



Staff Report

To: Planning Commission

Through: Chris Kerr, AICP, Community Development Director *CK*

From: Colin Cortes, AICP, CNU-A, Senior Planner

Meeting Date: January 11, 2024 (Prepared January 4, 2024)

Item: Modification of Conditions MOC 23-03 to CU 22-02 for 960 Young St,
"Townsend Farms"

Tax Lot(s): 051W18AD08300

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Issue before the Planning Commission

Modification of Conditions application MOC 23-03 to Conditional Use CU 22-02 (Type III) with requests to (1) not widen and improve Young Street frontage with asphalt, new curb, landscape strip with street trees, and wider sidewalk and (2) not screen the east side of the north outdoor storage yard with shrubbery inside the east lot line: Commission decision.

Executive Summary

Background

- The Commission had approved CU 22-02 on January 26, 2023 for an industrial freezer building addition/expansion.
- Variance VAR 22-09 relieved the developer of west half-street improvement of the “Joyce Way” right-of-way (ROW) that lies along the east lot line. The remaining required street improvements are limited to the Young Street frontage.



Close-up of subject property; subject property outlined in green

The Proposal

The applicant's MOC requests are to:

1. Dispense with the street improvements that CU 22-02 Conditions D1a(3) & CU1a(2)-(4) require and that WDO 3.01.01, 3.01.02, 3.01.04B, & Figure 3.01C would have required anyway, namely, to:
 - a. Leave in place the existing roadway asphalt, striping, and curb.
 - b. Leave the existing narrow nonconforming planter strip in place and with no street trees.
 - c. Leave the existing nonconforming sidewalk that is 5 ft instead of 6 ft and located closer to curb than per the street standard cross section.
 - d. Not remove or relocate the existing front yard fencing if it were to be within the widened right-of-way (ROW), which the applicant has already dedicated. (It appears to staff that the fencing is beyond even the widened ROW and so the condition would be not applicable.)

2. To either dispense with east yard shrubbery screening of the north outdoor storage yard that Condition CU5 requires or to be allowed to plant it past the east lot line and within "Joyce Way", the adjacent City ROW, for which the Commission approved December 14, 2023 improvement into a linear park with a bicycle/pedestrian path and landscaping through Design Review DR 22-06 for the 1030 Young Street Apartments and its developer.



Exhibit CU5: Outdoor storage yard east side fencing Google Street View August 2017

The staff analyses and findings (Attachment 102), staff provides about a dozen reasons to deny the requests. Below is a recapitulation for request 1 (Young Street improvements):

- a. The sole evidence in the application materials is the applicant's assertion that improving the Young Street frontage would be, "unnecessarily burdensome".
- b. The applicant refuses to pursue the administrative option of fee in-lieu as Woodburn Development Ordinance (WDO) 3.01.02F & 4.02.12A allow, wanting neither to construct nor pay fee in-lieu.
- c. The applicant already bonded for street improvements to the tune of \$200,268 and thereby obtained a building permit on June 20, 2023.
- d. As is required of any applicant for a structural building permit, the applicant had provided for the industrial freezer addition/expansion a construction project value estimate, which was \$1,477,000. If someone were to ask how expensive street improvements would be compared to the development itself, staff notes that the bond amount as a percentage of project value is 13.6%.
- e. It is likely that the percentage is even lower because the Public Works Department Engineering Division likely required that the bond amount be at least 150% of a cost estimate acceptable to that department. In this scenario, then the bond of \$200,268 would have been premised on a private contractor construction cost estimate of \$133,512, which would be 9.0% of building addition construction value.
- f. Before the applicant was an applicant and during pre-application meeting ("pre-app") PRE 22-20 on May 24, 2022, staff informed of required Young Street improvements.
- g. After CU 22-02 staff report publication January 19, 2023, the applicant did not submit written testimony through staff ahead of the land use public hearing, which was January 26, 2023, to indicate that it objected to any draft conditions and how so.
- h. The applicant did not contest Condition CU1 at the land use public hearing on January 26, 2023.
- i. The Planning Commission did not object to Condition CU1 or Young Street improvements and approved the condition as staff had recommended.
- j. The applicant did not appeal the Commission land use final decision to the City Council.
- k. The developer already got accommodation of reducing construction costs of public improvements through variance VAR 22-09 by not having to construct the west half of Joyce Way.

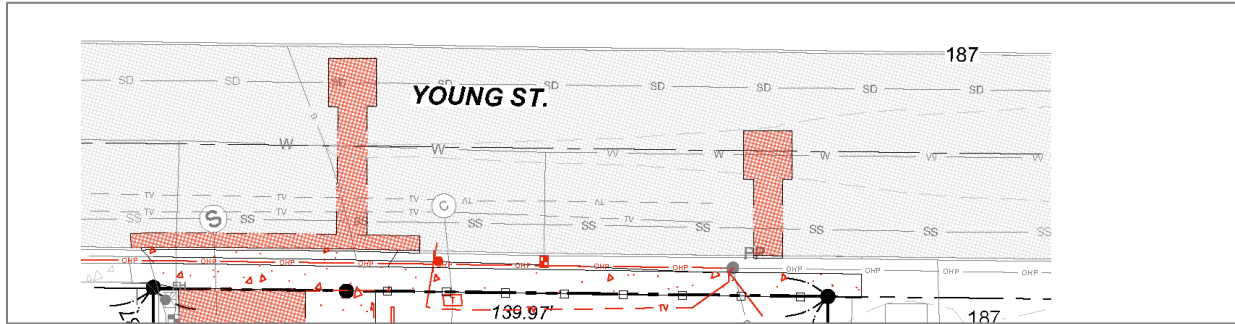
Below are reasons to deny request 2 (outdoor storage yard east shrubbery at screening):

- a. If the applicant planted the shrubbery past the east lot line and within Joyce Way, by virtue of the territory being ROW it would become a City irrigation and pruning responsibility. Even though the applicant submitted to staff an October 5, 2023 application incompleteness response letter stating, "Townsend Farms will maintain the shrubbery until the City moves forward with any ROW improvements", nothing guarantees that Townsend Farms would actually do such and there'd be no legal basis for the City to attempt enforcement of the applicant's offer.
- b. There's no reason for the City to take on implementing the screening of the Townsend Farms outdoor storage yard.
- c. The design and landscaping of Joyce Way is settled following Commission approval on December 14, 2023 of Joyce Way as a linear park with a bicycle/pedestrian path through Design Review DR 22-06 for the 1030 Young Street Apartments. Improvement of that ROW into a linear park will be entirely upon that developer, West Coast Home Solutions.
- d. No shrubbery is required by DR 22-06. Staff anticipates none. What is required are simply tree plantings and retention of lawn where not displaced by pavement or tree plantings.
- e. Townsend Farms, to which staff duly mailed notice of public hearing as an owner of land within 250 feet of 1030 Young Street, did not deploy the strategy of testifying on DR 22-06 to ask the Commission to make West Coast Home Solutions include shrubbery within the Joyce Way landscaping to screen the Townsend Farms outdoor storage and relieve Townsend Farms of having to fulfill its CU 22-02 condition.

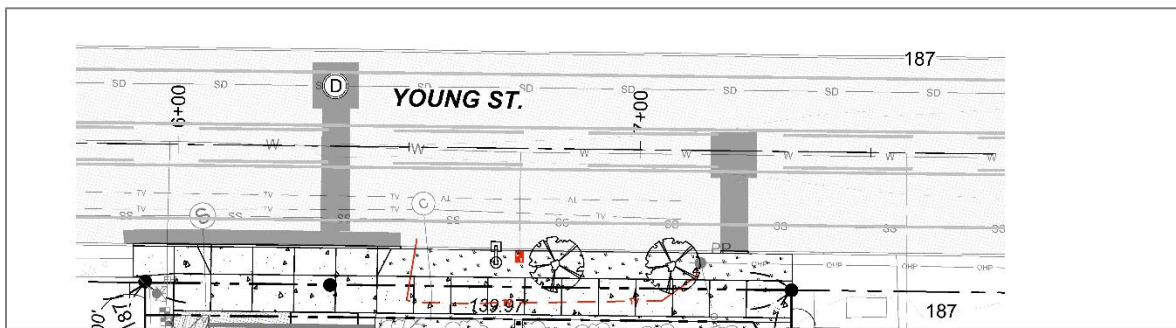
The staff analyses and findings (Attachment 102) provide more detail.

Site Plan

Site plan excerpts are below, and larger versions are among the attached site plans (Attachment 103). These two illustrate Young Street in “before” and “after” contexts based on the present CU 22-02 conditions.



“Existing site plan” (Site plan of existing conditions)



“Approved site plan” (Site plan of conditioned Young Street frontage improvements)

Staff finds that the proposal does not merit approval per the analyses and findings (Attachment 102).

Recommendation

Denial.

Actions

The Planning Commission may instead act on the land use application to approve with modified conditions.

Attachment List

- 101. Public Improvements Performance Bond (Liberty Mutual Surety Bond No. 53S207865 of March 31, 2023; 2 pages)
- 102. Analyses & Findings
- 102A. Public Works comments e-mail prompt (Dec. 19, 2023)
- 103. Application materials / site plans (Oct. 16, 2023; 6 pages)



BOND NO. 53S207865
INITIAL PREMIUM: \$4,005.00
SUBJECT TO RENEWAL.

**PUBLIC IMPROVEMENTS
PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That we, Conroy, LLC, as Principal,
and The Ohio Casualty Insurance Company, a corporation organized and doing business under and by
virtue if the laws of the State of New Hampshire and duly licensed to conduct a general surety business

in the State of Oregon as Surety, are held and firmly bound unto
City of Woodburn

as Obligee, in the sum of
Two Hundred Thousand Two Hundred Sixty Eight & No/100-----(\$200,268.00) Dollars, for which payment,
well and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH THAT:

WHEREAS, the above-named Principal entered into an agreement with said Obligee to:
Townsend Farms Woodburn - 960 Young St. public improvements (demo/excavation; sidewalks/curbs/traffic control; water/storm
utility work; electrical utility work; fencing & landscaping. Project: 603-03-2023

NOW THEREFORE, the condition of this obligation is such, that if the above Principal shall well and truly perform said agreement
during the original term thereof, this obligation shall be void, otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal and the name of the said
Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at
Portland, OR, this 31st day of March, 2023.

“PRINCIPAL”

“SURETY”

Conroy, LLC

The Ohio Casualty Insurance Company

By: _____

BY: Sandra Stewart

Sandra Stewart,

Attorney-in-Fact





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8209407-905022

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, David Galt; Eli Biondine; Jon C. Sandstrom; Lori D. Andrews; Sandra Stewart

all of the city of Portland state of OR each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 6th day of February, 2022.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 6th day of February, 2022 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 31st day of March, 2023.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Analyses & Findings

This attachment to the staff report analyzes the application materials and finds through statements how the application materials relate to and meet applicable provisions such as criteria, requirements, and standards. They confirm that a given standard is met or if not met, they call attention to it, suggest a remedy, and have a corresponding recommended condition of approval. Symbols aid locating and understanding categories of findings:

<i>Symbol</i>	<i>Category</i>	<i>Indication</i>
✓	Requirement (or guideline) met	No action needed
✗	Requirement (or guideline) not met	Correction needed
⊖	Requirement (or guideline) not applicable	No action needed
▲	<ul style="list-style-type: none"> Requirement (or guideline) met, but might become unmet because of condition applied to meet separate and related requirement that is not met Plan sheets and/or narrative inconsistent Other special circumstance benefitting from attention 	Revision needed for clear and consistent records
■	Variance	Request to vary from requirement

Section references are to the [Woodburn Development Ordinance \(WDO\)](#).

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Location

<i>Address(es)</i>	960 Young Street
<i>Tax Lot(s)</i>	051W18AD08300
<i>Nearest intersection</i>	Platted: Young Street and unimproved unnamed right-of-way (ROW) that staff terms “Joyce Way” – See Attachment 201 “Dictionary & Glossary” for background; Existing/improved: Young & Bryan Streets

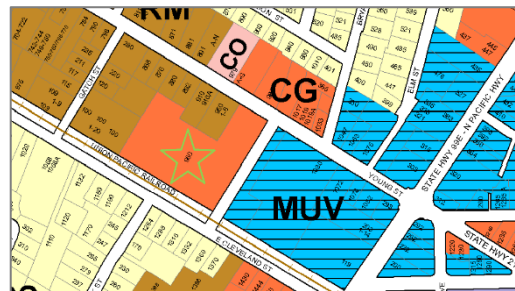
Land Use & Zoning

<i>Comprehensive Plan Land Use Designation</i>	Commercial – with Mixed Use Village Overlay (MUVO)
<i>Zoning District</i>	Commercial General (CG)
<i>Overlay District(s)</i>	None
<i>Existing Use(s)</i>	Fresh and frozen berry growth, processing, and distribution; storage of farm products

For context, the comprehensive plan land use map designations and zoning are illustrated below with excerpts from the City geographic information system (GIS) and the zoning is tabulated further below:



Comprehensive Plan land use map excerpt; a green star marks the subject property



Zoning map excerpt

Note: Per the [Highway 99E Corridor Plan](#), p. 33, Figure 12 “Mixed Use Village Boundaries and Phasing”, the subject property falls within the light pink area that the legend indicates as “Proposed New Zone Boundaries by Timing ... Phase 2 (upon improvement of Hwy 99E)”. When the City Council adopted the H99ECP via Ordinance No. 2492 on July 9, 2012, staff at the time apparently anticipated that the Mixed Use Village (MUV) zoning district would expand onto this and other light pink properties.

On H99ECP p. 11, Footnote 10 indicates, “Rezoning is recommended to occur for Phase 2 through a legislative action by the City once funding for the detailed engineering design of the improvements to Highway 99E in Segment 3 is committed.” On p. 10, the first paragraph describes, “Segment 3 (from Lincoln to south of Cleveland)”, as that highway segment.

In short, the Comprehensive Plan and Highway 99E Corridor Plan both plan for the City to rezone the subject property MUV in the indefinite future.

<i>Cardinal Direction</i>	<i>Adjacent Zoning</i>
North	Medium Density Residential (RM): houses and apartment houses
East	Across "Joyce Way" right-of-way (ROW): Mixed Use Village (MUV): 1030 Young Street, which was the site of the Young Street Market destroyed by fire and demolished
South	Across Union Pacific / Willamette Valley Railroad ROW and track as well as across E. Cleveland Street: Residential Single Family (RS): houses and apartment houses
West	RM: small apartment complex, New Hope Apostolic Church parking area

Statutory Dates

<i>Application Completeness</i>	November 2, 2023
<i>120-Day Final Decision Deadline</i>	March 1, 2024 per Oregon Revised Statutes (ORS) 227.178 . (The nearest and prior regularly scheduled City Council date is February 26, 2024.)

Modification of Conditions Provisions

4.02.07 Modification of Conditions

Any request to modify a condition of approval is to be considered pursuant to the procedure and the standards and criteria applicable to a new application of the type of permit or zone change that is proposed to be amended, except that the modification of a condition limiting the use of property may only be considered as a Type IV Official Zoning Map Change application.

Staff applies this section as examined below in relation to the original land use approval: Conditional Use CU 22-02 with corollary Design Review DR 22-11 and Variance VAR 22-09 (Planning Commission January 26, 2023).

The applicant's MOC request is to:

1. Dispense with the street improvements that CU 22-02 Conditions D1a(3) & CU1a(2)-(4) require and that WDO 3.01.01, 3.01.02, 3.01.04B, & Figure 3.01C would have required anyway, namely, to:
 - a. Leave in place the existing roadway asphalt, striping, and curb.
 - b. Leave the existing narrow nonconforming planter strip in place and with no street trees.
 - c. Leave the existing nonconforming sidewalk that is 5 ft instead of 6 ft and located closer to curb than per the street standard cross section.
 - d. Not remove or relocate the existing front yard fencing if it were to be within the widened right-of-way (ROW), which the applicant has already dedicated. (It appears to staff that the fencing is beyond even the widened ROW and so the condition would be not applicable.)
2. To either dispense with east yard shrubbery screening of the north outdoor storage yard that Condition CU5 requires or to be allowed to plant it past the east lot line and within "Joyce Way", the adjacent City ROW, for which the Commission approved December 14, 2023 improvement into a linear park with a bicycle/pedestrian path and landscaping through Design Review DR 22-06 for the 1030 Young Street Apartments and its developer.



Exhibit CU5: Outdoor storage yard east side fencing Google Street View August 2017

Regarding request 1, the application materials proposed strikethrough-and-underline revisions of conditions as quoted below:

“D1. Frontage/street improvements: To conform with 3.01:

a. Young Street: The developer shall:

- (1) ROW: Dedicate ROW of min width to achieve a min width of 37 ft south of road centerline per WDO 3.01.04B and Figure 3.01C “Minor Arterial”.
- (2) PUE: Grant a streetside PUE min 5 ft wide per WDO 3.02.01B and max 8 ft wide per 3.02.01F.2.

Note: See Note A below.

~~(3) Street trees: The developer shall revise the site plan Sheet C003 or equivalent:~~

~~(a) To conform with WDO 3.06.03A.2a by indicating a species that is large size category at maturity as Table 3.06B describes; and~~

~~(b) To conform with WDO Table 3.06C by indicating a permissible species.~~

The developer shall revise the site plans prior to building permit issuance.

Note: See also Condition CU1a.

b. Joyce Way: Because of Variance VAR 22-09 regarding west half-street construction, see Conditions V1 & V2.”

“CU1. Frontage/street improvements:

a. Young Street:

(1) ROW curvature: To accommodate potential improvement of the west side of Joyce Way and curvature for turning vehicles at the west/southwest corner of a T-intersection of Young and Joyce, the applicant shall dedicate a blunted area of the subject property east/northeast corner as ROW of a curvature per public works standards.

Note: See Note A below.

~~(2) Landscape strip and sidewalk: Based on WDO 5.03.01B.3c5), the landscape strip shall be minimum (min) width 6.5 ft including curb width, and the sidewalk min width 8 ft.~~

~~(3) Street tree fee in lieu: If the developer opts for street tree fee in lieu, it shall be for maximum (max) 3 of the min 5 street trees that WDO 3.06.03A.1 (1:30) requires and with a fee per Attachment 203.~~

~~(4) Fence/fencing: The developer shall remove any existing north yard fencing from within the widened Joyce Way ROW prior to building permit final inspection.~~

Note: See also Condition D1.”

“CU4. North yard:

a. ~~Trees: Based on WDO 5.03.01B.3c5), the north yard shall have min two trees that complement the row of street trees and are placed within a band between streetside PUE and 20 ft from ROW.~~

b. ~~Hedge/shrubbery: Based on WDO 5.03.01B.3c5) and to buffer/screen from the north, the developer shall replace the shrubbery proposed to be removed with minimum 18 shrubs that are large size category at maturity per WDO Table 3.06B.~~



Exhibit CU4b: North yard shrubbery to be removed Google Street View August 2017”

In response:

1. The applicant’s narrative does not elaborate on why there is a request for strikethrough-and-underline changes to Condition CU1. The applicant’s letter October 5, 2023, which was a response to the September 14, 2023 letter from staff deeming the application incomplete, is the only source of a reason, stating under Item B.2a that:

“For the bond, ‘Public Improvements Performance Bond, Liberty Mutual Surety Bond No. 53S207865 of March 31, 2023, for \$200,268’, Townsend Farms understands that was required for the owner to initiate the construction of the building portion of the project.

We also understand that the city [*sic*] does not agree with rescinding the COA [editor’s note: condition of approval] requirements for the Young Street Improvements based on the timing and not addressing this sooner in the process. Our client, however, strongly believes that these improvements would be unnecessarily burdensome. The client would like to maintain this bond in the interim and release or amend this bond after clarity is determined for the extent of the public improvements.”

Regarding fee in lieu of Young Street improvements, the letter adds that:

“For fee in-lieu proposal, we would rather proceed with pleading our case in front of the Planning commission before considering this option.”

That is to say, the applicant wants neither to construct nor pay fee in-lieu, which Woodburn Development Ordinance (WDO) 3.01.02F & 4.02.12A allow staff to consider and accept, and so the applicant has no interest in providing cost estimates or other materials for administrative determination of a fee in-lieu.

Additionally, 4.02.12A.2 outlines when a developer pays fees in-lieu. Where no land division is relevant as is the case with Townsend Farms, the applicant was to have resolved such before building permit issuance, which was June 20, 2023. (To avoid having to construct street improvements prior to building permit issuance, the applicant had already bonded through the Public Works Department Engineering Division to obtain City issuance of building permit 971-23-000102-STR-02. As quoted above, the bond is Liberty Mutual Surety Bond No. 53S207865 of March 31, 2023 for \$200,268.)

2. The application materials provide no further qualitative description, and no quantitative information at all, beyond the letter assertion that, “the improvements would be unnecessarily burdensome.”

Because structural building permit applications require estimated project valuation, be it a reasonable one an applicant submits or one calculated by City Building Division staff per formulae that the state prescribes through the Building Codes Division (BCD), staff notes that for building permit application 971-23-000102-STR-02 the applicant stated a job value of \$1,477,000 for construction of the building addition as a freezer tunnel and for related mechanical work.

As mentioned earlier, the applicant had already bonded through the Public Works Department Engineering Division to obtain City issuance of building permit 971-23-000102-STR-02. The bond is Liberty Mutual Surety Bond No. 53S207865 of March 31, 2023 for \$200,268.

Comparing \$200,268 with \$1,477,000, it is 13.6%.

It is also likely that the construction cost of street improvements compared to the building addition construction value is an even lower ratio because the Public Works Department Engineering Division likely required that the bond amount be at least 150% of a cost estimate acceptable to that department. In this scenario, then the bond of \$200,268 would have been premised on a private contractor construction cost estimate of \$133,512, which would be 9.0% of building addition construction value.

3. Before the applicant was an applicant and during pre-application meeting (“pre-app”) PRE 22-20 on May 24, 2022, staff informed of required Young Street improvements stated as agenda item B.1 on pages 2 & 3.
4. After CU 22-02 staff report publication January 19, 2023, the applicant did not submit written testimony through staff ahead of the land use public hearing, which was January 26, 2023, to indicate that it objected to any draft conditions and how so.

5. The applicant did not contest Condition CU1 at the land use public hearing on January 26, 2023.
6. The Planning Commission did not object to Condition CU1 or Young Street improvements and approved the condition as staff had recommended.
7. The applicant did not appeal the Commission land use final decision to the City Council.
8. As mentioned earlier, the applicant had already bonded through the Public Works Department Engineering Division to obtain City issuance of building permit 971-23-000102-STR-02. The bond is Liberty Mutual Surety Bond No. 53S207865 of March 31, 2023 for \$200,268.
9. The applicant's narrative p. 2 notes that the applicant has already dedicated the required right-of-way (ROW), which is correct, but also states, "no curbs or additional street asphalt is being placed", which is incorrect. Among the CU 22-02 site plans, civil Sheet C003 Detail 2 (received November 15, 2022) clearly indicates additional asphalt and new curb that tapers to and from existing frontages on each side of the subject property.
10. The developer already got accommodation of reducing construction costs of public improvements through variance VAR 22-09 by not having to construct the west half of Joyce Way.
11. The design and landscaping of Joyce Way is settled following Commission approval on December 14, 2023 of Joyce Way as a linear park with a bicycle/pedestrian path through Design Review DR 22-06 for the 1030 Young Street Apartments. Improvement of that ROW into a linear park will be entirely upon that developer, West Coast Home Solutions.

Regarding request 2, the application materials proposed strikethrough-and-underline revisions of conditions as quoted below:

~~"CU5. Based on WDO 5.03.01B.3c5) and to buffer/screen from the east, along the existing outdoor storage yard chain link fence, the developer shall plant evergreen shrubbery, specifically 40 shrubs that are large size category at maturity per WDO Table 3.06B along the outside of the fence and minimum 10 ft from the existing Joyce Way ROW boundary, which is equal to 5 ft from the to-be-widened Joyce Way ROW.~~



Exhibit CU5: Outdoor storage yard east side fencing Google Street View August 2017

In response:

1. If the applicant planted the shrubbery past the east lot line and within Joyce Way, by virtue of the territory being ROW it would become a City irrigation and pruning responsibility. Even though the applicant submitted to staff an October 5, 2023 application incompleteness response letter stating, “Townsend Farms will maintain the shrubbery until the City moves forward with any ROW improvements”, nothing guarantees that Townsend Farms would actually do such and there’d be no legal basis for the City to attempt enforcement of the applicant’s offer.
2. There’s no reason for the City to take on implementing the screening of the Townsend Farms outdoor storage yard.
3. Regarding the aforementioned Joyce Way as a linear park, no shrubbery is required by DR 22-06. Staff anticipates none. What is required are simply tree plantings and retention of lawn where not displaced by pavement or tree plantings.
4. Townsend Farms, to which staff duly mailed notice of public hearing as an owner of land within 250 feet of 1030 Young Street, did not deploy the strategy of testifying on DR 22-06 to ask the Commission to make West Coast Home Solutions include shrubbery within the Joyce Way landscaping to screen the Townsend Farms outdoor storage and relieve Townsend Farms of having to fulfill its CU 22-02 condition.

Staff finds that the proposal does not merit approval, and so there are no recommended conditions of approval modifying CU 22-02 conditions of approval.

Applicant Identity

<i>Applicant</i>	Chris Peck, Project Manager, Triumph Specialty Construction, Inc.
<i>Applicant's Representative</i>	Joe Kurth, Civil Engineer, Crow Engineering, Inc.
<i>Landowner(s)</i>	Townsend Farms (Mike Townsend, President)

Colin Cortes

From: Colin Cortes
Sent: Tuesday, December 19, 2023 1:34 PM
To: Dago Garcia
Cc: Curtis Stultz; Cole Grube; Roy Reyes; Max Rosenthal; Aidan O'Connell
Subject: MOC 23-03 to CU 22-02 staff report due Thu Jan 4

Follow Up Flag: Follow up
Due By: Thursday, December 28, 2023 8:00 AM
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Dago:

If there's need for Public Works comments about modification of conditions MOC 23-03 to conditional use CU 22-05 (Townsend Farms at 960 Young St), please pass them along, thanks. Planning staff will publish the staff report sometime Thursday, January 4, a week prior to the [January](#) 11 Planning Commission hearing date.

The MOC request includes to dispense with street improvements. [View the shared drive copy of app materials.](#)

[View the City project webpage](#), which includes a copy of the CU 22-05 land use final decision document with its conditions of approval.

Please note that what's rare about this case is that Planning staff intends to recommend that the Commission *deny* the MOC application.

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NARRATIVE

Modification of Conditions of Approval, Item #1– Frontage Improvements

Property Address: 960 Young St.

Building Permit 971-23-000102-STR-02

Existing Frontage (Pre-Construction) – from Report CU22-02



Exhibit CU4b: North yard shrubbery to be removed Google Street View August 2017

Text from Conditional Use CU22-02

Frontage/street improvements

CU1. Frontage/street improvements:

a. Young Street:

(1) ROW curvature: To accommodate potential improvement of the west side of Joyce Way and curvature for turning vehicles at the west/southwest corner of a T-intersection of Young and Joyce, the applicant shall dedicate a blunted area of the subject property east/northeast corner as ROW of a curvature per public works standards.

Note: See Note A below.

(2) Landscape strip and sidewalk: Based on WDO 5.03.01B.3c5), the landscape strip shall be minimum (min) width 6.5 ft including curb width, and the sidewalk min width 8 ft.

(3) Street tree fee in lieu: If the developer opts for street tree fee in lieu, it shall be for maximum (max) 3 of the min 5 street trees that WDO 3.06.03A.1 (1:30) requires and with a fee per Attachment 203.

(4) Fence/fencing: The developer shall remove any existing north yard fencing from within the widened Joyce Way ROW prior to building permit final inspection.

Note: See also Condition D1.

CU4. North yard:

a. Trees: Based on WDO 5.03.01B.3c5), the north yard shall have min two trees that complement the row of street trees and are placed within a band between streetside PUE and 20 ft from ROW.

~~b. Hedge/shrubbery: Based on WDO 5.03.01B.3c5) and to buffer/screen from the north, the developer shall replace the shrubbery proposed to be removed with minimum 18 shrubs that are large size category at maturity per WDO Table 3.06B.~~

D1. Frontage/street improvements: To conform with 3.01:

a. Young Street: The developer shall:

(1) ROW: Dedicate ROW of min width to achieve a min width of 37 ft south of road centerline per WDO 3.01.04B and Figure 3.01C "Minor Arterial".

(2) PUE: Grant a streetside PUE min 5 ft wide per WDO 3.02.01B and max 8 ft wide per 3.02.01F.2.

Note: See Note A below.

~~(3) Street trees:~~

~~(a) To conform with WDO 3.06.03A.2a by indicating a species that is large size category at maturity as Table 3.06B describes; and~~

~~(b) To conform with WDO Table 3.06C by indicating a permissible species. The developer shall revise the site plans prior to building permit issuance.~~

Note: See also Condition CU1a.

D10. To conform withn WDO 3.10.08R, the developer shall remove the existing monument sign from the area within Young Street widened ROW and streetside PUE.

This variance from the requirement detailed in the Conditional Use document CU22-02, section CU1, CU4 and D1.

The property owner is proposing the following modifications to the requirements of the document listed above:

- Eliminate the requirement of the 8 foot wide sidewalk
- Eliminate the requirement to plant street trees
- Eliminate the requirement for additional landscaping along Young Street.

The property owner is asking for this variance request for the following reasons:

- The owner has already dedicated the property the proposed ROW to the city in case Young Street is ever developed. If and when Young Street is developed, the Right of way frontage will be altered anyway.
- No curbs or additional street asphalt is being placed therefore Young street is not changing its fundamental use.
- Existing landscaping which is robust, will remain.

NARRATIVE

Modification of Conditions of Approval, Item #2 – East Side Fencing Buffering

Property Address: 960 Young St.

Building Permit 971-23-000102-STR-02



Exhibit CU5: Outdoor storage yard east side fencing Google Street View August 2017

Text from Conditional Use CU22-02

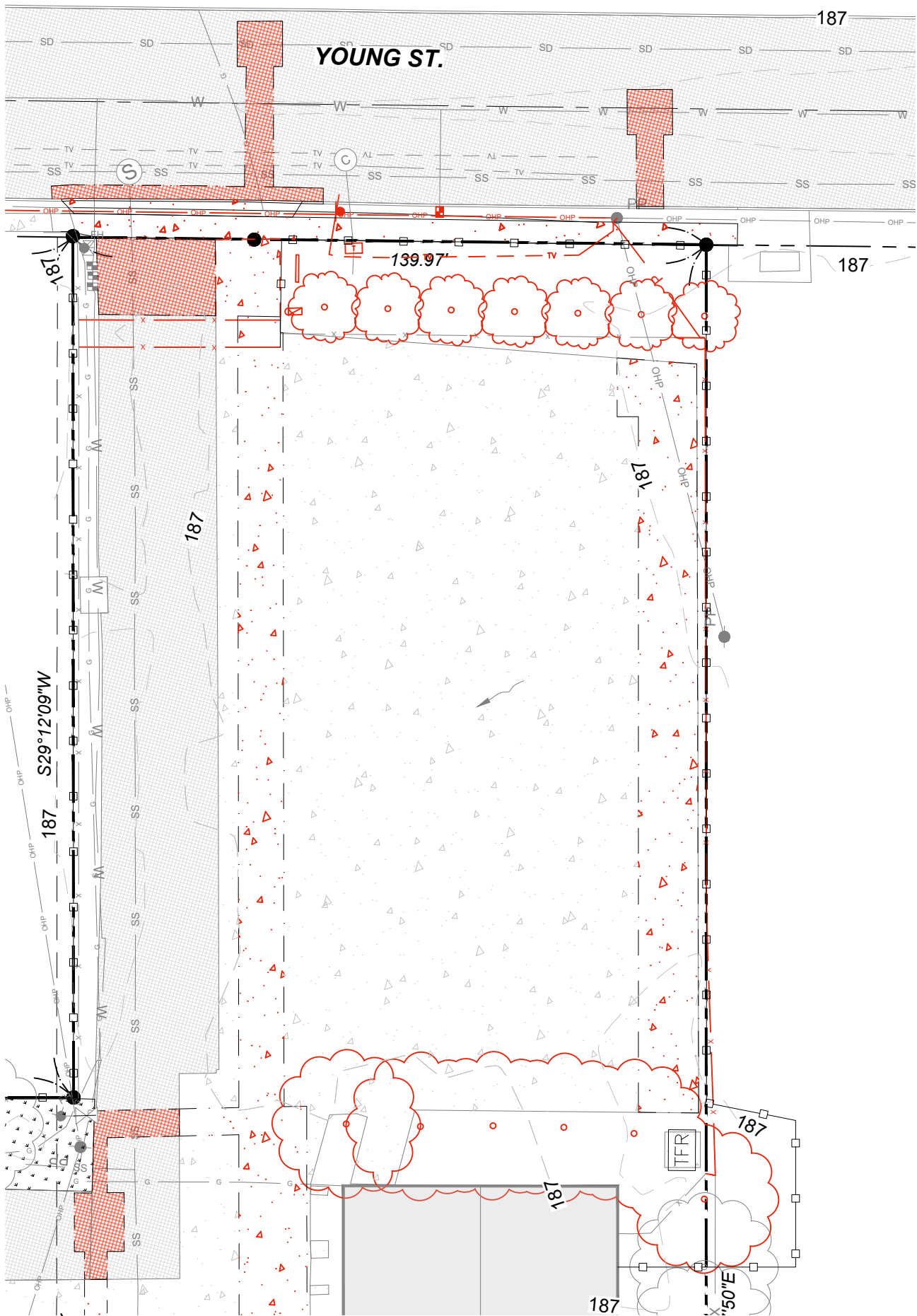
CU5. Based on WDO 5.03.01B.3c5) and to buffer/screen from the east, along the existing outdoor storage yard chain link fence, the developer shall plant evergreen shrubbery, specifically 40 shrubs that are large size category at maturity per WDO Table 3.06B along the outside of the fence and minimum 10 ft from the existing Joyce Way ROW boundary, which is equal to 5 ft from the to be widened Joyce Way ROW.

The property owner is proposing the following modifications to the requirements of the document listed above:

- In lieu of relocating the fence to place the required 40 shrubs per the requirement for landscaping along east side of property, the owner wishes to place the landscaping within the “Joyce Way” ROW side of the east property line.

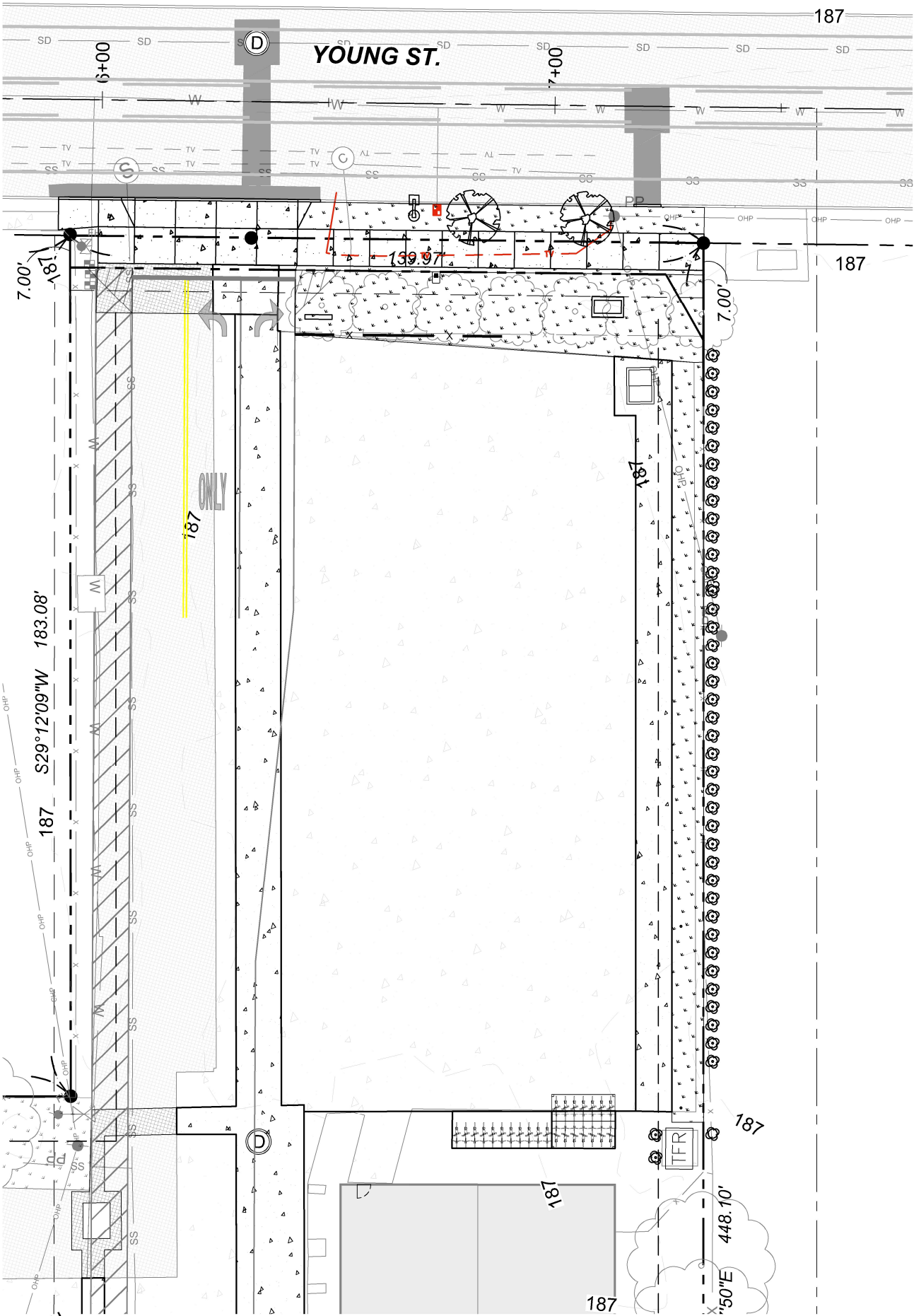
This variance from the requirement detailed in the Conditional Use document CU22-02, section CU5 is being requested for the following reasons:

- The proposed conditional use document requires the fence line to be brought to the west 5-10 feet. The proposed buffering requirement for the plants and trees specified along this fence line will decrease the capacity of the existing storage yard as shown in the picture above and will create a burden on the existing property owner for their operations. By placing the landscaping in the ROW, the intent of the buffering requirement is met.



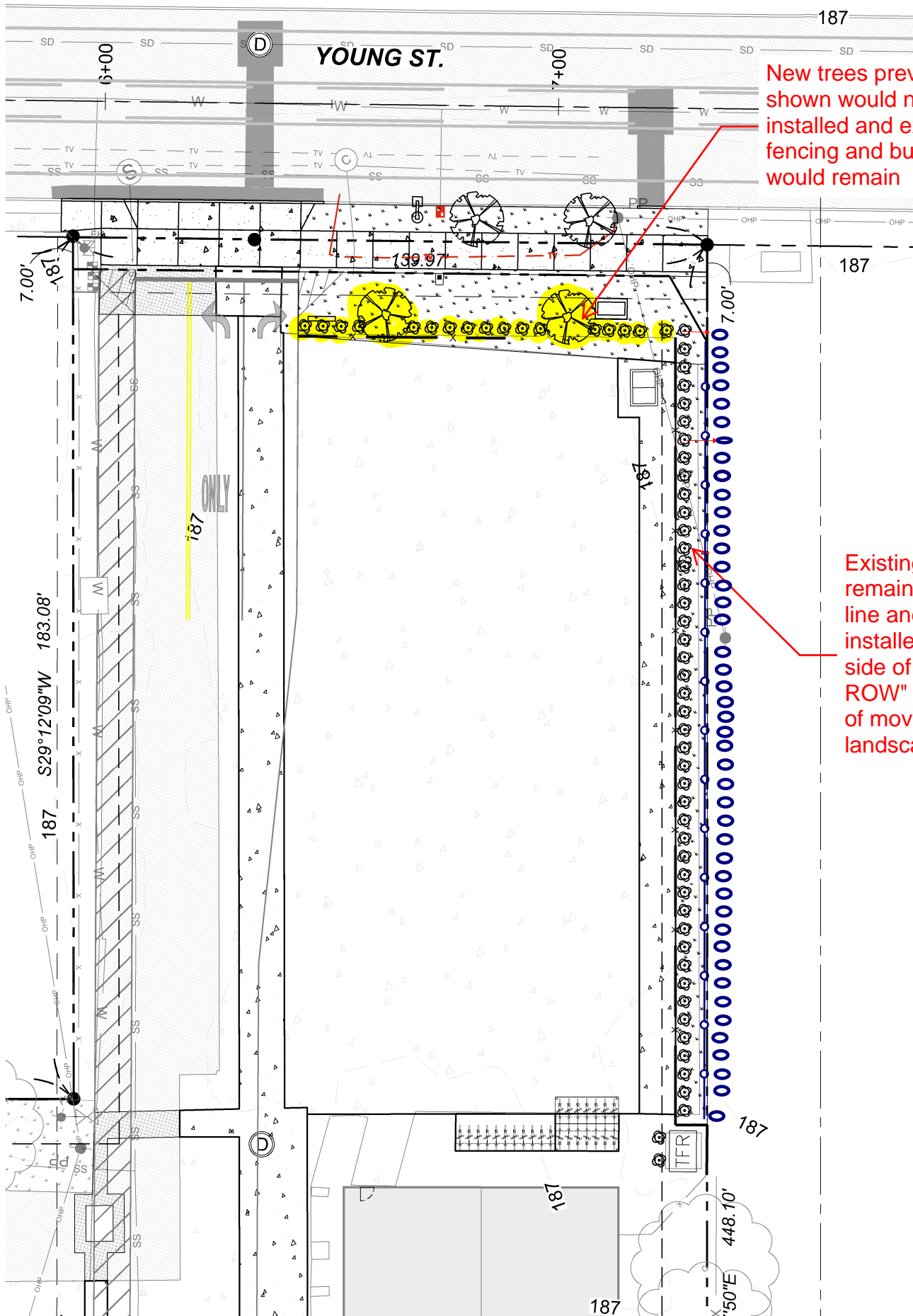
ENLARGED EXISTING SITE PLAN

SCALE: 1"=30'



ENLARGED APPROVED SITE PLAN

SCALE: 1"=30'



New trees previously shown would not be installed and existing fencing and bushes would remain

Existing fencing to remain on property line and bushes to be installed on public side of "Joyce Way ROW" of way in lieu of moving fence for landscaping



ENLARGED APPROVED SITE PLAN

SCALE: 1"=30'