



**NOTICE OF DECISION ON A TYPE II LAND USE PERMIT**

**Decision:** Denied

**Permit Type:** Modification

**File No.** Z0075-24

**Applicant's Proposal:** The applicant is requesting a design review modification to a previously approved design review, County File Z0096-02-D. Specifically, the applicant is requesting to place a storage container in the location of an existing loading dock berth. The loading berth area will be moved to another portion of the site suitable for that purpose. No other alterations to the existing structures or site layout are proposed.

**Decision Date:** October 2, 2024

**Deadline for Filing Appeal:** October 14, 2024, at 4:00 pm.

**Issued By :** Erik Forsell, Senior Planner, [EForsell@clackamas.us](mailto:EForsell@clackamas.us)

**Applicant:** VC Cash & Carry DBA Food Depot

**Owner of Property:** Pat Desantis – DPI Group, LLC

**Zoning:** RCC – Regional Center Commercial

**Assessor's Map & Tax Lot(s):** T1S R2E Section 32DD Tax Lot 09500

**Site Address:** 12405 SE 82<sup>nd</sup> Avenue, Clackamas, OR 97086

**Location Map**



## **Community Planning Organization (CPO) for Area:**

Southgate CPO (Inactive)

Community Planning Organizations (CPOs) are part of the county's community involvement program. They are advisory to the Board of County Commissioners, Planning Commission and Planning and Zoning Division on land use matters affecting their communities. CPOs are notified of proposed land use actions and decisions on land within their boundaries and may review these applications, provide recommendations or file appeals. If this CPO currently is inactive and you are interested in becoming involved in land use planning in your area, please contact Clackamas County Community Engagement at 503-655-8751.

**Opportunity to Review the Record and Decision:** The complete decision, including findings and conditions of approval, and the submitted application are available for review online at <https://acela.clackamas.us/citizenaccess/>. Select the **Planning** tab and enter the file number to search. Select **Record Info** and then select **Attachments** from the dropdown list, where you will find the submitted application. A copy of the decision, application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost by contacting the Planner listed above. Copies of all documents may be purchased at a cost established by the County fee schedule.

**Appeal Rights:** **This decision will not become final or effective until the period for filing an appeal with the County has expired without the filing of an appeal.** Any person who is adversely affected or aggrieved or who is entitled to written notice of the decision pursuant to Subsection 1307.09(C) of the Clackamas County Zoning and Development Ordinance may appeal this decision to the Clackamas County Land Use Hearings Officer by filing a written appeal. An appeal must include a completed Appeal Form available at [www.clackamas.us/planning/supplemental.html](http://www.clackamas.us/planning/supplemental.html) and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified above.

Appeals may be submitted in person during office hours (8:00 am to 4:00 pm Monday through Thursday, closed Friday and holidays). Appeals may also be submitted by email or US mail.

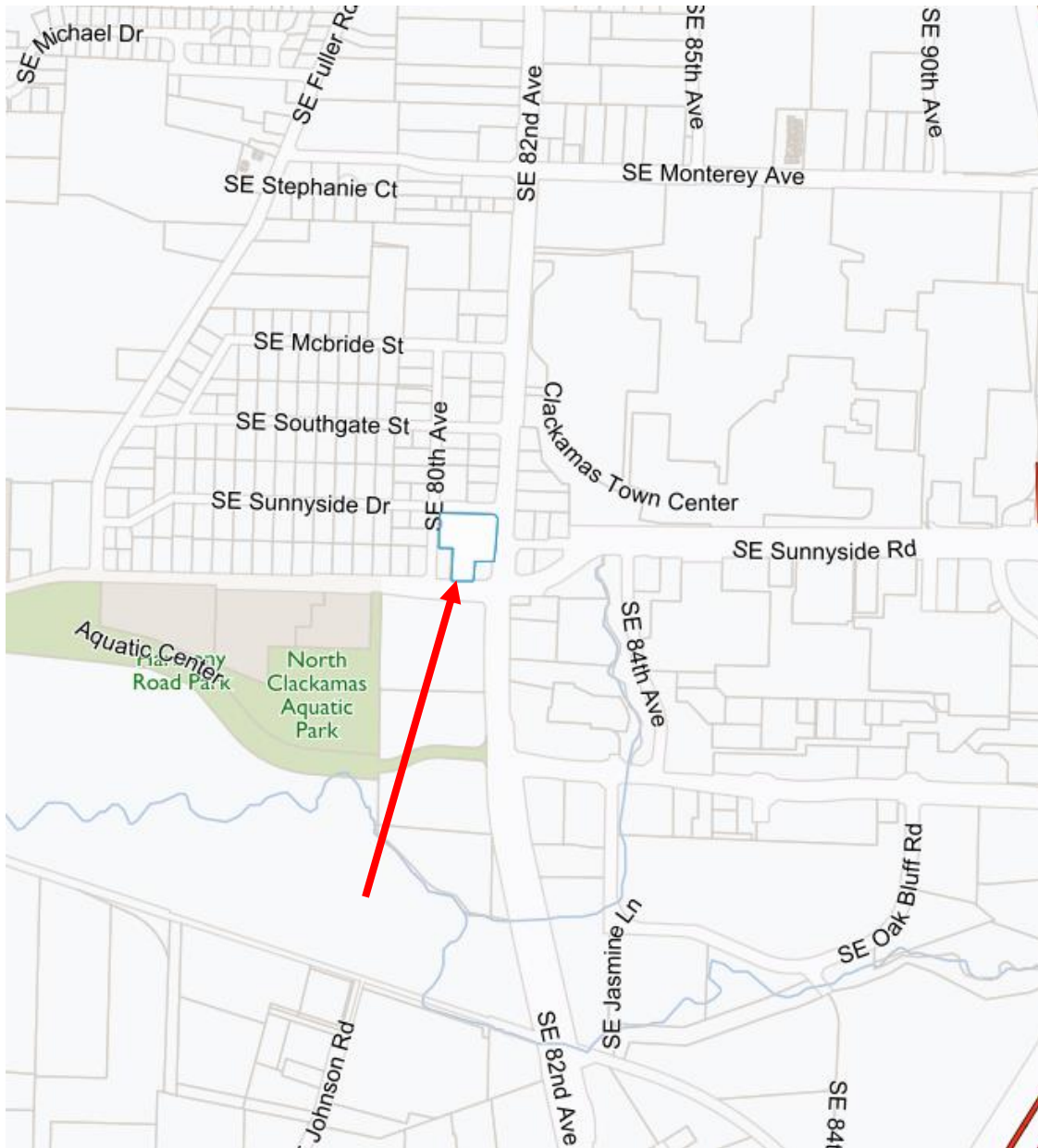
A person who is mailed written notice of this decision cannot appeal this decision directly to the Land Use Board of Appeals under ORS 197.830.

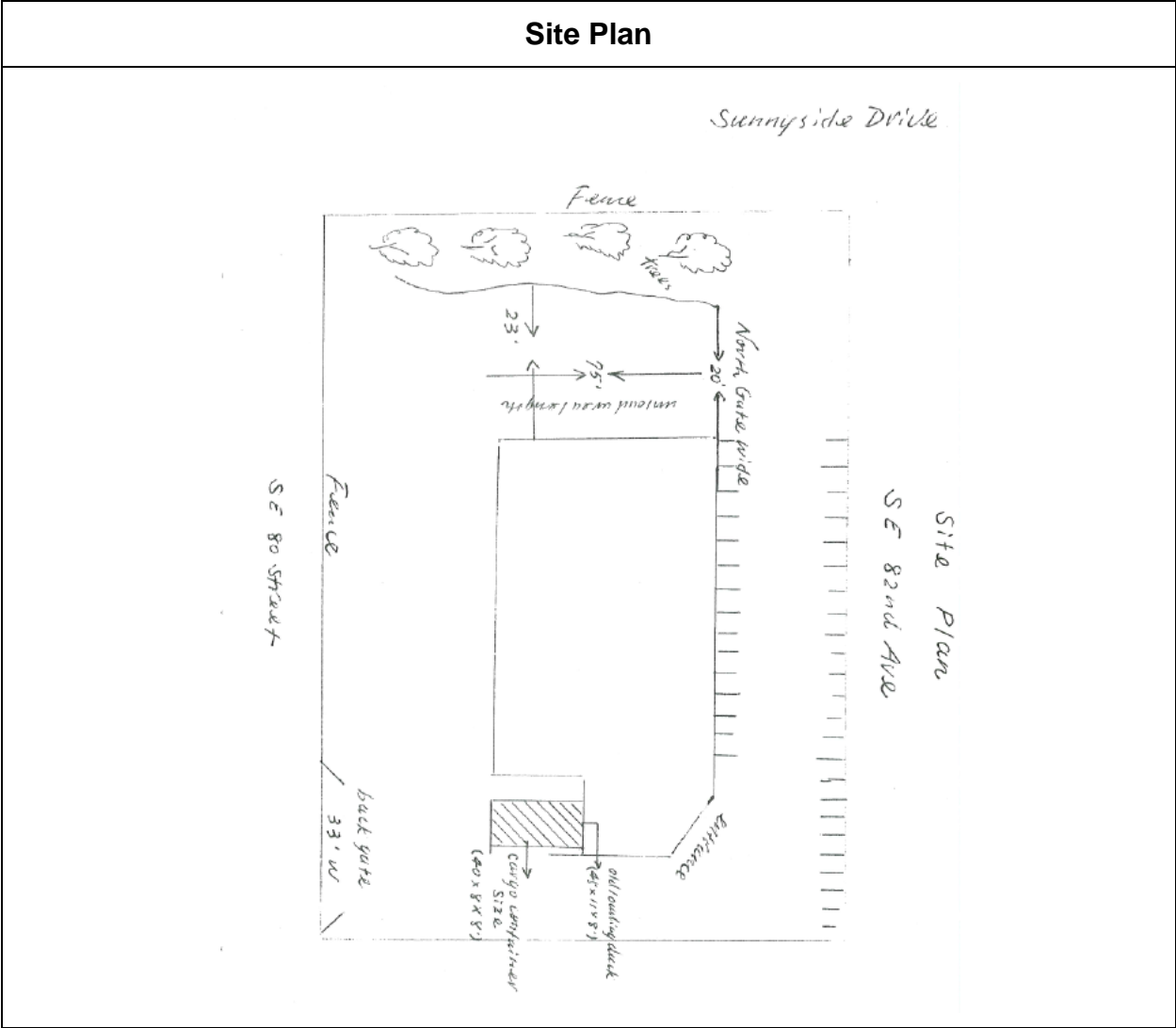
NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

*Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email [DRenhard@clackamas.us](mailto:DRenhard@clackamas.us).*

503-742-4545: ¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод? | 翻译或口译? | Cán Biên dịch hoặc Phiên dịch? | 번역 또는 통?

# Location Map





**CONDITIONS OF APPROVAL**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parentheses. *These are recommended conditions should the application be approved by a higher review authority.*

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on February 28 and July 25, 2024. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with these documents and the limitation of any approval resulting from the decision described herein.

## APPLICABLE APPROVAL CRITERIA

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This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 510, 1005, 1007, 1009, 1010, 1015, 1021, and 1307.

## PUBLIC AND AGENCY COMMENTS

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Notice was sent to applicable agencies and owners of property within 300 feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section. Comments from the following were received:

- Clackamas Fire District #1
- Clackamas River Water
- ODOT

## FINDINGS

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The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the decision.

1. **Background/Overview of Applicant's Proposal:** The applicant is requesting to modify a previously approved design review (County File Z0096-02) to provide for additional storage by removing a loading dock area and relocating that loading berth area to another portion of the site. No other significant site improvements or alterations are proposed. The site currently operates as a commercial business (wholesale grocery store) with associated accessory uses/components in the RCC zone which are permitted uses. The use is not proposed to change or otherwise be significantly modified by the addition of the proposed storage container. Therefore, the applicant has requested to modify the original design review approval, findings of fact are below.
2. **ZDO Section 510, RCC – Regional Commercial Center: Table 315-1 Table of Uses (Retail - Grocery Store)**

**FINDING:** The modification does not alter the existing use, which is a grocery store. This is a permitted use in the zone.

3. **ZDO Section 1005, Site and Building Design**

**FINDING:** The proposal is a modification to a previously approved design review, aforementioned in this report. The modification criteria discussed in detail below, in part, require that the modification shall be consistent with the zoning ordinance provisions that are in effect on the date the application was submitted pursuant to 1309.01.B. The application was submitted on February 28, 2024.

The modification proposal in this instance is limited in scope, it does not increase habitable space nor does it significantly alter the site or building design. To that extent, applicable findings

are made to each subsection found in Section 1005; findings are limited to the proposal and its relation to applicable sections of the approval criteria.

Generally speaking, staff's analysis finds that the proposed relocation of the loading berth to accommodate a new storage container does not have a significant effect on the site design but the storage container does not meet the building design criteria among other specific criteria related to design review.

4. **ZDO Section 1005.01, Site and Building Design – Purpose**

**FINDING:** The proposal is to add a storage container on the site. The addition will not detract from a lively, safe and walkable area and will accommodate the needs of the users at the development. No appreciable changes or impacts because of the change are anticipated, and the new storage and loading dock could efficiently utilize the land in the site area.

The applicant states that the loading dock area is abandoned and is not used and that the storage container provides more flexibility for the storage of material for sale which is an efficient use of the land for a permitted use in the zone.

***These criteria are met.***

5. **ZDO Section 1005.02, Site and Building Design – General Site Design Standards**

**FINDING:** The proposal is to add a storage container to the site which is an accessory use to a preexisting commercial use present on the site. There is no impact to walkways on the site and the structure will be located in a loading dock area that was previously not easily visible to the public realm and will remain that way. The loading dock area is partially obscured by fencing and other equipment storage.

The storage container is not oriented to the front lot line and does not have doors that meet the orientation requirements as required for new retail buildings pursuant to 1005.02 G and H.

***These criteria are not met.***

6. **ZDO Section 1005.03, Site and Building Design – Building Design**

**FINDING:** The proposed storage container is not habitable space and has no 'man door' entryways and is not part of a mixed use type development. The proposed storage container is partially obscured from the public right-of-way by a fence along the property line between the subject site and SE 80<sup>th</sup>.

A storage container is structure per ZDO 202 which defines a structure as 'anything constructed or erected'. The storage container appear to meet this strict definition of a structure because it is constructed or erected and then placed on the site. Therefore, the standards described in this section are applicable to the placement of the storage container.

The storage container does not meet the entrance way, glazing, roof design and materials standards found in this section and given the nature of storage containers, it would be very difficult for a storage container to ever meet these standards. The building design standards are

intended to regulate new development so that it is cohesive, relatively attractive and compatible with existing development.

The loading, storage, parking and utilitarian aspects of the area where the proposed storage container will be located are consistent with the criteria found at 1503.I.4 which requires that loading and delivery areas are located to the side or rear of buildings. The replacement loading berth area is proposed to be located on the northern portion of the structure which is to the side of the existing structure.

***These criteria are not met.***

**7. ZDO Section 1005.04, Site and Building Design – Outdoor Lighting**

**FINDING:** The proposal does not include changes to or addition of outdoor lighting.

***These criteria are met.***

**8. ZDO Section 1005.04, Site and Building Design – Additional Requirements**

**FINDING:** The site is approximately 1.69 acres or ~73,000 square feet so the site must comply with three (3) additional techniques. The prior decision (County File Z0096-02) references and makes findings towards the structures on site being constructed to maximize solar gain for the purpose of energy efficiency and the ability to use photovoltaics. The site has the following attributes as demonstrated by the provided site plans:

- Modulate building to maximize solar access
- Deciduous trees to provide summer shade and allow winter sun;
- High albedo roof surface on the primary structure.

**FINDING:** The applicant made no findings towards these standards and therefore the record does not contain enough information to verify that these are met.

***These criteria are not met.***

**9. ZDO Section 1005.06, Site and Building Design – Modifications**

**FINDING:** Not applicable; no modifications are requested or warranted.

**10. ZDO Section 1005.07, Site and Building Design – Clackamas Regional Center Area Design Standards**

**FINDING:** The subject property is within the Clackamas Regional Center area on Comprehensive Plan Map X-CRC-1. The proposed storage container does not meet any of the

building and materials standards as mentioned above in findings, it also does not meet the more specific regional center area design standards for structures.

*These criteria are not met.*

11. **ZDO Section 1005.08, Site and Building Design – Regional Center Design Standards**

**FINDING:** The subject property is within the Region Center area on Comprehensive Plan Map X-CRC-1. The storage container does not meet these standards.

*These criteria are not met.*

12. **ZDO Section 1005.09, Site and Building Design – Fuller Road Station Community Dimensional and Design Standards**

**FINDING:** Not applicable; the site is not located in these areas.

13. **ZDO Section 1005.10, Site and Building Design – PMU District Standards**

**FINDING:** Not applicable; the site is not zoned in PMU.

14. **ZDO Section 1005.11, Site and Building Design – Sunny Side Village Standards**

**FINDING:** Not applicable; the site is not in Sunny Side Village.

15. **ZDO Section 1005.12, Site and Building Design – Government Camp Standards**

**FINDING:** Not applicable; the site is not in Government Camp.

16. **ZDO Section 1006, Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management, and Erosion Control**

**FINDING:** The proposal does not involve any new habitable conditioned space, bedrooms, bathrooms, kitchens or change of use that would alter or increase the amount of water and sewage load on the site.

The service providers (Clackamas River Water and WES) have not indicated any concern for the proposal or requested any further permitting for the proposed storage container.

*These criteria are met.*

17. **ZDO Section 1007, Roads and Connectivity**

**FINDING:** Not applicable. No new roads, right-of-way or streets are proposed nor is there a proposal for alteration to any access.

18. **ZDO Section 1009, Landscaping**

**FINDING:** No modifications to the landscaping plan are proposed; the site plan shows adequate and functional landscaping consistent with the previous approval.

19. **ZDO Section 1010, Signs**



**FINDING:** Not applicable. No new signage is proposed.

**20. ZDO Section 1015, Parking and Loading**

**FINDING:** The applicant is proposing to relocate the loading berth associated with the loading dock on the site. The applicant provided an updated site plan and photos in response to an incomplete determination as evidence that a new loading berth area can be accommodated on the northern portion of the site. In fact, the new loading berth area provides better turning radii than the existing loading dock area which is relatively constrained.

***These criteria are met.***

**21. ZDO Section 1021, Solid Waste and Recycling**

**FINDING:** Not applicable. No modifications to the solid waste and recycling areas are proposed.

**22. ZDO Section 1309, Modification.** A modification to an approved Type II or III land use permit, or conditions thereto, requires review as a Type II applications pursuant to 1307, Procedures, and shall be subject to the following standards and criteria:

- A. A modification shall be consistent with the prior approval;**
- B. A modification shall be consistent with the ordinance provisions in effect on the date the modification is submitted; and**

**FINDING:** As demonstrate by the findings above, although the storage container is consistent with the prior approval, it is not consistent with the current ordinance provisions and therefore cannot be approved.

***These criteria are not met.***

- C. A modification shall not result in any of the following:**
  - 1. A change in the type of use**
  - 2. An increase of greater than 25 percent of the original approved building floor area;**
  - 3. An increase of greater than 25 percent of the original approved lot coverage;**
  - 4. An increase in the density of the development (residential or recreational uses), or intensity of use, as demonstrated by a change in occupancy rating requiring substantial modifications to structures;**
  - 5. An increase in traffic congestion or use of public facilities;**
  - 6. A reduction in approved open space;**
  - 7. A reduction of off-street parking spaces or loading berths, except as provided under Section 1015;or**
  - 8. A reduction in required pavement widths or a change in major access locations, except as required by the County**

**FINDING:** The applicant has demonstrated and staff have verified in the record that the proposed modification will not cause any of the above to occur.

***These criteria are met.***