



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

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**Date:** June 3, 2011  
**To:** Interested Person  
**From:** Douglas Hardy, Land Use Services  
503-823-7816 / [Douglas.Hardy@portlandoregon.gov](mailto:Douglas.Hardy@portlandoregon.gov)

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

The Bureau of Development Services has **approved with conditions** 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 11-100975 AD**

#### **GENERAL INFORMATION**

**Applicant:** Jack Davis  
Pac West Energy LLC  
3450 East Commercial Court  
Meridian, ID 83642

**Representative:** Caryl J Mattson  
Barghausen Consulting Engineers, Inc  
18215 72nd Avenue South  
Kent, WA 98032

Bruce Creagor  
Barghausen Consulting Engineers, Inc.  
18215 72nd Avenue South  
Kent, WA 98032

**Site Address:** 2450 SE 122<sup>nd</sup> Avenue

**Legal Description:** TL 5400 0.48 ACRES, SECTION 02 1S 2E  
**Tax Account No.:** R992020710  
**State ID No.:** 1S2E02CC 05400  
**Quarter Section:** 3343  
**Neighborhood:** Mill Park, contact Rosemary Opp at 503-256-4591  
**Business District:** Gateway Area Business Association, contact Fred Sanchez at 503-256-3910  
**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

**Zoning:** General Commercial (CG)  
**Plan District:** None  
**Other Designations:** None  
**Case Type:** Adjustment Review (AD)  
**Procedure:** Type II, Administrative decision with appeal to Adjustment Committee

**PROPOSAL**

The applicant proposes converting an existing three-bay service station to a convenience store. As part of the conversion, a one-story, 775 square foot addition is proposed on the east side of the existing building. The addition will be flush with the south-facing wall of the existing building, and located 73 feet from the lot line along SE Division Street. Because SE Division Street is a designated Transit Street, building walls are required to be set back no farther than 10 feet from the street lot line.

The applicant is requesting an Adjustment to the maximum building setback standard (Zoning Code Section 33.130.215.C) to allow the building wall of the addition to be set back 73 feet from the lot line along SE Division Street.

**RELEVANT APPROVAL CRITERIA**

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

**ANALYSIS**

**Site and Vicinity:** The site, located at the northeast corner of SE 122<sup>nd</sup> Avenue and SE Division Street, is currently developed with a Shell gasoline station. Development on the site includes a one-story, 1,775 square foot building, set back approximately 73 feet from SE Division Street and approximately 80 feet from SE 122<sup>nd</sup> Avenue. An open canopy, covering the gas pumps, extends towards SE 122<sup>nd</sup> Avenue. The remainder of the site is largely paved for vehicle maneuvering/queuing area and parking. With the exception of a small grassy island fronting both SE Division Street and SE 122<sup>nd</sup> Avenue, there is no landscaping on the site. There are no pedestrian connections from the building to either street.

The surrounding area is characterized by lower density, auto-oriented commercial development. Most sites in the vicinity are developed at a low building coverage with large, surface parking lots located to the side or in front of the buildings. Some buildings in the area are built to the maximum street setback.

Southeast Division Street in this location is a designated Major Transit Priority Street, as well as a District Collector and City Walkway and Bikeway. Southeast 122<sup>nd</sup> Avenue in this location is a designated Transit Access Street, Major City Traffic Street, and a City Walkway and Bikeway.

**Zoning:** The site, and surrounding properties within a 200 foot radius, are located in a CG (General Commercial) zone. 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.

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

**Agency Review:** A Notice of Proposal was mailed on March 31, 2011. The following City bureaus have responded with no issues or concerns regarding the requested land use review:

- Bureau of Environmental Services;
- Water Bureau;
- Fire Bureau;

- Bureau of Parks - Urban Forestry Division; and
- Bureau of Development Services – Life Safety.

The Bureau of Transportation Engineering and Development (PBOT) responded with no issues regarding the requested Adjustment, but will require prior to the issuance of building permits modifications to curb cuts along both SE Division Street and SE 122<sup>nd</sup> Avenue. Specifically, PBOT will require the applicant to close the existing western-most driveway/curb cut along the site's SE Division Street frontage. Additionally, the applicant will be required to relocate the existing southern-most driveway/curb cut along the site's SE 122<sup>nd</sup> Avenue frontage so that it is at least 25 feet from the southwest corner of the site. The applicant has since modified the original site plan to accommodate these requirements. These changes are reflected on the attached Exhibit C1.

The Bureau of Development Services Site Development Section responded with no issues or concerns regarding the requested land use review, but noted that there is no record that the cesspool on the site was abandoned at the time of sewer connection. This cesspool may need to be located and decommissioned at the time of building permit review.

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the Notice of Proposal.

## 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 applicant is requesting an Adjustment to allow a proposed building addition to exceed the maximum 10 foot building setback from SE Division Street. The purpose for the maximum building setback, as stated in Section 33.130.215.A of the Zoning Code, is as follows:

*The setbacks requirements along transit streets and in Pedestrian Districts create an environment that is inviting to pedestrians and transit users.*

Based on the findings identified below, the proposal will equally meet the purpose of the this regulation.

The applicant proposes adding 775 square feet of floor area to the existing 1,775 square foot building on the site. The south-facing wall of the existing building is set back 73 feet from SE Division Street, with the wall of the proposed addition being flush (and at the same setback from SE Division Street) as the existing wall. At 14 feet in width, the addition will be only about one-third of the width of the total building wall facing SE Division Street.

The building setback standards require this 14 foot wide addition to be located a maximum of 10 feet from SE Division Street, even though the remainder of the building façade would set back 73 feet from the same street frontage. While the proposal does not meet this standard, the development as a whole will become no less transit-oriented than the current situation. In fact, with the upgrades proposed elsewhere on the building and on the site, the development will become more inviting to pedestrian and transit users. The window area along the west-facing building façade, oriented to SE 122<sup>nd</sup> Avenue (also a designated transit street) will be expanded significantly. These floor to ceiling storefront windows, and the main entry, will extend along nearly 70 percent of the façade, providing interest to pedestrians, and a clear visual clue on where to enter the store. Additionally, a new six foot wide colored and stamped concrete pedestrian path will connect the sidewalk fronting this façade to SE 122<sup>nd</sup> Avenue.

The appearance of the site will also be enhanced for pedestrian and transit users through significant landscape upgrades throughout the site. Currently, landscaping on the site is limited to groundcover planted in two small islands along the two street frontages. The applicant proposes to expand both these landscape areas, and provide landscaped areas along the east and north property lines. The majority of these landscaped areas will be planted with a variety of vegetation, including trees, shrubs and living groundcover. These landscaped areas will not only improve the appearance of the site as viewed by pedestrian and transit users along the two adjacent transit streets, but also help guide vehicles and pedestrians through the site.

The two landscaped areas along SE Division Street and SE 122<sup>nd</sup> Avenue, while expanded in size over what now exists, have no landscaping other than grass. To further enhance the appearance of the site and to better define the boundaries of the vehicle and pedestrian space, a condition of approval will require landscaping to the L2 landscape standard (Zoning Code 33.248.020.B) be planted in these areas (see Exhibit C2).

As proposed and with the condition of approval, the Adjustment request equally meets the intent of the maximum building setback, and this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** Because the site is located in a General Commercial zone, it must be demonstrated that the proposal is consistent with the classifications of the adjacent streets and the desired character of the area.

The classifications of the two adjacent streets, as identified in the Transportation Element of the Comprehensive Plan, are as follows:

SE 122<sup>nd</sup> Avenue: Major City Traffic Street; Transit Access Street; City Bikeway; City Walkway; and Major Truck Street.

SE Division Street: District Collector Street; Major Transit Priority Street; City Bikeway; City Walkway; and Truck Access Street.

Because the Adjustment does not affect the use or density of use allowed on the site, it is consistent with the type of uses and density of development that is intended on streets with the classifications identified above. While the City Bikeway and City Walkway designations of the two adjacent streets are intended to facilitate the movement of pedestrians and bicyclists to development along these streets, in part by ensuring buildings are closer to the street with no or limited vehicle area between the building and the street, the fact is the site is presently developed with a highly auto-oriented use (a gasoline station). The requested Adjustment in no way makes development on the site less bike and pedestrian friendly, but rather, as identified above, decreases the auto-orientation of existing development by

introducing a pedestrian connection from the building to the street, and replacing paved vehicle area with landscaped areas. These pedestrian and landscape improvements are desired features along City Bikeways and Walkways.

As for being consistent with the desired character of the area, the desired character of an area is established by the purpose statement of the base zone, and any adopted area plans. The site is located in a CG zone, which is intended to be auto-accommodating, while allowing a wide range of retail and service businesses (Section 33.130.030.G). Development is intended to be auto-accommodating except when adjacent to a transit street. The proposed Adjustment has no impact on the ability of the site to be developed for a variety of retail and service uses, and while the use of the site requires accommodating vehicles, the applicant has enhanced the pedestrian and landscape elements on the site as a way of appealing to pedestrians and transit users.

As for adopted area plans, the site is located within the boundaries of the *Outer Southeast Community Plan*. This plan contains a variety of policy directions, such as Economic Development, Transportation, Housing, Open Space and Environment, which are not directly relevant to the requested Adjustment. One policy in the plan deals with Urban Design, and includes a desire to create a “Main Street” along many of the neighborhood’s commercial corridors, including SE 122<sup>nd</sup> Avenue and SE Division Street. The policy seeks to achieve this goal by locating buildings with entrances close to the sidewalk. For the subject site, the existing main entrance to the building is located approximately 80 feet from SE 122<sup>nd</sup> Avenue, and 75 feet from SE Division Street. Proposed development on the site will not substantially change the location of the main entrance. As such, the requested Adjustment, which is limited to a 14 foot wide addition on the east side of the existing building, has no impact on this desired Urban Design policy. Proposed site improvements to the site, including an increase in window area on the existing building’s west-facing façade, the new pedestrian connection to SE 122<sup>nd</sup> Avenue, and additional landscaping, all enhance the appearance of the site.

Based on these findings, 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:** As only one Adjustment is requested, this criterion is not applicable.

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

**Findings:** City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. Because there is neither a scenic nor historic resource designation on the site, this criterion is not applicable.

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

**Findings:** As indicated in responses to Approval Criteria A and B, the proposal:

- equally meets the intended purposes of the regulation being adjusted; and
- is consistent with the classifications of the adjacent streets and the desired character of the area as defined by the CG base zone purpose statement and the *Outer Southeast Community Plan*.

Towards creating an environment that is inviting to pedestrians (thereby supporting the intent of the maximum setback standard) and further supporting the *Outer Southeast Community Plan* Urban Design policy, a condition of approval will require that landscaping, meeting the L2 landscape standard, be planted in the two islands fronting SE 122<sup>nd</sup> Avenue and SE Division Street (see Exhibit C2).

As proposed and with the condition of approval, this criterion is met.

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

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

## DEVELOPMENT STANDARDS

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

## CONCLUSIONS

The applicant has demonstrated that the applicable approval criteria have been met for the requested Adjustment. The site is presently used as a gasoline service station, with a convenience store proposed within the existing building. A 14 foot wide, 775 square foot addition is proposed on the east side of the building. While it is difficult to meet the intent of the maximum building setback on this site given the existing development, the applicant has proposed a variety of building and site improvements that seek to make the development more inviting to pedestrians and transit users. These improvements are a step towards making the site more consistent with the Urban Design goals of the *Outer Southeast Community Plan*, and with the type of development encouraged along streets designated as City Walkways and Bikeways.

## ADMINISTRATIVE DECISION

**Approval** of an Adjustment to increase the maximum transit street setback (Zoning Code Section 33.130.215.C) along SE Division Street from 10 feet to 73 feet for the proposed addition, per the approved site plans, Exhibits C1 and C2, signed and dated June 2, 2011, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B) must be noted on each of the four 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 11-100975 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Landscaping to the L2 standard is required in the two landscape islands located along both the SE 122<sup>nd</sup> Avenue and SE Division Street site frontages (see Exhibit C1).

**Staff Planner: Douglas Hardy**

**Decision rendered by:**  **on June 2, 2011.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: June 3, 2011**

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on January 5, 2011, and was determined to be complete on March 29, 2011.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 5, 2011.

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 extended the 120-day review period by 31 days. Unless further extended by the applicant, **the 120 days will expire on August 27, 2011.**

**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 June 17, 2011**, at 1900 SW Fourth Avenue. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3:00 pm. After 3:00 pm and on Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the 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 Street 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 **June 20, 2011 – the next business 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:

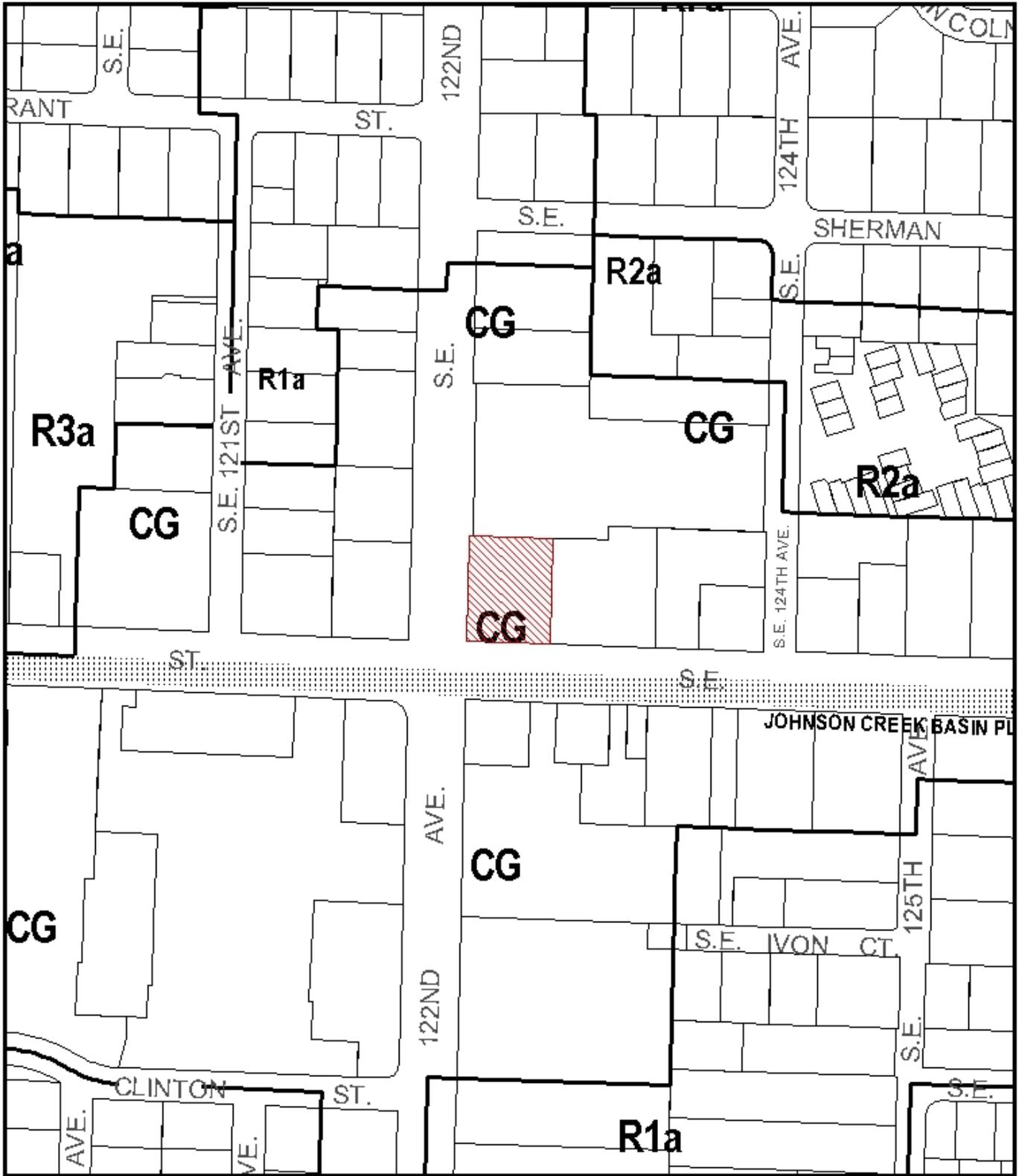
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Statement submitted January 5, 2011
  - 2. Statement submitted March 28, 2011
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Landscape Plan (attached)
  - 3. Building Elevations
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Bureau of Development Services - Site Development Review
  - 6. Bureau of Parks, Forestry Division
  - 7. Bureau of Development Services – Life Safety
- F. Correspondence: (none)
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Letter of Incompleteness
  - 4. Convenience Store Good Neighbor Plan

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



# ZONING

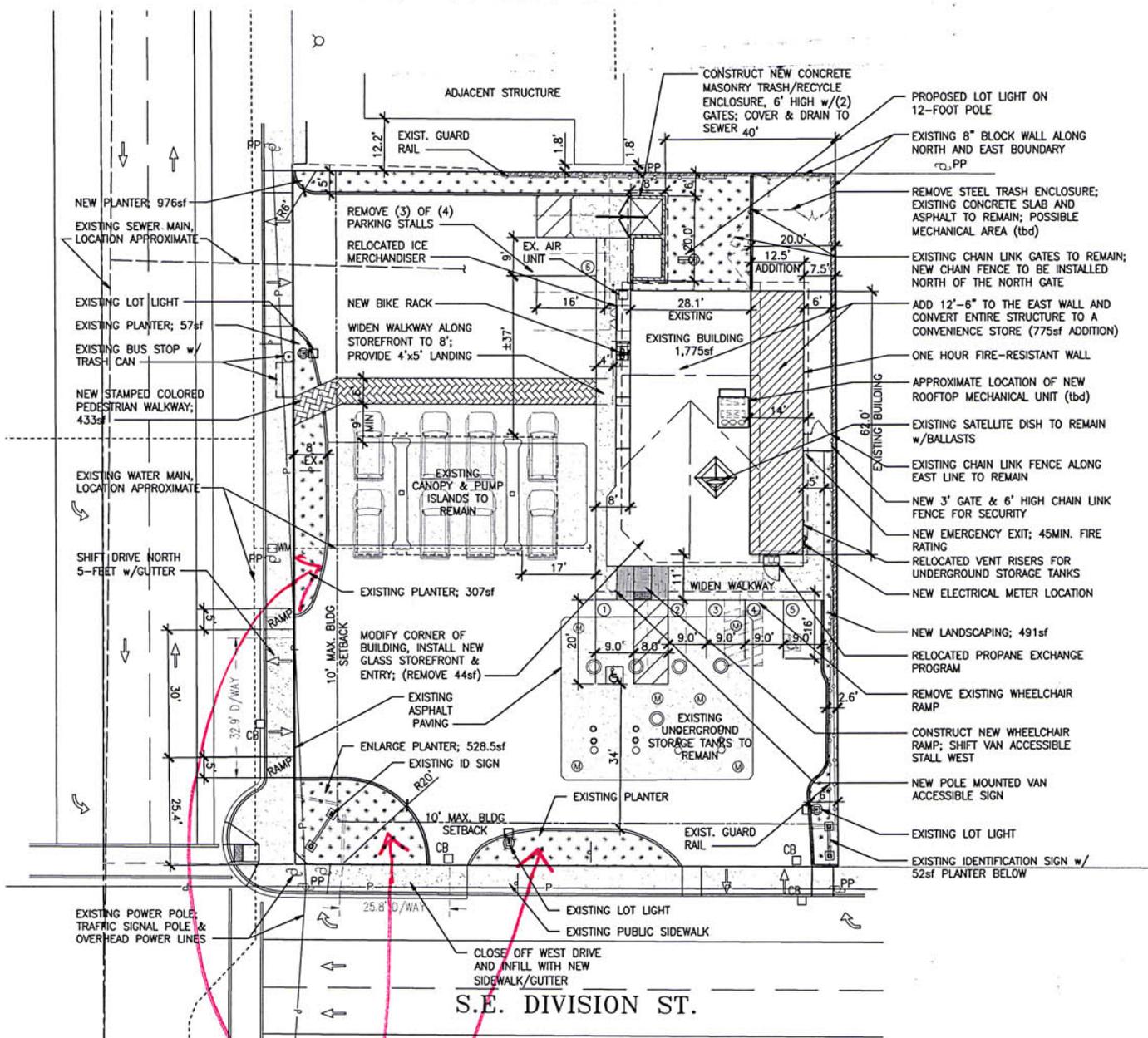


File No.	LU 11-100975 AD
1/4 Section	3343
Scale	1 inch = 200 feet
State_Id	1S2E02CC 5400
Exhibit	B (Mar 30, 2011)

*Handwritten signature*

6-2-11

This approval applies only to this drawing and is subject to the City of Portland's standard terms and conditions.



*AREAS OF REQUIRED L2 LANDSCAPING; SEE C2 FOR FULL LANDSCAPE PLAN*

CASE NO. 11-100975  
EXHIBIT C1



