



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

FROM CONCEPT TO CONSTRUCTION

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Date: April 9, 2015
To: Interested Person
From: Kathleen Stokes, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

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

CASE FILE NUMBER: LU 15-117390 NU

GENERAL INFORMATION

Applicant: Dustin Posner, DDP Architecture, LLC
2831 NW Cornell Rd / Portland, OR. 97210

Owner: Don Minnerly
4508 N Williams Ave / Portland, OR 97217

Site Address: 4555-4557 N WILLIAMS AVE

Legal Description: BLOCK 14 N 42' OF E 70' OF LOT 1, MAEGLY HIGHLAND ADD
Tax Account No.: R526800030, R526800030
State ID No.: 1N1E22AC 05100, 1N1E22AC 05100
Quarter Section: 2530
Neighborhood: Humboldt, contact Micah Meskel at 503-481-5715.
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-841-5032.
District Coalition: Northeast Coalition of Neighborhoods, contact info@necoalition.org
Zoning: R1a (Residential 1,000, Medium Density Multi-Dwelling, with an Alternative Design Density Overlay)

Case Type: Nonconforming Situation Review
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal: The applicant is proposing the location of a real estate office in the ground level storefront of the existing building on this site. Legal nonconforming status for an ongoing manufacturing use (wood working shop, including furniture, musical instruments and boat building) was documented and the establishment of a proposed retail use (restaurant) was approved in 2013, under LU 13-165351 NU AD. The plans for the restaurant fell through and the manufacturing use was continued on the site. Now, however, the property owner has an opportunity for another tenant that is in a different use category, office, which is also a use category that is not allowed in the R1 zone. Therefore, the applicant is asking that the approval be expanded, to allow the proposed office use, while still retaining the approval for retail uses on the site for the standard 3 years that are granted with a land use approval. The proposal states that only one of these uses would occupy the ground floor space at any time. The upper level of the structure is and will remain in residential use. The applicant is also asking that the

condition of the previous decision that required a privacy fence adjacent to the proposed outdoor seating area be removed, since outdoor seating is no longer a part of the proposal.

The applicant has provided the following information regarding the proposed office use:

- Proposed hours for the real estate office would be Monday through Friday from 8 AM to 5 PM and there would be no regular weekend hours.
- The real estate office would have up to three agents, with occasional visits by customers or outside agents.
- No changes are proposed to the exterior appearance of the building.

Relevant Approval Criteria: Nonconforming Situation Review, 33.258.080 B.

ANALYSIS

Site and Vicinity: The subject site is a 2,940 square-foot lot that is located on the southwest corner of the intersection of North Williams Avenue and Going Street. The property is developed with a two-story, 24 by 47-foot structure that was built in 1903. The building contains a historic store-front on the ground floor, with storage for the commercial use in the basement and residential living quarters on the upper level. A curb cut on North Going Street provides motor vehicle access to a paved parking area that abuts the west side of the building. The area to the south of the building is currently undeveloped and provides an outdoor yard for the commercial and residential uses on the site.

The area around the site is developed with a mix of uses, many of which also date from the early 1900s. The site is located on a double-block face on Williams, that extends from NE Going Street, south to NE Skidmore Street. Most of the remainder of this block to the south is developed with residential uses, including several vintage single-dwelling structures. The area immediately to the west contains a mixture of single and multi-dwelling residential structures. There are other nonconforming commercial uses located on the north side of Going Street, on both sides of Williams Avenue. Farther north on Williams, there are residential uses on the west side of the street and a pocket of commercial uses in an EX (Central Employment) zone on the east side of the street. The southern end of the double block face on the west side of Williams and the area beyond Skidmore, to the south, is also designated EX and contains a mixture of residential and commercial uses.

Zoning: The site is zoned R1, Medium Density Multi-dwelling Residential. This zone allows up to one unit per 1,000 square feet of site area and requires a minimum of one unit per 1,450 square feet of site area, or 1 unit per 2,000 square feet of site area for sites that are smaller than 10,000 square feet. There is also an "a" or Alternative Design Density Overlay on this site. The provisions of this overlay zone allow increased density on some sites, when the proposed development meets Community Design Standards or is approved through Design Review. These provisions only apply to residential development, so in this case, the applicant is not taking advantage of the provisions of this overlay zone.

Land Use History: City records include one prior land use review for this site:

LU 13-165351 NU AD approved Nonconforming Situation Review (33.258.080 B.), to allow a proposed restaurant to locate on the site and to also allow the area that is devoted to the use to expand into the outdoor area on the site, as indicated on the site plan. Approval was also given for an Adjustment to Code Section 33.266.110, to waive the additional three onsite parking spaces that would be required for the proposed use. These approvals are subject to compliance with the approved site plan, Exhibit C-1, signed and dated December 6, 2013, and also are subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B-C) 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 13-165351 NU AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. Approval of this Nonconforming Situation Review is limited to those uses that would be expected to have impacts that would be similar to the proposed restaurant. Any other Retail Sales and Service Use would require a new analysis and review to be approved. The previously existing rights to a Manufacturing and Production Use are maintained in accordance with the Code standards only for the time limits that are specified in Code Section 33.258.050 D. The uses that can be allowed without approval through a new Nonconforming Situation Review include the following:

In addition to a restaurant, these uses include cafes and delicatessens and these additional uses:

- The Sales-oriented uses, that are listed in 33.920.250 C.1, except for the sale or leasing of consumer vehicles, which are not allowed through this review, and
 - The Personal service-oriented uses, that are listed in 33.920.250 C.2, except for branch banks, urgency medical care, laundromats, tanning salons, mortuaries and kennels, which are not allowed through this review, and
 - The Repair-oriented uses, that are listed in 33.920.250 C.4, except for guns, appliances and large office equipment, photo or laundry drop-off, quick printing and recycling drop-off, which are not allowed through this review.
- C. A 90% sight-obscurating fence must be placed along the portion of the southern property line that is parallel to the outdoor seating area. This fence may not exceed 3.5 feet in height, within the first 10 feet from the property line that abuts North Williams Avenue, but is required to be at least 6 feet tall along the portion of the property line that is farther to the west, up to at least the point where it meets the required perimeter landscaping at the edge of the parking area.

This decision was issued on December 12, 2013 and the approval remains in effect for three years from that date. The applicant has requested that the requirement for a fence be removed, as an outdoor seating area is no longer being created.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **February 27, 2015**. The following Bureaus have responded with no issues or concerns:

- Environmental Services provided a response that stated that there were no objections to approval of the requested change of use for the site and noted that any further changes to development would be subject to compliance with requirements of the current City of Portland Stormwater Management Manual (Exhibit E-1).
- Transportation Engineering responded to note that the previous approval for a restaurant use to be located on the site was found to be acceptable and that the current proposal to allow an office use instead of the retail proposal would not have any greater impacts on traffic or parking and probably would have fewer impacts on the transportation infrastructure. The response also explained Title 17 requirements for street dedication (Exhibit E-2).
- Life Safety Plan Review Section of BDS provided a response that noted that a change of occupancy permit would need to be approved for the proposed office use (Exhibit E-3).
- Site Development Section of BDS provided a response of, “no concerns,” (Exhibit E-4).

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

ZONING CODE APPROVAL CRITERIA

NONCONFORMING SITUATION REVIEW

33.258.010 Purpose of Nonconforming Situation Regulations

Nonconforming situations are created when the application of a specific zone to a site changes, or a zoning regulation changes. As part of the change, existing uses, density, or development might no longer be allowed. The intent of the change is not to force all noncomplying situations to be immediately brought into conformance. Instead, the intent is to guide future uses and

development in a new direction consistent with City policy, and, eventually, bring them into conformance.

Legal nonconforming status is based on whether the situation was allowed when established, and if it has been maintained over time. This chapter also provides a method to review and limit nonconforming situations when changes to those situations are proposed. The intent is to protect the character of the area by reducing the negative impacts from nonconforming situations. At the same time, the regulations assure that the uses and development may continue and that the zoning regulations will not cause unnecessary burdens.

Nonconforming situations that have a lesser impact on the immediate area have fewer restrictions than those with greater impacts. Nonconforming uses in residential zones are treated more strictly than those in commercial, employment or industrial zones to protect the livability and character of residential neighborhoods.

33.258.050 Nonconforming Uses

B. Change of Use A change to a use in a different use category which is prohibited by the base zone may be allowed through a nonconforming situation review.

Nonconforming use status for this site and purposes for review requirements: The previous proposal for this site was to use the existing structure for a restaurant, which is classified as a retail sales and service use. Previously, the main floor and basement storage area of the building were used for a woodworking shop, where the owner made boats, furniture, musical instruments and other similar products. The woodworking shop is classified as a manufacturing use. The second story of the building was dedicated to a residential use and will remain in this use. Changes that are proposed to the development on the site, include any needed interior alterations to the building to meet building code requirements. Previously, the potential addition of a kitchen garden area and a small outdoor seating area were proposed, as well as the enhancement of the parking area, through upgrading the surface, new striping to meet accessibility standards and the addition of landscaping.

Currently, the applicant wishes to gain approval for use of the ground floor of the building for a real estate office. Title 33, the Portland Zoning Code Offices places offices in a different use category than retail sales and service and so requires a new analysis of the impacts and approval of a new Nonconforming Situation Review. The current proposal does not include an outdoor seating area so the applicant is requesting that the condition for a fence to provide privacy screening be removed. The other aspects of the approval would remain active for the three-year time limit allowed by the Code, so that, if the use were to change again within that time frame, an additional review would not be required for one of the uses that were previously approved under LU 13-165351 NU AD.

The zoning history for the site shows that it was zoned Commercial prior to 1959. From 1959 to 1980, the site was zoned M3, Light Manufacturing. From 1980 to 1990, the zoning designation was C2 or General Commercial. With a change in the City's Zoning classifications, C2 was changed to CG, which was still called General Commercial and the site retained that designation until October 26, 1993, when it was changed to R1a, with the adoption of the zoning map amendments for the Albina Community Plan. The present owner of the property, Mr. Don Minnerly, purchased the site in 1991. A fire seriously damaged the building in 2007. Mr. Minnerly has been working to restore the structure and previously provided documentation, including building permits and tax statements that show proof that he continued to operate his business in the lower portion of the building (the ground floor and the associated basement storage area) through the years since he had acquired it.

Therefore, the applicant has the right to legal nonconforming status for the site for Manufacturing and Production Uses. Based on the approval of LU 13-165351, there is also a right to replace the previous use with one of the Retail Sales and Service Uses that were listed in the decision for that review. In accordance with Code Section 33.258.050, the applicant also has the right to request a change of use to another prohibited use in a different use category and to expand the use, within the property lines that existed two years prior to the time that it

became nonconforming. Therefore, the Code allows us to consider the proposed alternative Office use. While the current prospective tenant for the space wishes to operate a real estate office, the applicant is requesting approval of uses in the broader category of office uses that would be expected to have similar impacts, including the office uses that are listed in Portland Zoning Code Section 33.920.240 as examples of Traditional Office and/or Industrial Office uses, except for the following, which would not be allowed under approval of this proposal: Brokerage Houses; Bank Headquarters; Government Offices; Public Utility Offices; Medical and Dental Clinics; Blood Collection facilities; Telecommunication Service Providers; Television, Video, Radio and Internet Studios and Broadcasting; Scientific Services; Medical and Dental Labs.

33.258.080 Nonconforming Situation Review

A. Procedure. A nonconforming situation review is processed through a Type II procedure.

B. Approval criteria. The request will be approved if the review body finds that the applicants has shown that all of the following approval criteria are met:

1. With mitigation measures, there will be no net increase in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:
 - a. The hours of operation;
 - b. Vehicle trips to the site and impact on surrounding on-street parking;
 - c. Noise, vibration, dust, odor, fumes, glare, and smoke;
 - d. Potential for increased litter; and
 - e. The amount, location, and nature of any outside displays, storage, or activities; and

Findings: Hours of operation - The woodworking shop included custom furniture manufacturing and boat building and was generally open from noon to as late as 10 PM, Monday through Friday. Weekend hours were also practiced but did not maintain a regular schedule.

The hours of operation for the proposed real estate office would generally be from 8 AM to 5 PM, Monday through Friday. Weekend usage would not be a regular occurrence as the office would not have any listed public hours on weekends.

The proposed hours for the office use are less than the previous manufacturing use and also less than the previously approved retail use. To start, the hours of operation for the previously proposed restaurant operation would generally be Tuesday through Thursday, from 5 PM until 10 PM, Friday and Saturday, from 5 PM to 11 PM and Sunday, from 5 PM until 9 PM. Eventually, breakfast hours were to be added as well.

Vehicle trips and impact on surrounding on-street parking - The woodworking shop seems to have had a varying degree of business that was not reported to have any average numbers of patrons or employees, but waxed and waned over the years. Pickup and delivery of materials and finished products might occur at any time that the business was operation, including weekends and later evening hours. However, the applicant notes that customer traffic was generally quite light from this use.

The proposed office use would have three real estate agents. Occasional visits would occur from outside agents from other offices who came to negotiate sales contract, but customer traffic to the location is expected to be very limited and light in volume, keeping closer to the amount of traffic generated by the manufacturing use than the amount that was anticipated to be generated by the proposed retail use that was approved in the 2013 review.

The restaurant that was approved under the previous review would have had a seating capacity of about 35, with some additional outdoor seating, and would have had up to 5 employees. Most of the items needed by the business would be picked up by the restaurant owner or his employees, but it is anticipated that there may be 1 or 2 deliveries in the

morning hours. The applicant stated in the narrative for that review that much of the projected clientele would come from the immediate neighborhood and so they will be targeting patrons who would be walking or bicycling to the site. With this understanding, the retail use was found to have a higher traffic volume but not to the extent that it would create significant detrimental impacts on the residential area.

Portland Transportation staff analyzed the potential impacts of the current proposal and provided the following summary and conclusions:

At this location, N Williams is classified as a Neighborhood Collector, Transit Access Street, City Bikeway, City Walkway, and a Local Service Street for all other modes. N Going is classified as a Local Service Street for all modes. Based on the zoning and street classification, a 2-ft dedication along N Williams along the portion of the site without a building on the property line will be required as a condition of building permit approval. No street improvements will be required per the approval of Public Works Appeal 15-125410 PW.

The transportation approval criteria for this review relate to any increase in vehicle trips and the potential impact to the on-street parking supply in the immediate vicinity. The ground floor area of approximately 1,128 was previously approved to become a small restaurant from the previous manufacturing use (13-165351 LU). The previous use probably averaged only 30 or fewer daily vehicle trips. Restaurants are one of the highest vehicle trip generators, particularly for a space of this size.

A restaurant would have been expected to generate 2.86 vehicle trips per seat. Given the applicant proposes up to 35 seats, 100 daily vehicle trips would have been anticipated. The proposed office use would generate 13 trips. The previous application provided a detailed on-street parking study examining the utilization rate during the peak residential demand times of early evenings and weekends. Within the study area, there were between 16% to 38% on-street parking spaces occupied during the peak demand periods. Parking management strategies are usually warranted once the utilization rate reaches 80% of the on-street parking supply. Conversion of the floor area to an office use will not have any significant impact to the supply of on-street parking. Adequate on-street parking will still be available to serve the local residents, businesses', and their customers.

Based on this analysis, BDS staff concurs with findings of PBOT staff that the conversion of the floor area to either a retail use, as previously approved, or to the currently proposed office use category, will not have any significant impact, due to the minimal number of vehicle trips. Adequate on-street parking will also still be available to serve the local residents, businesses and their customers.

Noise, vibration, dust, odor, fumes, glare, and smoke - No noticeable impacts from noise, vibration, dust, odor, fumes, glare or smoke were expected from the previously approved retail use, as operations will generally be contained within the building. Further, restaurants generally do not produce these types of impacts, other than odors associated with food preparation, which are generally not considered to be noxious. By its very nature, the proposed Office Use category would be even less likely to generate any impacts from any of these factors.

No documented information is available for the previous use on impacts from these sources, but the creation of wood products generally involves the use of power tools and may involve the use of glues, solvents and other products that create impacts from the generation of noise, vibrations, dust, odors and fumes. Anecdotally, the applicant has indicated that, while vibration was not an issue, that the equipment that was used for the operations included table saws, routers, shapers, planers, a lathe and a special dust collection system that also added a noise component. Based on the information that was provided for the

approved retail use or from the alternate proposal for an office use, it can be deduced that there will be no increase in impacts from these things on the residential area.

Potential for increased litter - The applicant has stated that the site will be maintained to be free of litter and so there should be no increase in impacts from this factor.

Outside displays, storage, or activities - Signs for either the previously approved retail use or the newly proposed office use will meet the requirements of Title 32, the Portland Sign Code. Outdoor activities for the previously approved restaurant were proposed to be confined to a small outdoor seating area. A condition of approval required that a 90% sight-obscurer fence be placed along the portion of the southern property line that is parallel to the outdoor seating area. The outdoor area is no longer being proposed for either the Office Use or for any retail use that might locate on the site in its stead, during the time that remains with approval for a retail use to locate on the site. Therefore, no impacts are expected from outdoor displays or activities and there is no longer a nexus for the condition that required that a privacy fence be installed on the site. The condition can, instead, be rephrased to state that, as long as the site still has a residential zone designation, no outdoor seating area is allowed for the commercial use on the site, unless a privacy fence is installed, in accordance with the condition of the 2013 NU review.

Summary: The proposed office use is expected to have no more, and possibly fewer, impacts on the residentially-zoned area than either the previous manufacturing use or the approved retail uses that were allowed by 13-165351 NU AD.

Because the analysis that was done for the previous 2013 proposal was very specific to the particular proposed retail use, and based on the limited amount of available floor area, the approval was limited to only those uses that are similar in character and impacts to that proposal, rather than the broad range that includes all of the retail sales and service uses. The limitation was also based on the stated fact that a restaurant of the size allowed by the building on this site would have the largest traffic impacts of the list of possible uses, but it still would create no noticeable increase in the impacts, in regards to the burdens placed on the transportation system or the availability of on-street parking.

Therefore, the proposed office uses could be allowed and, should there be a change from an office use, within the time that remains before the previous approval would expire (by December 12, 2016), retail uses that were allowed under LU 13-165351 NU AD, could be located in the existing building, including a restaurant, café or a delicatessen and these additional uses:

- The Sales-oriented uses, that are listed in 33.920.250 C.1, except for the sale or leasing of consumer vehicles, which are not allowed through this review, and
- The Personal service-oriented uses, that are listed in 33.920.250 C.2, except for branch banks, urgency medical care, laundromats, tanning salons, mortuaries and kennels, which are not allowed through this review, and
- The Repair-oriented uses, as detailed in 33.920.250 C.4, except for guns, appliances and large office equipment, photo or laundry drop-off, quick printing and recycling drop-off, which are not allowed through this review.

The Code requires approval of an additional review for any increase in floor area for the nonconforming use. With a condition that further requires any other future office uses that are among those excluded from this proposal or for any retail sales and service uses, not included in the above list would also be subject to approval through another Nonconforming Situation Review, this criterion can be met.

2. If the nonconforming use is in an OS or R zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the OS or R zoned area. This is based on taking into account factors such as:
 - a. Building scale, placement, and facade;

- b. Parking area placement;
- c. Buffering and the potential loss of privacy to abutting residential uses; and
- d. Lighting and signs, and

Findings: The main changes that are proposed to the development on the site include interior reconfiguration of the commercial space. The parking area will be enhanced with the required perimeter landscaping, surface repair and striping of parking spaces. No changes will occur that would impact the privacy of the abutting residential property to the west. The previously proposed outdoor seating area is no longer part of the proposal for either office or for retail uses. LU 13-1653551 Condition of Approval C, which required that a 90% sight-obscuring fence be placed along the portion of the southern property line that is parallel to the outdoor seating area will be modified to reflect this change, noting that no outdoor seating is allowed for the commercial use, while the property is still zoned residential, unless such a fence is installed. The property to the south has a residence that is located on the southern half of the property and a large outdoor area that abuts the subject site on the north, thereby providing an element of natural buffering. Lighting and signs on the outside of the building will conform to City Code standards. Therefore, with modification to the condition described above, the appearance of the development that serves the proposed new use will not lessen the residential character of the R zone and this criterion can be met.

- 3. If the nonconforming use is in a C, E, or I zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

Findings: The proposal is in a residentially zoned area. This criterion does not apply.

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 approval criteria for the requested Nonconforming Situation Review can be met, with conditions that ensure that any future nonconforming uses are limited to the projected level of impacts that might occur from the current office use proposal or those from the previously approved retail uses. Subject to compliance with the approved site plan and these conditions, this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of a Nonconforming Situation Review to allow the proposed office use, while still retaining the approval for retail uses on the site, as an alternative proposed use until December 12, 2016. Approval is subject to general compliance with the approved site plan, Exhibit C-1, signed and dated April 7, 2015, and also is subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through E) 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 15-117390 NU." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. The uses are only approved to locate on the ground floor of the existing building on this site. Only one of the approved uses, whether in the Office Use Category of the Retail Sales and Service Use Category would occupy the ground floor space at any time.
- C. The office uses that are approved to locate on the site include all of the office uses that are listed in Portland Zoning Code Section 33.920.240 as examples of Traditional Office and/or Industrial Office uses, except for the following, which are not allowed under approval of this proposal: Brokerage Houses; Bank Headquarters; Government Offices; Public Utility Offices; Medical and Dental Clinics; Blood Collection facilities; Telecommunication Service Providers; Television, Video, Radio and Internet Studios and Broadcasting; Scientific Services; Medical and Dental Labs.
- D. The retail uses that retain the right to locate on the site include cafes and delicatessens and these additional uses:
- The Sales-oriented uses, that are listed in 33.920.250 C.1, except for the sale or leasing of consumer vehicles, which are not allowed through this review, and
 - The Personal service-oriented uses, that are listed in 33.920.250 C.2, except for branch banks, urgency medical care, Laundromats, tanning salons, mortuaries and kennels, which are not allowed through this review, and
 - The Repair-oriented uses, that are listed in 33.920.250 C.4, except for guns, appliances and large office equipment, photo or laundry drop-off, quick printing and recycling drop-off, which are not allowed through this review.

If no retail use has been established on the site prior to December 12, 2016, and if the site is still under a residential zone designation at that time, the right to locate retail uses on the site will expire, in accordance with Zoning Code Section 33.730.130 B.1.

- E. Condition of Approval C of LU 13-165351 NU AD is modified as follows: No outdoor seating is allowed to be established for any commercial use on the site, as long as the site remains under a residential zone designation, unless a privacy fence is installed to screen the surrounding residential properties from the activity area. This requires that a 90% sight-obscuring fence must be placed along the portion of the property line that is parallel to the outdoor seating area. This fence may not exceed 3.5 feet in height, within the first 10 feet from the property line that abuts North Williams Avenue, but is required to be at least 6 feet tall along the portion of the property line that is farther to the west, up to at least the point where it meets the required perimeter landscaping at the edge of the parking area.

Staff Planner: Kathleen Stokes

Decision rendered by:  **on April 7, 2015**

By authority of the Director of the Bureau of Development Services

Decision mailed: April 9, 2015

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

Procedural Information. The application for this land use review was submitted on February 10, 2015, and was determined to be complete on **February 24, 2015**.

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 10, 2015.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or

extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: June 24, 2015.**

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 April 23, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

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

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

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

Recording the final decision.

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

- *Unless appealed*, The final decision may be recorded on or after **April 24, 2015– (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

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

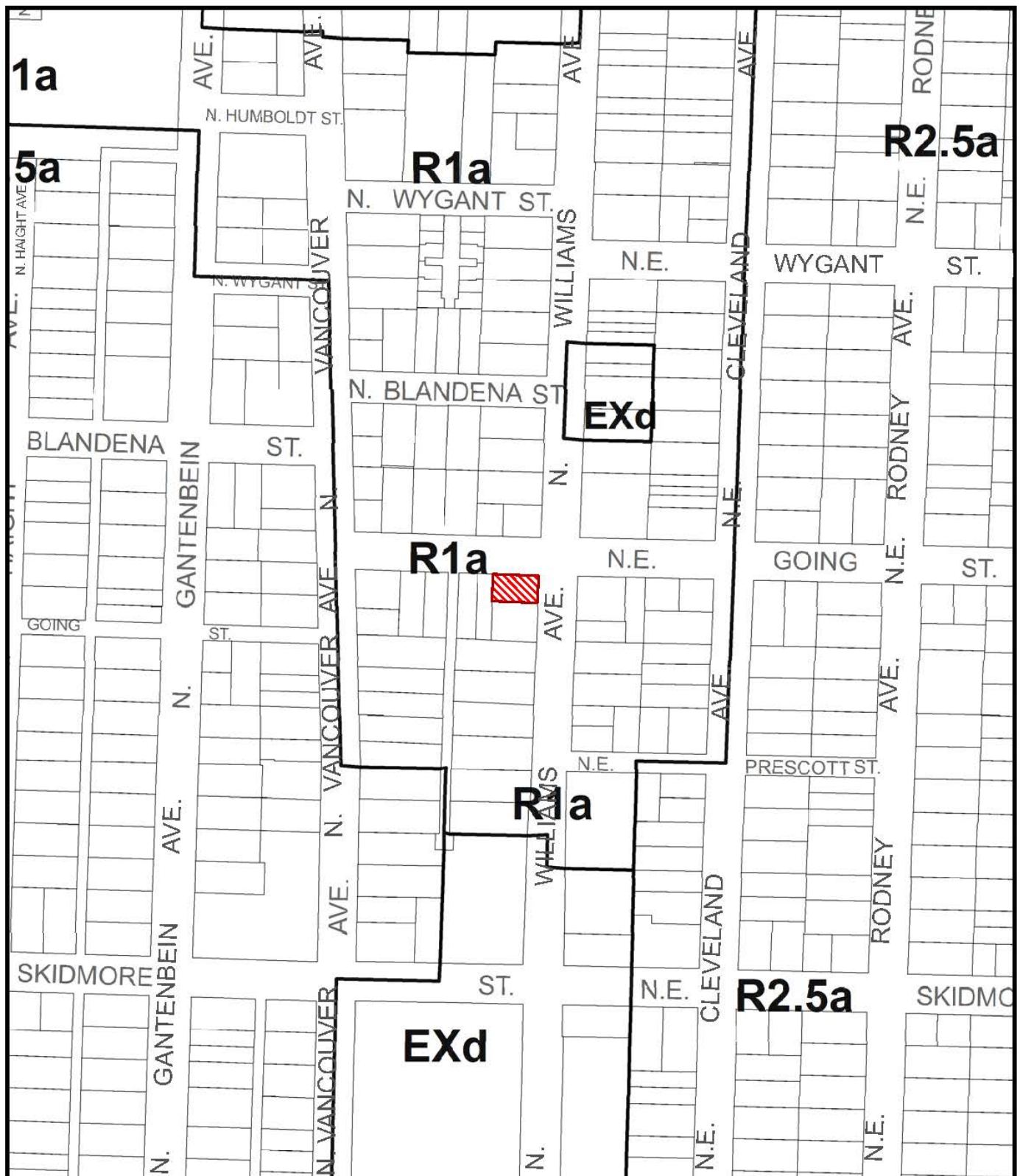
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Application, plans and narrative
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Life Safety Plan Review Section of BDS
 - 4. Summary of responses from City Service Agencies, including Site Development Review Section of BDS
- F. Correspondence: (none received)
- G. Other: (none)

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



ZONING



Site

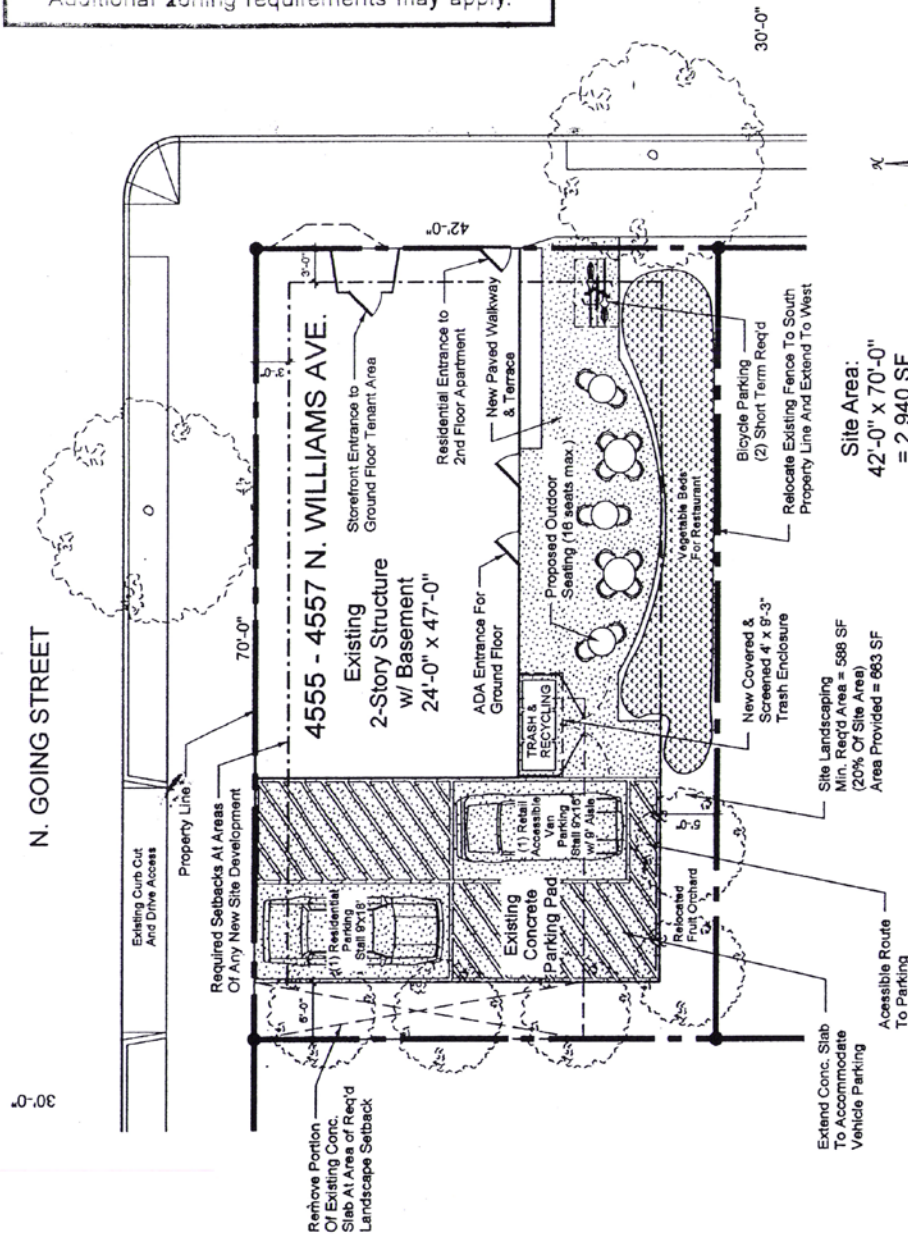


NORTH

File No. LU 15-117390 NU
 1/4 Section 2530
 Scale 1 inch = 200 feet
 State_Id 1N1E22AC 5100
 Exhibit B (Feb 25, 2015)

Attachment 'B'

CL N Going Street

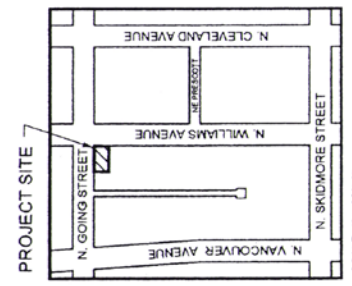


1 CONCEPTUAL SITE PLAN

SCALE: 1" = 8'-0" Delta 2 Revision: Show Onsite Parking Layout For Parking Adjustment Request



Site Area:
42'-0" x 70'-0"
= 2,940 SF



Approved
City of Portland
Bureau of Development Services
Planner *Kathleen A. Stokes*
Date *April 7, 2015*

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

SITE PLAN

MINNERLY BUILDING
4555-57 N. WILLIAMS
PORTLAND, OR 97217

D. Dustin Posner, Architect
DDP Architecture, LLC
2831 NW Cornell Road
Portland, Oregon 97210

Project No. 10.046
Drawn by D.P.
Date 5/14/13
Rev. 1 6/23/13
Rev. 2 10/25/13

1

LU15-117390NUAD

Exhibit C-1

Site plan approved through LU13-165351NUAD for use that has outdoor seating