

AGENDA

TOLEDO PLANNING COMMISSION

ELECTRONIC/VIRTUAL MEETING VIA ZOOM MEETING PLATFORM. The Planning Commission will hold the meeting through the Zoom video meeting platform. The public is invited to attend the meeting electronically. Email planning@cityoftoledo.org or call 541-336-2247 ext. 2130 to receive the meeting login information.

Public Comments: The Planning Commission may take limited verbal comments during the meeting. Written comments can be submitted by email to planning@cityoftoledo.org by 4:00 pm on June 9, 2021, to be included in the record. Comments received will be shared with the Planning Commission and included in the record.

1. CALL TO ORDER AND ROLL CALL
2. VISITORS: (A time set aside to speak with the Planning Commissioners about issues not on the agenda)
3. DECISION ITEM: Extension to the deadline date for a Variance approval (File #VAR-1-20), requested by Gary Shane and Deloris Dinkel
4. PUBLIC HEARING: Conditional Use Permit for a multi-family residential use (tri-plex) in the Commercial Zone, (File #CU-3-21), for property located at 163 E Hwy 20, 165 E Hwy 20 and 165 NE 2nd Street, requested by Bruster Enterprise LLC
5. WORKSESSION: Planning Commissioner Training
6. DISCUSSION ITEMS:
 - a. Planning Commission Meeting Time
 - b. Updates and Reports
7. STAFF COMMENTS
8. COMMISSIONER COMMENTS
9. ADJOURNMENT

* Comments submitted in advance are preferable. Comments may be submitted by phone at 541-336-2247 extension 2130 or by email to planning@cityoftoledo.org. The meeting is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodation for persons with disabilities should be made at least 48 hours in advance of the meeting by calling the Toledo Planning Department at 541-336-2247.



TO: Toledo Planning Commissioner Members

FROM: Justin Peterson, Contract Planner

DATE: June 2, 2021

RE: Request to the Deadline Dates for Land Use Decisions

Attached is a request to extend the deadline dates for a land use decisions issued in June of 2020.

The home on the property was destroyed by a fire. The City of Toledo received a building permit for a foundation repair (518-20-000509-STR) on March 16, 2020. On review of the permit it was discovered that the existing foundation did not meet the current side yard setback requirements. On May 21, 2020, the property owner applied with the City of Toledo for a Type II, Class B Variance (#VAR-1-20) to replace a non-conforming structure at 363 SE 2nd Street in Toledo. The City of Toledo approved the requested variance on June 16, 2020. Authorization of a variance was valid for one (1) year if a building permit has not been issued or development has not begun. The foundation repair permit was approved on April 8, 2020 with a setback condition. A building permit was received for garage in December 2020. The garage permit is pending the conversion of the basement to livable space. The Residential General (R-G) Zone requires accessory structures to have a main use on the property. No permit has been received to rebuild the home above the basement.

Delores and Gary Dinkel are requesting extension to the deadline date to file his Variance to replace a non-conforming structure at 363 SE 2nd Street. In June, 2020, the City Staff reviewed and approved the variance to replace a non-conforming structure for property at 363 SE 2nd Street. In accordance to the municipal code and conditions of approval, approval shall be void after 12 months if the building permit has not been issued or an extension is not granted. The decision Order is attached for your review.

Mr. Dinkel's written request for an extension to the deadline date was received by City staff on June 1, 2021, before the deadline date of June 16, 2021.

The relevant Toledo Municipal Code sections authorizing extensions are noted below:

TMC CHAPTER 17.68 VARIANCES

17.68.060 Time limit on approval of a variance.

- A. Except as provided in subsection B of this section, authorization of a variance shall be void after one year if a building permit has not been issued or development has not begun.
- B. The authorization may be extended by the planning commission for an additional period of one year if the request is made in writing prior to the expiration of the original authorization.

Staff recommends granting an extension for Variance #VAR-1-20 with a deadline date updated to June 16, 2022.

TO: Justin Peterson

Contract Planner

The City of Toledo OR.

RE: Lincoln City Assessors Map 11-10-17 BD Tax Lot 16200

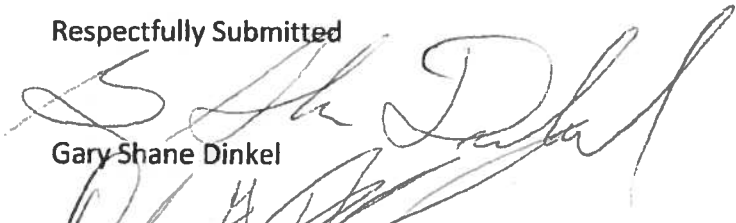
363 S.E 2nd St Toledo OR.

As stated in your letter dated May 5, 2021, we are hereby requesting a one-year extension to the variance #VAR-1-20, that was granted on June 16, 2020.

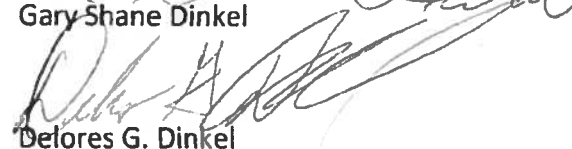
The foundation repair permit that was granted on April 8, 2020 to TerraFirma to repair the foundation of the garage was completed and inspected Lincoln County.

The garage permit is waiting for a clarification by the Lincoln County Building Inspector's Office as to what constitutes a "kitchen". The owners continue to remodel the day light basement and expect to have the remodel complete by the end of July. *Thus making a "livable space"*

Respectfully Submitted



Gary Shane Dinkel



Delores G. Dinkel

RECEIVED
CITY OF TOLEDO
DATE 6/1/2021
BY M

MAILED 6/16/20



City of Toledo
206 N. Main Street, P.O. Box 220
Toledo, OR 97391

June 16, 2020

Delores and Gary Dinkel
363 SE 2nd Street
Toledo, OR 97391

Dear Mrs. Dinkel and Mr. Dinkel,

RE: Lincoln County Assessor's Map Number 11-10-17 BD Tax Lot 16200
City of Toledo File No. VAR-1-20

On May 21, 2020, you applied with the City of Toledo for a Type II, Class B Variance to replace a non-conforming structure at 363 SE 2nd Street in Toledo.

Some variances require a Type II procedure because they involve discretionary decision-making or the potential for more substantial changes that may have some impact on the adjacent property owners. A Class B Variance is a variance requiring staff level approval and is intended to apply to situations which require a greater exercise of discretion and in which the factual situation is complex.

Section 17.68.040(D) of the Toledo Municipal Code applies in this instance. It reads:

“D. Class B—Variance to Rebuild a Destroyed Nonconforming Structure. Section 17.56.060 allows rebuilding a partially damaged nonconforming structure as long as it is not made to be more nonconforming. It also precludes the rebuilding of a totally destroyed nonconforming structure. A variance to this section can be applied for and will be evaluated against the following criteria:

1. Public response;
2. Livability and effects on adjacent and surrounding properties;
3. Circumstances pertinent to the property in question that are beyond the control of the applicant;
4. No other provisions of the municipal codes are violated;
5. Effected natural resources;
6. No public safety issues are created;
7. The requested variance is the minimum necessary.”

Justin Peterson, City Planner

E-mail: planning@cityoftoledo.org (541) 336-2247 Ext. 2130

Fax: (541) 336-3512

The following **FACTS** apply in this case:

1. The application was submitted on the proper form and with the required fee.
2. The application was complete.
3. Pertinent criteria with which to make a determination was included.
4. Notification letters of the proposed variance decision were mailed to 18 property owners within 150' feet of your property, and to public service organizations, on May 27, 2020.
5. Notification emails of the proposed variance decision were sent on May 27, 2020 to City of Toledo staff and Oregon Department of Transportation.
6. The affidavit of mailing was completed by staff.
7. A fourteen (14) day period was provided to allow written comments to be submitted into record. The comment period ended on June 11, at 5:00 pm.
8. Public Works, Fire, and Police reviewed the application and had no comments. As of 5:00 pm on June 11, 2020, no other comments were received.

The following **ANALYSIS AND FINDINGS** apply in this case:

You have requested a variance to replace a non-conforming single-family home at 363 SE 2nd Street in Toledo. Based on a review of the City's property file, your current use is a legally authorized, non-conforming use, for your single-family home to be located 3'10" from the east side (side yard) setback. In this case, the non-conforming use is the placement of single-family home that was approved by the City prior to 1974. It is non-conforming because, as stated by the applicant, the east side (side yard) setback is 3'10". In summary, the current use was "grandfathered-in," because the single-family home was placed prior to the adoption of the current setback standards, which makes it non-conforming to what is permitted (5' minimum side yard) today. An analysis must be completed on the future use, a replacement single-family home.

The purpose of Chapter 17.56, Nonconforming Uses and Structures, is as follows:

"...to preserve those structures and uses as they exist at the time that this ordinance or its amendments become effective, to allow a minimum of further expansion or upgrading and to assure that improvement and change to such structures and uses will, as much as possible, be in accordance with the requirements of this ordinance." (TMC 17.56.010).

Accordingly, a Class B variance is required to repair or rebuild a significantly damaged non-conforming use or structure. Section 17.68.040(D), entitled "Class B—Variances," provides, as follows:

"Variance to Rebuild a Destroyed Nonconforming Structure. Section 17.56.060 allows rebuilding a partially damaged nonconforming structure as long as it is not made to be more nonconforming. It also precludes the rebuilding of a totally destroyed nonconforming structure. A variance to this section can be applied for and will be evaluated against the following criteria:"

Justin Peterson, City Planner

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Section (D) provides for standards (1-7) for granting a variance. This Section (D) also references Section 17.56.060, entitled “Destruction of a nonconforming structure.”

In reviewing 17.56.060, it provides as follows:

“If a nonconforming structure or use is destroyed by any cause, the structure may not be rebuilt. A Class B variance is necessary to repair or rebuild a significantly damaged nonconforming use or structure.”

Sections 17.68.040(D) and 17.56.060 work together to allow a variance to rebuild a partially destroyed nonconforming structure. Both sections reference each other. In this case, staff finds that it is a significantly damaged structure and that the foundation of the old single-family home still exists.

Per TMC 17.56.060, a Class B variance is required. This is what has been requested. Such a variance to the replace the non-conforming single-family home is based on standards located in TMC 17.68.040 (D)(1-7).

Findings are made that the requested variance is in conformance with Toledo Municipal Code Section 17.68.040(D), and Chapter 19.12 for granting a Class B variance.

1. The subject property contains an existing single-family home. Based on the applicant’s statements the single-family home is located 3’10” from the east property line (side yard). The side yard is required to be a minimum of 5’ unless a variance is granted.
2. Public response to the request and City notification to surrounding owners did not include an objections to the requested variance.
3. The proposed new home would replace an existing single-family home of the same dimensions that has been located on the subject property prior to 1974. There is no evidence that the existing single-family home has had any detrimental impact on the livability of adjoining properties since it was constructed, and therefore replacement of the single-family in the same location on the property will likely have no measureable impact on livability or have no negative effects on adjoining or nearby properties.
4. The property owner acquired the subject property after the single-family home was built and established, and the location of the old home is inherent with the property in its current location. This situation is beyond the control of the applicant.
5. The proposed single-family home complies with all other standards of the General Residential (R-G) zoning district of the subject property including front and rear yard setbacks and lot coverage, and otherwise complies with all applicable provisions of the Toledo Municipal Code.

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6. There are no identified natural resource values on the subject property that would prevent the construction of the single-family home.
7. No public safety issues were identified. The applicant shall apply for a building permit from Lincoln County prior to construction.
8. The applicant is requesting approval to replace an existing single-family home with no increase in dimensions and in the same location, therefore the variance requested is the minimum necessary.

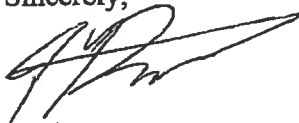
The requested administrative decision, to approve a variance for replacement of a single-family home, with a single-family home, at 363 SE 2nd Street in Toledo, is approved with the following conditions:

1. The site plan submitted with the application is the basis on which this request is approved.
2. The applicant shall obtain a valid building permit from Lincoln County for the new single-family home prior to construction, and comply with all building codes.
3. Except for the side yard requirement, all special standards for certain uses and other code requirements applicable to single-family homes in the R-G zone must be complied with in the rebuilding of the single-family home.

The date of this administrative decision is June 16, 2020. The administrative decision is effective on the day after the appeal period expires. An appeal can be filed on appropriate City forms and paying the appeal fee within fourteen days of the date on this letter. In this case, an appeal must be filed with the City of Toledo by June 30, 2020 at 5:00 PM. If an appeal is filed, the decision is effective when the appeal is decided.

Feel free to call me if you have any questions regarding this decision or if you would like appeal information. I can be reached at (541) 336-2247 extension 2130 or email planning@cityoftoledo.org.

Sincerely,



Justin Peterson
Contract Planner

cc: Lincoln County Planning and Development Department
City of Toledo Property File 11-10-17 BD Tax Lot 16200

Justin Peterson, City Planner

E-mail: planning@cityoftoledo.org (541) 336-2247 Ext. 2130

Fax: (541) 336-3512

2nd STREET

PLOT PLAN
FOR LOT 8
SCALE
 $3/32" = 1'$

24" EASEMENT

55'

30'

FRONT YARD
GRASS

← 6'-2" →

18' x 45' HOUSE
HEIGHT 26'

← 3'-10" → VARIANCE
REQUESTED

100'

100'

TERRACED BACK YARD

W/ PLANTERS AND

52'

SMALL TREES

TOLEDO PLANNING COMMISSION

STAFF REPORT

PROPERTY: Lincoln County Assessor's Map # 11-10-17 BB Tax Lot 11300
163 East Hwy 20, 165 East Hwy 20, and 161 NE 2nd Street,
Toledo, Oregon

APPLICATION #: CU-3-21

APPLICANT: Bruster Enterprise LLC. (Property Owner)

APPLICATION DATE: May 5, 2021

HEARING DATE: Planning Commission – June 9, 2021

REQUEST: The applicant is requesting a Conditional Use Permit to build a multi-family dwelling in the Commercial Zone, specifically, to convert the commercial stores to a three-unit apartment building.

LOCATION: The building is located at the southwest corner of the NE 2nd Street and Business Hwy 20 intersection.

PARCEL SIZE: Approximately 0.06 acres

I. REPORT OF FACTS:

1. Plan Designation: Commercial (C)
2. Zone Designation: Commercial (C) and Main Street Overlay
3. Existing Structures: The subject property has an existing building that has historically been used as commercial stores, professional offices, and office spaces. Around 2018 the upper floor stores were converted to residential units. The lower basement floor was more recently converted to residential.
4. Topography: The subject property generally slopes downhill to the west.
5. Development Constraints: The existing building is located on a sloped area.
6. City water: The existing building is connected to city water.
7. City sewer: The existing building is connected to city water.
8. Notice of Public Hearing: Notices mailed to 37 property owners and 19 public/service agencies on May 20, 2021.
9. Notice Published: May 26, 2021 and June 2, 2021
10. Comments Received: Public Works Director, Fire Chief, and Police Chief all reviewed the application. Mr. Wells a neighboring property owner stopped by City Hall and noted some concerns about parking.
11. Attachments to the Staff Report: A. Application with supporting information

- B. Zoning Map
- C. Aerial Map
- D. Code Enforcement Letters

II. AUTHORITY:

TMC 17.64.020 states that conditional uses may be permitted by the Planning Commission in accordance with the standards and procedures specified in this ordinance [Toledo Zoning Ordinance]. Future significant enlargements or major alterations of a conditional use shall also be reviewed by the Commission and new conditions may be imposed. Change in use, expansion or contraction of site area, or alteration of structures or uses which are classified as conditional but which existed prior to the effective date of this ordinance, shall conform to all regulations pertaining to conditional uses.

The Planning Commission will be considering the facts and criteria identified in this report and testimony/information received through the close of the public hearing, as it reviews this conditional use request on June 9, 2021.

III. APPLICABLE CRITERIA FOR EVALUATING THE CONDITIONAL USE REQUEST AND STAFF ANALYSIS:

The following Comprehensive Land Use Plan and ordinance standards apply to this request. The standards are listed below in regular type. Staff analysis, including facts and findings, are below the Comprehensive Plan and ordinance standards in an italicized font.

1. 2000 Toledo Comprehensive Land Use Plan – Article 2, Objective 2(A) – Comprehensive Plan Map Designations:

Comprehensive Plan Map designations are intended to guide development by designating appropriate areas for each particular type of development use. Additional uses within each designation may be allowed as either uses permitted outright or as conditional uses when the city determines that such uses are either consistent with the general use or can be reviewed for compatibility through the conditional use process. The map designations and the uses allowed in the designations should reflect the applicable goals and objectives of the Toledo Comprehensive Land Use Plan.

...

Commercial - This designation provides for a wide range of commercial activities including retail and service uses as well as other compatible uses commonly associated with commercial areas including allowing residential uses. This designation shall be implemented by the zoning map designation of Commercial. A Main Street Overlay District shall be implemented to recognize the unique attributes and development pattern of the existing Main Street area.

2. 2000 Toledo Comprehensive Land Use Plan – Article 2, Objective 2(B) – Zoning Map Designations:

...

Commercial (C) - The purpose of the C zone is to provide for retail and service

commercial uses. It is also intended that these uses will supply personal services or goods to the average person and that a majority of the floor space will be devoted to that purpose. Compatible uses including public, civic, and institutional uses will also be allowed. Residential use above the commercial main floor or located so as not to prevent the main commercial use shall be allowed and encouraged especially in the Main Street District area.

3. TMC Sections 17.16.010 – 17.16.040 – Commercial (C) Zone.

TMC 17.16.010 Purpose.

The purpose of the C Zone is to provide for retail and service commercial uses. It is also intended that these uses will supply personal services or goods to the average person and that a majority of the floor space will be devoted to that purpose. Compatible uses including public, civic, and institutional uses are also allowed. Residential use above the commercial main floor or located so as not to prevent the main commercial use are allowed and encouraged especially in the Main Street District area.

TMC 17.16.020 Uses permitted outright.

In the C Zone, the following uses and their accessory uses are permitted outright. Special standards for certain uses, marked with an asterisk (*), are found in Section 17.16.050.

- A. Retail trade or commercial services, except drive-in uses.
- B. Entertainment (e.g., theaters, clubs, amusement uses).
- C. Hotel, motels, bed and breakfast facility, hostel, or residency hotels.
- D. Personal and professional services (e.g., child care center, catering/food services, restaurants, taverns, laundromats and dry cleaners, barber shops and salons, banks and financial institutions, or similar uses).
- E. Medical and dental offices, clinics or laboratories.
- F. Office uses (i.e., those not otherwise listed).
- G. Public and institutional uses such as religious uses, clubs, lodges, government offices and facilities, public safety services, libraries, museums, community centers, public parking lots, parks, schools, or other similar uses.
- H. Custom manufacturing of goods for retail and/or wholesale sale on the premises such as small-scale crafts, electronic equipment, bakery, furniture, art, sculpture, pottery, or other similar types of goods.
- I. Truck and car repair and service - minor.*
- J. Automobile service stations.
- K. One accessory dwelling unit in conjunction with a commercial use and that meets applicable code requirements.
- L. Temporary street vendors/seasonal commercial uses not to exceed six months.
- M. Transportation facilities (operation, maintenance, preservation, and construction in accordance with the Toledo Transportation System Plan).

TMC 17.16.030 Conditional uses permitted.

- A. Animal hospitals or kennels.
- B. Drive-in use for uses which are permitted outright or as conditional uses in the C zone.
- C. Restaurants (take-out or drive-in).
- D. Machine shops.
- E. Mini-storage.

F. Multi-family dwelling units.

G. Overnight trailer park or recreational vehicle parks.

H. Pumping station or utility substations.

I. Truck and car repair and service - major.

J. Food production and/or beverage production, where the majority of the floor space will be devoted to providing personal services or goods to the public.

K. Medical marijuana dispensary facility.

L. Marijuana retailer.

M. Uses which are similar to those permitted outright or conditionally in the C zone and which conform to the purpose of the zone.

4. TMC Sections - 17.040.020 – Main Street District Overlay

17.40.020 - Requirements from which Main Street District uses are exempt. The Main Street District is exempt from the following sections of the code to the extent that the requirements are not included as a condition of approval of a land use permit.

A. Setback requirements of the Commercial Zone of Section 17.16.040.

B. Parking requirements of Section 17.44.030.

C. Landscaping requirements of Section 17.52.020.

Staff Analysis: The property identified as 163 East Hwy 20 (Map 11-10-17 BB Tax Lot 11300) is approximately 0.06 acres and located in the Commercial (C) Zone. The property is located in the Main Street District. The Main Street District Overlay exempts three sections of the code 1) Setback requirements of the Commercial Zone of Section 17.16.040, 2) Parking Requirements of Section 17.44.030, and 3) Landscaping requirements of Section 17.52.020. The uses allowed outright and conditional use requirements for the C Zone (the underlying zone) still apply.

The existing building on the subject property historically had commercial stores, professional offices, and office spaces. The previous commercial stores, professional offices, and offices were outright permitted uses (TMC 17.16.020). The buildings upper two offices were converted to residential in 2018. In 2018 the applicant submitted a building permit to Lincoln County for a change of use in 2018. The City of Toledo signed the building permit and noted a condition of approval that a conditional use was required. The conditional use permit was never applied for and the change of use permit was not completed. Later the lower office was converted to residential.

The building is currently being used as a triplex. The triplex has not obtained the required zoning approvals or building permits. The City of Toledo Enforcement letters are included in the packet (Attachment D). In addition, a letter from the Lincoln County Building Department is included in the packet (Attachment D). This is discussed further in the staff report below.

The applicant, Bruster Enterprises LLC is now requesting a Conditional Use to allow a multi-family (triplex) in the C Zone. "Dwelling, multi-family" means a building containing two or more dwelling units excluding accessory dwelling units. TMC 17.16.030(F) identifies multi-family dwelling units as a conditional use permitted.

5. 2000 Toledo Comprehensive Land Use Plan – Article 10: Housing, Goal 1, Objectives 3, 9, 10, and 11:

- GOAL 1. Encourage development of a mixture of housing stock in terms of design, type, cost, and location that meets the housing needs of all Toledo citizens.
- OBJECTIVE 3. Encourage a mix of housing types and residential densities within the Urban Growth Boundary and the city limits that conforms with the population and density projections adopted by the City of Toledo.
- OBJECTIVE 9. Encourage the development of higher (quality) standard housing types and residential neighborhoods that assist to:
- Attract new businesses and keep local businesses within the community.
 - Ensure that moderate, middle, and high income families can continue to live in Toledo.
 - Ensure the economic viability of the community and support the tax base and schools.
 - Maintain the quality of life in Toledo.
- OBJECTIVE 10. Encourage residential development on vacant or redevelopable lots in areas already serviced or where services can be economically provided.
- OBJECTIVE 11. Provide maximum choices for the client residents and minimal disturbance to the existing neighborhoods by dispersing multi-family and low and moderate income housing units through the community with small scale projects rather than aggregated into large complexes or single purpose neighborhoods.

Staff Analysis: In the application materials, the applicant states that, "Time and people create change. Times have changed the environment of Main Street. We as a people need to change our approach to meet the new needs of the Main Street area. The reality of small business and the needs of the community require a return to the Vision the City Council adopted in 2000." The subject property historically had commercial stores, professional offices, and office spaces. Proposed development of the multi-family residential building is a permitted Conditional Use within the C Zone. The proposed triplex meets the Comprehensive Land Use Plan Housing Goals and Objectives because the application, 1) provides a mixture of housing types and stock; 2) assists with the economic viability of the community by providing housing options to employees of local businesses; and 3) redevelops an existing lot where services can be provided.

The application has been reviewed in compliance with and is consistent with Toledo's Comprehensive Land Use Plan goals and policies.

EVALUATION CRITERIA – CONDITIONAL USE PERMITS

6. TMC 17.64.010 – 17.64.050 Conditional Use Permits

17.64.010 Purpose.

A use is designated as a conditional use within a given zone when it is judged to be generally in line with the purpose of the zone but which could, if not reviewed, have a negative impact on other properties or uses within the zone. The purpose of such a review is to assure adequate site design and compatibility with surrounding uses and property. A review of a conditional use is a Type III review.

17.64.020 Authorization to grant or deny conditional use permits.

Uses designated in this ordinance as permitted conditional uses may be permitted by the planning commission in accordance with the standards and procedures specified in this ordinance. Future significant enlargements or major alterations of a conditional use shall also be reviewed by the commission and new conditions may be imposed. Change in use, expansion or contraction of site area, or alteration of structures or uses which are classified as conditional but which existed prior to the effective date of this ordinance, shall conform to all regulations pertaining to conditional uses.

17.64.030 Application submission requirements for conditional use permits.

A property owner or the owner's authorized agent may initiate a request for a conditional use by filing a completed application with the city manager along with the appropriate fee as set by city council resolution. The application shall be accompanied by a site plan, drawn to scale, showing the dimensions and arrangement of the proposed use. The planning commission or city manager may require other drawings or material necessary to an understanding of the proposed use and its relationship to surrounding properties as part of a complete application.

17.64.040 Conditions for development.

The planning commission shall review and make a decision to approve or deny a conditional use request in accordance with the standards and procedures for a Type III review as set forth in Toledo Municipal Code Chapter 19.16.

In approving a conditional use request, the planning commission may impose any conditions determined by the commission to be necessary and appropriate to ensure that the use will comply with all applicable provisions of this section. Such conditions may include, but are not limited to:

- A. Limit the manner in which the use is conducted, including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.
- B. Establish a special yard or other open space or lot area or dimension.
- C. Limit the height, size or location of a building or other structure.
- D. Designate the size, number, location or nature of vehicle access points.
- E. Increase the amount of street dedication, roadway width, or improvements within the street right-of-way.
- F. Designate the size, location, screening, drainage, surfacing or other improvement of a parking or truck loading area.
- G. Limit or otherwise designate the number, size, location, height or lighting of signs.
- H. Limit the location and intensity of outdoor lighting or require its shielding.
- I. Require diking, screening, landscaping or another facility to protect adjacent or nearby property and designate standards for installation or maintenance of the facility.
- J. Designate the size, height, location or materials for a fence.
- K. Protect existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.
- L. Specify other conditions to permit development in conformity with the intent and purpose of the conditional classification of development.

17.64.050 Standards governing conditional uses.

In addition to the standards of the zone in which the conditional use is located and the other standards of this chapter, conditional uses shall meet the following standards:

A. In addition to other applicable standards of this section, all conditional uses shall comply with the following requirements:

1. The site under consideration is suitable for the proposed use considering:
 - a. The size, design and operating characteristics of the use.
 - b. The adequacy of transportation access to the site.
 - c. The natural and physical features of the site such as general topography, natural hazards, natural resource values, and other features.
2. The proposed use is compatible with existing and projected uses on surrounding lands, considering the factors in paragraph (1) of this subsection.

Staff analysis: According to the application materials, the owner provides the following information for the proposed development:

- a. *The applicant provided a site plan. Based on the Assessor records the upper floor areas are 960 sq. ft. and the lower floor is 960 sq. ft.*
- b. *In 2009 we discussed the Toledo Councils adopted 2020 vision and the Main Street Overlay with the then City planner and City manager. The 2020 vision and Main Street overlay focus on the unique aspects of the area. The vision was to combine commercial space with residential.*
- c. *The existing building is connected to City Water and City Sewer.*
- d. *The downstairs office was recently vacated by a doctor, who had a clinic there for almost a year. Currently it is rented short term to the supervising electrician who is working at the GP Mill for two months. He complained that it was impossible for his co-workers to find adequate short-term housing within the city.*
- e. *I would prefer to offer the space as commercial, the apparent needs of the community indicate a residential use is more appropriate*

As discussed above, the building on the subject property was converted to a triplex without the required land use or building permits. The applicant in his letter indicates that he believed that the conversion of use had been completed. However, from review of the property file and information available staff could not find record of a conditional use permit or an approved change of use permit. The structure is located in the Commercial Zone and multi-family requires a conditional use. The remaining required building permits will be listed as conditions of approval.

After the enforcement letters the authorized agent Bruster Enterprises LLC started working to submit the required permits. After some email and phone call correspondence the applicant met with the City Attorney, City Manager, Contract Planner, and Planning Assistant on April 21, 2021. After the meeting the applicant agreed to submit the conditional use application. The applicant submitted the conditional use application on May 5, 2021 and additional information on May 20, 2021. The application was deemed complete and information was prepared for the Planning Commission members to review.

Plumbing and Electrical work is required to be completed by licensed contractors. It is unclear if all the work was completed by a CCB licensed contractor or specialty-licensed subcontractors. If the work was not completed by properly licensed plumbers/electricians, then licensed plumbers/electricians must be hired to inspect and permit the work. Staff recommends a

condition of approval that states Plumbing and Electrical work is required to be completed or certified by licensed specialty contractors.

There is an apparent change of use in the structure and that change in use is subject to both local and Lincoln County jurisdiction for use and occupancy. The owner has converted the commercial portions of the structure to a residential uses. TMC 17.16.030 et seq. and TMC 17.64 set out the permitting process for a change of use. (see also ORS 455 in general and 455.148. Chapter 3 International Building Code). Staff recommends a condition of approval that the Owner/builder shall obtain all necessary building permits including the change of use and change of occupancy permit from the Lincoln County Building Department.

Based on City records, it is unclear if all of the parties have a business license to engage in business activity in the City of Toledo (TMC 5.04). Staff recommends a condition of approval that a business license is required for anyone engaging in business activity in the City (TMC 5.04).

The requested conditional use permit for a multi-family dwelling in the Commercial Zone meets the criteria in TMC 17.64.050(A).

- 1) The proposed triplex is suitable for the site, considering the lot size, and applicant's proposed design and operating characteristics of the use.*
- 2) The proposed footprint of the building is not proposed to change.*
- 3) The property has proper access to a street, NE 2nd Street and Business Hwy 20. NE 2nd Street and Business Hwy 20 are public streets with a paved surface.*
- 4) The subject property is located in the Main Street Overlay and is exempt from parking standards (TMC 17.40.020(B)). With that said, the subject property contains an area to accommodate parking. In addition, some on-street parking is available on SE 2nd Street.*
- 5) The proposed triplex is permitted as a Conditional Use under the Commercial Zone. The subject property is surrounded by commercial and residential uses. The proposed use is consistent with existing and projected uses on surrounding lands.*

Based on TMC 17.64.040, the Planning Commission has authority to impose conditions to mitigate issues the Commission finds appropriate, such as minimize environmental effects such as noise/vibration/air pollution/glare/odor, establish open spaces, limit building height or vehicle access points, provide screening/drainage/fencing/parking/landscaping improvements, limit signs and outdoor lighting, or protect existing natural resources.

Authorization of the conditional use shall be void after one year if a building permit has not been issued or development has not begun. Authorization may be extended by the Planning Commission for an additional period of one year if the request is made in writing prior to the expiration of the original authorization.

FURTHER STAFF ANALYSIS:

The request by the current owner, Bruster Enterprises LLC., would be compatible with surrounding land uses. Neighboring properties to the West, South, and North are zoned Commercial (C). The proposed development will be compatible with the current mixed use character and flavor of the neighborhood. (See Attachment B - Zoning Map).

Uses in the general area are commercial and residential, even though the area is located in the Commercial Zone. Multi-family residential use is allowed as a conditional use in the Commercial Zone.

The Toledo Public Works Department has been advised of the proposal. Both water and sewer services are connected to the building.

IV. FACTS AND FINDINGS:

The applicant is requesting approval of a conditional use to construct a multifamily dwelling (a triplex) in the C Zone. Based upon the information received by City staff through June 2, 2021, the conditional use request appears to conform with relevant provisions of the City's plans and ordinances as described below. The following recommended findings support approval of the conditional use:

1. The property identified as 163 East Hwy 20 (Map 11-10-17 BB Tax Lot 11300) is approximately 0.06 acres and located in the Commercial (C) Zone. The property is located in the Main Street District. The Main Street District Overlay exempts three sections of the code 1) Setback requirements of the Commercial Zone of Section 17.16.040, 2) Parking Requirements of Section 17.44.030, and 3) Landscaping requirements of Section 17.52.020. The uses allowed outright and conditional use requirements for the C Zone (the underlying zone) still apply.
2. The existing building on the subject property historically had commercial stores, professional offices, and office spaces. The previous commercial stores, professional offices, and offices were outright permitted uses (TMC 17.16.020). The buildings upper two offices were converted to residential in 2018. In 2018 the applicant submitted a building permit to Lincoln County for a change of use in 2018. The City of Toledo signed the building permit and noted a condition of approval that a conditional use was required. The conditional use permit was never applied for and the change of use permit was not completed. Later the lower office was converted to residential.
3. The building is currently being used as a triplex. The triplex has not obtained the required zoning approvals or building permits. The City of Toledo Enforcement letters are included in the packet (Attachment D). In addition, a letter from the Lincoln County Building Department is included in the packet (Attachment D).
4. The applicant, Bruster Enterprises LLC is now requesting a Conditional Use to allow a multi-family (triplex) in the C Zone. "Dwelling, multi-family" means a building containing two or more dwelling units excluding accessory dwelling units. TMC 17.16.030(F) identifies multi-family dwelling units as a conditional use permitted.
5. In the application materials, the applicant states that, "Time and people create change. Times have changed the environment of Main Street. We as a people need to change our approach to meet the new needs of the Main Street area. The reality of small business and the needs of the community require a return to the Vision the City Council adopted in 2000." The subject property historically had commercial stores, professional offices, and office spaces.

Proposed development of the multi-family residential building is a permitted Conditional Use within the C Zone. The proposed triplex meets the Comprehensive Land Use Plan Housing Goals and Objectives because the application, 1) provides a mixture of housing types and stock; 2) assists with the economic viability of the community by providing housing options to employees of local businesses; and 3) redevelops an existing lot where services can be provided.

6. The application has been reviewed in compliance with and is consistent with Toledo's Comprehensive Land Use Plan goals and policies.
7. According to the application materials, the owner provides the following information for the proposed development:
 - a. The applicant provided a site plan. Based on the Assessor records the upper floor areas are 960 sq. ft. and the lower floor is 960 sq. ft.
 - b. In 2009 we discussed the Toledo Councils adopted 2020 vision and the Main Street Overlay with the then City planner and City manager. The 2020 vision and Main Street overlay focus on the unique aspects of the area. The vision was to combine commercial space with residential.
 - c. The existing building is connected to City Water and City Sewer.
 - d. The downstairs office was recently vacated by a doctor, who had a clinic there for almost a year. Currently it is rented short term to the supervising electrician who is working at the GP Mill for two months. He complained that it was impossible for his co-workers to find adequate short-term housing within the city.
 - e. I would prefer to offer the space as commercial, the apparent needs of the community indicate a residential use is more appropriate
8. The building on the subject property was converted to a triplex without the required land use or building permits. The applicant in his letter indicates that he believed that the conversion of use had been completed. However, from review of the property file and information available staff could not find record of a conditional use permit or an approved change of use permit. The structure is located in the Commercial Zone and multi-family requires a conditional use. The remaining required building permits will be listed as conditions of approval.
9. After the enforcement letters the authorized agent Bruster Enterprises LLC started working to submit the required permits. After some email and phone call correspondence the applicant met with the City Attorney, City Manager, Contract Planner, and Planning Assistant on April 21, 2021. After the meeting the applicant agreed to submit the conditional use application. The applicant submitted the conditional use application on May 5, 2021 and additional information on May 20, 2021. The application was deemed complete and information was prepared for the Planning Commission members to review.
10. Plumbing and Electrical work is required to be completed by licensed contractors. It is unclear if all the work was completed by a CCB licensed contractor or specialty-licensed subcontractors. If the work was not completed by properly licensed plumbers/electricians, then licensed plumbers/electricians must be hired to inspect and permit the work.
11. There is an apparent change of use in the structure and that change in use is subject to both

local and Lincoln County jurisdiction for use and occupancy. The owner has converted the commercial portions of the structure to a residential uses. TMC 17.16.030 et seq. and TMC 17.64 set out the permitting process for a change of use. (see also ORS 455 in general and 455.148. Chapter 3 International Building Code).

12. Based on City records, it is unclear if all of the parties have a business license to engage in business activity in the City of Toledo (TMC 5.04).
13. The requested conditional use permit for a multi-family dwelling in the Commercial Zone meets the criteria in TMC 17.64.050(A).
 - a. The proposed triplex is suitable for the site, considering the lot size, and applicant's proposed design and operating characteristics of the use.
 - b. The proposed footprint of the building is not proposed to change.
 - c. The property has proper access to a street, NE 2nd Street and Business Hwy 20. NE 2nd Street and Business Hwy 20 are public streets with a paved surface.
 - d. The subject property is located in the Main Street Overlay and is exempt from parking standards (TMC 17.40.020(B)). With that said, the subject property contains an area to accommodate parking. In addition, some on-street parking is available on SE 2nd Street.
 - e. The proposed triplex is permitted as a Conditional Use under the Commercial Zone. The subject property is surrounded by commercial and residential uses. The proposed use is consistent with existing and projected uses on surrounding lands.
14. Based on TMC 17.64.040, the Planning Commission has authority to impose conditions to mitigate issues the Commission finds appropriate, such as minimize environmental effects such as noise/vibration/air pollution/glare/odor, establish open spaces, limit building height or vehicle access points, provide screening/drainage/fencing/parking/landscaping improvements, limit signs and outdoor lighting, or protect existing natural resources.
15. The City Public Works Director, Police and Fire Chief have all reviewed the application.
16. City sewer and water main lines are located in the Hwy 20 and NE 2nd Street right-of-way. The subject property is connected to City water and City sewer.
17. The proposal provides an existing parking lot area. The subject property is located in the Main Street Overlay and is exempt from parking standards (TMC 17.40.020(B)).
18. Notification to surrounding property owners, 19 public/service agencies, and publication of the proposed Conditional Use Permit were completed in accordance with the Toledo Municipal Code requirements.

V. STAFF RECOMMENDATION:

Based on the staff report, testimony received, and analysis of the applicable code and land use planning goals, staff recommends the Planning Commission approve Case File CU-3-21, subject to the following conditions:

1. Approval is based upon the submitted application and plan, as described in Attachment A of the Staff Report. Development shall conform with the proposed plan and any significant change shall be submitted to the City Planning Department as a modification to the conditional use permit.
2. Any driveway improvements must be coordinated and approved by the Toledo Public Works Director and Fire Chief.
3. Owner/builder shall obtain all necessary building permits including the change of use and change of occupancy permit from the Lincoln County Building Department.
4. Plumbing and Electrical work is required to be completed or certified by licensed specialty contractors.
5. A business license is required for anyone engaging in business activity in the City (TMC 5.04).
6. Authorization of the conditional use shall be void after one year if a building permit has not been issued or development has not begun. Authorization may be extended by the Planning Commission for an additional period of one year if the request is made in writing prior to the expiration of the original authorization.

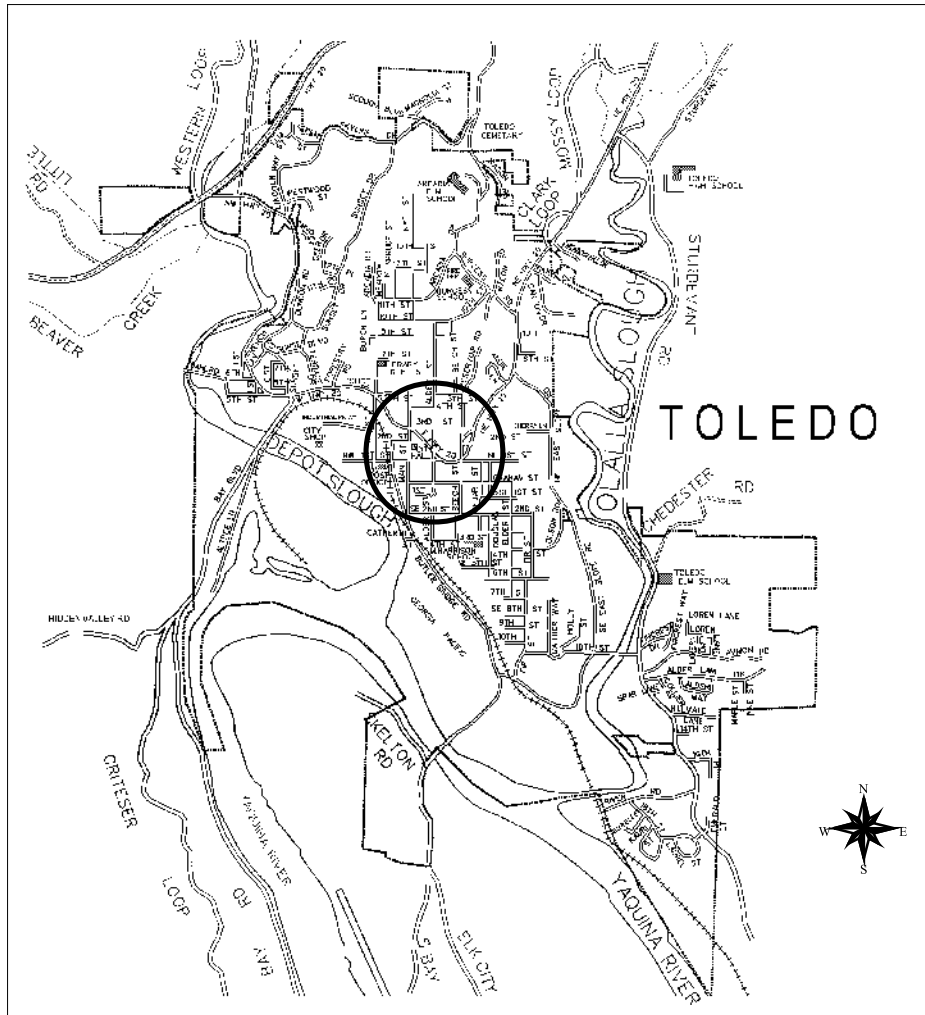
PROPOSED MOTION (CU-3-21):

BASED ON THE TESTIMONY RECEIVED, THE STAFF REPORT, AND THE EVIDENCE AND ARGUMENTS BEFORE THE PLANNING COMMISSION AT THE PUBLIC HEARING ON JUNE 9, 2021, THE PLANNING COMMISSION FINDS THAT THE REQUEST BY BRUSTER ENTERPRISES LLC, (CU-3-21) COMPLIES WITH THE CRITERIA IDENTIFIED IN TOLEDO MUNICIPAL CODE 17.64.050. THE PLANNING COMMISSION HEREBY ADOPTS THE STAFF REPORT AS FINDINGS, AS WELL AS THE PROPOSED CONDITIONS OF APPROVAL FOR CU-3-21, AND ALLOWING FOR THE CORRECTION OF TYPOGRAPHICAL AND GRAMMATICAL ERRORS.

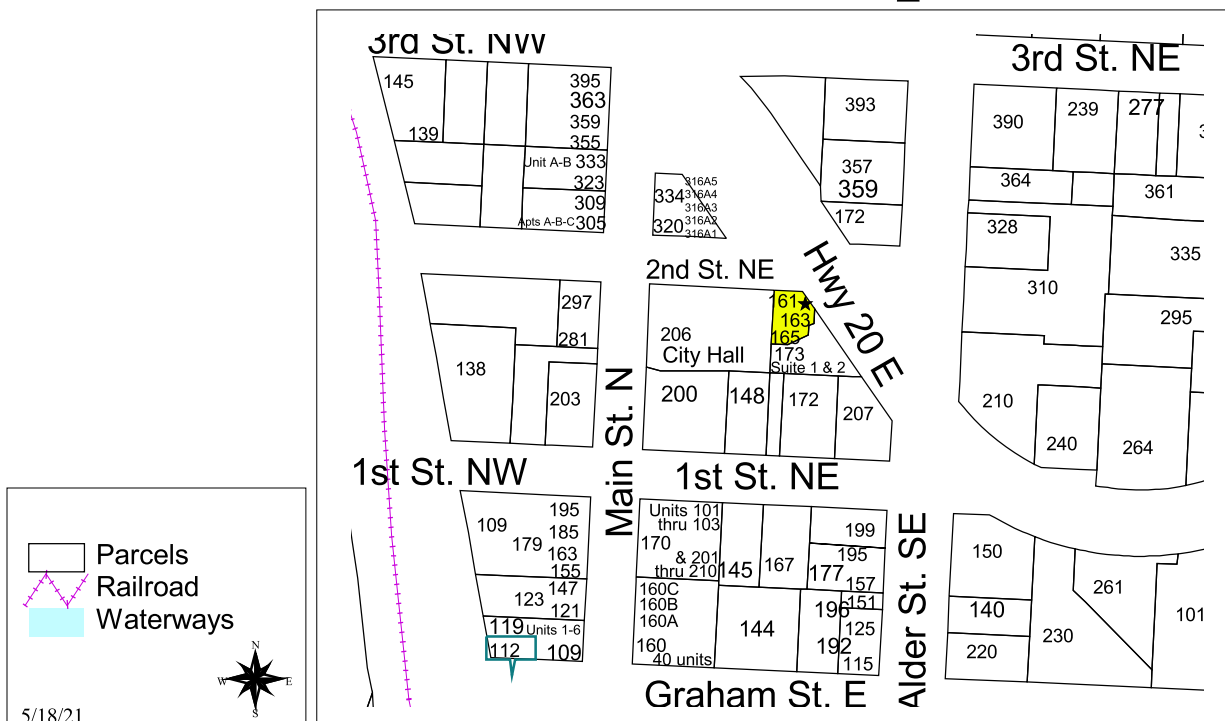
VI. PLANNING COMMISSION ROLE:

The Planning Commission should evaluate the applicant's proposal and all testimony presented to them in order to make findings which demonstrate that the applicable criteria in the Toledo Municipal Code and Comprehensive Plan can be satisfied. The decision of the Planning Commission should be based on the report of facts and analysis contained within the Staff Report, as well as the facts and testimony presented by the applicant and those who support or oppose the request given at the public hearing. Any action on the application should address the applicable criteria as contained in the Toledo Municipal Code. The decision of the Planning Commission shall be final unless appealed to the City Council.

Location Map



Site Map



ATTACHMENT A

Application with Supporting Information

(City of Toledo File #CU-3-21)

CITY OF TOLEDO LAND USE APPLICATION

Date 4-12-2021

Property Owner Bruno Enterprises LLC

Telephone 541-222-2634

Mailing Address PO Box 372
Toledo, OH 43691

Authorized Agent Barry Bonster

Telephone 541-222-2634
1920 B

Property Address 163 E Hwy 20

Property Size .06 Acres

Property Location _____

Assessors Map No. 11-10-17-28-11300-00
11510W 178B

Tax Lot No. 2406292

Present Zoning Commercial

Proposed Change None

Comprehensive Plan Designation _____

Current Land Use Commercial

Existing Structures (if any) One

Proposal for which this request is being made (attach additional sheets if needed) 2000 Toledo

Comprehensive Land use plan - Article 21 Land use planning.
Retail and Service uses associated with Commercial areas including
allowing residential uses. Residential use in association with Commercial
shall be allowed and encouraged especially in the main street district.

The following must be submitted with this application:

- Area: Three Studio Residential units
- ☐ Deed description and proof of ownership interest.
 - ☐ Site plan drawn to scale which shows property lines, access, existing buildings, other relevant features or conditions, the property's relationship to the surrounding neighborhood, and the location of existing and proposed development.
 - ☐ Description of the proposed land use action, including information on how the proposal might impact surrounding property.
 - ☐ Supplemental information form (if required).
 - ☐ Application fee.

☐ Annexation/Rezone (\$1,100)*	☐ Expedited Land Division (\$1,500)*	☐ Riparian Modification Permit (\$150)
☐ Appeal, Land Use Misc (\$300)*	☐ Lot Line Adjustment (\$100)	☐ Similar Use, Planning Comm (\$225)
☐ Appeal, Type II (\$200)*	☐ Modification of Approval (75% of fee)	☐ Staff Level Exception to TPIRDS
☐ Appeal, Type III (\$400)*	☐ Partition, Major (\$700+\$20/lot)*	☐ (\$25+recording fee)
☐ Code Amendment (\$700)	☐ Partition, Minor (\$400)*	☐ Subdivision (\$700+\$20/lot)*
☐ (if requires M56 notice \$700+mailing)	☐ Planned Unit Development	☐ UGB Amendment (\$2,000)
☐ Comp. Plan Amendment (\$700)	☐ (\$700+\$20/unit)*	☐ Vacation (\$700)*
☐ (if requires M56 notice \$700+mailing)	☐ Public Hearing, Misc. Permit	☐ Variance, Type I (\$50)*
☐ Code Interpretation, official (\$125)	☐ Replat, Major (\$700+\$20/lot)	☐ Variance, Type II (\$200)*
☐ Conditional Use (\$400)	☐ Replat, Minor (\$400)	☐ Variance, Type III (\$400)*
☐ Exception to Statewide Goal (\$2,000)	☐ Restrictive Lot Line Covenant (\$75)	☐ Zone Change (\$700)

*Supplemental forms are required

If filing multiple Land Use Applications, the most expensive application will be assessed and 75% of each additional land use application when submitted together. If filing multiple Type I permits, staff can waive some fees where overlapping permits do not need significant additional review.

Date Received 5/5/21

For Office Use Only

Received By _____

Fee Paid \$400

City File No. CU-3-21

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that I must present sufficient factual evidence to show that this application complies with the Toledo Zoning Ordinance, Comprehensive Plan, and other applicable regulations. This responsibility is independent of any opinions expressed in the Planning Department Staff Report concerning the applicable criteria. I certify that, to the best of my knowledge, all information contained in this application is accurate.

My signature below shows that I have thoroughly discussed this application with the City Planner or the City Manager or designee and I am fully aware of my responsibilities as the applicant.

I understand that the Planning Commission will hold a public hearing for this application.

☒ yes

I understand that the City Council will hold a public hearing for this application.

☒ yes

I understand that this is a City of Toledo staff-level decision.

☒ yes

Other _____

☐ yes

Benny Bruste
Applicant(s) Signature

5-3-21
Date

Property Owner (if different)

Date

*****For Office Use Only*****

Public Works

1. Is City sewer available? Yes _____ No _____
Where _____

Is the property within City _____ UGB _____
Will a connection have to be constructed? Yes _____ No _____
What size of a line is required _____
2. Is City water available? Yes _____ No _____
Where _____

Is the property within City _____ UGB _____
Is the lot accessible to City water? Yes _____ No _____
3. Are there any public works improvements necessary? Yes _____ No _____
If yes, describe _____

4. Is there proper access? Yes _____ No _____
Are there proper easements? Yes _____ No _____

Curb cuts and property entrances must be constructed to City specifications. Permit and specifications are available through the Public Works Department.
5. Are there any special access requirements? Yes _____ No _____
If yes, describe _____
Is a state access permit required? Yes _____ No _____
Is a county permit required? Yes _____ No _____
6. Meter size _____
Estimated installation cost _____
7. Is a plan review by Public Works required? Yes _____ No _____
8. Is this a new parcel, created legally since 11/1/83? Yes _____ No _____
Minor Partition _____ File # _____
Major Partition _____ File # _____
Subdivision _____ File # _____
9. Is this application ready to be approved? Yes _____ No _____
Explain modifications or revisions needed for the application _____

Comments _____

REVIEWED AND APPROVED BY:

Public Works Director

Date

Fire Department

1. Does the proposal meet the safety requirements of the NFC and UFC? Yes ☒ No ☐

2. Is this application ready to be approved? Yes ☒ No ☐

Explain modifications or revisions needed for the application _____

Comments Provide fire extinguishers with a rating of 1A-10BC (or greater)
for each apartment unit.

REVIEWED AND APPROVED BY:

Dany Muriel
Fire Chief Inspector/Captain

5/20/21
Date

Police Department

1. Is this application ready to be approved? Yes ☐ No ☐

Explain modifications or revisions needed for the application _____

Comments _____

REVIEWED AND APPROVED BY:

Chief of Police

Date

Planning Department

1. Is this application ready to be approved? Yes ☐ No ☐

Explain modifications or revisions needed for the application _____

Comments _____

REVIEWED AND APPROVED BY:

Community Development Coordinator

Date

BARRY BRUSTER BRUSTER ENTERPRISE LLC

109 Main St Toledo, Or 97391 | 541-272-2634 | bbruster@hotmail.com

May 20, 2021

Toledo Planning committee

To: Toledo Planning committee

We began investing into Toledo in 2005. In 2009 we purchased a property at 109 main street with the following in mind.

In 2009 we discussed the Toledo Counsels adopted 2020 vision and the Main Street Overlay with the then City planner and City manager. The 2020 vision and Mainstreet overlay focus on the unique aspects of the area. The vision was to combine commercial space with residential. This is a boon for business owners to control cost, creates vibrant activity on Main Street, and form a community within the greater community. We were informed that as long as "You don't rollout of bed and open the door" it was acceptable. With the ongoing housing crisis in Lincoln County the need for this reality has grown proportionally. Somewhere this vision has faltered, and it is our hope that the Toledo planning committee will take up the torch to help create a living main street area.

In 2017 we purchased the property at 163 N Hwy 20 in 2018 with this vision in mind. The Duty Insurance building has been a Toledo monument since 1950. We have made no exterior or internal structural changes. The top two offices each have a separate bathroom and private office. We added a shower and kitchen sink in each apartment with existing plumbing. We added ground fault interruption plugs for the bath and kitchen area. We added kitchen cabinetry and countertop. The apartments do not have residential ovens. The private offices act as bedrooms without closets. The joining door between the offices is still there.

In 2018 a new city manager, now gone, brought forth concerns that we had done extensive remodeling which was unfounded. We complied with the request to get permits. We hired an electrician and plumber to inspect and obtain permits from the county. Neither contractor recommended changes and subsequently successfully submitted for the permits. The electrical permit was signed complete. The inspector did not come to inspect the plumbing and the plumber advised us the matter was closed.

The downstairs office area had a bathroom, shower, and sink plumbing existing when we purchased the building. There was an existing 220 plug and GFI plugs installed. We sheet rocked the walls and painted. The area is an open floor plan except for the bathrooms. Screens would be used to separate the living area.

All three areas have two forms of egress from the bedrooms, smoke detectors, and extinguishers.

The downstairs office was recently vacated by a doctor, who had a clinic there for almost a year. Currently it is rented short term to the supervising electrician who is working at the GP Mill for two months. He complained that it was impossible for his co-workers to find adequate short-term housing within the city.

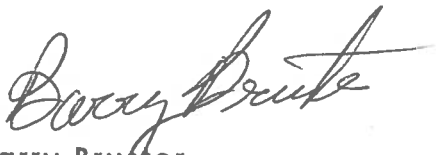
We believed the matter was closed until 3 years later we were contacted by Justin, the city planner. Subsequently we had a meeting with Judy, Justin, Arlene, and David. They held that the City Code supersedes the vision of the City and their interpretation of the code was that commercial and residential use were not compatible in a single space. While I would prefer to offer the space as commercial, the apparent needs of the community indicate a residential use is more appropriate.

The Bruster family has an extensive history on both residential and commercial construction starting in the 1960's. We have remodeled numerous commercial and residential properties and are experienced all aspects of construction, including alternate construction materials. We currently provide homes to 13 families in Toledo and take pride in providing safe and quality living. All the properties we have purchased have been dilapidated and eye sores to the Toledo community. We have invested our lives in those properties to make them places families can be proud to call home.

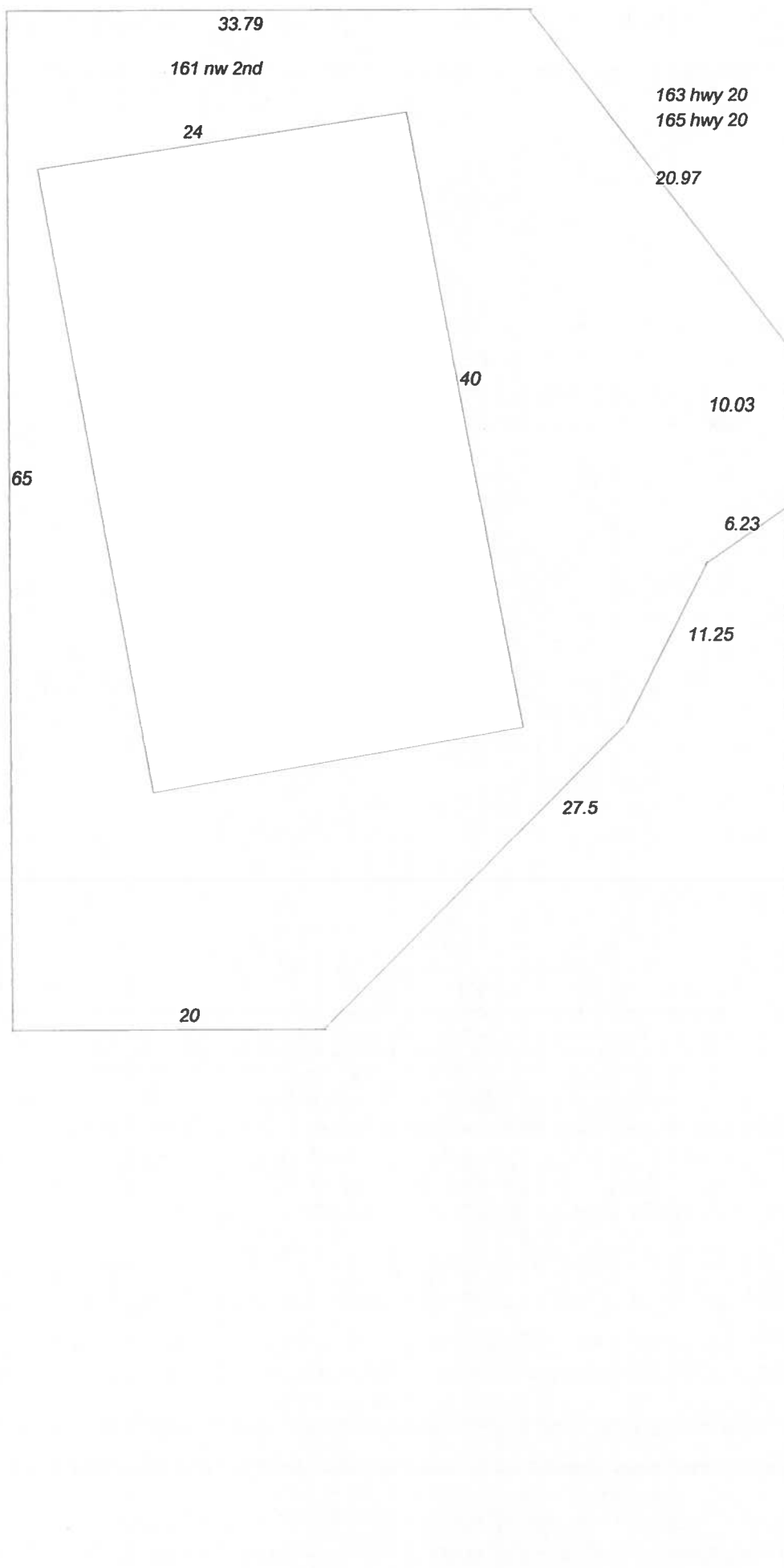
Time and people create change. Times have changed the environment of Mainstreet. We as a people need to change our approach to meet the new needs of the Main Street area. The reality of small business and the needs of the community require a return to the Vision the City Counsel adopted in 2000. They require changes to city codes that are opposed to growth, creativity, and the needs of the community.

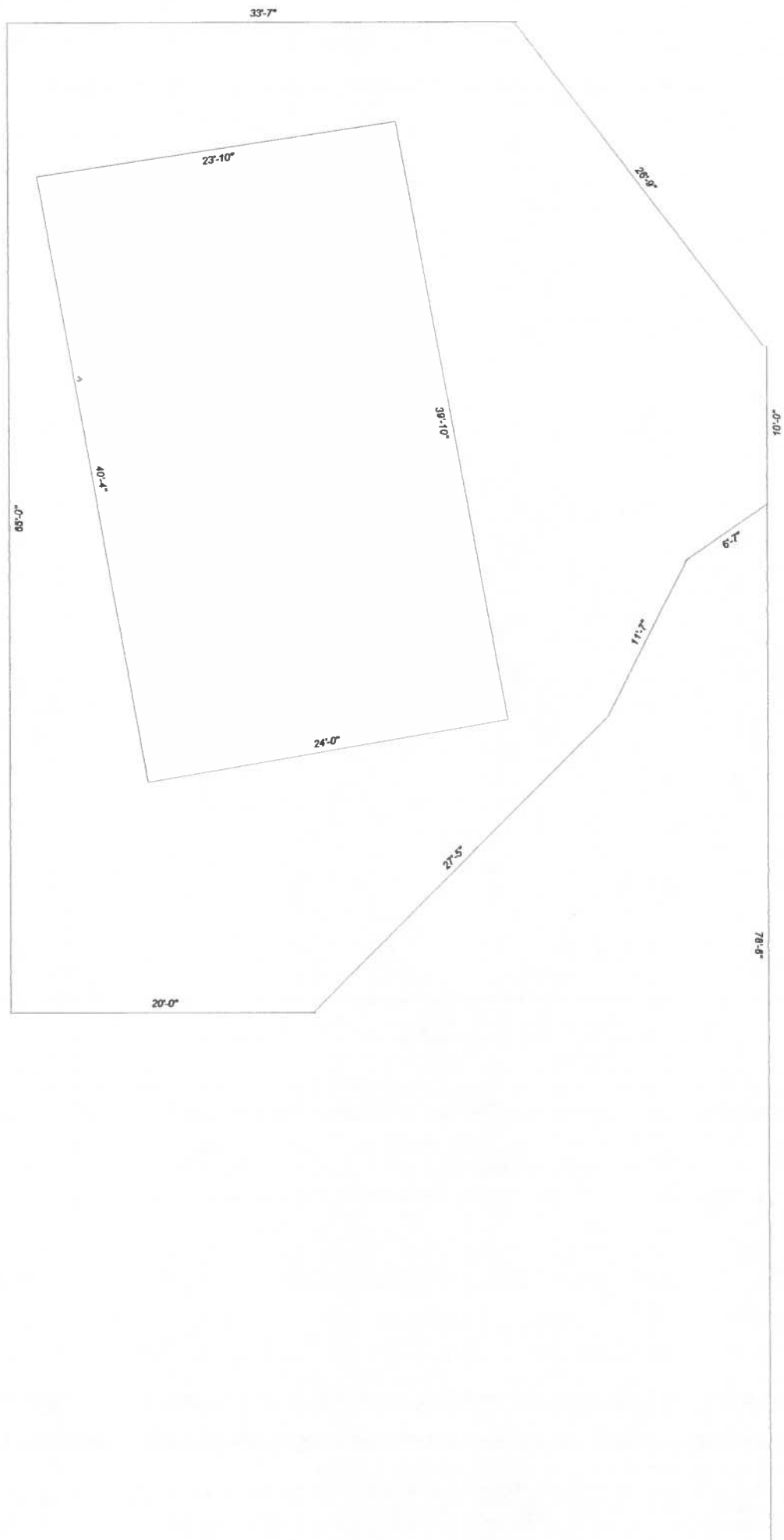
Thank you for your consideration of this matter and I hope you will join me in my vision and the Toledo City 2020 Vision to make the Main Street Overlay a livable reality.

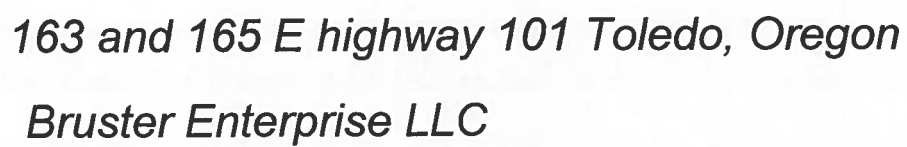
Sincerely,

A handwritten signature in cursive script, reading "Barry Bruster".

Barry Bruster
Bruster Enterprise LLC







Bruster Enterprise LLC



163 E 1st Street Toledo, Oregon
Bruster Enterprise LLC



Work Site Inspection Result Report

Permit#: 519-18-001466-ELEC

LINCOLN COUNTY
210 SW 2nd St
Planning & Development
Newport, OR 97365
541-265-4192
FAX: 541-265-6945

www.co.lincoln.or.us/planning

lincolncountybldgdiv@co.lincoln.or.us

Job Address: 163 E HWY 20 TOLEDO OR 97391

Owner: BRUSTER ENTERPRISE LLC

Parcel: 11-10-17-BB-11300-00

Contractors:

ABOVEBOARD ELECTRIC INC	5415742948
ABOVEBOARD ELECTRIC INC	5414441072
SCOTT G EVANS	5413364308

Inspection Type

ELEC RES
4999 Final Electrical

Inspection Date

July 31, 2018

Inspector

Dion Wells

Time:

Work Desc: install GFI outlets in kitchen and bathroom

Scheduled by: Scott Evans

5412705705

Request Comments:

Inspection Result

- | | | | |
|--|--|------------------------------------|---|
| ☒ Approved | ☐ Approved w/conditions | ☐ No Access | ☐ Wrong Inspection Requested |
| ☐ Partial Approval | ☐ Denied | ☐ Not Ready | ☐ Not Required |

Action Required

- | | | |
|---|---|--|
| ☐ Corrections Needed | ☐ Correction Required within ____ days | ☐ Do Not Insulate / Cover |
| ☐ Revisions Required | ☐ Stop Work | ☐ Other: _____ |

CORRECTIONS / COMMENTS:

Approved

☐ Reinspection Required Prior To Approval

☐ OK To Continue After Corrections Made

☐ Owner / Contractor sign below indicating all corrections have been made and return to inspector within ____ days.

Signature: _____

Inspector: *Dion Wells*

519-18-001562-FLM

519-18-001582-STR

PERMIT # 519-18-001466-Elec

REC. _____

LINCOLN COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT

APPLICATION FOR BUILDING PERMIT

Date _____

Valuation _____

Permit Fee _____

Approved _____

Plan # _____

Plan Ck _____

F.L.S. _____

Disapproved _____

St. Srchg _____

Date _____

Zoning _____

By _____

OnSite _____

Total _____

Application is made to:

A ☐ Erect ☐ Relocate
☐ Repair ☒ Change of
☐ Alter Occupancy

B ☐ DWELLING OCCUPANCY GROUP
☐ BUILDING
☐ STRUCTURE

TO BE COMPLETED BY OWNER/APPLICANT/CONTRACTOR

Owner Bauster Enterprise Address PO Box 358 Toledo OR Phone 541-961-5828Architect/ Builder _____ Address 97391 Phone _____Applicant Jim Bauster Address PO Box 358 Toledo OR 97391 Phone 541-961-5828

CCB License # _____ Email: _____

Site Address: 163 Hwy 20 Toledo, OR 97391Directions to Job Site: 2nd St & Hwy 20 Toledo OR.Lincoln County Assessor's Map/Tax Lot # 11-10-17-BB-11300-00Setbacks from property lines: **E** Front 30' W Rear 5' N Side 15' S Side 5' Height 12'Is proposed structure replacing an existing structure? Yes ☐ No ☒Is property served by PUBLIC sewer system? Yes ☒ No ☐Describe work to be done. **INCLUDE NUMBER OF BEDROOMS EXISTING OR PROPOSED WHERE APPLICABLE.**
(Only work described herein will be approved by this permit).PAINTING (NO structural changes) EXISTING unit AS IS.

NOTE 1: SEPARATE PUBLIC SEWER AND WATER PERMITS MUST BE OBTAINED FROM LOCAL DISTRICT.

NOTE 2: SEPARATE PLUMBING, ELECTRICAL, AND MECHANICAL PERMIT MUST BE OBTAINED.

I AGREE TO BUILD TO THE ABOVE DESCRIPTIONS, PLANS AND SPECIFICATION AND WITHIN THE REQUIREMENTS OF BUILDING CODE OF THE COUNTY OF LINCOLN.

Signature Jim Bauster

OFFICE USE ONLY:

Planning Division _____

On-Site Waste Management _____

AUG 08 2013

SEE REVERSE SIDE FOR INSPECTION INFORMATION

RECORDING REQUESTED BY:

Western Title & Escrow
255 SW Coast Highway, Suite 100
Newport, OR 97365

AFTER RECORDING RETURN TO:

Order No.: WT0146050-JET
James Ralph Bruster
Bruster Enterprise, LLC
P.O. Box 358
Toledo, OR 97391

SEND TAX STATEMENTS TO:

Bruster Enterprise, LLC
P.O. Box 358
Toledo, OR 97391

APN: R406292
Map: 11-10-17-BB-11300

Lincoln County, Oregon	2017-09709
10/05/2017 11:35:19 AM	
DOC-WD	Cnt=1 Pgs=2 Stn=0
\$10.00 \$11.00 \$10.00 \$20.00 \$7.00	\$58.00
I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.	
	
Dana W. Jenkins, Lincoln County Clerk	

SPACE ABOVE THIS LINE FOR RECORDER'S USE

STATUTORY WARRANTY DEED

Teresa J. Duty, Grantor, conveys and warrants to **Bruster Enterprise, LLC**, an Oregon limited liability company, Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Lincoln, State of Oregon:

Beginning at a point on the East line of Lot 3, Block 15, GRAHAM'S 4th ADDITION TO TOLEDO, (now known as 5th ADDITION TO THE TOWN OF TOLEDO), in the City of Toledo, County of Lincoln and State of Oregon, that is North 0°16' East 61.78 feet from the Southeast corner of said Lot 3, Block 15, GRAHAM'S 4th ADDITION, (now known as 5th ADDITION TO THE TOWN OF TOLEDO); thence South 62°42' West 6.23 feet; thence South 0°16' West, 11.25 feet; thence South 62°42' West 27.50 feet; thence North 89°54' West 20.00 feet to the West line of said Lot 3, Block 15; thence North along the West line of said Lot 3 to the Northwest corner thereof; thence East along the North line of said Lot 3 to its intersection with the West right of way line of U.S. Highway 20; thence Southeasterly along said Westerly right of way line to a point that is North 62°42' East 10.03 feet from the Point of Beginning; thence South 62°42' West 10.03 feet to the Point of Beginning.

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS SIXTY-FIVE THOUSAND AND NO/100 DOLLARS (\$65,000.00). (See ORS 93.030).

Subject to:

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2017-2018.

Tax Identification No.: R406292

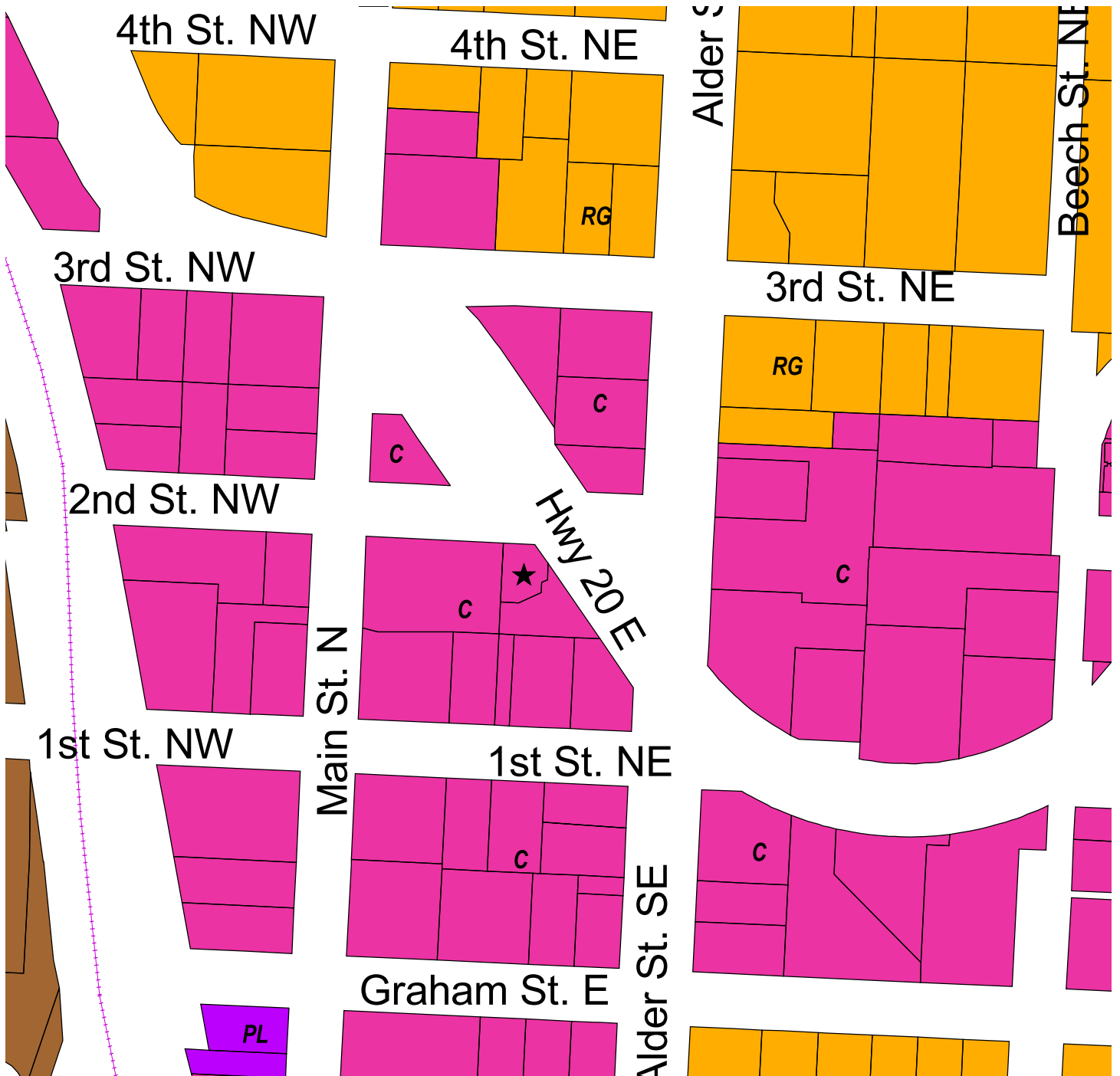
2. Rights of the public to any portion of the Land lying within streets, roads, and highways.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES 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 THAT THE UNIT OF LAND

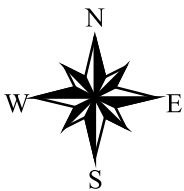
ATTACHMENT B

Zoning Map

(City of Toledo File #CU-3-21)



200 0 200 400 Feet

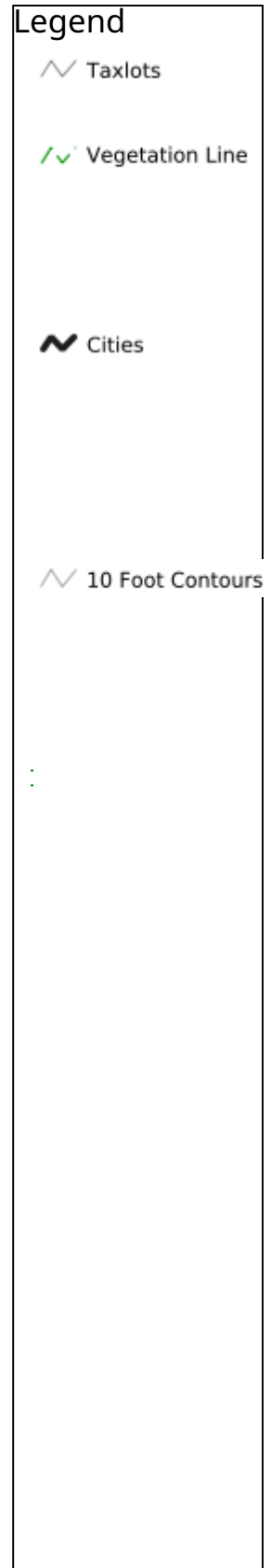


- Parcels
- Railroad
- Zoning Plan**
- Commercial
- Industrial
- Light Industrial
- Natural Resources
- Public Lands
- Residential General
- Residential Single
- Water Dependent
- Parcels in UGB
- Waterways

ATTACHMENT C

Aerial Map

(City of Toledo File #CU-3-21)



Printed on 6 / 3 / 2021

Lincoln County Government Use only. Use for any other purpose is entirely at the risk of the user. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users should review the primary information sources to ascertain their usability.



ATTACHMENT D
Code Enforcement Letters
(City of Toledo File #CU-3-21)



City of Toledo
206 N. Main St.
PO Box 220
Toledo, OR 97391

April 5, 2021

MAILED VIA CERTIFIED MAIL NO.

To: Bruster Enterprises, LLC PO Box 358 Toledo, OR 97391

The City has determined that the commercial real property located at 163-165 NE Hwy 20 Toledo, OR 97391 is operating as a residential multifamily use. The determination is based on curbside inspection, evidence collected by the City, and your response to the City dated March 2, 2021.

The subject property is located within the commercial zone and within the Main Street Overlay. The conversion from commercial to residential multifamily within these zones, requires a conditional use approval from the City and a change of occupancy from Lincoln County.

Based on the historical record, you were informed of zoning code and building code violations in 2018 by both the City of Toledo and the Lincoln County Building Official. Again, in 2020-21 the City engaged in the interactive process with you to encourage voluntary compliance.

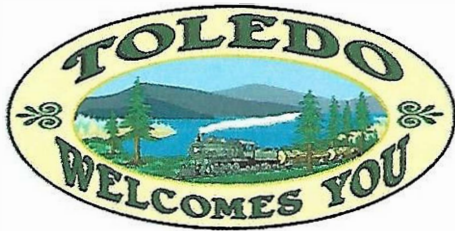
This is your final notice. In thirty (30) days from the date of this letter, the City will assess fines of \$500 per day pursuant to TMC 17.88.050.

You can remedy this matter by submitting a conditional use application to the Toledo Planning Department within 30 days of the date of this letter. Alternatively, you can vacate the residential tenants from the premises within 30 days of this letter and return the use to commercial occupants.

Your right to appeal this decision is described in TMC 17.84.030 ("Appeals"). Please note that this section requires that you file your appeal within 14 days of the date on this letter.


David James Robinson, City Attorney


Judy Richter, City Manager



City of Toledo
206 N. Main St.
PO Box 220
Toledo, OR 97391

January 4, 2021

MAILED VIA CERTIFIED MAIL NO.

To: Bruster Enterprises, LLC PO Box 358 Toledo, OR 97391

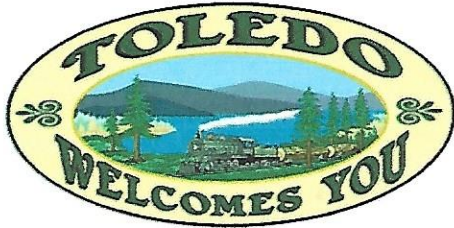
The commercial real property located at 163-165 NE Hwy 20 Toledo, OR 97391 appears to be operating as a residential use. Based on curbside inspection and evidence collected by the City, no permits or approvals were obtained that allow for the conversion from commercial use to residential use. The City of Toledo zoning ordinance prohibits new single-family use; however, one accessory dwelling unit is allowed in conjunction with the commercial use (TMC 17.16.020).

The City requests a reply from the owner with in thirty (30) days to address the following issues:

- (1) The apparent change of use in the structure is subject to both local and Lincoln County jurisdiction for use and occupancy. It appears that the owner has converted the commercial portion of the structure to a residential use. TMC 17.16.030 et seq. and TMC 17.64 set out the permitting process for a change of use. (see also ORS 455 in general and 455.148, Chapter 3 International Building Code).
- (2) If the structure is an outright permitted use (One accessory dwelling unit in conjunction with a commercial use and that meets applicable code requirements) then the owner/builder should have submitted to development review (17.60). Owner/builder did not follow the TMC Ch. 17.60 and obtain a development review permit.
- (3) Conversion of the building into more than one residence would require a conditional use permit for a multi-family dwelling. The City has your Application for Building Permit, dated August 8, 2018. It appears that the owner did not follow through with the City's direction to apply for a conditional use with the Toledo Planning Commission. It also appears that the City's Building Official (Al Eames, Lincoln County) did not inspect the building.

The City can assist you to bring the building into compliance. Some things to consider when responding to this matter:

Any plans that the owner submits for the proposed occupancy change must be drawn by an Oregon licensed engineer or architect. A code summary must be submitted for plan review



outlining the specific details for a change of occupancy from a Group B Occupancy (offices) to a Group R-2 Occupancy (apartments). This is to be inclusive of the requirements of the Oregon Structural Specialty Code, Oregon Specialty Plumbing Code, Oregon Specialty Electrical Code, and the Oregon Fire Code. Work shall commence after building permits are issued and be shall completed within 90 days. All work shall be conducted by licensed CCB constructors who also hold a current City of Toledo Business License.

Please contact City of Toledo Planning Department for assistance with this matter. Failure to respond to this letter may result in civil penalties.

David James Robinson

David James Robinson, City Attorney

A handwritten signature in black ink, appearing to read "J. Peterson", written over a horizontal line.

12-22-2020

Justin Peterson, City Planner

Encl: BP Application, Land Use Form, Lincoln County Building Permit Application, Bruster Enterprises Building Permit



DEPARTMENT OF PLANNING AND DEVELOPMENT

Building Division
210 S. W. 2nd ST
Newport, OR 97365
(541) 265-4192
Fax (541) 265-6945

July 13, 2018

Certified: 7017 2400 0000 9085 2328

Bruster Enterprise LLC
P.O. Box 358
Toledo, OR 97391

RE: Building Code Violation (sec. 105.1 of the Oregon Structural Specialty Code)

Mr. Bruster,

On May 17, 2018, I wrote to you regarding permit requirements for a structure located at 163 NE Hwy 101, Toledo, OR (letter attached). As of this date, steps to resolve this violation have not been initiated.

Steps to resolve this violation shall commence within 10 days upon receipt of this letter. If the permit process is not started within the 10 days, I will forward the violation to the City of Toledo for disposition.

Sincerely,

Al Eames, C.B.O
Lincoln County Building Official

CC: Craig Martin, City Manager
file



DEPARTMENT OF PLANNING AND DEVELOPMENT

Building Division
210 S. W. 2nd ST
Newport, OR 97365
(541) 265-4192
Fax (541) 265-6945

May 17, 2018

Certified: 7011 3500 0002 1101 0981

Bruster Enterprise LLC
P.O. Box 358
Toledo, OR 97391

RE: Property identified on Lincoln County Assessors map as 11-10-17-BB Tax Lot 11300
further identified as 163 NE Hwy 20, Toledo, OR 97391

Mr. Bruster,

Our records indicate that you are the owner of the above referenced property. It has come to my attention that the commercial structure located on this property apparently has been converted into a duplex without obtaining the required building, plumbing, or electrical permits.

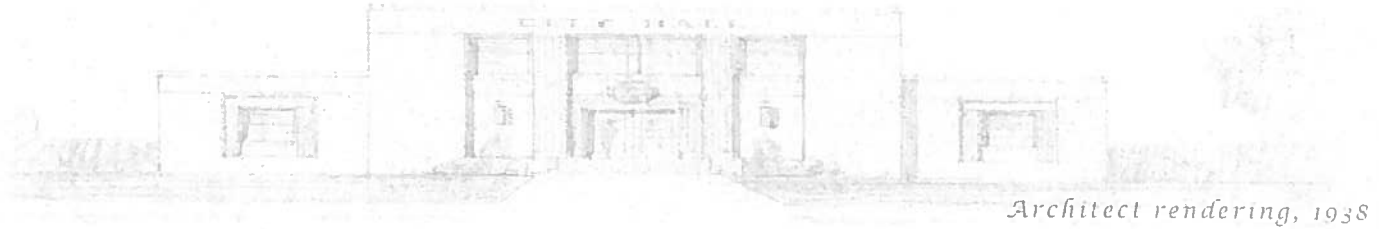
Please contact me within 21 days upon receipt of this letter so that steps to resolve this issue can be initiated. Your voluntary cooperation will be appreciated and avoid the potential for legal action.

Sincerely,

Al Eames, C.B.O
Lincoln County Building Official

CC: Craig Martin, City Manager
file

CITY OF TOLEDO



April 19, 2018

Bruster Enterprise LLC
PO Box 358
Toledo, OR 97391

RE: Lincoln County Assessor's Map 11-10-17 BB Tax Lot 113000
163/165 NE Hwy 20 and 161 NE 2nd Street, Toledo OR

It has recently come to the City of Toledo's attention that work occurring at the above described property may require a permit.

The property is located in the Commercial Zone. While some components of your work may be exempt from a building permit, some projects may need to be reviewed/inspected for Uniform Building Code compliance, especially in the case of commercial structures. Conversion of the existing office spaces (163 and 165 NE Hwy 20) to a different use would require a "Change in Occupancy" review, Fire/Life Safety inspection, and Zoning Ordinance compliance.

The Toledo Zoning Ordinance prohibits a new single-family residential dwelling in the Commercial Zone. One accessory dwelling unit, in conjunction with a commercial use, is allowed outright in the zone. For example, if the 161 NE 2nd Street unit is used as an apartment and 163/165 NE Hwy 20 has a business, this will meet the Zoning Ordinance criteria. However, without an approved business license assigned to the 163/165 NE Hwy 20 space, it is unclear if there is a commercial use on the property. Conversion of the building into more than one residence would require a Conditional Use Permit for a multi-family dwelling. Any residential use in the building will still have to comply with the Uniform Building Code and Fire/Life Safety standards.

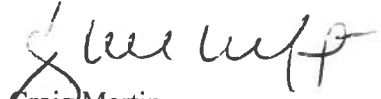
Please contact me to discuss the scope of your project. City staff can also assist with any questions about obtaining a business license for commercial use of the property, zoning ordinance requirements, or to provide application forms for a building permit or conditional use permit. You can also contact Lincoln County Building Official Al Eames at (541) 265-4192 to discuss the Uniform Building Code requirements and permit fees. Electrical and plumbing questions can also be directed to Lincoln County at (541) 265-4195. Locally, Toledo Fire Chief Will Ewing may be able to provide information on the fire inspection process and he is available at (541) 336-3311.

If a building permit is necessary for work already completed, you can still apply for a building permit 'after-the-fact'. This is to ensure that all work has been completed to code. If you hired a general contractor, they can contact me to discuss the project and they can still apply for all necessary permits. Be aware that your

contractor(s) must have a City of Toledo business license and be licensed/registered with the Oregon Contractor Construction Board because of the commercial designation of the property.

Please contact me at (541) 336-2247 extension 2020 or email manager@cityoftoledo.org to discuss your project.

Sincerely,



Craig Martin
City Manager

cc: Al Eames, Lincoln County Planning and Development
Jason Johnson, Toledo Code Enforcement Officer
Will Ewing, Toledo Fire Chief
✓ Arlene Inukai, Toledo Planning Assistant