



**MULTNOMAH COUNTY OREGON**  
**LAND USE AND TRANSPORTATION PROGRAM**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
PH: 503-988-3043 FAX: 503-988-3389  
[http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use)

Notices
Decision Notices
mailed on 6/22/04
by SD

## NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

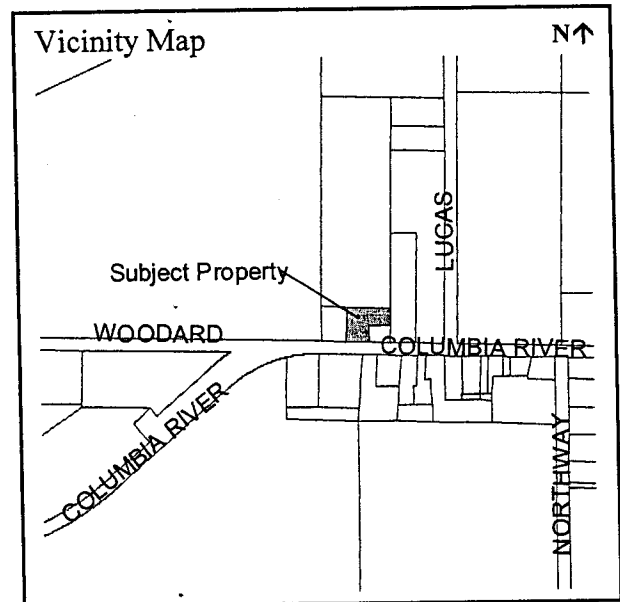
**Case File:** T2-04-042

**Permit:** Verification and Restoration of a Non-Conforming Use

**Location:** 31815 E. Crown Point Highway  
TL 1700, Sec 32D, T 1N, R 4E, W.M.  
Tax Account #R94432-0150

**Applicant:** Dean Zarosinski  
Zarosinki Engineering and Design

**Owner:** Phillip and Judy DuFresne  
31815 E. Crown Point Highway  
Troutdale, OR 97060

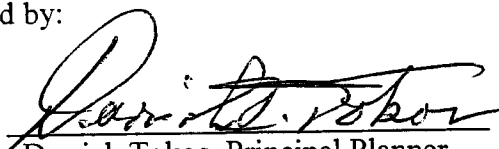


**Summary:** Application to verify that Big Bear's Market and Deli is a lawfully established, non-conforming use so that repairs can be made to the structure, damaged by a fire in March of this year.

**Decision:** Approved with conditions.

Unless appealed, this decision is effective Tuesday, July 6, 2004 at 4:30 PM.

Issued by:

By:   
Derrick Tokos, Principal Planner

For: Karen Schilling- Planning Director

Date: Tuesday, June 22, 2004

**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Derrick Tokos, Staff Planner at 503-988-3043.

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals (LUBA) until all local appeals are exhausted.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, July 6, 2004 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 35.0005(L)(13), Definitions, Lot of Record; MCC 35.0005(N)(2), Definitions, Nonconforming Use; MCC 35.7200 through 35.7215, Nonconforming Use; MCC Chapter 37, Administration and Procedures.

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at [http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use).

### **Scope of Approval**

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

### **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 parenthesis.

1. The restoration of the damaged portion of the Market and Deli shall be commenced under approved building permits no later than March 7, 2005 (MCC 35.7205(A)(2)).
2. The deli shall continue to operate consistent with the letter authored by Bob Hall, Senior Planner, dated April 4, 1994 (MCC 35.7215).
3. The property owner shall obtain building permits for the feed room and bottle room (labeled Dry Storage) and make changes to these portions of the structure as necessary to comply with these permits (MCC 37.0560). The permits are to be obtained, and work commenced, concurrent with restoration of the damaged portions of the market.

#### **Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

## **Findings of Fact**

1. The applicant, Dean Zaroiniski, P.E., on behalf of property owners Phil and Judy Dufresne, is seeking to remodel Big Bear's Market and Deli, damaged by a fire in March of this year. The fire was located at the west end of the building, where the deli, kitchen, and lottery machines were located. The store itself was undamaged and is currently operating. The applicant has submitted a site plan and floor plan for the market, illustrating areas damaged by the fire and the interior layout of the building (Exhibit A1 and A2).
2. The store and deli is located in rural unincorporated east county, in Springdale. It is addressed at 31815 East Crown Point Highway. The property is slightly more than a half acre in size at 27,443 square feet, and is an irregular "L" shaped piece of ground with the store located in the southern portion of the site. Paved parking exists to the front of the store with open ingress/egress onto the highway. A gravel parking lot behind the building provides additional parking and can be accessed via a paved driveway that parallels the west property line. The waste disposal system for the store, a small storage shed, and a 24' x 24' pole building are north of the building, to the rear of the site. All of these features are shown on the applicant's site plan.
3. As discussed later in this decision, a market has existed on this property for a very long time, predating modern zoning laws that would not allow it to be built the way that it is, if it were being proposed as a new today. These are called "non-conforming uses <sup>(1)</sup>," or some call them "grandfathered uses." Consistent with ORS 215.130, Multnomah County ordinances require a land use review any time a non-conforming use is altered (MCC 35.7200(B)). This includes the repair of a structure damaged by fire (MCC 35.7205). The applicant filed an application for this review on May 18, 2004, a step that is required before the County can render a decision (MCC 35.7215(E)).
4. A non-conforming use review for restoration due to fire or other disaster involves two things. First, the status of the non-conforming use must be verified -- that is, it must be confirmed that the subject use is actually a non-conforming use (MCC 35.7215). Once the status of the use has been verified, a determination must be made that the restoration work is necessary because of the fire and that it can be commenced within one year of the date of the fire (MCC 35.7205).
5. Verification of the status of a non-conforming use requires evidence that the use was legally established and operating at the time the zoning code was adopted rendering it non-conforming, and has not been abandoned or interrupted for a continuous two year period (MCC 35.7215(A)). The nature and extent of the use must also be established, the requirements for which are listed under 35.7215(B). Proof of existence, continuity, and nature and extent of the use, covering the last 10 years is the minimum required to establish a rebuttable presumption that such use is non-conforming and eligible for alteration (MCC 35.7215(F)). As demonstrated below, evidence provided by the applicant, or otherwise contained in the record, is sufficient to establish a rebuttable presumption that the market and deli is a non-conforming use.
  - a. While assessment records show the structure was built in 1955 and zoning codes indicate that a market and deli use of the property became non-conforming in 1977 <sup>(2)</sup>, we need not look back that

---

<sup>(1)</sup> A non-conforming use is a legally established use, structure or physical improvement in existence at the time of enactment or amendment of the Zoning Code but not presently in compliance with the use regulations of the zone district in which it is located (MCC 35.0005(N)(2)).

<sup>(2)</sup> In October of 1977, with Ord. #148, the County rezoned the property from Retail Commercial (C-3) to Multiple Use Agriculture (MUA-20). This change is shown on Sectional Zoning Map 656. With this change, rural service commercial uses such as Big Bear's Market and Deli went from being allowed outright to requiring conditional use approval. No conditional use approval has been granted for the market.

far to determine that Big Bear's Market and Deli is a lawfully established use, because that determination was made more recently. On August 8, 2001, the property owner presented to the County Land Use Planning Office a Department of Environmental Quality (DEQ) land use compatibility statement for sanitation improvements (Exhibit A3). In signing off the statement, County staff indicated that the business complies with all applicable local land use requirements and stated:

*"Existing grocery store is a legally established use. Grocery store deli authorized pursuant to letter from Multnomah County dated April 4, 1994. A copy of the letter is attached."*

The 1994 letter, authored by Robert Hall a Senior Planner with the County, also states that the grocery is legally established and adds that a deli can be considered accessory, and effectively part of the market use, provided it does not represent more than fifty percent of the total gross income (Exhibit A4). The DEQ sign-off and 1994 letter are evidence that the market and deli was lawfully established, as it existed in August of 2001.

The drawing card on file with the County Assessor's office shows a feed room addition to the east side of the market in 1984 and enclosed shed (i.e. the dry storage room) to the north side of the structure in 1986 (Exhibit A5). No building permits were obtained for these additions. While the County determined in 2001 that these areas are components of a lawfully established market and deli, in terms of compliance with the County land use codes, that decision does not absolve the landowner from compliance with the State Building code requirements. On June 15, 2004 staff met at the property with the landowner, Phil Dufresne and Al Lajimodiére, a Building Official with the City Gresham. We walked through both of the additions and understand from Al that it is feasible that these areas can be modified to meet the building code requirements without expanding the structure beyond its current configuration. Considering this, a condition of approval is included requiring that the owner obtain these permits.

- b. The market and deli use has not been abandoned or interrupted for a two year period since it was established as lawful on August 8, 2001. A copy of the current Oregon Department of Agriculture License is sufficient to show this as it covers the timeframe from August 7, 2003 through June 30, 2004 (Exhibit A6). Oregon Liquor Control Commission history card and license renewal documents also serve to show that the market and deli were in operation during this timeframe (Exhibit A7).
- c. Factors that must be considered in establishing the nature and extent of a non-conforming use include a description of the use, the activities conducted, the scope or intensity of uses, and the number, location, and size of physical improvements associated with the use (ref: MCC 35.7215(B)). Big Bear's is a grocery store and delicatessen, the size and extent of which is illustrated with aerial photographs taken in 1998 and 2002 (Exhibits A8 and A9). The site plan illustrates the interior configuration of the market, with the store taking up the central and eastern portions of building and the deli the west end. Photographs from June of 2004 confirm the exterior and interior layout and store use (Exhibit A10). The Department of Agriculture has also confirmed, via e-mail, that the deli component to the market is generating less than 50% of gross revenue consistent with the County's 1994 letter (Exhibit A11).

As illustrated on the site plan, a 24' x 24' pole barn to the rear of the property is used for storage associated with the market. This structure was permitted and constructed in 1974 when the property was zoned Retail Commercial. A smaller, 10' x 11' storage shed is shown adjacent to the rear of the market. The aerial photographs show this structure existed in 2001, when the County determined the use to be lawfully established.

6. The Planning Director may authorize restoration of a non-conforming use if the restoration is made necessary by fire or other disaster (MCC 35.7205). An incident report from Multnomah County Rural Fire Protection District #14 documents that the deli and kitchen portions of the structure were damaged by a fire on March 7, 2004 (Exhibit A12). This is confirmed with photographs taken in June of 2004 showing substantial fire damage to the interior framing of this portion of the building (Exhibit A10). The incident report and photographs are adequate evidence that restoration is needed as the result of the fire. Restoration work must be commenced within one year (MCC 37.7205(A)(2)). The fire occurred less than four months ago, leaving ample time in which to start the restoration work, and a condition of approval is included requiring that it occur within this timeframe.
7. The applicant has indicated that they will construct a uniform roof line for the market, raising it in the vicinity of the dry storage area, immediately north of the area damaged by the fire. Since framing in the vicinity of the deli was significantly damaged by the fire, requiring that the roof be reconstructed at this location, expansion of the effort to adjoining undamaged areas is a reasonable extension of restoration work.

When the County changed the zoning of the property to Multiple Use Agriculture (MUA-20) in 1977, rural commercial uses such as Big Bear's Market and Deli went from being allowed outright to being allowed, subject to conditional use approval. This has continued under the current Rural Center (RC) zoning adopted by the County in August of 1980 (Ord. #236). The purpose of the Conditional Use review and accompanying standards for parking and setbacks is in part to ensure uses are situated on property such that there is ample area for parking with safe ingress/egress onto adjoining roads and that structures are setback from property lines to provide for privacy<sup>(3)</sup>. As illustrated on the site plan, at 18 feet from the highway with a parking area extending into the road right-of-way and one foot of separation between the building and east property line, Big Bear's Market and Deli does not meet these standards. Further changes to the use or structure will require review by the County to ensure that they do not have a greater adverse impact on the neighborhood, and such review may necessitate changes to existing improvements (MCC 35.7210(C)).

8. Evidence in the record shows that the property is a lot of record, having satisfied applicable zoning and land division regulations in effect at the time it was created (MCC 35.005(L)(13)). This is relevant insofar as the County cannot issue permits for further development on properties that were improperly created (MCC 37.0560). The property was placed in its present configuration on January 5, 1966 with a deed recorded in Book 455 at page 859 of the County Records. County zoning at the time was Retail Commercial (C-3). The C-3 district had no minimum lot size or dimensional requirements relevant to the land division, and the property possess street frontage as required at the time (MCC 4.20, Ord. #100). The 1966 deed pre-dates County regulations for land partitions, which did not go into effect until October 19, 1978, meaning that the property satisfied applicable land division laws.
9. Property owner consent is required for this type of land use review (MCC 37.0550). This requirement has been satisfied by virtue of the owner, Phil Dufresne, having signed the application form.
10. On May 19<sup>th</sup>, 2004 public notice was mailed to surrounding property owners, neighborhood associations, and other interested parties as required by MC 37.0530. The notice included a brief description of the application and listed the applicable approval standards. Eighteen letters were

---

<sup>(3)</sup> Standards referenced are those in effect at the time Rural Center zoning was adopted for the property (Ord. #205). Conditional Use approval criteria include the requirement that structure and uses avoid creating hazardous conditions (MCC 7.523). The Rural Center zone requires 10 foot side and 30 foot front yard setbacks to ensure separation between structures (MCC 3.164) and off-street parking standards were adopted to ensure that parking area are physically separated from roadways (MCC 6.20 et. seq.).

received during the comment period, all of which were supportive of Big Bear's Market and the services they provide to the community. Some of the comments were critical of the land use planning process and need for this review. None of letters made reference to approval standards applicable to this decision. Copies of all of the letters are included in the case record.

## **Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for verification and restoration of a non-conforming market and deli. The applicant's request is approved subject to the conditions of approval established in this report.

## **Exhibits**

A copy of the site plan and floor plan are attached. All other materials submitted by the applicant, prepared by county staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be found as part of the permanent record for this application. Exhibits referenced in this decision are described below:

<u>Label</u>	<u>Pages</u>	<u>Description</u>
A1	1	Site Plan prepared by Zarosinski Engineering and Design, dated June 16, 2004.
A2	1	Floor Plan prepared by Zarosinski Engineering and Design, dated June 16, 2004.
A3	2	DEQ Land Use Compatibility Statement, signed August 6, 2001.
A4	2	Letter titled "Re-Establishment of a Deli in a Grocery Store," signed by Robert Hall, Senior Planner, dated April 4, 1994.
A5	1	Assessment and Taxation Drawing Card
A6	1	Oregon Department of Agriculture License for the Market and Deli
A7	2	Oregon Liquor Control Commission License and History Card
A8	1	1998 Aerial Photograph of the Property
A9	1	2002 Aerial Photograph of the Property
A10	4	Photographs of the Property taken June 2004
A11	1	E-mail from Amy Rivers, Oregon Department of Agriculture dated June 15, 2004
A12	2	Fire Incident Report from Multnomah County Rural Fire Protection District #14, dated March 7, 2004

BUILDING AREA = 4,155 SQ. FT  
 SITE AREA = 27,799 SQ. FT  
 = 0.638 ACRES  
 MULTNOMAH ZONING = RC

SCOPE OF WORK:  
 FIRE REPAIR: REMOVE & REPLACE  
 INSULATION AND DRYWALL. REMOVE  
 AND REPLACE EXISTING FIRE DAMAGE  
 ROOF.

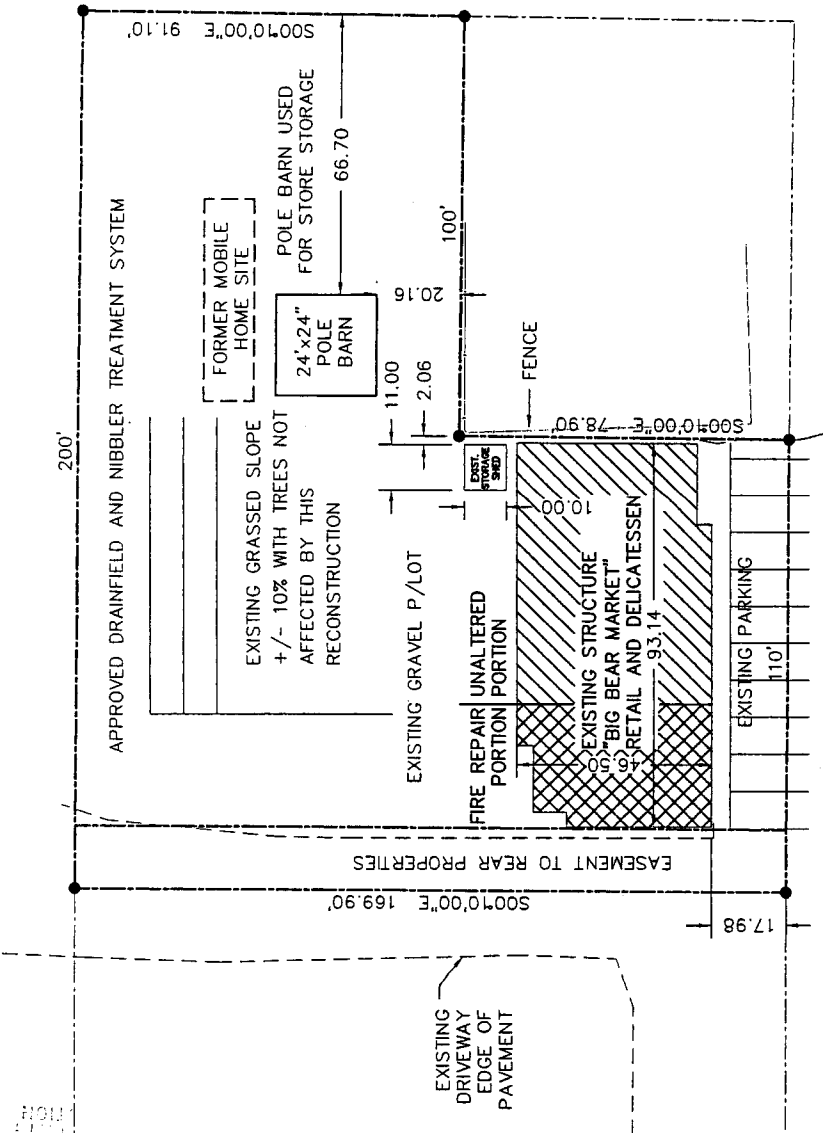
MAP TAX LOT # 1N4E32D-01700  
 ALTERNATIVE ACCOUNT #  
 944320150

CONTACT INFORMATION  
 DEAN P. ZAROSINSKI PE  
 PH. # (971) 223-2920  
 FAX # (971) 223-6181  
 e-mail dzaro@zaroeng.com

PREFILING CONFERENCE DATE  
 MAY 6, 2004

SITE ADDRESS:  
 BIG BEAR MARKET  
 31815 E. CROWN POINT HIGHWAY  
 TROUTDALE, OR.

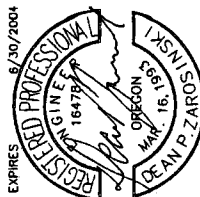
EXHIBIT  
**A1**



E. COLUMBIA HWY.

## EXISTING SITE PLAN

SCALE: 1"=30'



FOR: COOPER CONSTRUCTION COMPANY  
 PORTLAND, OR. 97214  
 (503) 232-3121 2305 SE 9TH AVE.

SITE PLAN

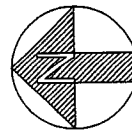
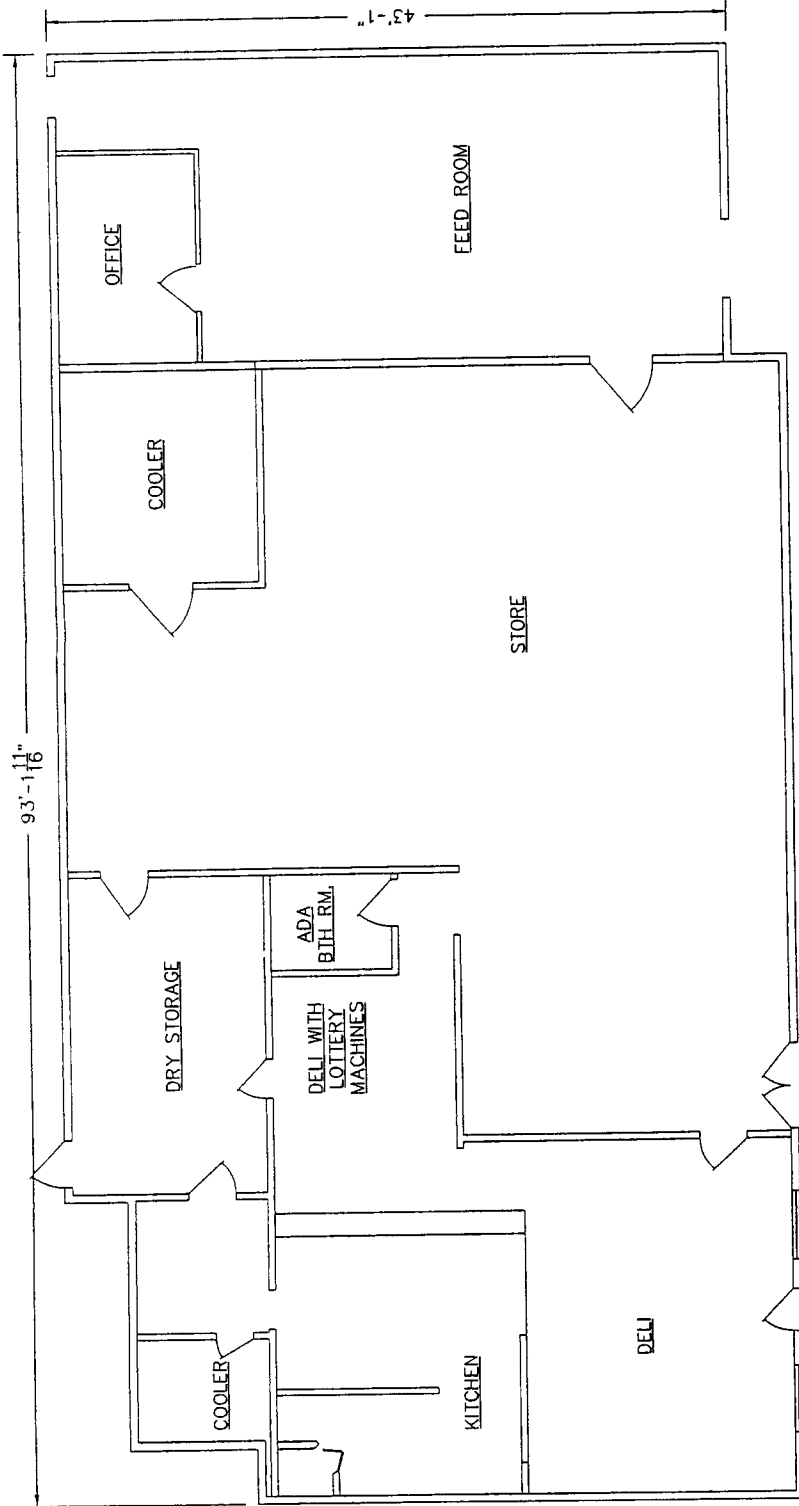
Zarosinski Engineering & Design

107 S.E. WASHINGTON ST., SUITE 211B  
 PO BOX 81, PORTLAND, OR. 97214  
 PHONE (971) 223-2920 FAX: (971) 223-6181  
 E-MAIL: dzaro@zaroeng.com

PLOT DATE: 8/16/04

DATE: 8/16/04  
 SCALE: AS NOTED  
 SHEET: 1

SITE



**OVERALL FLOOR PLAN**  
SCALE: 1/8" = 1'

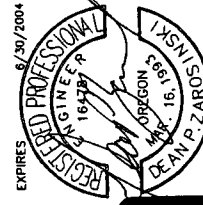


EXHIBIT  
**A2**

FIGURE  
02

**Zarosinski Engineering & Design**  
107 S.E. WASHINGTON ST., SUITE 211B  
PORTLAND, OR. 97214  
PHONE: (503) 232-3121 FAX: (503) 232-6181  
EMAIL: zaroseng@zaroseng.com

ADA DETAILS & SPECIFICATIONS  
FOR: COOPER CONSTRUCTION COMPANY  
PORTLAND, OR. 97214  
PHONE: (503) 232-3121 FAX: (503) 232-6181  
EMAIL: zaroseng@zaroseng.com

DATE: 6/16/04  
DRAWN BY: ANJ  
CHECKED BY: ANJ  
SCALE: AS SHOWN  
SHEET: 55.1