



City of Canby
Planning Department
222 NE 2nd Avenue
P.O. Box 930
Canby, OR 97013
Ph: 503-266-7001
Fax: 503-266-1574

LAND USE APPLICATION

NONCONFORMING STRUCTURE OR USE Process Type II

APPLICANT INFORMATION: (Check ONE box below for designated contact person regarding this application)

☐ Applicant Name: Christopher Nestlerode	Phone: 503-341-6801
Address: 2850 SW Cedar Hills Blvd. #106	Email: chris@pdsllcnw.com
City/State: Beaverton, Oregon	Zip: 97005
☐ Representative Name: Christopher Nestlerode	Phone: 503-341-6801
Address: 2850 SW Cedar Hills Blvd. #106	Email: chris@pdsllcnw.com
City/State: Beaverton, Oregon	Zip: 97005
☒ Property Owner Name: Benjamin Y. Chan	Phone: 503-803-6556
Signature: B.Y. Chan 4-29-26	
Address: 11004 SE Lenore ST.	Email: bcc22008@yahoo.com
City/State: Happy Valley, OR	Zip: 97086
☒ Property Owner Name: Chun P. Zhen	Phone: 503-803-6556
Signature: Chun P. Zhen	
Address: 11004 SE Lenore ST.	Email: bcc22008@yahoo.com
City/State: Happy Valley, OR	Zip: 97086

NOTE: Property owners or contract purchasers are required to authorize the filing of this application and must sign above

- ① All property owners represent they have full legal capacity to and hereby do authorize the filing of this application and certify that the information and exhibits herewith submitted are true and correct.
- ② All property owners understand that they must meet all applicable Canby Municipal Code (CMC) regulations, including but not limited to CMC Chapter 16.49 Site and Design Review standards.
- ③ All property owners hereby grant consent to the City of Canby and its officers, agents, employees, and/or independent contractors to enter the property identified herein to conduct any and all inspections that are considered appropriate by the City to process this application.

PROPERTY & PROJECT INFORMATION:

679 SE 1ST, CANBY 97013	0.33 ACRES	31E33DA01100
Street Address or Location of Subject Property	Total Size of Property	Assessor Tax Lot Numbers
Restaurant (no work), New Canopy for car parking	Canby UGB	Contact City
Existing Use, Structures, Other Improvements on Site	Zoning	Comp Plan Designation
Existing Use is a restaurant. No change to existing use, development is repair of existing canopy.		
Describe the Proposed Development or Use of Subject Property		

STAFF USE ONLY

FILE #	DATE RECEIVED	RECEIVED BY	RECEIPT #	DATE APP COMPLETE

NONCONFORMING STRUCTURE OR USE – TYPE II—Instructions to Applicants

If a property owner is expanding this size of a nonconforming structure (either foot print or height), the application will be heard by the Planning Commission as a New Business item. If the property owner is replacing within the existing footprint of the structure the Planning Director will make the decision.

All required application submittals detailed below must also be submitted in electronic format on a CD, flash drive or via email to: PlanningApps@canbyoregon.gov

Applicant City
Check Check

- ☒ ☐ One (1) copy of this application packet. The City may request further information at any time before deeming the application complete.

- ☒ ☐ Payment of appropriate fees – cash or check only. Refer to the city’s Master Fee Schedule for current fees. Checks should be made out to the *City of Canby*.

- ☒ ☐ **Please submit one (1) electronic copy of mailing addresses in either an EXCEL SPREADSHEET or WORD DOCUMENT** for all property owners and all residents within 500 feet of the subject property. **If the address of a property owner is different from the address of a site, an address for each unit on the site must also be included and addressed to “Occupant.”** A list of property owners may be obtained from a title insurance company or from the County Assessor’s office.

- ☒ ☐ One (1) copy of a written, narrative statement describing the proposed development and detailing how it conforms with the Municipal Code and to the approval criteria, including the applicable Design Review Matrix, and availability and adequacy of public facilities and services. **Ask staff for applicable Municipal Code chapters and approval criteria.**
Applicable Code Criteria for this application includes:
See Separate Document Attached

- ☒ ☐ One copy of either the recorded plat or the recorded deeds or land sales contracts that demonstrates how and when legal property lines were established and where the boundaries of the legal lot(s) of record are located. If the property is a lot or parcel created by plat, a copy of the recorded plat may be obtained from the Clackamas County Surveyor’s office. If the property is a legal lot of record created by recorded deed or land sales contract at a time when it was legal to configure property lines by deed or contract, then those recorded deeds may be obtained from the Clackamas County Office of the Clerk, or a Title Company can also assist you in researching and obtaining deeds.

CRITERIA FOR EXPANSION OF NONCONFORMING STRUCTURE OR CHANGE OF NONCONFORMING USE

In judging whether or not such applications shall be approved or denied, the City shall weigh the proposal's positive and negative features and the public convenience or necessity to be served against any adverse condition that would result from authorizing the particular development at the location proposed and, to approve such expansion or change shall find that the following criteria are either met, can be met by observance of conditions, or are not applicable:

- A. The proposal will be consistent with the policies of the Comprehensive Plan and the requirements of the Land Development and Planning Ordinance, other than those specific zoning standards to which the use or structure is nonconforming.
- B. The characteristics of the site are suitable for the proposed use considering size, shape, design, location, topography, existence of improvements and natural features.
- C. All required public facilities and services exist to adequately meet the needs of the proposed development.
- D. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, or precludes the use of surrounding properties for the uses listed as permitted in the zone.
- E. In considering whether to approve a change in the use the Commission shall compare the following characteristics of the historical use of the property with that proposed by the applicant in order to assure that the change will not constitute an expansion or intensification of the nonconforming use:
 - 1. Traffic, including both volume and type (car, truck, foot, etc.);
 - 2. Noise;
 - 3. Days and hours of operation;
 - 4. Physical appearance;
 - 5. Other environmental considerations (dust, vibration, glare, etc.);
 - 6. Type and size of equipment used.



Reconstruction ● Renovation ● New Construction

2850 SW Cedar Hills Blvd., Suite #106
Beaverton, Oregon 97005-1354

Web: PropertyDamageSolutions.net

Email: chris@pdsllcnw.com

Phone: 503-382-8000

Brianna Addotta, AICP | Associate Planner

City of Canby | Development Services Department
222 NE 2nd Ave. | PO Box 930
Canby, OR 97013

RE: PRA 26-01 Wally's Chinese Kitchen – Nonconforming Use Narrative

Project summary: The replacement of a canopy that was approved and constructed before the current setback requirements were established. The canopy was damaged by a third party and had to be removed for safety, but the support poles remain. The sign is also intended to be replaced, and the sign pole is still installed. The canopy design has been altered so that there is no overhang into ODOT right-of-way or slope easement, but the design and size of the canopy will be largely the same as what existed previously.

Per the planning comments received on February 11th 2026, the replacement of the damaged canopy shall be processed through a Non-Conforming Structure Application due to the replacement in its original location is over the current setbacks for this structure type.

Per Section 16.52.020, the structure is considered Nonconforming due to setbacks.

The purpose of this Narrative is to address this section of the code.

Per Section 16.52.020 (B). The Planning Commission may allow existing nonconforming structures to be reconstructed over existing legally approved building footprints. Approval of a nonconforming structure application under this Chapter is required.

We have submitted a design for consideration to planning staff for review and the response by staff was to submit a Land Use Application for a Nonconforming structure Process Type II.

Per Section 16.52.060 Destruction of a nonconforming use or structure.

If a nonconforming structure or a structure containing a nonconforming use is destroyed by any cause to an extent exceeding eighty percent of the cost of replacement of the structure using new materials, as determined by the Building Official, the property owner may apply to the Planning Commission to restore the nonconforming use or structure. In judging whether or not the restoration of a nonconforming use shall be approved or denied, the Planning Commission shall weigh the proposal's positive and negative features and the public convenience or necessity to be served against adverse conditions that would result from authorizing the particular restoration at the location proposed. In order to approve such restorations, the Planning Commission shall find that the criteria as set forth in section 16.52.050 are met, can be met by observance of conditions, or are not applicable. (Ord. 805 section 3 [part], 1987; Ord. 740 section 10.3.80(F), 1984)

We refer to the criteria in section 16.52.050 and the notes from the planning meeting to indicate that the replacement of the damaged canopy meets the criteria of the planning code.

Per Section 16.52.050 The following conditions establish the criteria for review of the non-conforming structure:

- A. The proposal will be consistent with the policies of the Comprehensive Plan and the requirements of the Land Development and Planning Ordinance, other than those specific zoning standards to which the use or structure is nonconforming.
- B. The characteristics of the site are suitable for the proposed use considering size, shape, design, location, topography, existence of improvements and natural features.
- C. All required public facilities and services exist to adequately meet the needs of the proposed development.
- D. The proposed use will not alter the character of the surrounding area in a manner which substantially limits or precludes the use of surrounding properties for the uses listed as permitted in the zone.
- E. In considering whether to approve a change in use, the city shall compare the following characteristics of the historical use of the property with that proposed by the applicant in order to assure that the change will not constitute an expansion or intensification of the nonconforming use:

- 1. Traffic, including both volume and type (car, truck, foot, etc.);
- 2. Noise;
- 3. Days and hours of operation;
- 4. Physical appearance;
- 5. Other environmental considerations (dust, vibration, glare, etc.);
- 6. Type and size of equipment used.

The following is a response to the criteria in relation to the reconstruction of the existing damaged non-conforming canopy.

- A. The use and the construction type of the replacement of the canopy meet the policies of the comprehensive plan. The need for the non-conforming use is due to current setbacks. The existing canopy is over the current setback and thus the replacement of it will be over the current code setback.
- B. There is no change to the site or its characteristics. This project is the repair of an existing non-conforming canopy cover that will be replaced in like kind and quality.
- C. There is no change in the building, to the facilities or to services. This project is the repair of an existing non-conforming canopy cover that will be replaced in like kind and quality.
- D. There is no change to the character. This project is the repair of an existing non-conforming canopy cover that will be replaced in like kind and quality. There is no effect to surrounding properties.
- E. This proposed project is not a change in use and has no modification to the criteria items 1-6.

Thank You,

Christopher Nestlerode

Christopher Nestlerode

Principal
Property Damage Solutions, LLC
2850 SW Cedar Hills Blvd. #106
Beaverton, Oregon 97005

WARRANTY DEED-STATUTORY FORM

Grantor:

Wallace W. Lee and Lois Jean Lee
as husband and wife,
7709 SE Sherman
Portland, Oregon, 97215

SPACE RESERVED FOR RECORDER'S USE

Clackamas County Official Records
Sherry Hall, County Clerk

2009-001625

MAIL FUTURE TAX STATEMENTS TO AND
AFTER RECORDING RETURN TO:

Grantee: WALLACE W. LEE
Benjamin Yimbun Chan
11680 SE 108th. Avenue
Portland, Oregon, 97226



01272550200900016250020029

\$36.00

01/12/2009 01:41:12 PM

D-D Cnt=1 Str=2 JANISKEL
\$10.00 \$10.00 \$16.00

Wallace W. Lee and Lois Jean Lee, husband and wife, Grantor, conveys and warrants to Benjamin Yimbun Chan, Grantee, the following described real property free of encumbrances except as specifically set forth herein situated in Clackamas County, Oregon, to-wit:

See "Exhibit A", attached hereto and incorporated herein by reference.

and commonly known as 679 SE First Avenue, Canby, Oregon.

This property is free from encumbrances except. NONE

The true consideration for this conveyance is \$210,000.00.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Dated this 12 day of January ²⁰⁰⁹~~1999~~

Wallace W. Lee
Wallace W. Lee, Grantor

Lois Jean Lee
Lois Jean Lee, Grantor

STATE OF OREGON)

ss.

County of Clackamas)

January 12, ²⁰⁰⁹~~1999~~

Personally appeared the within named Wallace W. Lee and Lois Jean Lee and acknowledged the foregoing instrument to be their voluntary act and deed.



Jeana L. Pemberton
Notary Public for Oregon

My Commission Expires: Oct 29, 2011

EXHIBIT A

LEGAL DESCRIPTION

Part of the Philander Lee D.L.C. in the southeast one-quarter of Section 33, Township 3 South, Range 1 East of the W.M., in the County of Clackamas and State of Oregon, more particularly described as:

Beginning at a point in the easterly line of a tract of land conveyed to Edward Sommerfield by deed recorded in book 90, page 63, Deed Records, said point bears South 27° East 60.0 feet from the most northerly corner of said Sommerfield tract; thence South 27° East tracing the easterly line of said Sommerfield tract, 130 feet; then South 63° West 108 feet to the true point of beginning of the tract herein described; said true place of beginning being also the southeasterly corner of that certain tract of land conveyed to Albert A. Seida, et ux, by deed recorded September 27, 1956, in Book 517, page 11, Deed Records; thence North 27° West along the northeasterly line of said Seida tract to the southeasterly line of that certain tract of land conveyed to the State of Oregon for highway purposes by deed recorded February 20, 1961, Deed Book 583, page 259; thence Southwesterly along the southeasterly line of said highway tract, a distance of 100 feet; thence Southeasterly parallel with the northeasterly line of said Seida tract to the southeasterly line of said Seida tract; thence South 27° East along the southwesterly prolongation of the last described course 18 feet, more or less, to its intersection with the northeasterly extension of the south line of Lot 11, Block 1, Brownmore, in Clackamas County, Oregon, which is also the north line of the alley between Block 1 and Block 2, Brownmore; thence Northeasterly along the said south line extended parallel with the southeasterly line of the said Seida tract, 100 feet, more or less, to its intersection with the easterly line of the said Sommerfield tract; thence North 27° West along the said southerly line of the said Sommerfield tract to the true point of beginning.

3/ **KNOW ALL MEN BY THESE PRESENTS, That**
ALBERT A. SEIDA and MAXINE C. SEIDA, husband and wife,
hereinafter called the grantor, for the consideration hereinafter stated,
to grantor paid by **IRVIN G. SNYDER and MARIAN L. SNYDER, husband and wife,**
hereinafter called the grantee,
does hereby grant, bargain, sell and convey unto the said grantee and grantee's heirs, successors and assigns, that
certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, sit-
uated in the County of **CLACKAMAS** and State of Oregon, described as follows, to-wit:

Part of the Philander Lee D.L.C. in Section 33, T. 3S., R. 1E. of
the W.M., in the County of Clackamas and State of Oregon, more
particularly described as:

Beginning at a point in the Easterly line of a tract of land
conveyed to Edward Sommerfield by Deed recorded in Book 90, Page
63, Deed Records, said point bears South 27° East 60.0 feet from the
most Northerly corner of said Sommerfield tract; thence South 27°
East tracing the Easterly line of said Sommerfield Tract, 130 feet;
thence South 63° West 108 feet to the true point of beginning of
the tract herein described; said true place of beginning being
also the Southeasterly corner of that certain tract of land
conveyed to Albert A. Seida, et ux, by deed recorded September
27, 1956, in Book 157 Page 11, Deed Records; thence North 27°
West along the Northeasterly line of said Seida tract to the
Southeasterly line of that certain tract of land conveyed to the
State of Oregon for highway purposes by deed recorded February
20, 1961, Deed Book 583, Page 259; thence Southwesterly along the
Southeasterly line of said highway tract a distance of 100
feet; thence Southeasterly parallel with the Northeasterly line
of said Seida Tract to the Southeasterly line of said Seida Tract;
thence South 27° East along the Southwesterly prolongation of the
last described course 18 feet more or less, to its intersection
with the Northeasterly extension of the South line of Lot 11, Block
1, BROWNMORE, in Clackamas County, Oregon which is also the North
line of the alley between Block 1 and Block 2, BROWNMORE, thence
Northeasterly along the said South line extended parallel with the
Southeasterly line of the said Seida Tract, 100 feet, more or less, to
its intersection with the Easterly line of the said Sommerfield
Tract; thence North 27° West along the said Southerly line of the
said Sommerfield Tract to the true point of beginning. 70 1629

31

C-70-0023

70-1689

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever.
And said grantor hereby covenants to and with said grantee and grantee's heirs, successors and assigns, that grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances except any acts or encumbrances placed against said premises by anyone other than the Grantor subsequent to December 28, 1964.

and that grantor will warrant and forever defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever, except those claiming under the above described encumbrances.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$16,000.00

In construing this deed and where the context so requires, the singular includes the plural.
WITNESS grantor's hand this 23 day of January, 1970.
Albert A. Seida
Maxine C. Seida

STATE OF OREGON, County of CLACKAMAS) ss. January 23, 1970
Personally appeared the above named Albert A. Seida and Maxine C. Seida,
husband and wife,
and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me: Dale H. Metcalf
Notary Public for Oregon
My commission expires 10-19-73

NOTE—The apostrophe between the symbols ®, if not applicable, should be deleted. See Chapter 462, Oregon Laws 1967, as amended by the 1967 Special Session.

WARRANTY DEED

SEIDA
TO
SNYDER

AFTER RECORDING RETURN TO
AFTER RECORDING RETURN TO
TRANSCAMERICA TITLE INS. CO.
902 Main Street
Oregon City, Oregon 97045
10-2-114 2

STATE OF OREGON, County of Clackamas.
I, George D. Poppin, County Clerk, Ex-Officio Recorder of Conveyances and Ex-Officio Clerk of the County of Clackamas, do hereby certify that the within instrument of writing was duly executed and recorded in the records of said County for the year 1970, January 26, PM 2:48, as shown by the following:
DEED
1970 JAN 26 PM 2:48
In Book On Page
Witnessed by me, George D. Poppin, County Clerk, and Susan Carlson, Deputy.
George D. Poppin
Susan Carlson
Recording Certificate



2850 SW CEDAR HILLS BLVD. SUITE 106
BEAVERTON, OREGON 97005-1354
CONTACT: CHRISTOPHER NESTLERODE
PHONE: 503-382-8000 EM. CHRIS@PDSLLCNW.COM

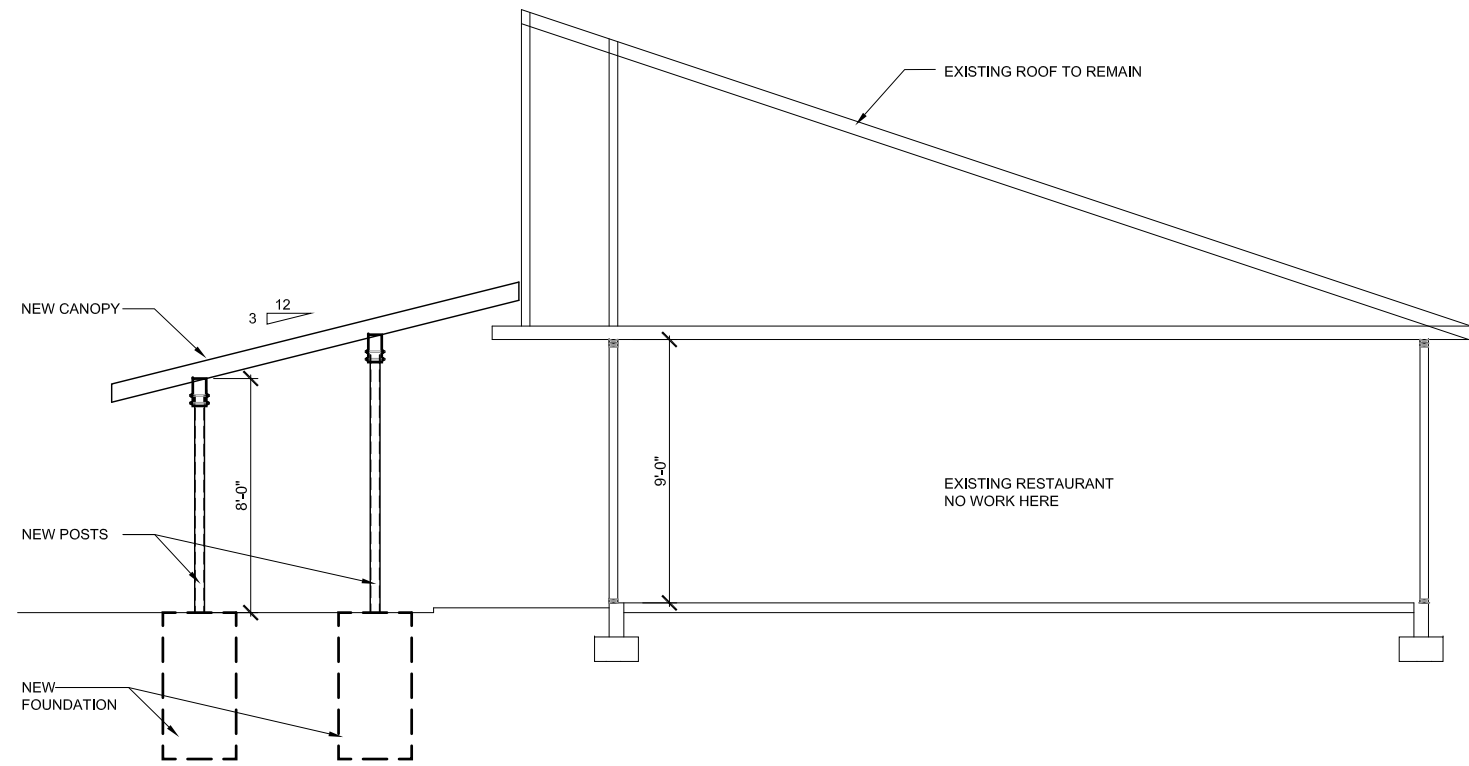
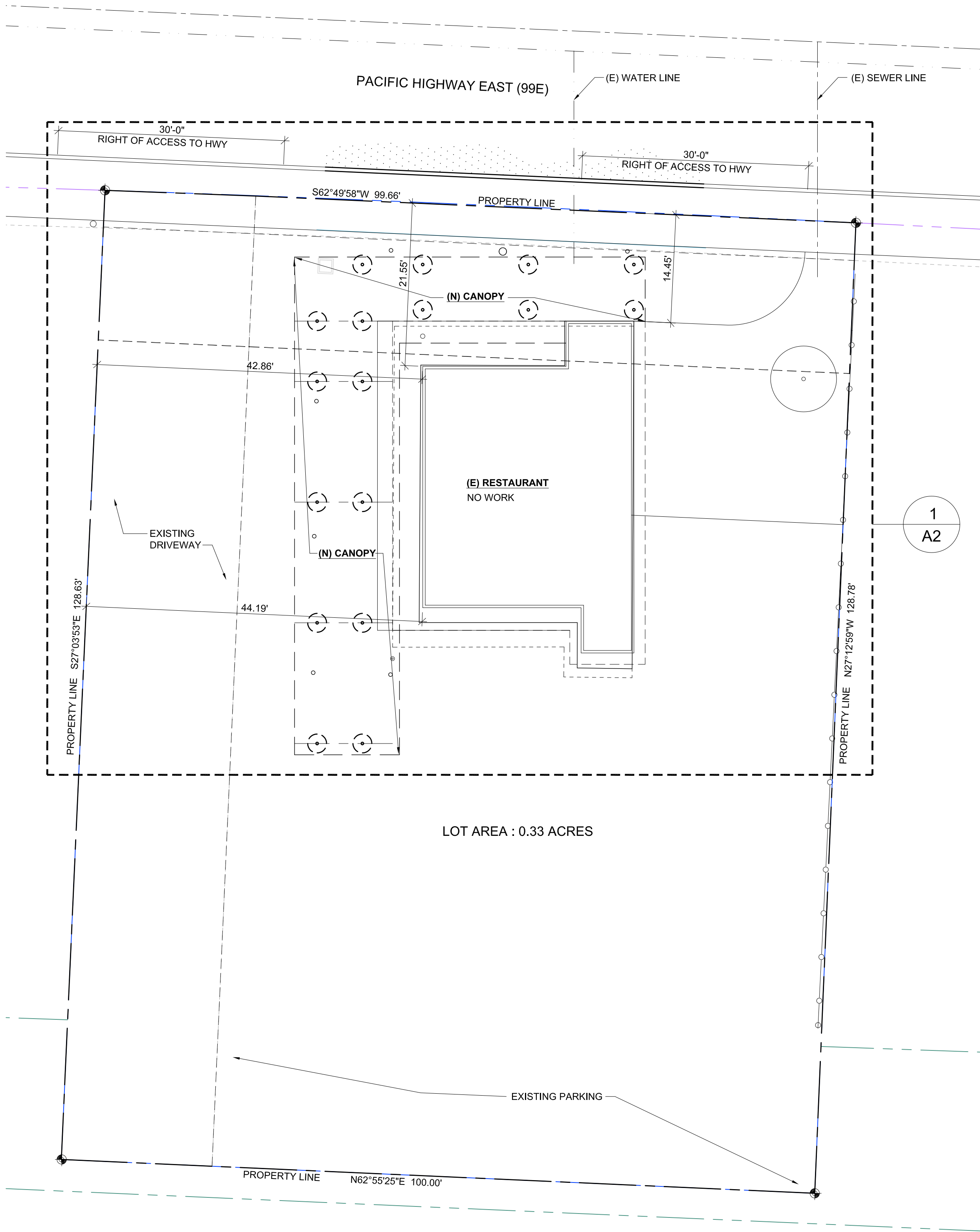
PRE-APP. CONF. 01-15-26

CANOPY REPAIR
679 SE 1ST AVE., CANBY, OR 97013

OVERALL SITE PLAN

PDS # 2506117

A1



1
A1
OVERALL SITE PLAN
SCALE: 1"=10'-0"



2
A1
CANOPY SECTION
SCALE: 1/4"=1'-0"

WALL KEY:

- EXISTING WALLS

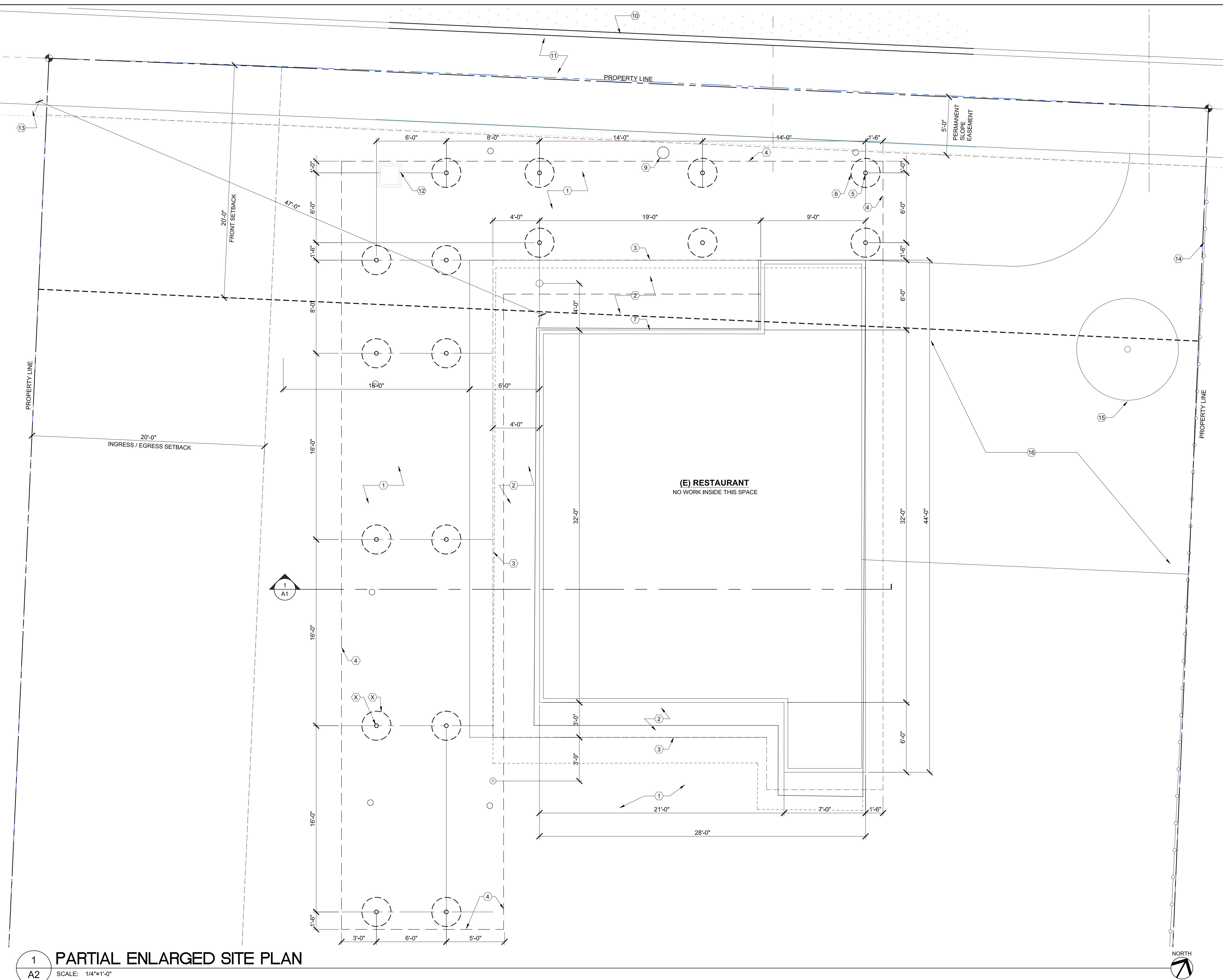
KEY NOTES:

- 1 EXISTING ASPHALT PAVING TO REMAIN
- 2 EXISTING CONC WALKWAY TO REMAIN
- 3 LINE OF EXISTING BLDG CANOPY ABOVE
- 4 LINE OF NEW CANOPY ABOVE
- 5 NEW 4" DIA. METAL POST
- 6 NEW FOUNDATION BELOW
- 7 EXISTING BUILDING WALLS TO REMAIN
- 8 NEW WHEEL STOP
- 9 EXISTING SIGN POST TO REMAIN
- 10 EXISTING CURB TO REMAIN
- 11 EXISTING SIDEWALK TO REMAIN
- 12 EXISTING TRENCH DRAIN TO REMAIN
- 13 EXISTING FIRE HYDRANT
- 14 EXISTING CHAINLINK FENCE TO REMAIN
- 15 EXISTING TREE TO REMAIN
- 16 EXISTING GRASS AREA TO REMAIN

CANOPY REPAIR

679 SE 1ST AVE., CANBY, OR 97013

PARTIAL ENLARGED SITE PLAN



1
A2

PARTIAL ENLARGED SITE PLAN

SCALE: 1/4"=1'-0"

