

City of Portland, Oregon

Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Charlie Hales, Mayor Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

Date: May 9, 2013

To: Interested Person

From: Sylvia Cate, Land Use Services

503-823-7771 / Sylvia.Cate@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website http://www.portlandonline.com/bds/index.cfm?c=46429. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 13-131734 ZE

GENERAL INFORMATION

Applicant: City of Portland Bureau of Development Services

Land Use Services Division 1900 SW 4th Ave Ste 5000

Portland, OR 97201

Owners: Trung Van Vuong and Lieu Thi Tran

25380 S Laura Ln Estacada, OR 97023

Site Address: 5234 SE POWELL BOULEVARD..

Legal Description: BLOCK 1 LOT 7&8 EXC N 30', OAKDALE

Tax Account No.: R621800070 **State ID No.:** R52E07DB 12700

Quarter Section: 3436

Business District: Foster-Powell, contact Aaron Sorenson at 971-235-0025. Foster Area, contact Seth Richardson at 503-771-1737. Southeast Uplift, contact Bob Kellett at 503-232-0010.

Plan District: Powell Boulevard Plan District

Existing Zoning: R1a, Multi-Dwelling Residential 1,000 with Alternative Design Density

overlav

Corrected Zoning: CG, General Commercial

Case Type: ZE, Zone Map Error Correction

Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The Bureau of Development Services is initiating a Zoning Map Error Correction to change the zoning on the east portion of the site, Lot 8, Block 1; Oakdale Subdivision from R1a [Multi-Dwelling Residential with Alternative Design Density overlay] to CG [General Commercial]. This

process is necessary because the current zoning line bisects an existing commercial building that occupies most of the site. City policy does not allow zoning lines to be placed such that they result in split zoned properties or buildings.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

33.855.070.A.-C., Corrections to the Official Zoning Maps

ANALYSIS

Site and Vicinity: The site is a 1,750 square foot lot developed with a 2,928 square foot building. City records indicate that the original use of the existing building was as an office; it currently is used as a restaurant.

Zoning: The *existing zoning* is R1a, Multi-Dwelling Residential 1,000 with Alternative Design Density overlay. The *proposed corrected zoning* is CG, General Commercial.

Land Use History: City records indicate there are no prior Quasi- Judicial land use reviews for this site.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **April 15, 2013**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 15, 2013. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.855.070 Corrections to the Official Zoning Maps

The Director of BDS may initiate and approve a review following the Type II procedure for the types of discretionary corrections to the Official Zoning Maps listed below. Nondiscretionary corrections to the Official Zoning Maps may be initiated by the Director of Planning as described in Section 1.01.037 of the Portland City Code.

- **A. Mapping errors.** The correction may be made for mapping errors such as:
 - 1. A map line that was intended to follow a topographical feature does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches; or
 - 2. There is a discrepancy between maps and on balance there is sufficient evidence of legislative intent for where the line should be located.

Findings: The Bureau of Planning and Sustainability has submitted documentation of their research conducted on the site which notes that changes in zoning has resulted in a zoning error. BSP staff notes that the following supporting documents were provided:

- Current zoning map showing 5234 SE Powell Boulevard as split zoned, with General Commercial (CG) within the Powell Blvd. Plan District on the west half of the site and Medium Density Multi-dwelling with and Alternative Design Density Overlay (R1a) on the eastern half of the site.
- Historic Zoning map 3436 dated revised 6.96 indicating that 5234 SE Powell Boulevard.. with a General Commercial Zone and Powell Blvd. Plan District assignation across the entirety of this lot.

The property identified as tax account number R229023 is comprised of two originally platted 25' X 70' lots described as Lots 7 & 8 of Block 1 of the Oakdale Subdivision. It is currently occupied by a commercial building that occupies substantially the entire site. Immediately to the east is a public parking area within the expanded Powell Boulevard right of way. Early versions of the official zoning map 3436 identify both original tax lots 7&8 as being zoned General Commercial (CG) This is seen on Zoning map 3436 revised 6.96. Sometime prior to the adoption of current zoning map 3436 revised 08.99 the zoning district boundary line separating the General Commercial (CG) zoning on the subject property (and applied to properties to the west with frontage on Powell Blvd.) from properties to the east zoned R1 Medium Density Multi-dwelling residential shifted west 25 feet effectively splitting the property in two. Historic tax lot 7 is zoned CG while tax lot 8 is zoned R1a.

There is no corresponding record of an official rezoning action that would cause this zoning district boundary line to shift as portrayed. It is not city policy to locate zoning district boundary lines to "split zone" properties or buildings. A more likely scenario is that this zoning district boundary line was inadvertently shifted at such time as the map was being update to reflect the acquisition of the additional right of way immediately east of this property.

The zoning map error correction criteria states that corrections for mapping errors can be made if "there is a discrepancy between maps and on balance there is sufficient evidence of legislative intent for where the line should be located." In this instance the zoning district boundary line shift is in conflict with general city zoning policies and unsupported by any documented zoning action.

BPS staff has determined that a zoning map error has occurred and that zoning map 3436 should be corrected to re-designate 5234 SE Powell Boulevard (R229023) General Commercial (CG) in its entirety.

For these reasons, this criterion is met.

B. Movement of the reference item for the map line. The correction may be made when it can be clearly shown that a map line is based on the location of a reference item that has since been moved. Reference items are rights-of-way, tentative rights-of-way, utility easements and similar type items. Map line changes in these cases must not be more than a trivial change to the map pattern and must not result in any significant impacts to abutting lots.

Findings: The zoning map line was not based on a reference item that has been moved or no longer exists. This criterion is not applicable.

C. Land within the Urban Growth Boundary. The correction may be made when it involves the removal of the Future Urban overlay zone from properties that are now within the Urban Growth Boundary.

Findings: The site is within the UGB. This criterion is not applicable.

CONCLUSIONS

The zoning map error correction criteria states that corrections for mapping errors can be made if "there is a discrepancy between maps and on balance there is sufficient evidence of legislative intent for where the line should be located." In this instance the zoning district boundary line shift is in conflict with general city zoning policies and unsupported by any documented zoning action. A more likely scenario is that this zoning district boundary line was inadvertently shifted at such time as the map was being update to reflect the acquisition of the additional right of way immediately east of this property

BPS staff has determined that a zoning map error has occurred and that zoning map 3436 should be corrected to re-designate 5234 SE Powell Boulevard (R229023) General Commercial (CG) in its entirety.

ADMINISTRATIVE DECISION

Approval of:

• Correction of a Zone Mapping Error, to move the zoning line east by one lot:

Legal Description: BLOCK 1 LOT 7&8 EXC N 30', OAKDALE

Tax Account No.: R621800070 State ID No.: 1S2E07DB 12700

from R1a to CG, General Commercial; and

• Zoning map 3436 should be corrected to re-designate 5234 SE Powell Boulevard (R229023) General Commercial (CG) in its entirety, per Exhibit B-2.

Staff Planner: Sylvia Cate

Decision rendered by: on May 7, 2013

By authority of the Director of the Bureau of Development Services

Decision mailed: May 9, 2013

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on March 22, 2013, and was determined to be complete on April 10, 2013.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on March 22, 2013.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: August 8, 2013.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 23, 2013** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged**. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

- A building or zoning permit will be issued only after the appeal period has expired.
- No recording with Multnomah County is required as the Applicant is the City of Portland.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

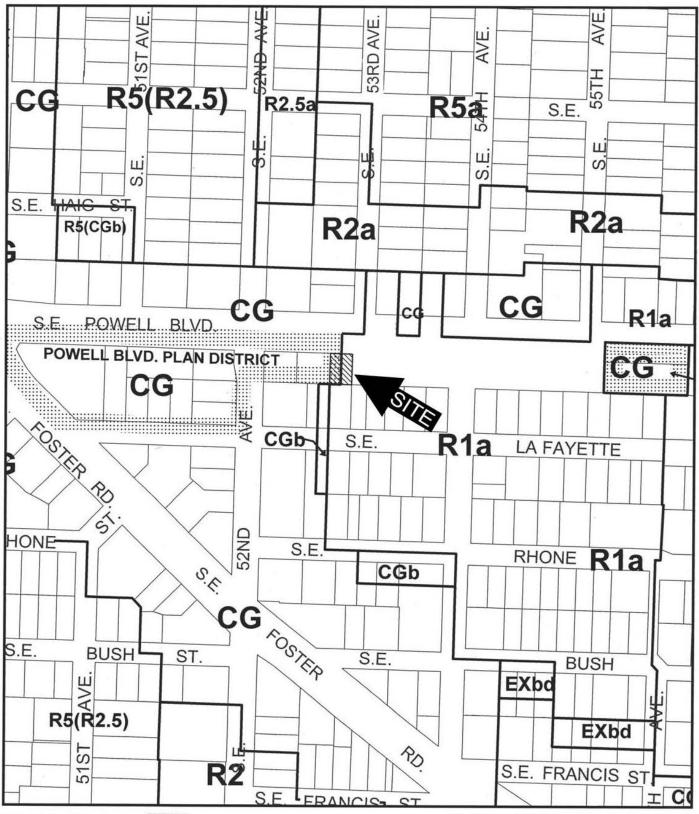
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
 - 1. Existing
 - 2. Proposed/Corrected
- C. Plans/Drawings:
 - 1. Site Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
- F. Correspondence:

None

- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING Site EXISTING



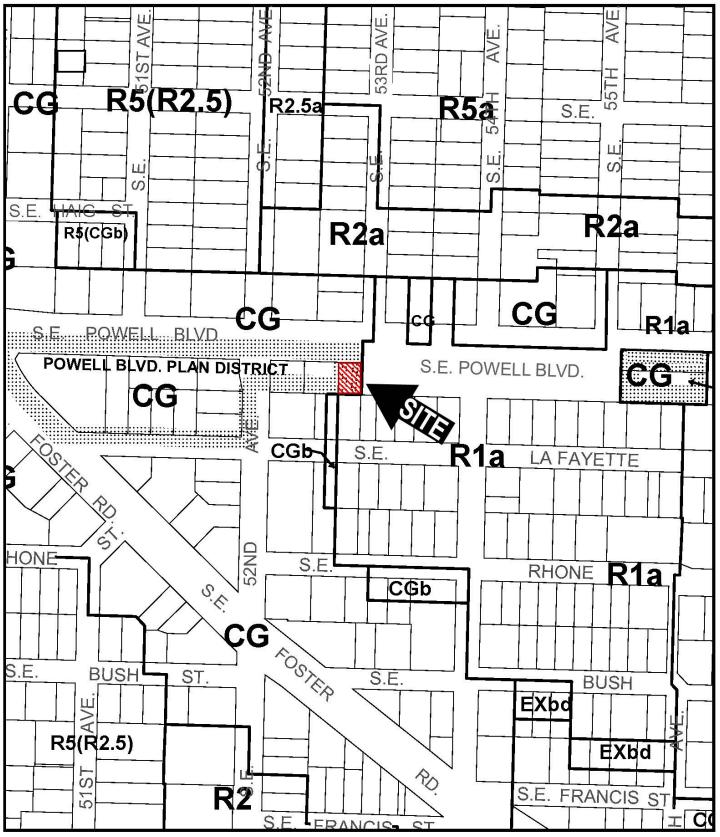
THIS SITE LIES WITHIN: POWELL BLVD. PLAN DISTRICT

File No. <u>LU 13-131734 ZE</u>

1/4 Section <u>3436</u>

Scale <u>1 inch = 200 feet</u>

State_Id <u>1S2E07DB 12700</u> Exhibit <u>B1 (Mar 27,2013)</u>



ZONING Site PROPOSED



THIS SITE LIES WITHIN: POWELL BLVD. PLAN DISTRICT

File No. LU 13-131734 ZE

1/4 Section 3436

Scale 1 inch = 200 feet

State_Id 1S2E07DB 12700

Exhibit B2 (Mar 27,2013)