



City of Portland, Oregon
Bureau of Development Services
Land Use Services

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: January 27, 2009
To: Interested Person
From: Sean Williams, Land Use Services
503-823-7612 / sean.williams@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 08-189802 AD

GENERAL INFORMATION

Applicant: Stephen Wood Mary Wood
PO Box 33135 9935 SE Taggart Street
Portland, OR 97292 Portland, OR 97266

Representative: Robert W Reed
34144 SE Jar Road
Boring, OR 97009
(503)-668-0892

Site Address: 9935 SE Taggart Street

Legal Description: LOT 1, PARTITION PLAT 1993-21
Tax Account No.: R649730810
State ID No.: 1S2E09AA 04101
Quarter Section: 3340
Neighborhood: Powellhurst-Gilbert, contact John McDonald at 503-753-4226.
Business District: Midway, contact Bill Dayton at 503-252-2017.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.
Plan District: Johnson Creek Basin
Zoning: Residential 5,000 (R5) w/ Alternative Design Density Overlay (a)
Case Type: Adjustment (AD)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant is requesting an adjustment to the maximum lot area standard within the R5 zone (33.610.200) of 8,500 square feet to facilitate a property line adjustment.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are: **33.805.040 A.-F., Approval Criteria for Adjustments.**

ANALYSIS

Site and Vicinity: The site is approximately 13,503 square feet and is located on SE Taggart Street which ends as a cul-de-sac before connecting to SE 101st Avenue. The site currently has an existing single story residence and an existing single story detached garage. The surrounding lots are approximately between 10,856 square feet to 5,199 square feet, and characterized by single family residences on originally platted lots or on more recent subdivided properties

Zoning: The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood.

Land Use History: City records indicate one land use review (LUR 91-00538) pertaining to a 3-lot land division. Although that decision was approved, it does not impose any constraints on this current land use review.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **December 22, 2008**. The following Bureaus have responded:

- Bureau of Environmental Services responded that there are two drywells on the site. The existing drywell located east of the existing house appears to be within Parcel 2 or on the new property line that will be established. BES has recommended approval of the current adjustment because there appears to be adequate area for stormwater facilities. However, BES has noted that it would not support the property line adjustment the applicant is showing on the site plan until an appropriate stormwater facility meeting setback requirements is constructed or a legal easement agreements are recorded. For additional information see Exhibit E-1.
- Bureau of Transportation Engineering responded that there are no concerns with the proposed adjustment. However, it is noted that future development may require dedication of frontage (SE Taggart Street) for completion of a turnaround/cul-de-sac and pedestrian corridor, as well as frontage improvements. For additional information see Exhibit E-2.
- Site Development Section of BDS responded and supports the adjustment to the maximum lot area. However, the applicant will need to address the issues and meet the conditions that Site Development has noted in their response, when the applicant applies for a property line adjustment. For additional information see Exhibit E-3.
- Water Bureau, Fire Bureau, Bureau of Parks-Forestry Division, and Life Safety Plans Examiner all have responded with no concerns (Exhibit E-4).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on December 22, 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

APPROVAL CRITERIA FOR ADJUSTMENTS

33.805.010 Purpose

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 zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and 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 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F., below, have been met. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

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

Findings: The applicant is requesting an adjustment to allow a piece of land identified as Lot 2 (Exhibit C-1) to exceed the maximum lot area standard of 8,500 square feet in the R5 zone. The purpose of the lot dimension standards for lots in the RF through R5 zones (33.610.200) ensure that:

- **Each lot has enough room for a reasonably-sized house and garage;**
- **Lots are of a size and shape that development on each lot can meet the development standards of the zoning code;**
- **Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;**
- **Each lot has room for at least a small, private outdoor area;**
- **Lots are compatible with existing lots;**
- **Lots are wide enough to allow development to orient toward the street;**
- **Lots don't narrow to an unbuildable width close to the street**
- **Each lot has adequate access from the street;**
- **Each lot has access for utilities and services; and**
- **Lots are not landlocked.**

The applicant desires to adjust the common property line between 9935 SE Taggart Street (Lot 1 of PP 1993-21) and the adjacent lot to the east (Lot 2 of PP 1993-21) which is vacant. The proposal would result in a reduction in area for Lot 1 from 13,503 square feet to approximately 7,362 square feet and increase in area for Lot 2 from 5,662 square feet to approximately 11,535 square feet. Because Lot 2 will exceed the maximum lot area in the R5 zone an adjustment is requested.

The existing residence (9935 SE Taggart St.) will be retained within Lot 1 and an existing garage that was associated with this house will now be located within Lot 2 and be the only structure on the lot as a result of the proposed PLA. Accessory structures are only allowed on a lot in conjunction with a primary building. Therefore, at the time of the PLA a covenant (33.110.250.B.3.b) will be required to allow the detached garage to be temporarily located on Lot 2 without a primary structure. Each Lot will meet the dimensional requirements of the zone and be of a size and shape that may accommodate a reasonably sized house and garage. The existing dwelling located within Lot 1 is in compliance with applicable setback and building coverage standards for the R5 zone. The existing garage to be located on Lot 2 is situated in a manner that will allow sufficient room to construct a primary residence.

In accordance with density standards for lots in RF through R5 zones, the combined maximum density of both lots is 3. Prior to the PLA, the maximum density for Lot 1 is 2 lots and the

maximum density for Lot 2 is 1 lot. The proposed PLA will simply result in a trade of density between the two lots. Therefore no gross change in density will result from the proposed adjustment. If the existing detached garage within proposed Lot 2 were to be removed the property could be split into two parcels that would allow for a reasonably sized house and garage and be of a configuration that would allow development to meet applicable standards of the zoning code.

The outdoor area available to the existing dwelling within Lot 1 is well in excess of the minimum requirement of 250 square feet in the R5 zone. The existing dwelling within Lot 1 is oriented toward the street and that orientation will not change as a result of this Adjustment; nor will it change with the subsequent Property Line Adjustment. Proposed Tract 2 is of a width that may accommodate the maximum density and provide for lots that can be wide enough to contain development oriented towards SE Harold Street.

Surrounding lots on SE Taggart Street range in size from approximately 13,503 (Lot 1) to 5,199 square feet with a number of lots at approximately 9,500 square feet. Therefore, Lot 2 will be compatible with existing lots. Each Tract of land contains adequate access from a public right-of-way that contains services and utilities that may accommodate existing and future development. However, as noted by the Bureau of Transportation (Exhibit E-2) right-of-way improvements may be required for SE Taggart Street for new development on Lot 2.

Based on the discussion above, the purpose of the maximum lot area standard can continue to be met and, therefore, this Adjustment criterion can be satisfied.

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 requested Adjustment is for a site in a residential zone that allows a variety of lot sizes, lot configurations, and housing types. The Zoning Map (Exhibit B) provides some evidence of the lot configurations in the area. Based on the findings associated with criterion A, the request to adjust the lot size standards to allow Tract 2 to exceed 8,500 square feet in area can meet the purposes of this regulation. The property line adjustment, facilitated by this adjustment request, will not physically alter the appearance of the neighborhood as viewed from SE Taggart Street as the existing structures will remain. Therefore, granting the Adjustment will have no impact on the livability or appearance of the residential area. This criterion can be 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

Findings: Only one adjustment is requested. This criterion is not applicable.

D. City-designated scenic resources and historic resources are preserved; and

Findings: The site does not contain any scenic or historic resource designations. This criterion is not applicable.

E. Any impacts resulting from the adjustments are mitigated to the extent practical;

Findings: As addressed in the preceding findings, there are no discernable impacts that will result from the proposed adjustment. Since the existing dwelling will likely remain and be largely unchanged when viewed from the street, the requested Adjustment will have little impact on the appearance or livability of this residential area. Lot 2 exceeds the maximum lot

area for the zone but will be available for future development or a potential land division consistent with the zone. For the purpose of the requested lot size adjustment there will be little resulting impact. Therefore, no mitigation is required and this criterion can be met.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: The site is not within an environmental overlay zone. This criterion is not applicable.

DEVELOPMENT STANDARDS

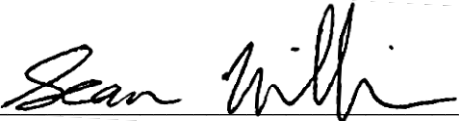
Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be 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 applicant proposes one adjustment to maximum lot size for a tract of land associated with a property line adjustment. As noted in this report, the proposal to allow property identified as Lot 2 to exceed the maximum lot size for the R5 zone is able to meet the adjustment approval criterion based on substantial conformance with applicable standards and established situations on the site and in the surrounding neighborhood.

ADMINISTRATIVE DECISION

Approval of an adjustment to maximum lot size (33.610.200) to allow Lot 2 to be reconfigured to a size of 11,535 square feet as a result of a subsequent property line adjustment per the approved site plan.

Decision rendered by:  **on January 23, 2009**
By authority of the Director of the Bureau of Development Services

Decision mailed: January 27, 2009

Staff Planner: Sean Williams

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 December 11, 2008, and was determined to be complete on December 19, 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 December 11, 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 Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on February 10, 2009** 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 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 Adjustment Committee 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 Adjustment Committee 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 **February 11, 2009 – (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)
- C. Plans/Drawings:
 1. Proposed Site Plan (attached)
- 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

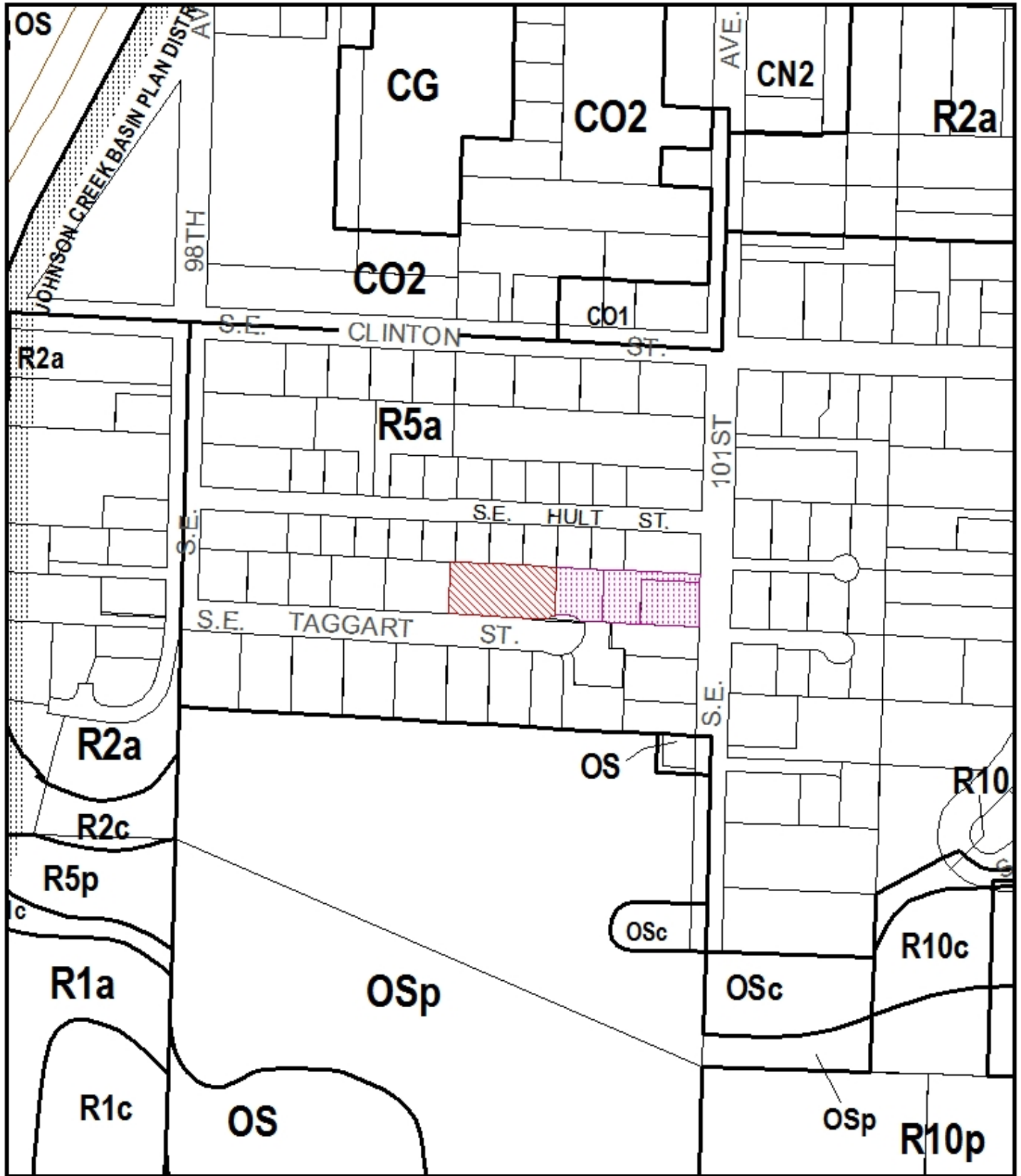
3. Site Development Review Section of BDS
4. Water Bureau, Fire Bureau, Bureau of Parks, Forestry Division & Life Safety Plans Examiner

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. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



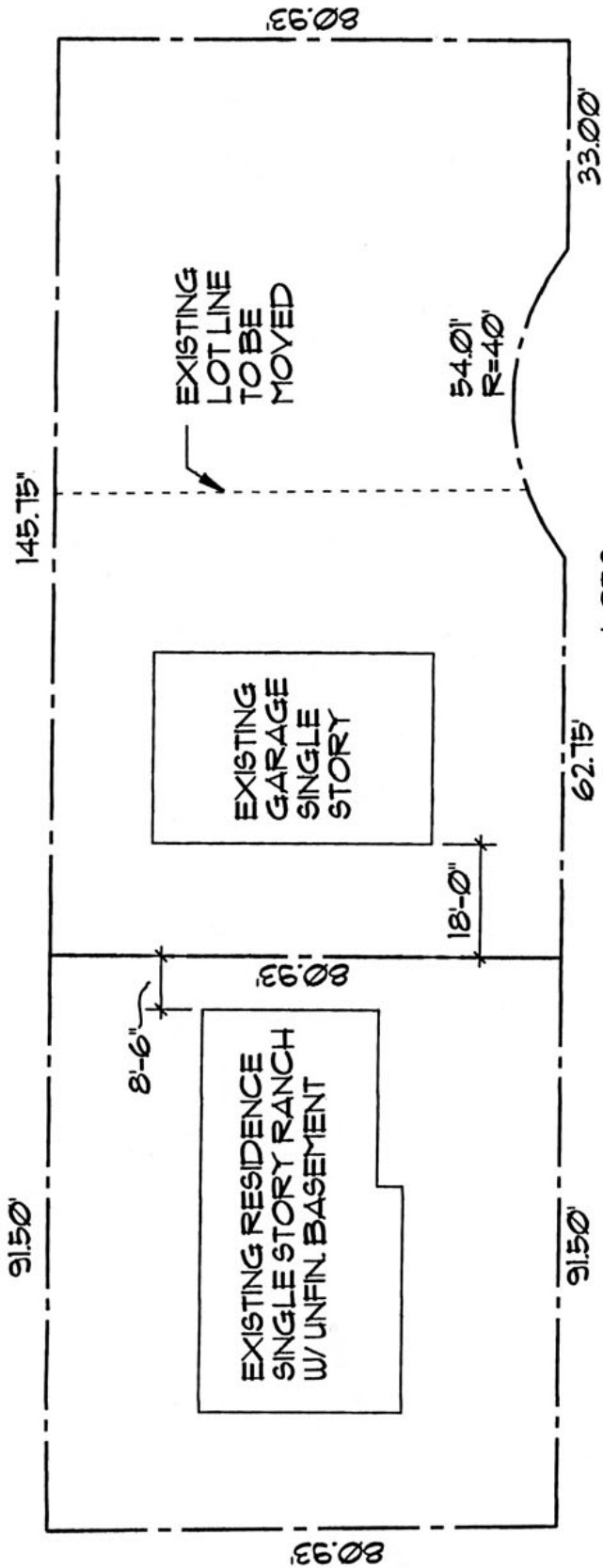
ZONING

-  Site
-  Also Owned



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	LU 08-189802 AD
1/4 Section	3340
Scale	1 inch = 200 feet
State_Id	1S2E09AA 4101
Exhibit	B (Dec 12, 2008)

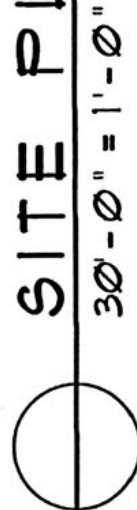


LOT 1
 7362 SQ. FT.
 0.169 ACRE
 9935 SE TAGGART

LOT 2
 11535 SQ. FT.
 0.264 ACRE
 NO ADDRESS AVAILABLE

ALL LOT LINE DIMENSIONS ARE TO BE VERIFIED
 BY SURVEYOR UPON APPROVAL

SITE PLAN - PROPOSED



CASE NO. 08-189802
 EXHIBIT C-1

12/03/08

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LU 08-189802AD

ROBERT W. REED
 ARCHITECT
 34144 SE Jarl Road
 Beving Oregon 97009
 Phone and Fax:
 (503) 658-0892