Community Development Department

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STAFF REPORT
Nonconforming Use Review (MN-01-16)

SUMMARY

The proposed project is a 375 square-foot expansion to an existing non-conforming use (contractor services) in a residential zone, located at 422 Cleveland Street SE. ADC 2.350(2)(e) allows structural expansions of nonconforming uses to be considered through a Type II procedure as established under ADC 1.350. The Non-Conforming Review criteria contained in Albany Development Code (ADC) 2.360 are addressed in this report.

APPLICATION INFORMATION

DATE OF REPORT:	October 26, 2016
FILE:	MN-01-16
TYPE OF APPLICATION:	375 square-foot expansion to an existing non-conforming use (contractors services) in a residential zone
REVIEW BODY:	Staff (Type II process)
PROPERTY OWNER / APPLICANT:	Yohn Baldwin, 330 NW Crest Drive, Corvallis, OR 97330
ADDRESS/LOCATION:	422 Cleveland Street SE
MAP/TAX LOT:	Linn County Assessor's Map No. 11S-03W-05CC; Tax Lot 10000
ZONING:	RM (Residential Medium Density) District
EXISTING LAND USE:	Contractors office and storage
SURROUNDING ZONING:	North: Residential Medium Density (RM) South: Community Commercial (CC) East: RM West: RM
SURROUNDING USES:	North: Residential Use South: Residential Use East: Residential Use West: Residential Use
PRIOR HISTORY:	CP-01-89 & ZC-02-89: Comprehensive Plan District Map Amendment from High Density Residential to General Commercial with concurrent Zone Change from R-3 (Multiple Family Residential) to C-2 (Community Commercial). ZC-04-07: Rezone from CC (Community Commercial) to RM (Residential Medium Density) zoning district. MN-02-08: Letter confirming that the shop and office for the general contracting business was a legal non-conforming use. CC-39-12: Code enforcement case related overflow parking, and expansion without a building permit.

STAFF DECISION

The subject non-conforming use review application is **APPROVED with CONDITIONS**. This approval expires three years from the date of conditional use approval, unless the applicant has installed the entire required public infrastructure related to the development and the infrastructure has been accepted by the city, or the applicant has provided financial assurance for all required public infrastructure per Albany Development Code (ADC) Section 12.600.

NOTICE INFORMATION

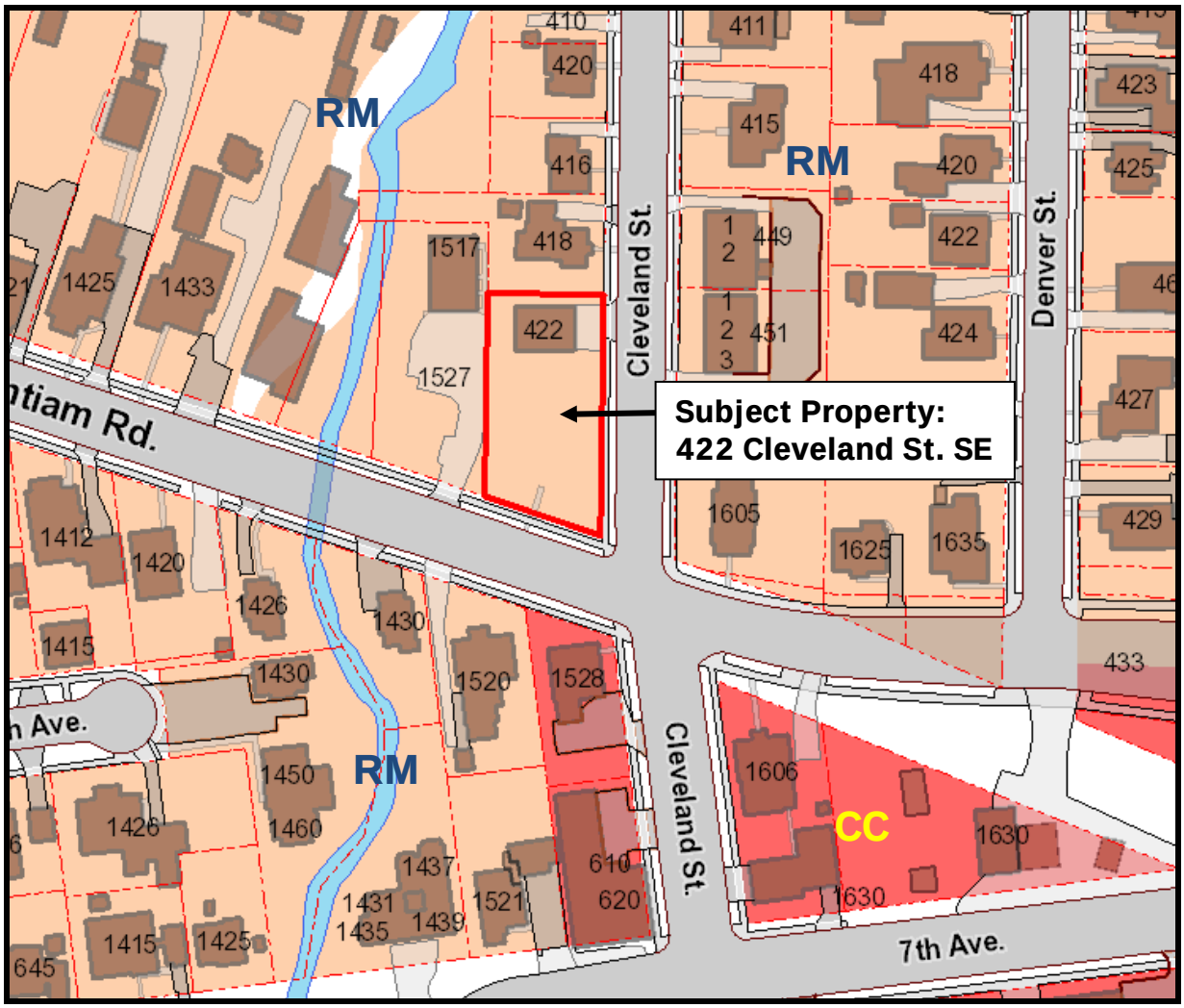
On August 3, 2016, a Notice of Filing was mailed to property owners within 200 feet of the subject property in accordance with ADC 1.350. At the end of the comment period on August 17, 2016, no comments were received.

STAFF ANALYSIS

NONCONFORMING USE REVIEW (ADC 2.360)

Section 2.360 of the Albany Development Code contains the following review criteria, which shall be met for this application to be approved. Code criteria are written in ***bold italics*** and are followed by findings, conclusions and conditions where needed to meet the criteria.

Zoning Map



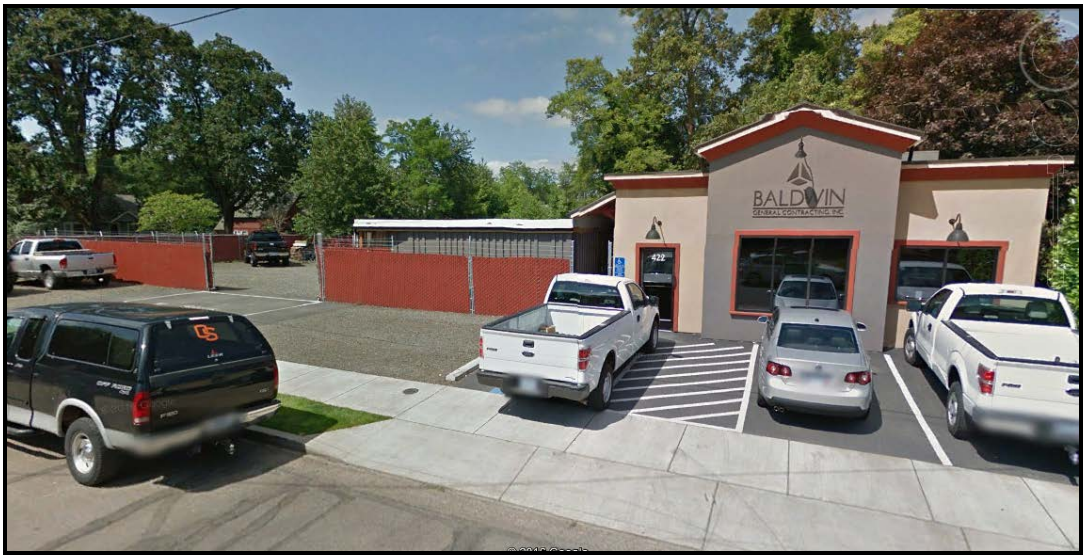
2.360 Nonconforming Use Review Criteria for Type II Decisions. A request will be approved for nonconforming uses if the review body finds that the application meets all of the following criteria:

(1) The nonconforming use was not created unlawfully.

FINDINGS OF FACT: Under planning file MN-02-08, the non-residential use was confirmed to be a legal non-conforming use in a residential zone. The letter under MN-02-08 states: "*The property at 422 Cleveland Street SE is now zoned RM (Residential Medium Density). Most commercial uses are not allowed in RM zoning districts. Residential uses are allowed. The zoning of the property was CC (Community Commercial) until 2007, when the City changed the zoning to RM at your request. The property had been used for a variety of commercial uses since the 1960s. It is our understanding that your business occupied the building on this property in 2004. The Planning staff made a determination, at that time, that your business was the same or similar to the previous uses of the property (including auto repair, storage, and day care). A review for your business to occupy the building was not required. When the zoning of the property was changed in 2007, the commercial use of the property became a 'non-conforming use.'*"

CONCLUSION: Staff considers the above excerpt from previous correspondence to be accurate and concurs that the current non-conforming use was created legally. This criterion is met.

Existing Contractor Services / Legal Non-Conforming Use



(2) With mitigation measures, there will not be a net increase in overall adverse impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:

(a) Noise, vibration, dust, odor, fumes, glare, and smoke;

(b) Potential for increased litter;

(c) The amount, location, and nature of any outside displays, storage, or activities;

(d) The appearance of the new use or development will not detract from the desired function and character of the zone;

(e) The operating characteristics of the proposed use are compatible with the existing and anticipated uses. The hours of operation in residential zones cannot be extended into the period of 11 p.m. and 6 a.m.;

(f) ***The street system has adequate capacity to accommodate the use through the horizon year of the current TSP;***

(g) ***The site has adequate on-site parking to accommodate the development or adequate parking will be provided in accordance with Article 9;***

(h) ***Parking areas and entrance-exit points are designed to facilitate traffic and pedestrian safety and avoid congestion;***

(i) ***Public services for water, sanitary sewer, stormwater, water management, and fire and police protection can serve the proposed use;***

(j) ***Activities and developments within overlay districts must comply with the regulations described in Article 4 (Airport Approach), 6 (Natural Resources, (and 7 (Historic) as applicable;***

(k) ***If a commercial use is proposed in an existing building in an industrial zone, the development shall not alter the existing building or site in a way that would discourage or preclude its later conversion back to an industrial use; and***

(l) ***Any applicable criteria in (3) and (4) below.***

FINDINGS OF FACT:

2.1 Criteria (a) through (l) are addressed below:

(a) The contractor services use is proposed to remain and continue to operate as such. The only change proposed is a 375 square-foot expansion of the existing building in the form of a canopy extending from the south facade. Given the relatively small expansion area and the continuation of the existing use, it is not expected that there will not be an increase in adverse impacts due to noise, vibration, dust, odor, fumes, glare, and smoke.

(b) The proposed 375 square-foot expansion to the existing building will not create an increase in litter.

(c) The proposed 375 square-foot expansion to the existing building will not create an increase in outside displays, storage, or activities. Existing outdoor storage is screened with a visually obstructed fence around the perimeter of the property.

(d) The proposed 375 square-foot expansion to the existing building will not change the appearance of the use or detract from the desired function and character of the zone, because the expansion is located behind a visually obstructing fence.

(e) The contractor services use a legal non-conforming use in a residential zone. The use is proposed to remain and will continue to operate. The criteria above states that properties in a residential zone are required to limit hours of operation within the period of 11 p.m. to 6 a.m. in order to be compatible with existing uses; therefore, this will be included as a condition of approval.

(f) The proposed 375 square-foot expansion to the existing building will not impact the transportation system; therefore, the street system has adequate capacity to accommodate the use through the horizon year of the current TSP.

(g) Existing parking is located on-site and the proposed 375 square-foot expansion to the existing building will not change the existing parking or require additional parking spaces; therefore, the site has adequate on-site parking to accommodate the development.

(h) The 375 square-foot expansion to the existing building will not change parking areas or entrance-exit points; therefore, traffic and pedestrian safety will not be impacted.

(i) The 375 square-foot expansion to the existing building will not change the ability of public services for water, sanitary sewer, stormwater, water management, or fire and police protection to serve the proposed use.

(j) The subject property is not located in any overlay districts; therefore, the regulations described in Article 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic) are not applicable.

(k) The property is not in an industrial zone; therefore, this criterion does not apply.

(l) Applicable criteria in (3) and (4) are addressed below.

CONCLUSION:

2.1 The proposed 375 square-foot expansion will not create new adverse impacts, or increase any existing adverse impacts to the surrounding area.

2.2 To be consistent with these criteria, the hours of operation must not extend into the period of 11 p.m. and 6 a.m.

2.3 These criteria can be met with the following condition of approval.

CONDITION:

2.1 Hours of operation shall not extend into the period of 11 p.m. and 6 a.m.

(3) Structural Expansions to buildings under 4,000 square feet is limited to 25% of the existing building.

(a) Nonconforming uses and buildings may expand one time only and must comply with current development standards.

FINDINGS OF FACT: The existing building is 1,500 square feet in size and the expansion is 375 square feet in size or 25% of the existing building. This expansion is only allowed one time. The expansion is consistent with development code standards in the RM zone. Therefore, this criterion is met.

(b) Expansion of a nonconforming use onto another site is prohibited, except when:

i. The expansion site abuts the site of the nonconforming use; and

ii. The expansion site was in the same ownership as the nonconforming site when it became nonconforming; and

iii. Prior zoning regulations on the expansion site would have allowed the use; and

iv. The expansion is approved through a nonconforming use review.

FINDINGS OF FACT: The proposed expansion will not locate onto another site; therefore, this criterion is not applicable.

(c) Addition of new residential units to a nonconforming residential use is prohibited.

FINDINGS OF FACT: The proposal is not a residential use expansion; therefore, this criterion is not applicable.

(4) Nonconforming Uses or Expansions in Residential Areas: If the nonconforming use is in a residential zone or in a mixed-use zone with residential uses adjacent to the site, the appearance of the new use or development will not lessen the residential character of the 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.

FINDINGS OF FACT: The site is located in a residential zone. The proposed expansion is only 375 square-feet in size, which is similar in size to a small storage shed that is allowed outright in all residential zones. There will be no change to the existing parking, and no new lighting or signs are proposed. The proposed expansion is located behind a sight-obscuring fence; therefore, the development will not lessen the residential character of the area. This criterion is met.

OVERALL CONCLUSION:

As proposed and conditioned, the development meets all applicable non-conforming review criteria with the following condition of approval:

CONDITION:

2.1 Hours of operation shall not extend into the period of 11 p.m. and 6 a.m.

ATTACHMENTS

A. Applicant's Findings of Fact

B. Applicant's Site Plan

Attachment A

BALDWIN
GENERAL CONTRACTING, INC

Baldwin General Contracting Inc
422 Cleveland Av. S.E.• P.O. Box 686
Albany, Oregon 97321

Voice: 541-926-2719
Fax: 541-926-1797

CCB 163467

NONCONFORMING SITUATION REVIEW CRITERIA FOR TYPE II DECISIONS

422 Cleveland Ave NE.

FINDINGS OF FACT

1. The nonconforming situation was created lawfully.
2. There will be a net decrease in overall detrimental impacts (over the impacts of the previous use) on the surrounding area taking into account factors such as:
    a. Less noise, vibration, dust, fumes, due to less intensive use of property.
    b. Decreased litter due to less intensive use of property.
    c. No outside storage, activities, or displays.
    d. The appearance of the new structure will be architecturally congruent with existing structure and will not detract from the desired character of the zone.
    e. Hour of operation will be between 6:00am and 6:00pm.
    f. The development does not affect street system.
    g. The development has no affect to onsite parking.
    h. The development will lessen the burden for public services over current use.
    i. Development complies with regulations in Article 4, 6, and 7 where applicable.
    j. The commercial use is not in an existing building in an industrial zone.
    k. See 3, and 4, below:
3. The existing building is under 4000sf and the expansion of 375 sf is 25% of existing SF.
    a. This expansion will only occur one time and will comply with current development standards.
    b. No expansion onto another site will occur.
    c. This is not a residential expansion.
4. The development will not lessen the residential character of the area;
    a. Building scale will be minimal and substantially not visible from street.
    b. Development will not affect parking.
    c. Not loss of privacy to abutting residential uses.
    d. No lighting or signs in new development.

Attachment B

BALDWIN
GENERAL CONTRACTING, INC

Name: JOHN BALDWIN Date: 7-6-16

Project: NEW CANOPY STRUCTURE Job #

Subject: SITE MAP

Baldwin General Contracting, Inc
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Albany, Oregon 97321

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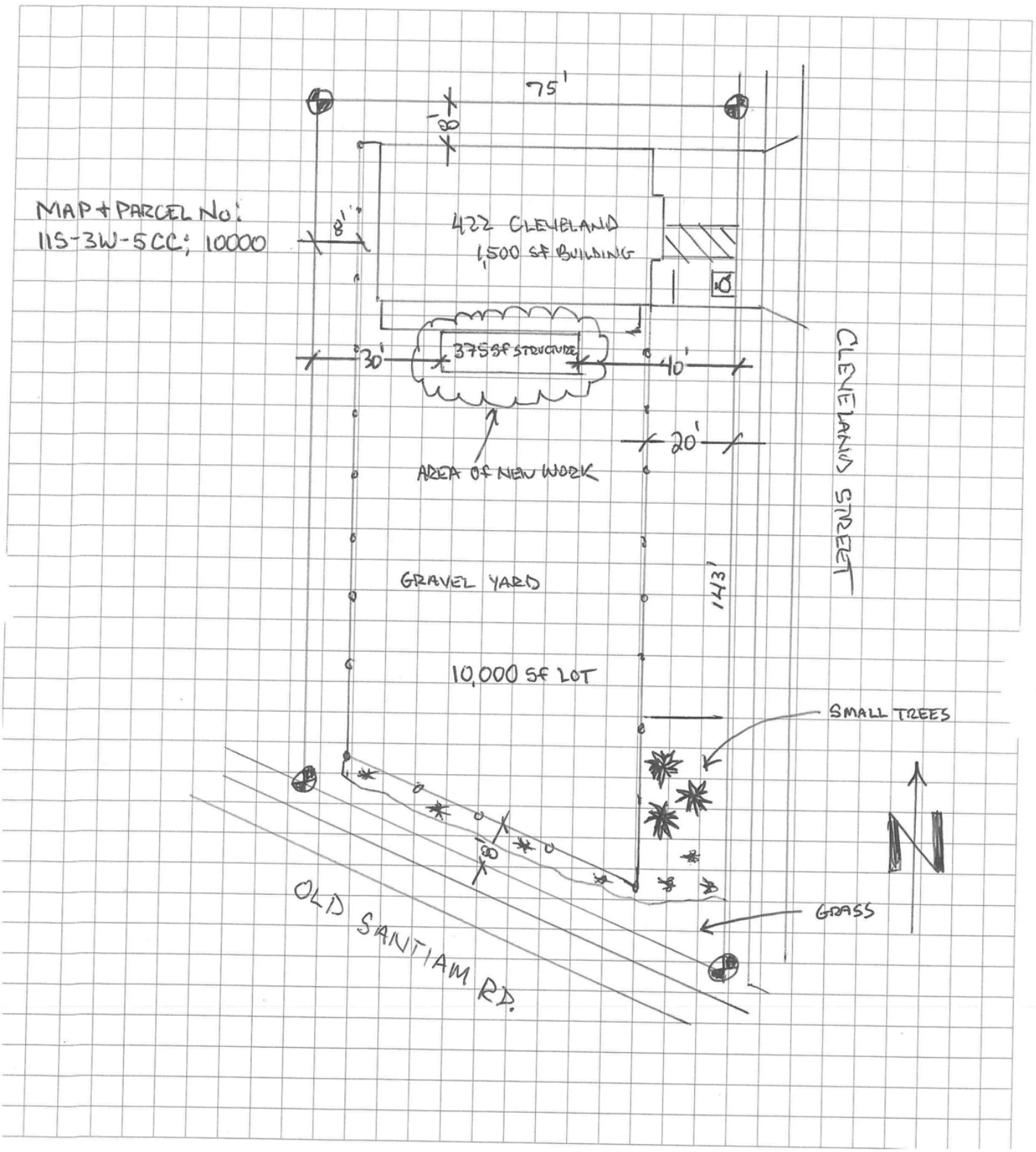
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