



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

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**Date:** June 3, 2008  
**To:** Interested Person  
**From:** Matt Wickstrom, Land Use Services  
503-823-7840 / [WickstromM@ci.portland.or.us](mailto:WickstromM@ci.portland.or.us)

**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 this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

**CASE FILE NUMBER: LU 08-122324 ZE AD**

**GENERAL INFORMATION**

**Applicant:** Bureau Of Development Services  
1900 SW 4th Ave  
Portland, OR 97201

**Applicants/Owners:** Randall N and Maureen Emery  
590 NW Wallula Ave  
Gresham, OR 97030

**Site Address:** 13635 SE DIVISION ST

**Legal Description:** EXC S 15' IN RD S 120' OF E 58' OF W 131.5' OF LOT 18, TAYLORS SUB

**Tax Account No.:** R822206830  
**State ID No.:** 1S2E02DC 04800  
**Quarter Section:** 3344  
**Neighborhood:** Hazelwood, contact Arlene Kimura at 503-252-9429  
**Business District:** Gateway Area Business Association, contact Fred Sanchez at 503-256-3910  
Midway, contact Donna Dionne at 503-252-2017

**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550

**Zoning:** R3a (Residential 3,000 with an Alternative Design Density overlay)

**Case Type:** ZE AD (Zoning Map Error Correction with a concurrent Adjustment Review)

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

**Proposal:**

The Bureau of Development Services has initiated a Zoning Map Error Correction on property located at 13635 SE Division Street (see attached zoning maps). The correction will change the zoning on this 6,090 square foot site from R3a (Residential 3,000 with an Alternative Design Density overlay) to CN1 (Neighborhood Commercial 1).

Prior to the site being annexed into the City of Portland in 1994, County zoning on the site was MR-4. Section 33.855.080 of the Portland Zoning Code specifies that properties annexed into the City from Multnomah County will be automatically rezoned to the comparable zone listed in Table 855-1, Assigned City Zoning for Multnomah County Zones, of the Zoning Code. Table 855-1 specifies that properties zoned MR-4 in the County will automatically be rezoned R3 with the exception of properties with a documented and approved retail use will be automatically rezoned CN1. The Bureau of Development Services has documented that a retail use was legally established and existed on this site at the time the property was annexed. Correcting the zoning on this site is consistent with Table 855-1.

The property owner requests a concurrent Adjustment Review to allow the exterior display of vehicles at this site. Exterior display is not allowed in the CN1 zone; however a property owner may request this use through a land use review. As mitigation for the proposed exterior display, the applicant plans to coat the existing chain link fence in a black paint material and may install additional landscaping.

**Relevant Approval Criteria:**

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

- 33.855.070 A – C (Corrections to the Official Zoning Maps)
- 33.805.040 A – F Adjustments

## ANALYSIS

**Site and Vicinity:** The 6,090 square foot site is located at the corner of SE Division Street and SE 137<sup>th</sup> Avenue. The site is currently developed with an approximately 900 square foot building set back toward the north end of the site with a large paved area in front and facing SE Division Street. The site has landscaped setbacks which range from about 3 feet in depth to 5 feet in depth along the south, east and west property lines. The landscaped setback along the western property line is planted with many tall mature shrubs. The landscaped setbacks along the street frontages are planted with shorter shrubs and bushes. The site is accessed from SE 137<sup>th</sup> Street. The surrounding vicinity is composed of a mix of residential and commercial uses. Residential uses are primarily small scale apartment buildings; commercial uses are primarily small retail stores or fast food establishments with minimally landscaped parking lots facing the street.

**Zoning:** The current zoning on the site is R3 (Residential 3,000). The R3 zone allows multi-dwelling residential development up to a maximum density of one unit per 3,000 square feet of site area. Retail Sales and Service uses which includes Vehicle Sales are prohibited in the R3 zone. This review approves a Zoning Map Error Correction to change the current zoning of the site from R3 to CN1. The CN1 zone is intended for small sites in or near dense residential neighborhoods. The zone encourages the provision of small scale retail and service uses for nearby residential areas. Development is intended to be pedestrian-oriented and compatible with the scale of surrounding residential areas. Exterior display is not allowed in the CN1 zone but this review also approves an Adjustment to that standard.

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

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **May 2, 2008**. The following Bureaus have responded:

- The Bureau of Environmental Services responded with information on sanitary services, stormwater management and water resources. The response notes no objection to the Zoning Map Error correction or the Adjustment proposal and states that BES supports the addition of vegetation to the site (Exhibit E-1).
- The Site Development Section of BDS responded with no objections to the Zoning Map Error Correction or the Adjustment proposal (Exhibit E-2).

- The Life Safety Section of BDS, the Development Review Section of Portland Transportation as well as the Fire, Parks and Water Bureaus all responded with no concerns (Exhibit E-3).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on May 2, 2008. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### Zoning Map Error Correction

#### **33.855.070 Corrections to the Official Zoning Maps**

**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

**Findings:** In this specific instance, the map line that was applied in error was not drawn with the intention of following a topographical feature. Therefore, this criterion is not applicable.

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:** Prior to the site being annexed into the City of Portland in 1994, County zoning on the site was MR-4, a Multnomah County designation. Section 33.855.080 of the Portland Zoning Code specifies that properties annexed into the City from Multnomah County will be automatically rezoned to the comparable zone listed in zoning code Table 855-1. This table specifies that properties zoned MR-4 in the County will automatically be rezoned R3 with the exception that properties with a documented and approved office use will be automatically rezoned CO1 and properties with documented and approved retail uses will be automatically rezoned CN1. The Bureau of Development Services has documented that a retail use was legally established and existed on this site at the time the property was annexed. Because a documented and approved retail use existed on the site at the time of annexation, the property should have been automatically rezoned to CN1 upon annexation, not R3. This criterion is met and based on this information the zoning on the map should be corrected from the R3 zone to the CN1 zone.

**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:** In this specific instance, the Zoning Map error is not the result the original zone line being based on a reference point that has since been moved. Therefore, 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:** This situation does not apply to the subject site; therefore, this criterion is not applicable.

### **Adjustment Review**

#### **Title 33.805.10 Purpose of Adjustments**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the code's regulations would preclude all use of the site. Adjustment reviews provide flexibility for unusual situations and to allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

#### **33.805.40 Adjustment Approval Criteria**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below are met.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

**Findings:** The applicant requests one Adjustment to allow the exterior display of vehicles within the asphalt surface area shown on the attached site plan. The purpose of this regulation is listed below:

#### ***Purpose 33.130.245 Exterior Display, Storage and Work Activities***

*The standards of this section are intended to assure that exterior display, storage, and work activities:*

- *Will be consistent with the desired character of the zone;*
- *Will not be a detriment to the overall appearance of a commercial area;*
- *Will not have adverse impacts on adjacent properties, especially those zoned residential; and*
- *Will not have an adverse impact on the environment.*

The proposal to allow the exterior display of vehicles within the CN1 zone is consistent with the desired character of the zone which can be found described above under Zoning. The site is just over 6,000 square feet in area which is only slightly larger than a typical single-dwelling residential lot. Based on this relatively small site size and associated exterior display area, the display of vehicles will not overwhelm or adversely impact the nearby residential area and will still allow the site to function as a "small scale" retail use. The desired character of the area statement mentions that parking areas are restricted since their appearance is generally out of character with the surrounding residential development and the desired orientation of the uses. The display of vehicles is similar in appearance to surface parking; however, adequate mitigation is required as part of this review to improve the appearance of the exterior display area.

The first mitigation measure involves coating (painting) the existing chain link fence in a black paint material. This will help to soften the appearance of the chain link fence as its visual contrast with landscaping and other surrounding development will be reduced as will be its overall visibility. A condition of approval has been included with this review to ensure that the fence is painted. The second mitigation measure involves the planting of two trees along the SE Division Street frontage of the site and two trees along the SE 137<sup>th</sup> Avenue frontage. In addition to the trees, three native evergreen flowering shrubs such as rhododendrons are required along the SE Division Street frontage and two native evergreen flowering shrubs are required along the SE 137<sup>th</sup> Avenue frontage. Up to three of these shrubs may be clustered at the corner of the site where SE Division Street intersects with SE 137<sup>th</sup> Avenue. The planting of the trees and shrubs will provide additional visual interest, color and aesthetics along both

street frontages which helps to mitigate for the exterior display of vehicles. A condition of approval has been included with this review to ensure that the trees and shrubs are planted.

In this location, the commercial area is primarily composed of fast food restaurants and other retail establishments with parking lots facing the street. Many of these parking lots are not landscaped or have minimal landscaping. Considering the existing landscaping around the site as well as the additional trees and shrubs which are required as part of this review, the appearance of the site will be an improvement over other surrounding commercial uses. A residential apartment building is located to the west of the site; however an existing high row of shrubs located along the west property line of the site will help obscure views of the vehicle display area from the apartment units. In addition, views from the apartment building are currently of a paved area which could be used as vehicle parking for a business. Views of a parking lot which would be allowed by right are not significantly different from views of a vehicle display area; therefore, impacts of the proposed exterior display area on the adjacent residential use are considered negligible. As the area where vehicle display is already paved, the proposal cannot be viewed as having significant impacts on the environment. In fact, the BES reviewer stated support for the addition of vegetation to the site which can be viewed as providing environmental benefits. Based on this information, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** The site is currently located in a residential zone; however, the findings above detail approval for a Zoning Map Error Correction to change the current zoning from R3 to CN1; therefore, only the latter half of this criterion applies to the proposal. In this location SE Division Street is classified by the Transportation Element as a District Collector, a Major Transit Priority Street, a City Bikeway, a City Walkway, a Minor Truck Street, a Major Emergency Response Street and a Community Corridor. In this location, SE 137<sup>th</sup> Street is classified as a local street for all categories. The PDOT reviewer examined the proposal and stated no objections or concerns. The proposal does not conflict with the classification of the adjacent streets. The findings above under Approval Criterion A discuss the consistency of the proposal with the desired character of the area and with mitigation, the proposal was found to be consistent. Based on this information, this criterion is met.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

**Findings:** Adequate improvements are required as part of this review to mitigate for exterior display of vehicles on this site. Mitigation includes coating (painting) the existing chain-link fence so that it blends in better with the surroundings and is visually less apparent. Mitigation also includes the planting of a total of four trees and five native evergreen flowering shrubs (such as rhododendrons) along the SE Division Street and SE 137<sup>th</sup> Avenue street frontages. Both measures will help soften the appearance of the exterior display of vehicles and the required trees and shrubs, as well as the existing landscaping, will also add visual interest for passersby. Based on this information, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and
- D.** City designated scenic resources and historic resources are preserved; and
- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resources and resource value as is practical.

**Findings:** Only one adjustment is requested, the site does not contain any identified scenic or historic resources and the site is not located in an environmental zone; therefore, these criterion are not applicable.

## DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## CONCLUSIONS

The Bureau of Development Services proposes a Zoning Map Error correction for this site. Based on the information provided incorrect zoning was applied to the site when it was annexed and zoning of the site should be CN1 rather than R3. The proposal meets the applicable approval criteria and should be approved. The property owner proposes one Adjustment associated with plans for the exterior display of vehicles for sale at this site. As noted in this report, the project is able to meet the applicable approval criteria based on the relatively small size of the site and exterior display area, the surrounding commercial development and accessory parking lots as well as the conditions of approval which require the existing chain-link fence to be painted and trees and shrubs to be planted along both street frontages. With approval requiring that the permit drawings substantially conform with the site plan attached, the request meets the applicable approval criteria and should be approved.

## ADMINISTRATIVE DECISION

Approval of a Zoning Map Error Correction (33.855.070) which changes the zoning on the site from R3 to CN1.

Approval of an Adjustment Review to allow the exterior display of vehicles on the site (33.130.245.B), per the approved site plan, Exhibits C-1, signed and dated May 30, 2008, subject to the following conditions:

- A. As part of the zoning permit application submittal, the following development-related conditions (B through C) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 08-122324 ZE AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The existing chain-link fence must be coated in a black paint material.
- C. A total of two trees must be planted within the landscaped setback along SE Division Street and a total of two trees must be planted within the landscaped setback along SE 137<sup>th</sup> Avenue. The trees must be a minimum of 1.5 caliper inches at time of planting. A total of three native evergreen flowering shrubs must be planted within the landscaped setback along SE Division Street and a total of two native evergreen flowering shrubs must be planted within the landscaped setback along SE 137<sup>th</sup> Avenue. Shrubs must be a minimum of one-gallon in size at time of planting. Up to three of the required shrubs may be clustered where the corner of the site meets the intersection of SE Division Street and SE 137<sup>th</sup> Avenue.

Decision rendered by:  on May 30, 2008

By authority of the Director of the Bureau of Development Services

Decision mailed: June 3, 2008

Staff Planner: Matt Wickstrom

**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 April 15, 2008, and was determined to be complete on April 29, 2008.

*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 April 15, 2008.

*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.

**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 June 17, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., 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. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-7967 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](http://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.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **June 18, 2008 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**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.

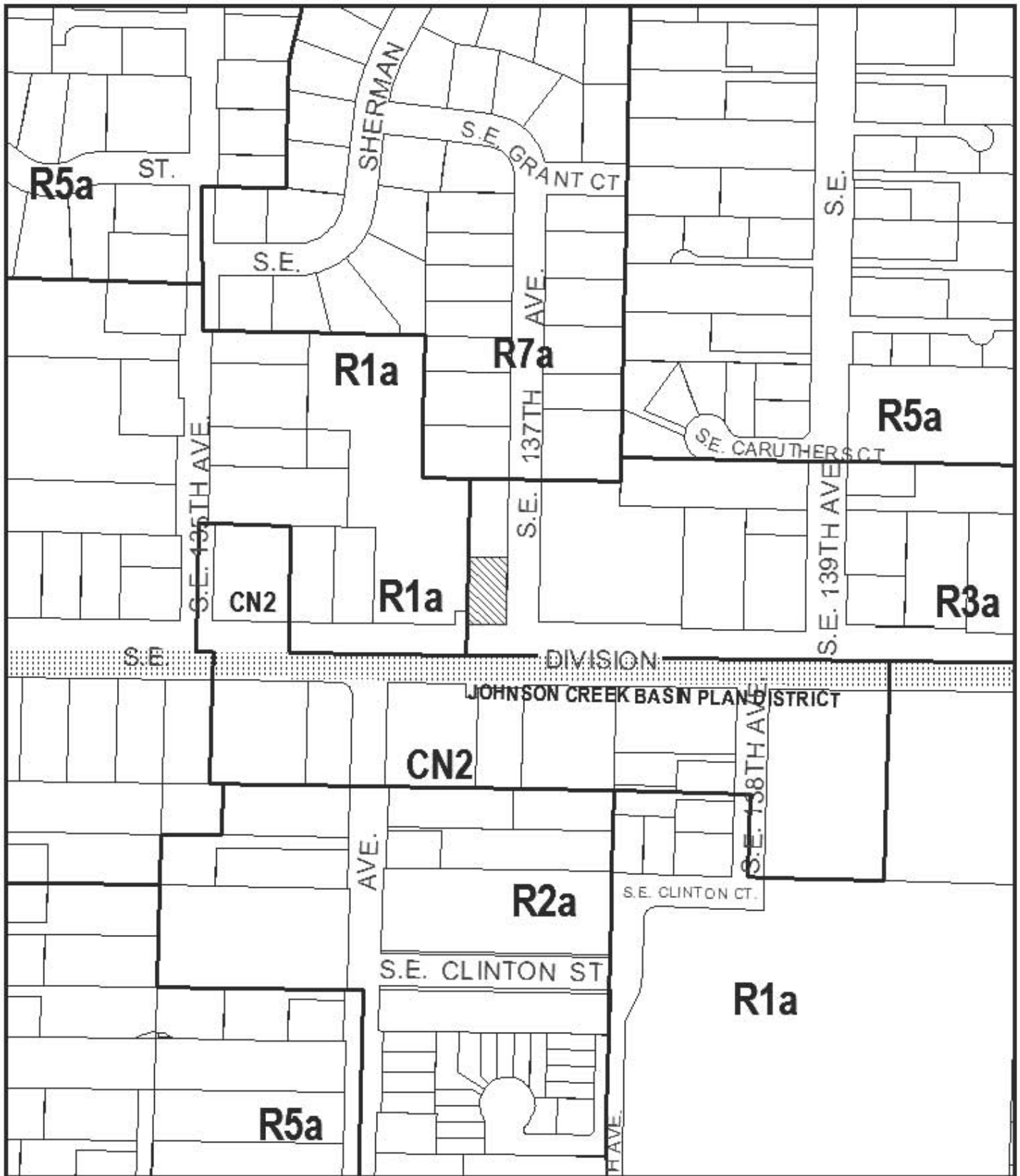


**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Site Development Review Section of BDS
  - 3. Summary sheet of Bureau responses
- F. Correspondence: None received
- G. Other: Site History Research

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).**

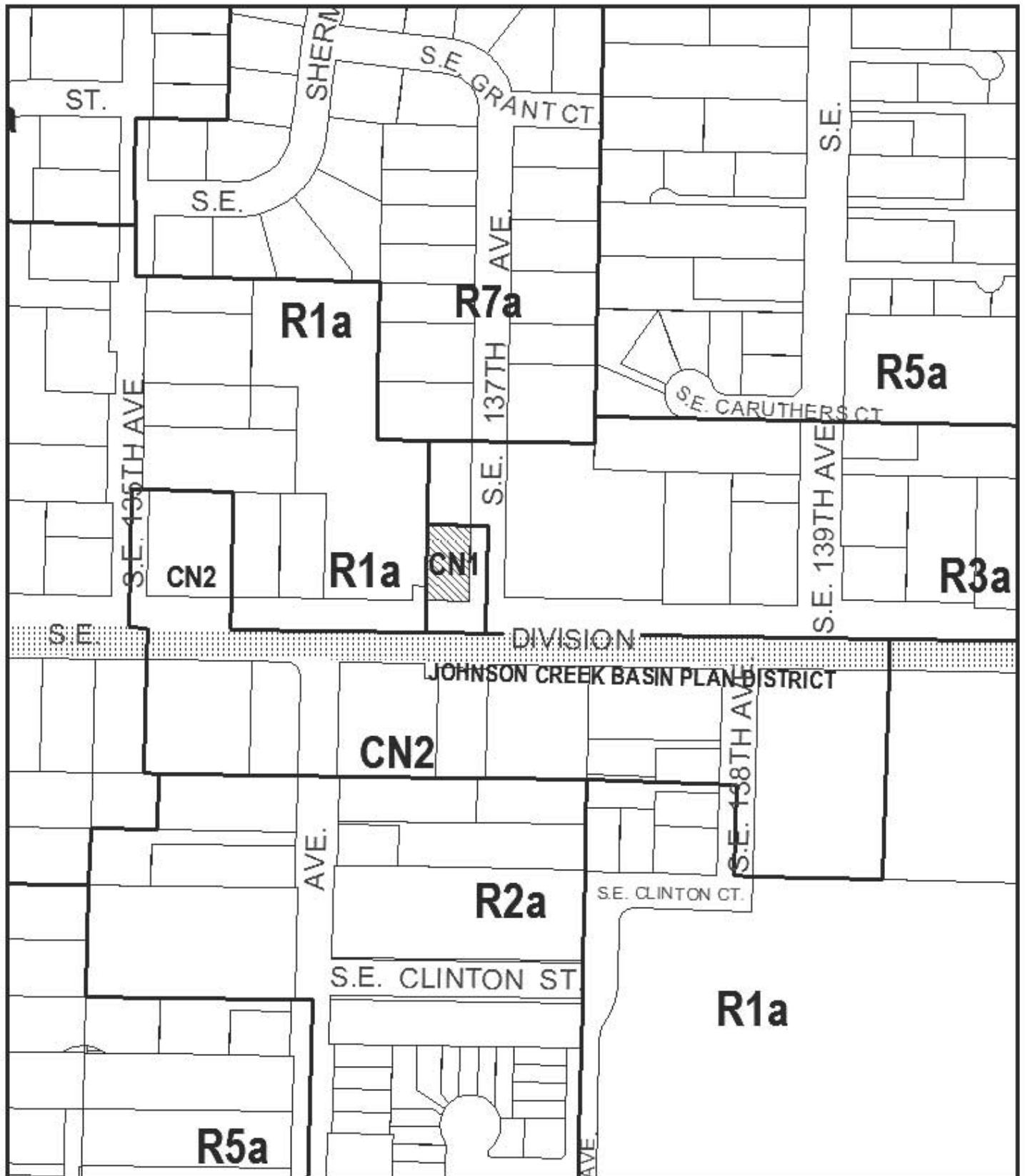


**ZONING  
EXISTING**

 Site



|             |                           |
|-------------|---------------------------|
| File No.    | <u>LU 08-122324 ZE AD</u> |
| 1/4 Section | <u>3344</u>               |
| Scale       | <u>1 inch = 200 feet</u>  |
| State_Id    | <u>1S2E02DC 4800</u>      |
| Exhibit     | <u>B (Apr 18, 2008)</u>   |



# ZONING PROPOSED



 Site

File No. LU 08-122324 ZE AD  
 1/4 Section 3344  
 Scale 1 inch = 183 feet  
 State\_Id 1S2E02DC 4800  
 Exhibit B (Apr 18, 2008)

Ref No: IA-05-177433

EXISTING STEEL FENCE - FOUR (4) FT

84" TALL ARBOVITINE TYPICAL OF EIGHT (8)

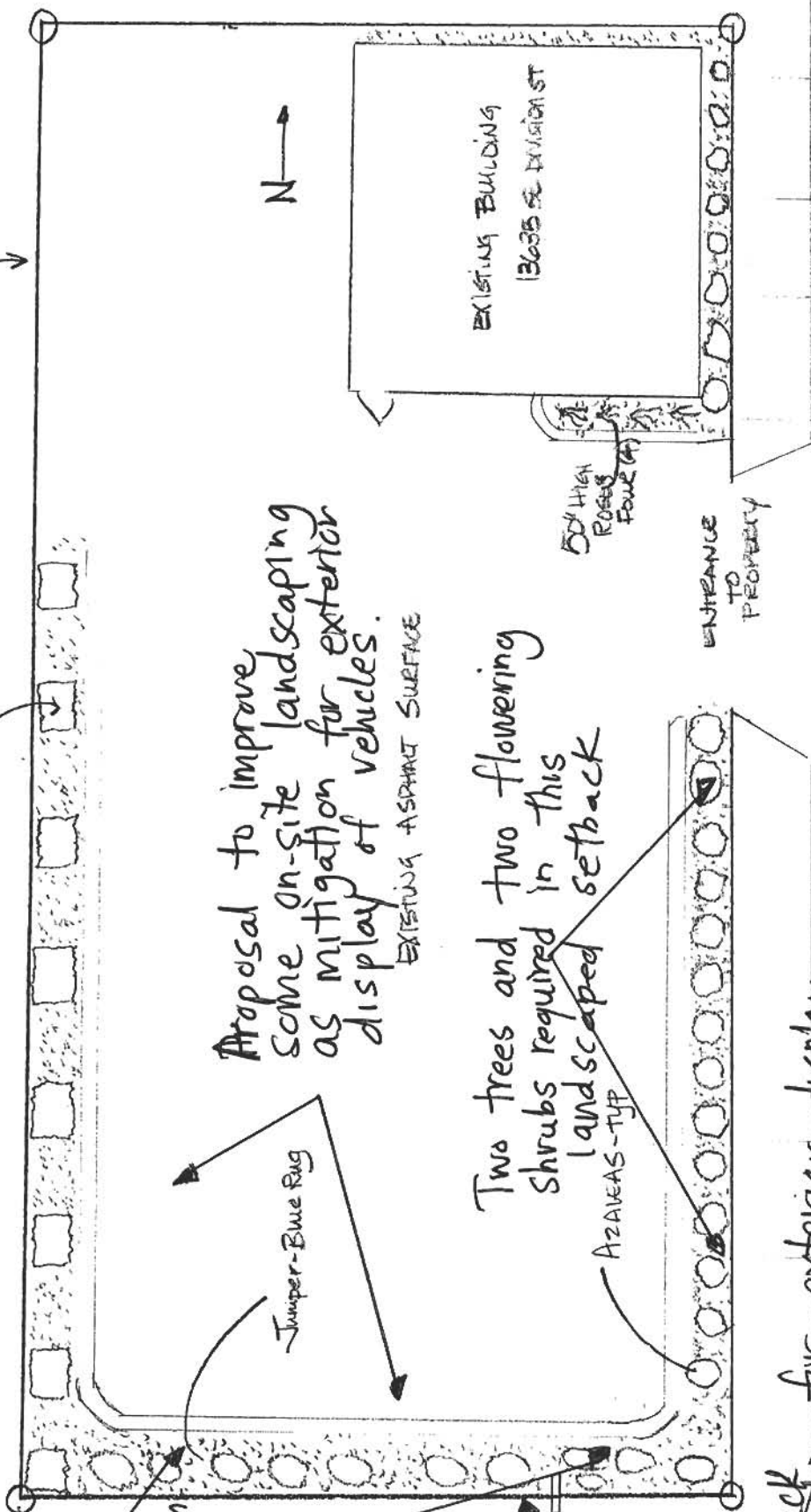
Two trees and three flowering shrubs required in this location

Proposal to improve some on-site landscaping as mitigation for exterior display of vehicles.

EXISTING ASPHALT SURFACE

Two trees and two flowering shrubs required in this landscaped setback

Proposal to coat / paint existing fence black as mitigation for exterior display



SE 137th STREET

Bureau of Development Services initiated Zoning Map Error Correction to change current zoning from R3a to CM1. Property owner initiated Adjustment Review to allow the exterior display of vehicles in the CM1 zone.