, 2008. One written response has been received from the Centennial Community Association in response to the proposal. The Association's letter expressed opposition to the Adjustments.

The letter stated the following:

- The Adjustment request to allow 69.1% of the site to have impervious surface instead of the maximum of 50% impervious surface is almost a 40% increase and a very significant departure from the 50% limit. The purpose statement of Section 33.537.140.A will not be equally or better met by allowing a 69.1% impervious coverage of the site. There will be flooding into Johnson Creek, which is down a steep hill below the site. SE 174th Avenue (Jenne Road) leads down the hill to Johnson Creek.
- The two Adjustments, taken together, do not result in a project consistent with a commercial zone in the Johnson Creek South Subdistrict. The pedestrian connection adjustment does not provide for a direct straight line access between the restaurant and SE 174th Avenue, and there needs to be more landscaping and less parking to meet the Johnson Creek South Subdistrict standard limiting impervious surface on a site to 50%.
- There is no mitigation proposed to address impacts such as flooding, stormwater runoff, erosion and damage to water quality from covering the site with almost 70% impervious surface.
- There are pervious materials available which allow a parking surface, such as "grass-crete" and pervious pavers. There are other options for parking lot pervious surface treatment which could reduce the need for an Adjustment.

Staff: Both Adjustments' compliance with the Adjustment Approval Criteria will be discussed in the following section of this report.

As noted in the Proposal section of this staff report, after the Notice of Proposal for this request was mailed, the applicant revised the Adjustment to Section 33.537.140, to reduce its scope from a proposed 69.1 percent impervious surface to a proposed 58.1 percent impervious surface. To achieve the reduction in proposed impervious surface area, the applicant reduced the proposed number of parking spaces to a number that is close to the minimum amount required for the development; increased the square footage of proposed landscaped areas; and proposed the use of pervious paving for the majority of the on-site pedestrian circulation system.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose

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 Approval Criteria

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

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

Findings: The purpose of the development standards requested for Adjustment are:

1. Pedestrian Standards. The intent of the standards, as stated in Section 33.130.240.A, is as follows:

The pedestrian standards encourage a safe, attractive, and usable pedestrian circulation system in all developments. They ensure a direct pedestrian connection between abutting streets and buildings on the site, and between buildings and other activities within the site. In addition, they provide for connections between adjacent sites, where feasible.

Section 33.130.240.B.1.a (1) requires a site with one street frontage to have a straight line pedestrian connection between one main entrance of each building on the site and the adjacent street. The straight line connection may not be more than 20 feet longer or 120 percent of the straight line distance, whichever is less. The applicant is requesting an Adjustment to this standard to allow the pedestrian connection between the proposed restaurant and SE 174th Avenue to be approximately 220 feet in length, which is longer than the straight line distance (approximately 160 feet) between the restaurant main entrance and SE 174th Avenue. The additional length is desired to allow the pedestrian connection to bypass the portion of the driveway that provides access to the abutting property to the south.

The applicant states that the request will equally meet the purpose of the regulation for the following reasons:

- The proposed pedestrian connection places the access walkway as close to the property line as possible, given the layout of the property.
- The pedestrian connection provides a shorter distance to the nearest bus stop in its proposed location than would be the case if constructed to the straight-line distance.
- The site is an irregularly shaped lot, and is positioned at an angle to the adjacent street. As a result, the site frontage on the street is reduced and limited to just over 90 feet in length. Because of its irregular configuration, the majority of the lot's buildable space is in the area farthest from the street frontage. The proposed design for the site places the retail shops along the street frontage, so that a majority of the building entrances have a direct connection with the street frontage. The restaurant, however, has to be placed on the rear (west) portion of the site, away from the street frontage, to accommodate the established internal traffic circulation pattern. The restaurant is placed in line with the other existing retail buildings, and faces into the main traffic circulation route within the shopping area.
- In order to construct the walkway directly from the restaurant building to the street lot line, the existing driveway that provides access to the site from SE 174th Avenue would need to be shifted to the north. Shifting the driveway to the

north is not practicable due to the great expense of shifting the driveway and curb cut and the landscaping bays, and the necessity of moving the extensive utilities that are in place to the north of the current access location.

- Although the pedestrian connection between the restaurant entrance and the street is longer than specified by the standard, it fits better with the existing internal pedestrian circulation system in place within the shopping center. The result is that the pedestrian connection ensures as direct a pedestrian connection between abutting streets and buildings on the site as is possible, and a better connection between buildings and other activities within the existing site.

Staff concurs with the applicant's findings. Staff concludes that the proposed pedestrian connection, although more than 20 feet longer than the straight line distance between the restaurant entrance and SE 174th Avenue, will nonetheless equally meet the purpose of ensuring a direct pedestrian connection between the restaurant building and the street.

This criterion is met.

2. Johnson Creek Plan District – South Subdistrict Development Standards. The intent of the standards, as stated in Section 33.537.140.A, is as follows:

These regulations mitigate the negative impacts that may result from the development of areas where flooding and landslides are common. The impermeable clay soils of the steep-sided Boring Lava hills to the south of the creek contribute to rapid stormwater runoff in the winter, and contribute to flooding. Unlike the flatter areas north of the creek, in the South subdistrict there are numerous small streams that can quickly carry stormwater runoff to Johnson Creek. The extensive tree canopy on these hillsides helps to slow stormwater runoff. Limitations on development density, tree removal, and impervious surface area reduce stormwater runoff, provide groundwater recharge, reduce erosion, protect water quality, and retain native vegetation. These regulations work together to protect watershed health while allowing the safe and efficient development of unconstrained lands.

The site is within the Johnson Creek Plan District – South Subdistrict, and is therefore subject to the standard of Section 33.537.140.D, which limits the percentage of a site that may be developed in impervious surface to a maximum of 50% impervious surface. The applicant requests an Adjustment to Section 33.537.140.D, to allow the site to have approximately 58.1 percent impervious surface.

Staff notes that the portion of the purpose statement relevant to the impervious area limitation references the following goals: reducing stormwater runoff, providing groundwater recharge, reducing erosion, protecting water quality, and protecting watershed health. The applicant states that the request will equally meet the above portions of the purpose statement, because the stormwater system designed for the site will result in an effective impervious area of less than 36 percent. The applicant states that this goal is accomplished in three ways:

- 1) The roof drainage system of the proposed new buildings is designed to take advantage of the soil type and percolation rates to maximize the groundwater recharging from the new impervious roof areas. In other words, 100 percent of the impervious roof area runoff is being collected and placed into drywells, minimizing the effect of roof runoff stormwater entering the system and lessening the impact of flooding in Johnson Creek. The use of the drywells (along with the excellent soil percolation rates) to recharge the groundwater

effectively mitigates the effects of stormwater runoff from the proposed roof areas.

- 2) The existing paved impervious area of 37,815 square feet (existing parking lot) is being reduced to 22,810 square feet. The paved area runoff is further mitigated by providing a stormwater quality swale within the parking area, to which the runoff from the paved area will be routed. With this swale, 80 percent of the impervious paved surface will be treated, filtered and recharged on site, with the remaining 20 percent draining to the original stormwater system put in place at the time of the original construction of the entire shopping center.
- 3) Existing and proposed pedestrian walkways, which account for 6.4 percent of the site area, are proposed to be paved with a pervious surface paver that allows the surface water to naturally percolate back into the soil and recharge the groundwater. This further lessens the impact of flooding in Johnson Creek. The use of the pervious paving effectively mitigates the site's pedestrian walkways as "impervious" surface.

The applicant concludes that the above measures will slow and reduce runoff from the development and allow stormwater to soak into the ground as it would naturally, lessening the impacts of flooding on Johnson Creek as well as lessening the introduction of pollutants and erosive flows entering Johnson Creek. Groundwater recharge via the roof drainage systems helps to maintain summertime base flows and helps to improve water temperatures in Johnson Creek.

The applicant's narrative, original site plan, and revised plan set have been reviewed by the Bureau of Environmental Services (BES), which is the City bureau that possesses technical expertise on stormwater management and is charged with protecting watershed health. Due to BES' expertise on stormwater management and watershed health issues, the BES response to the proposed stormwater management plan is key in determining whether that plan equally meets the purpose of the regulation for the impervious area limitation.

As stated in BES' Land Use Response Addendum #2, dated July 18, 2008 (Exhibit E-3), BES has noted that a number of unique circumstances exist for this site, and for the proposed development. BES has identified the following considerations for this proposal:

- The impervious area on the site already exceeds 50 percent;
- The applicant proposes to reduce the amount of impervious surface area that exists, from 59 percent to 58 percent;
- Infiltration tests, submitted by the applicant, show that the site has a good rate of infiltration;
- The site is relatively flat and has no potential for landslides;
- The seasonal high groundwater is fairly low, so infiltration can still occur during the wet season;
- The proposed changes to the site will increase the flood storage capacity of the site.

BES concluded that the development's proposed stormwater management system is acceptable, and it is acceptable for the development to exceed the 50 percent maximum impervious surface area on the site. The proposed total impervious surface area will be 58.1 percent, according to the submitted information.

The BES response stated that BES would like to have a good portion of the proposed landscaping for this site to be native evergreen or coniferous species, because such species intercept stormwater throughout the rainy season and are suited to our climate, thus needing less watering, and no pesticides or fertilizers. The BES recommendation for the planting of primarily native species was a consideration in

their conclusion that it is acceptable for the proposed development to exceed the 50 percent maximum impervious surface area on the site.

Staff forwarded a copy of the BES Land Use Response Addendum #2 to the applicant. The applicant stated to Staff that he and his client (the property owner) were willing to utilize primarily native species in the landscaping of the site, as recommended by BES. Therefore, a condition of approval is warranted, requiring submittal of a landscape plan indicating that a minimum of 75 percent of the proposed trees and shrubs will be native evergreen or native coniferous species.

Based on the applicant's submitted information and BES' response to that information, and with the applicant's compliance with the above condition of approval regarding the landscape plan, Staff concludes that the Adjustment to Section 33.537.140 equally meets the purpose of the regulation.

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: The site is within a Commercial zone. The adjacent street, SE 174th Avenue, is classified as a Community Transit Street, Neighborhood Collector Traffic Street, City Walkway, and City Bikeway.

Regarding the Adjustment for the pedestrian connection, direct pedestrian access will be provided between SE 174th Avenue and the retail building, which will be adjacent to the street. The length of the pedestrian connection from the street to the restaurant will exceed the Zoning Code standard by approximately 40 feet, in order to allow the connection to avoid crossing a portion of the driveway that provides access to the abutting property to the south. However, the pedestrian connection to the restaurant will still provide a safe and relatively direct connection between the restaurant and the street. The proposed pedestrian connection from the restaurant to the street will also be closer to the bus stop along the site's frontage than a straight-line connection would be. Therefore, the Adjustment for the pedestrian connection will be consistent with the classification of the adjacent street and the desired character of the area.

Regarding the Adjustment for the increase in impervious area, the proposed commercial development will meet the impervious surface standards of the General Commercial base zone. Because this site is within the Johnson Creek Plan District, South Subdistrict, it has additional impervious surface limitations. The desired character of the South Subdistrict, as expressed in the purpose statement, is an area in which stormwater runoff is reduced, groundwater is allowed to recharge, erosion is reduced, and water quality is protected, in order to protect watershed health. The applicant has provided information to demonstrate that the proposed stormwater management plan for the development will preserve these elements of the South Subdistrict desired character. As stated in Exhibit E-3, the Bureau of Environmental Services also supports the proposed development as shown on the plan set submitted on July 11, 2008, and concludes that it is acceptable to exceed the 50 percent maximum impervious surface area on the site.

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: Two adjustments are being requested. As stated in Zoning Code Section 33.130.030.G, the purpose of the General Commercial zone is as follows:

The General Commercial (CG) zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market. Industrial uses are allowed but are limited in size to avoid adverse effects different in kind or amount than commercial uses and to ensure that they do not dominate the character of the commercial area. Development is expected to be generally auto-accommodating, except where the site is adjacent to a transit street or in a Pedestrian District. The zone's development standards promote attractive development, an open and pleasant street appearance, and compatibility with adjacent residential areas. Development is intended to be aesthetically pleasing for motorists, transit users, pedestrians, and the businesses themselves.

The applicant notes that the proposed development is a restaurant and retail shops, which are consistent with the purpose of the CG zone.

The pedestrian connection adjustment will allow the connection between the restaurant entrance and the street to be approximately 40 feet longer than allowed by the standard, but will nonetheless provide a direct pedestrian connection between the restaurant and the street. The pedestrian connection adjustment will be consistent with the overall purpose of the CG zone, in that it will promote attractive development, a pleasant street appearance, and compatibility with nearby residential areas.

The impervious surface adjustment will allow an impervious surface area that is approximately 8.1 % greater than the applicable 50% impervious surface limitation. However, the development will be aesthetically pleasing and will have a pleasant street appearance, as it will include landscaping to the north of the proposed retail building adjacent to the street, additional landscaping within the existing parking area that is west of the proposed retail building and north of the proposed restaurant, and a garden area on the south side of the proposed restaurant. In addition, BES has concluded that the stormwater management system is acceptable and it is acceptable to exceed the 50 percent maximum impervious surface area on the site, as depicted in the applicant's revised plan set, submitted on July 11, 2008.

In addition, the pedestrian connection adjustment and the impervious surface adjustment are unrelated to each other and no cumulative impacts are anticipated.

This criterion is met.

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

Findings: The site is not within a City-designated scenic or historic resource, and therefore this criterion is not applicable.

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

Findings: Regarding the pedestrian connection adjustment, the impacts of a connection that is approximately 40 feet longer than the straight line distance is mitigated by the fact that a direct pedestrian connection from the restaurant entrance to the street is still provided. Additionally, due to the irregular lot shape, the proposed pedestrian connection provides a shorter distance to the nearest bus stop than a connection that meets the length requirement of the standard.

Regarding the impervious surface adjustment, the applicant has provided information to demonstrate that the proposed stormwater management system will mitigate any

impacts resulting from the requested increase in impervious surface area to approximately 58.1 percent. The applicant notes the following about that the proposed stormwater management system:

- The system uses methods approved in the Stormwater Management Manual that will return stormwater directly to the ground on-site or allow for evaporation and transpiration of stormwater, rather than allowing the stormwater to flow into the City storm system and directly to Johnson Creek; and,
- The system will mitigate impacts associated with an impervious surface area of over 50 percent by reducing the flow of stormwater to a level that is effectively equivalent to a site with approximately 36 percent impervious surface.

In addition, BES has concurred that the proposed stormwater management system is acceptable and it is acceptable to exceed the 50 percent maximum impervious surface area on the site. Lastly, there is a condition of approval imposed, requiring a minimum of 75 percent of the proposed landscaping (trees and shrubs) to be native evergreen and/or native coniferous species, because such species intercept stormwater throughout the rainy season.

This criterion is met.

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

Findings: The site is not within an environmental zone, therefore this criterion is not applicable.

DEVELOPMENT STANDARDS

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

CONCLUSIONS

The applicant has requested two Adjustments in conjunction with the proposed development of a retail building and a restaurant on the site. The first Adjustment is an Adjustment to the Pedestrian Standards, to allow the pedestrian connection between the restaurant main entrance and SE 174th Avenue to be approximately 40 feet longer than the straight line distance between the restaurant entrance and the street. The second Adjustment is an Adjustment to the maximum 50 percent impervious surface limitation of the Johnson Creek Basin Plan District, South Subdistrict; the applicant has requested a maximum impervious surface area of approximately 58.1 percent. The applicant has provided information to demonstrate that the requested Adjustments will comply with the Approval Criteria for Adjustments, with the imposition of conditions of approval. Therefore, the Adjustments can be approved. Approval of building permits is still required, after the decision is final and has been recorded with Multnomah County.

ADMINISTRATIVE DECISION

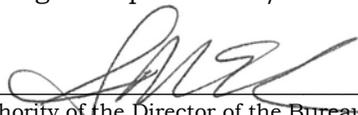
Approval of:

An Adjustment to Section 33.130.240 (Pedestrian Standards), to allow the pedestrian connection from the restaurant main entrance to SE 174th Avenue to be more than 20 feet longer than the straight line distance (specifically, to be approximately 220 feet in length); and,

An Adjustment to Section 33.537.140.D (Johnson Creek Basin Plan District, South Subdistrict), to allow the total impervious surface area of the proposed development to be a maximum of approximately 37,308 square feet, or approximately 58.1 percent of the site;

per the approved site plan, Exhibit C-1, signed and dated July 25, 2008, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (Condition B) 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 08-111336 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The landscape plan must indicate that a minimum of 75 percent of the proposed trees and shrubs will be native evergreen species and/or native coniferous species.

Decision rendered by:  **on July 25, 2008.**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 29, 2008

Staff Planner: Suzanne Savin

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 26, 2008, and was determined to be complete on March 18, 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 26, 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 for a total of 105 days, as stated with Exhibit A-5.

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

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

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

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

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on August 12, 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. Recognized neighborhood associations are not subject to the appeal fee. 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 Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

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

Recording the final decision.

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

- *Unless appealed,* The final decision may be recorded on or after **August 13, 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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

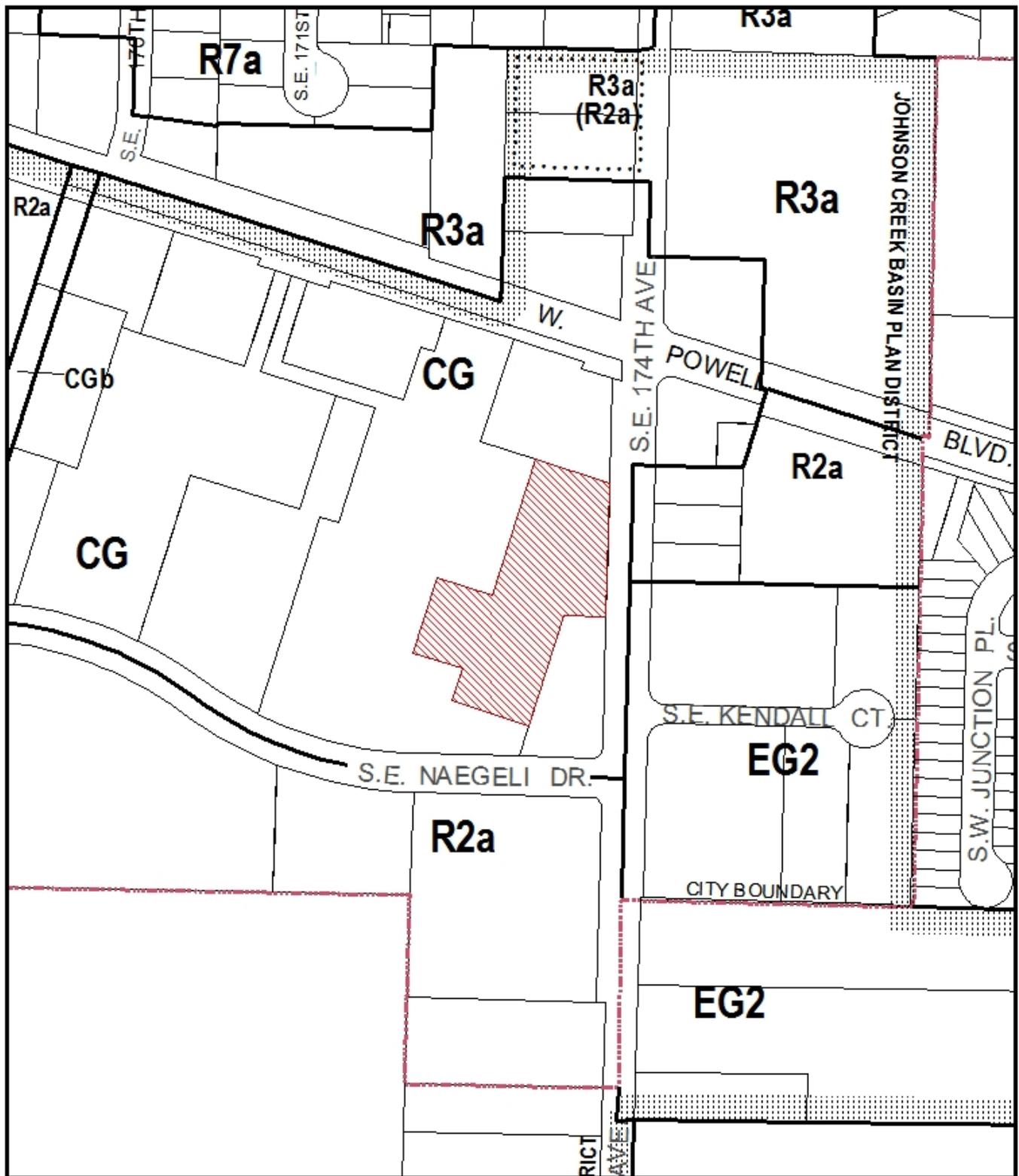
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
 1. Narrative
 2. Geotechnical Report
 3. Stormwater Calculations and Groundwater Addendum to Soils Report
 4. Narrative Addendum with Existing Impervious Surface Site Coverage and revised Proposed Impervious Surface Site Coverage
 5. Applicant Request to Stop the 120-Day Clock from April 11, 2008 to July 25, 2008
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Revised Site Plan (attached)
 2. Original Site Plan
 3. Retail Building Elevations (attached)
 4. Restaurant Building Elevations (attached)
 5. Onsite Erosion Control Plan
 6. Onsite Grading Plan
 7. Onsite Utility Plan
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services, dated April 11, 2008
 2. Bureau of Environmental Services Land Use Response Addendum #1, dated May 9, 2008
 3. Bureau of Environmental Services Land Use Response Addendum #2, dated July 18, 2008
 4. Bureau of Transportation Engineering and Development Review

5. Site Development Review Section of BDS, dated April 3, 2008
 6. Site Development Revised Land Use Review Response, dated May 2, 2008
 7. Life/Safety Plan Review Section of BDS
 8. "No concerns" responses from the Water Bureau, Fire Bureau, and Bureau of Parks - Forestry Division
- F. Correspondence:
1. Louise Cody, Land Use Chair of the Centennial Community Association, April 10, 2008, expressed concern and opposition to the Adjustments.
- G. Other:
1. Original LU Application
 2. Site History Research

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).



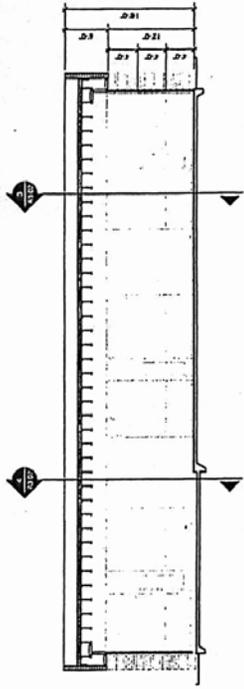
ZONING

 Site

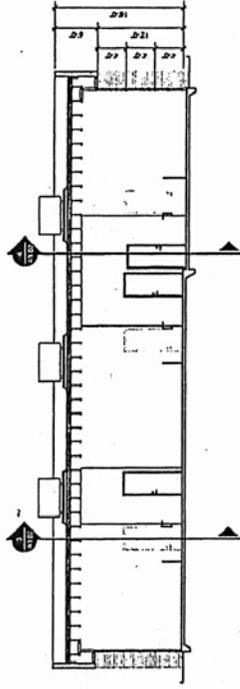


This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

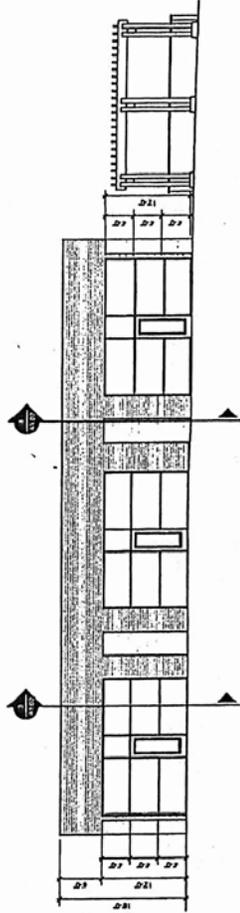
File No.	<u>LU 08-111336 AD</u>
1/4 Section	<u>3448</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S3E07CD 1900</u>
Exhibit	<u>B</u> (Feb 28, 2008)



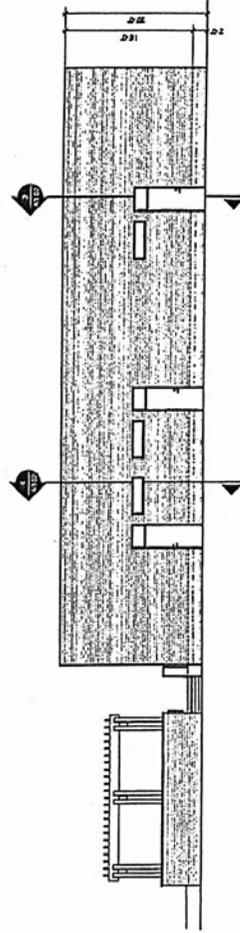
1 LONGITUDINAL SECTION - RETAIL BLDG.
 SCALE: 1/8" = 1'-0"



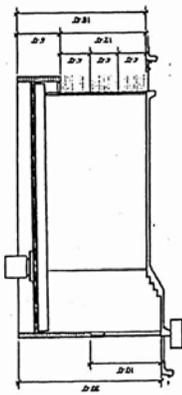
2 LONGITUDINAL SECTION - RETAIL BLDG.
 SCALE: 1/8" = 1'-0"



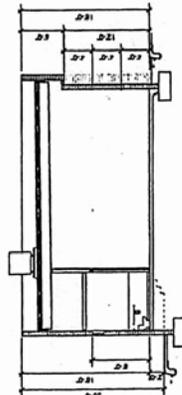
A EAST ELEVATION - RETAIL BLDG.
 SCALE: 1/8" = 1'-0"



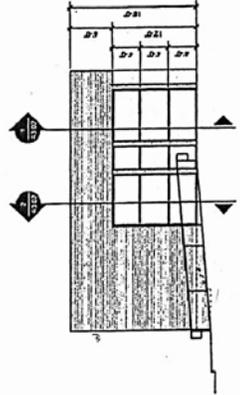
B WEST ELEVATION - RETAIL BLDG.
 SCALE: 1/8" = 1'-0"



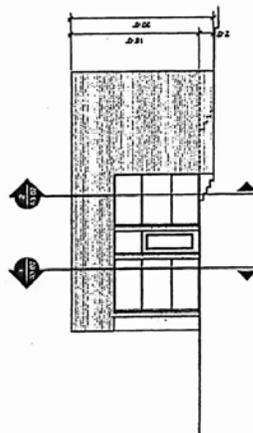
3 CROSS SECTION - RETAIL BLDG.
 SCALE: 1/8" = 1'-0"



4 CROSS SECTION - RETAIL BLDG.
 SCALE: 1/8" = 1'-0"



C EAST ELEVATION - RETAIL BLDG.
 SCALE: 1/8" = 1'-0"



D WEST ELEVATION - RETAIL BLDG.
 SCALE: 1/8" = 1'-0"

Exhibit C-3

Retail Building Elevations

