



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

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Date: February 27, 2009
To: Interested Person
From: Suzanne Savin, Land Use Services
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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 09-104664 ZE

GENERAL INFORMATION

Applicant: City of Portland, Bureau Of Development Services
Contact: Susan McKinney, Land Use Services
1900 SW 4th Avenue, Ste 5000
Portland, OR 97201

Owner: Pink Feather Inc
11825 SE Revenue Rd
Boring, OR 97009-9707

Also Notify: Scott Ogle
Pink Feather Restaurant
14154 SE Division Street
Portland, OR 97236

Site Address: 14154 SE DIVISION ST

Legal Description: TL 200 0.20 ACRES, SECTION 11 1 S 2 E; TL 100 0.20 ACRES, SECTION 11 1 S 2 E

Tax Account No.: R992112950, R992112960

State ID No.: 1S2E11AA 00200, 1S2E11AA 00100

Quarter Section: 3344

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

Current Zoning: R1a (Multi-Dwelling Residential 1,000, with Alternative Design Density Overlay Zone)

Proposed Zoning: CN1 (Neighborhood Commercial 1)

Case Type: ZE (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, to change the zoning for this site from the existing designation of Multi-Dwelling Residential with an Alternative Design Density Overlay (R1a) to Neighborhood Commercial 1 (CN1). The site consists of two contiguous tax lots, totaling approximately 17,699 square feet, which abut SE Division Street. The east tax lot contains a restaurant building and paved parking, and the west tax lot contains additional paved parking.

Prior to the site being annexed into the City of Portland in June 1994, County zoning on the site was MR-4, with an approved restaurant use. The site was the subject of two Multnomah County reviews: a 1957 review that approved conversion of a tavern into a club and restaurant (MC 20-57), and a 1959 review that approved an expansion of the restaurant (MC 16-59).

The residential designation of R3a that was placed on the site following annexation by the City of Portland does not allow retail sales and service uses, and so made the existing restaurant a nonconforming use. When a documented, allowed retail sales and service use exists on a site with a County zoning designation of MR-4, Portland Zoning Code Table 855-1 requires the designation to be CN1 (Neighborhood Commercial 1), rather than the comparable Portland residential designation of R3. In 1996, the Outer Southeast Community Plan re-zoned the site from R3a to R1a, which also does not allow retail sales and service uses.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are the criteria of Zoning Code Section 33.855.070.A (Corrections to the Official Zoning Maps – Mapping errors).

ANALYSIS

Site and Vicinity: The site is comprised of two contiguous lots, both of which have frontage on SE Division Street, which total approximately 17,699 square feet in size. The eastern lot contains the restaurant building and a portion of the paved parking area associated with the building. The western lot contains the remainder of the paved parking area associated with the building.

To the north of the site, on the north side of SE Division Street, are properties zoned R3a and R2a. These properties are developed with single-dwelling residences, multi-dwelling buildings, and a self-storage facility. To the east of the site is a mobile home park on an approximately 269,000 square foot site, which is zoned R2a. To the south of the site are properties zoned R1a, developed with single-dwelling residences and multi-dwelling buildings. To the immediate west of the site is a property zoned CN2, developed with a restaurant. Further west are properties zoned R1a, developed with multi-dwelling buildings and single-dwelling residences.

Current Zoning: The site is zoned R1a, Multi-Dwelling Residential 1,000, with Alternative Design Density Overlay Zone. The multi-dwelling zones are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing. The R1 zone is a medium density multi-dwelling zone. It allows approximately 43 units per acre. Density may be as high as 65 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one to four story buildings and a higher percentage of building coverage than in the R2 zone. The major type of new housing development will be multi-dwelling structures (condominiums and apartments), duplexes, townhouses, and rowhouses. Generally, R1 zoning will be applied

near Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.

The purpose of the Alternative Design Density Overlay Zone (designated with the letter 'a') is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements. In the R1 zone, the 'a' overlay allows bonus residential density when the proposed dwelling units go through a Type III design review process.

Retail sales and service uses, such as restaurants, are prohibited in the R1 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 CN1, Neighborhood Commercial 1. The Neighborhood Commercial 1 (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. Some uses which are not retail or service in nature are also allowed so a variety of uses may locate in existing buildings. Uses are restricted in size to promote a local orientation and to limit adverse impacts on nearby residential areas. Development is intended to be pedestrian-oriented and compatible with the scale of surrounding residential areas. Parking areas are restricted, since their appearance is generally out of character with the surrounding residential development and the desired orientation of the uses.

Land Use History: City records indicate three prior land use reviews for this site. The first two land use reviews listed below are Multnomah County reviews that took place before the site was annexed into the City of Portland in 1994.

MC 20-57: A Multnomah County review that occurred in 1957. This review approved conversion of a tavern into a club and restaurant.

MC 16-59: A Multnomah County review that occurred in 1959. This review approved an expansion of the restaurant.

LU 08-176537 NU: A 2008 Nonconforming Situation Review to add a smoking shelter to the rear of the restaurant. The applicant withdrew this application before a decision was issued.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **February 3, 2009**. The following Bureaus have responded with no issues or concerns:

- Water Bureau
- Fire Bureau
- Bureau of Parks-Forestry Division
- Bureau of Transportation Engineering

The Bureau of Environmental Services (BES) responded that BES does not object to the zoning map error correction, as there are adequate public services available under the proposed zoning designation of CN1. BES has no conditions of approval. The response included advisory information and details on the location and sizing of sanitary and stormwater facilities in the immediate vicinity of the site, for the benefit of the applicant. (Exhibit E-1)

The Site Development Section of BDS responded that Site Development has no objection to the requested land use review. The response included advisory information for the benefit of the applicant. (Exhibit E-2)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on February 3, 2009. 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.

Findings: Following a request by the applicant, 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; or

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 1994. 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 site (and abutting properties to the south) was re-zoned to R1 and the “a” overlay designation was added with the 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 states, “Sites with a documented, approved office are CO1. Sites with a documented, approved retail or commercial use are CN1.” A documented, approved commercial use (restaurant) existed on this site prior to 1994, as shown by the Multnomah County reviews approving conversion of a tavern to a restaurant (MC 20-57) and expansion of the restaurant (16-59), as well as electrical permits for the restaurant approved by Multnomah County in 1992 and 1993.

Because a documented and approved commercial use existed on the site at the time of annexation, the property should have been automatically rezoned to CN1 upon annexation, not R3. The zoning error was compounded when the site was rezoned to R1 and the “a” overlay was placed on the site with the zoning adopted for the Outer Southeast Community Plan.

Sufficient evidence exists of legislative intent that the appropriate comparable zoning for the site was CN1 rather than R3, and that the rezoning of the site in 1996 to R1 with “a” overlay was an additional error, as the R1a zone 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

There is sufficient evidence that the legislative intent of Title 33, Table 855-1 was to place CN1 zoning on the site, given the previous County zoning on the site and the fact that the site contains a documented, approved commercial use that was present prior to the site's annexation to the City. The CN1 zone was intended to be placed on sites that were previously mapped with County MR-4 zoning and that contained documented, approved commercial uses.

ADMINISTRATIVE DECISION

Approval of a Zoning Map Error Correction, from R1a to CN1, in conformance with Exhibit B.2.

Decision rendered by:  on February 25, 2009.

By authority of the Director of the Bureau of Development Services

Decision mailed: February 27, 2009

Staff Planner: Suzanne Savin

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 January 26, 2009, and was determined to be complete on January 30, 2009.

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 January 26, 2009.

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 March 13, 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 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 **March 16, 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.

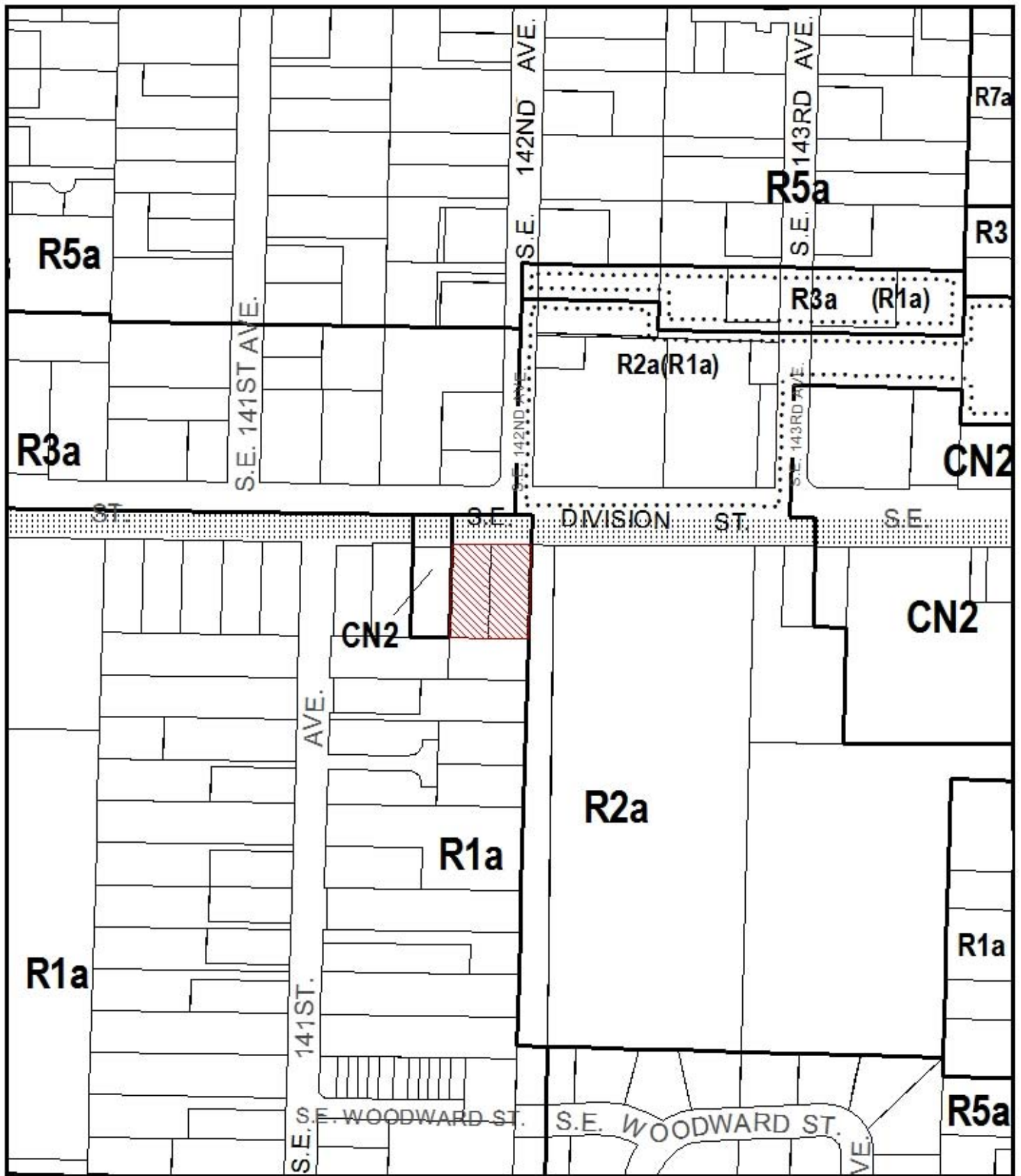
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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 Maps
 - 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 Section of BDS
 - 3. "No concerns" responses from the Bureau of Transportation Engineering and Development Review, Water Bureau, Fire Bureau, Bureau of Parks - Forestry Division
- F. Correspondence:
 - 1. No correspondence received.
- G. Other:
 - 1. Memo from Rodney Jennings, City Planner, Bureau of Planning, December 23, 2008
 - 2. Site History Research



ZONING EXISTING

 Site

File No. LU 09-104664 ZE

1/4 Section 3344,3345

Scale 1 inch = 200 feet

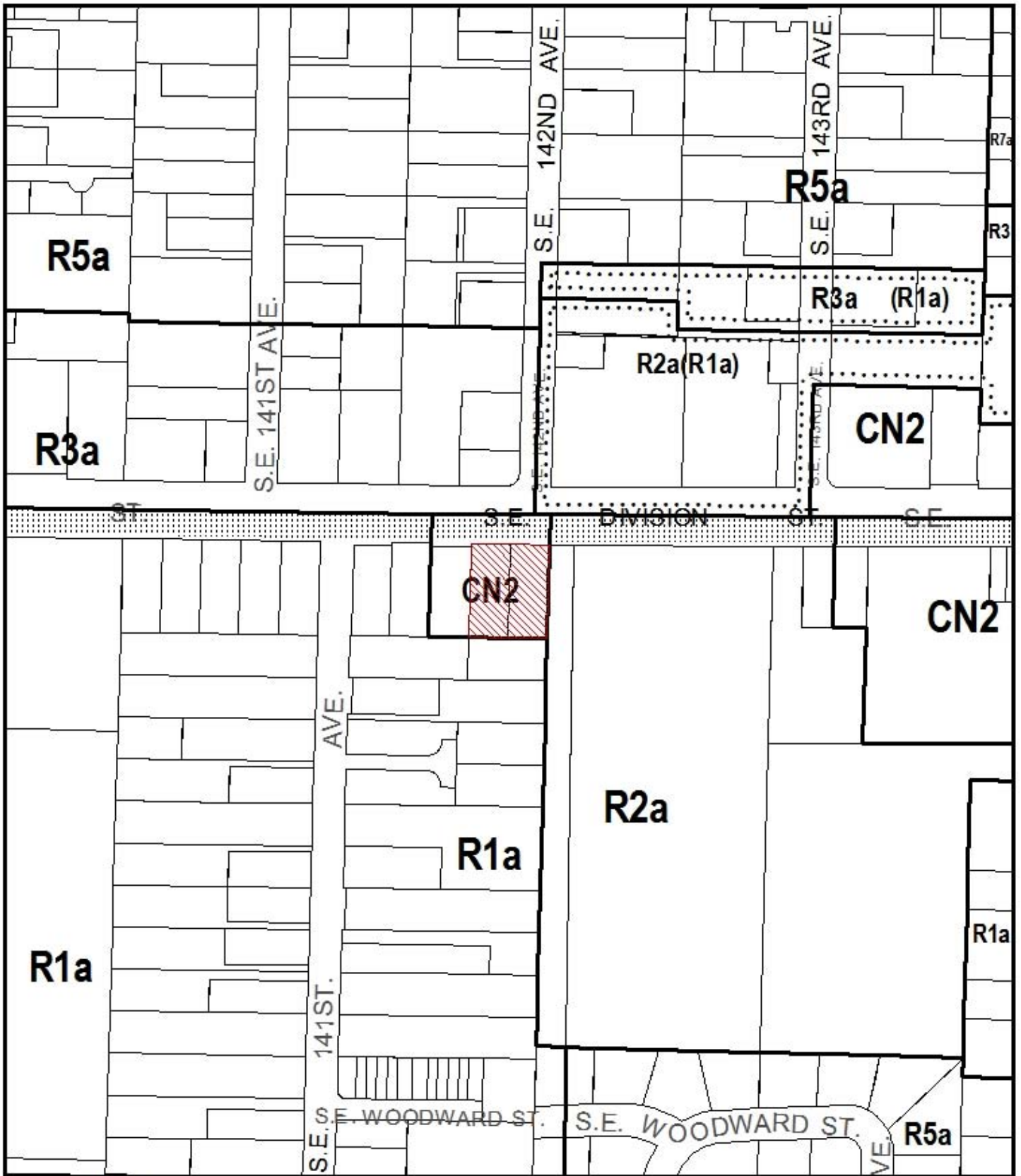
State Id 1S2E11AA 200

Exhibit B (Jan 28,2009)



NORTH

This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT



ZONING PROPOSED

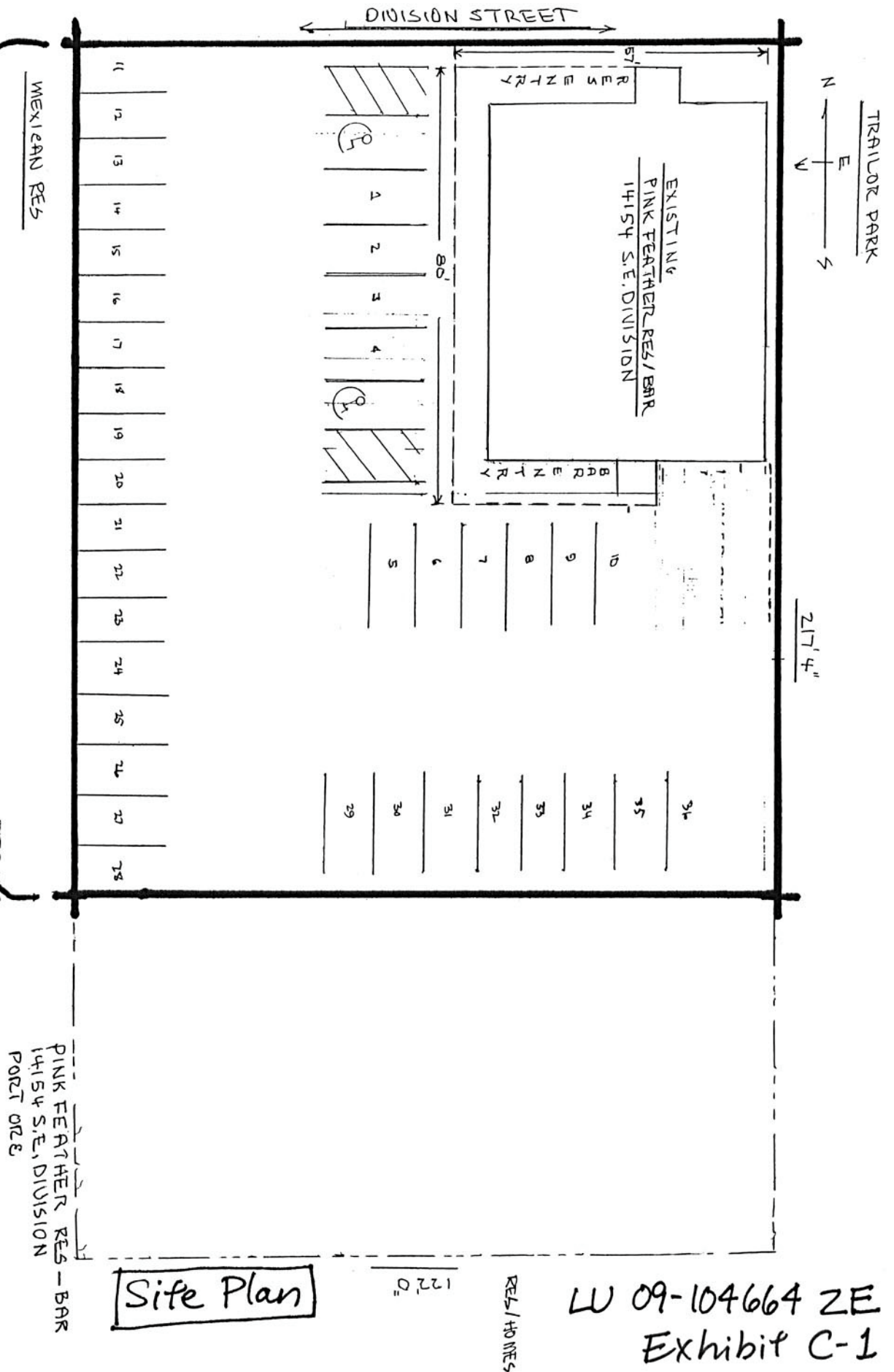
 Site



This site lies within the:
JOHN SON CREEK BASIN PLAN DISTRICT

File No.	<u>LU 09-104664 ZE</u>
1/4 Section	<u>3344,3345</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E11AA 200</u>
Exhibit	<u>B</u> (Jan 29,2009)

Site that is the subject of Zoning Map Error Correction request



Site Plan

1/2" = 120'

REL/HO NRES

LU 09-104664 ZE
Exhibit C-1

PINK FEATHER RES - BAR
14154 S.E. DIVISION
PART ONE