

City of Portland

Bureau of Development Services

Land Use Services Division

1900 SW Fourth Ave. Suite 5000 Portland, Oregon 97201 Telephone: 503-823-7300 TDD: 503-823-6868

FAX: 503-823-5630 www.portlandonline.com/bds

Date: July 24, 2008

To: Interested Person

From: Kathleen Stokes, Land Use Services

503-823-7843 / kstokes@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 08-138562 ZE

GENERAL INFORMATION

Applicant: City Of Portland, Bureau Of Development Services

Contact: Susan McKinney, LUS Division

1900 SW 4th Ave Ste 5000

Portland OR 97201

John R Chirgwin, property owner

26505 SE Rebman Rd Boring, OR 97009

Site Address: 1130 SE 122ND AVE

Legal Description: EXC W 5' IN ST LOT 4 BLOCK 1, JANET ADD

Tax Account No.: R426500070 **State ID No.:** 1S2E02BB 02400

Quarter Section: 3143

Neighborhood: Mill Park, Rosemary Opp at 503-256-4591.

Business District: Gateway Area Business Association, Fred Sanchez at 503-256-3910. **District Coalition:** East Portland Neighborhood Office, Richard Bixby at 503-823-4550.

Current Zoning: R3a (R 3,000, Townhouse Multi-dwelling Residential, with an

Alternative Design Density Overlay)

Proposed Zoning: CO1 (Office Commercial 1) **Case Type:** Zoning 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, on the advice of the Bureau of Planning, to change the zoning for this site from the existing designation of Townhouse Multi-dwelling Residential with an Alternative Design Density Overlay (R3a) to Office Commercial 1 (CO1). The request was made because the zoning on the site, before annexation from Multnomah County in 1989, was MR-4, with an allowed office use. The residential designation that was placed on the site following annexation by the City of Portland does not allow commercial uses and so made the existing dental office a nonconforming use. When a documented, allowed office use exists on a site with a County

zoning designation of MR-4, the Portland Zoning Code instructs the designation to be CO1, rather than the comparable Portland residential designation of R3.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of 33.855.070 A, which allows a mapping correction when there is a proven error in the location of the zoning line or a discrepancy between the map designation and the legislative intent for placing the designation.

ANALYSIS

Site and Vicinity: The subject site is a 9,583 square-foot parcel that is located on the northeast corner of SE 122nd Avenue and SE Salmon Street. The property is developed with a one-story commercial structure that was built in 1952 and provides office space for a dental practice. The portion of the lot between the structure and the street frontage on SE 122nd is attractively planted with mature landscaping materials. A surface parking lot is located at the rear of the building, on the northern portion of the lot.

The area around the site consists mainly of post-World War II, single-dwelling residential development on the lots that front onto SE Salmon Street. Along SE 122nd Avenue, there is a cluster of commercial development, including two other dental practices and offices for tax preparation and an insurance agency. Further to the north there is an area of increased commercial activity, including several major auto dealerships.

Current Zoning: The site is currently zoned R3, or R 3,000, Low Density Multi-dwelling Residential. This zone allows approximately 14.5 dwelling units per acre. The major type of new development will be townhouses, and small multi-dwelling residences. These housing types are intended to be compatible with low and medium density single-dwelling development. Generally, R3 zoning will be applied on large sites or groups of sites.

Retail sales and service and Office Uses are prohibited in the R3 zone. Existing uses that are legal nonconforming uses may remain. Nonconforming uses are uses that were allowed when established and have been maintained over time, but which are not allowed uses under the current zoning. Nonconforming uses may expand if approved through a Nonconforming Situation Review.

Proposed Zoning: The proposed zoning for the site is CO1, Office Commercial 1. This zone is used on small sites in or near residential areas or between residential and commercial areas. The zone is intended to be a low intensity office zone that allows for small scale offices in or adjacent to residential neighborhoods. The allowed uses are intended to serve nearby neighborhoods and/or have few detrimental impacts on the neighborhood. Development is intended to be of a scale and character similar to nearby residential development to promote compatibility with the surrounding area. Development should be oriented to pedestrians along transit streets and in Pedestrian Districts.

Land Use History: City records do not include any prior land use reviews for the site.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **June 25, 2008**. The following Bureaus have responded with no issues or concerns:

- Environmental Services provided comments on sanitary sewer services and storm water management requirements, for consideration for any future development plans for the site (Exhibit E-1).
- Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Life Safety Plan Review Section of BDS
- Portland Parks Urban Forestry Division

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 25, 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

Title 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. Non-discretionary 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.

Findings: Following a request by the property owner, the Bureau of Planning determined that a mapping error had occurred on the subject property. Subsequently, the Director of BDS initiated this review to correct the official zone map to more accurately portray the pre-existing use on the subject property.

33.855.070.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.

Findings: The request for the zoning map error correction is not based on topographical features. Therefore, this criterion does not apply.

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 R3 zoning designation was placed on this site, as a result of conversion of zoning from the County MR-4 zoning designation to a comparable City zoning designation, after annexation in 1989. The R3 designation was placed, in accordance with Title 33, Section 33.855.080, Recently Annexed Areas, and Table 855-1 which provides comparable City zoning that is to be applied to annexed properties. The "a" overlay designation was added with zoning adopted for the Outer Southeast Community Plan, March 25, 1996. While Table 855-1 shows that the R3 zoning designation is the comparable zoning for sites that had County zoning of MR-3 or MR-4, there is also a footnote (3), that directs that, "sites with a documented, approved office are CO1. Sites with a documented, approved retail or commercial use are CN1." A documented, approved office use existed on this site prior to 1989, as shown by the history of building permits approved by Multnomah County. According to research conducted by the Bureau of Planning (Exhibit G-1), the direction of this footnote was overlooked when the zoning was placed on the site after annexation, thereby causing the zoning map error. This error was compounded when the "a" overlay was placed on the site, as this overlay is only used for residentially zoned areas.

Sufficient evidence exists of legislative intent that the appropriate comparable zoning for the site was CO1, rather than R3, and that the "a" overlay was inappropriately placed on the site, as it is not intended to be placed on sites with commercial zoning. Therefore, this criterion is met.

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 Planning (BOP) recommended that a zoning map error correction be approved on this site, as the R3 zoning was placed in error. Table 855-1, which provides the comparable zoning designations for converting from County zoning for properties that are annexed into the City, states that sites with existing legal office uses are to be zoned CO1. The "a" overlay designation that was later placed on the site is not intended for sites with commercial zoning designations. Therefore, the relevant approval criteria are met and the Zoning Map Error Correction can be approved.

ADMINISTRATIVE DECISION

Approval of a Zoning Map Error Correction, from R3a to CO1, in conformance with Exhibit B.2.

Decision rendered by: July 22, 2008

By authority of the Director of the Bureau of Development Services

Decision mailed: July 24, 2008

Staff Planner: Kathleen Stokes

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 June 18, 2008, and was determined to be complete on June 23, 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 June 18, 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, who will hold a public hearing. Appeals must be filed by 4:30 PM August 7, 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. 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. 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 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. 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 August 8, 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:

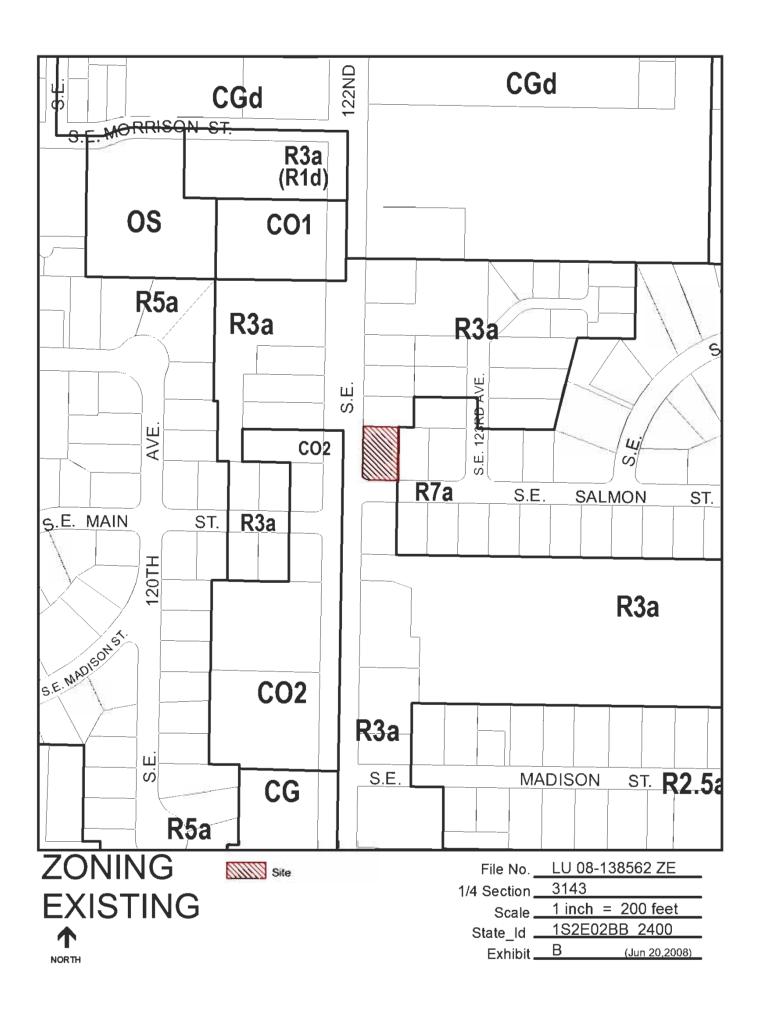
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

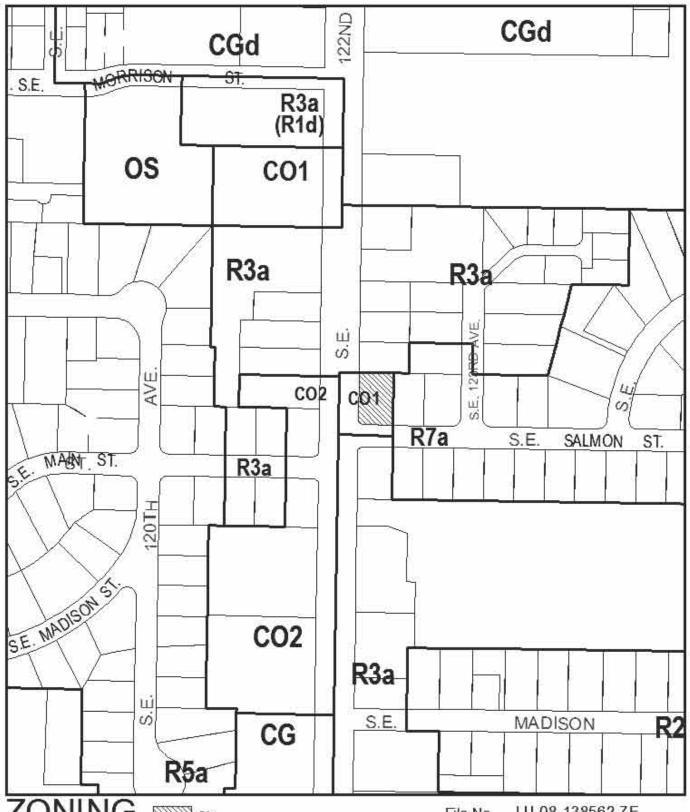
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
 - 1. Existing Zoning (attached)
 - 2. Proposed Zoning (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, Life Safety, Fire, Transportation, Water, Parks (TRACS file)
- F. Correspondence: (none received)
- G. Other:
 - 1. Memo from Rodney Jennings, City Planner, Bureau of Planning, June 17, 2008

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 Ste PROPOSED



File No. LU 08-138562 ZE

1/4 Section 3143

Scale 1 inch = 200 feet

State_Id 1S2E02BB 2400

Exhibit B (Jun 23,2008)

