



CITY OF
PORTLAND, OREGON

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File No.: LU 09-131599 ZC (HO 4090018)

Applicant: Bob Schatz
Allusa Architecture
2118 SE Division St.
Portland, OR 97202

Owner: David R Columbus
PO Box 12582
Portland, OR 97212-0582

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representative: Matt Wickstrom

Site Address: 1415 NE 63RD AVE

Legal Description: LOT 3 BLOCK 1, NORTH VALE

Tax Account No.: R614100050

State ID No.: 1N2E32BB 01600

Quarter Section: 2937

Neighborhood: Rose City Park

Business District: Portland International District Business Association

District Coalition: Central Northeast Neighbors

Zoning: R5 (R1) – Residential 5,000 with a Comprehensive Plan Map designation of Residential 1,000

Land Use Review: Type III, ZC (Zone Change - Zoning Map Amendment)

BDS Staff Recommendation to Hearings Officer: Approval

Public Hearing: The hearing was opened at 9:00 a.m. on July 29, 2009, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland OR, and was closed at 9:32 a.m. The applicant waived applicant's rights granted by ORS 197.763 (6)(e), if any, to an additional 7 day time period to submit written rebuttal into the record. The record was closed at the end of the hearing.

Testified at the Hearing:

Matt Wickstrom, BDS Staff Representative

Bob Schatz, Allusa Architecture, 2118 SE Division St., Portland, OR 97202

Liesl Close, 1414 NE 63rd Ave., Portland, OR 97213

Bob Haley, PBOT, Bldg. 106 / Room 800

Proposal:

The applicant requests a Zoning Map Amendment in compliance with the Comprehensive Plan Map designation for this 5,000 square foot site which is located on NE 63rd Avenue south of NE Halsey Street. The Zoning Map Amendment would change the current base zone designation for the site from R5 (Residential 5,000) to R1 (Residential 1,000). The Zoning Code allows a maximum of 5 dwelling units to be built on a 5,000 square foot site in the R1 zone while the current zoning, R5, would allow a maximum of 1 dwelling unit. A Type III Zoning Map Amendment Review is required when an applicant requests a change to the current zoning of a site in compliance with the Comprehensive Plan Map designation.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of the Portland Zoning Code ("PZC") Title 33. The relevant approval criteria are:

- PZC 33.855.040 Zoning Map Amendments: Approval Criteria for Base Zone Changes

II. ANALYSIS

Site and Vicinity: This 5,000 square foot site is located on NE 63rd Avenue, one lot south of NE Halsey Street. The site is developed with a small single-dwelling residence and a small garage/shed. For the purposes of this review, the vicinity is defined as the area within 400 feet of the site. A lot which fronts on NE Halsey Street and which is developed with a small office building, a parking lot and a detached house is located immediately north of the site. Development on the other side of NE Halsey Street and further north from that lot is primarily single-dwelling residential. Single-dwelling residential development is also the primary type of development to the west and south of the site. Single-dwelling residential development is also located directly across NE 63rd Avenue from the site while a warehouse used as industrial service space is located to the southeast of the site and a larger warehouse complex is located further east.

Zoning: The site is zoned R5 (Residential 5,000) with a Comprehensive Plan Map designation of R1 (Residential 1,000).

The R5 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet.

The R1 zone allows multi-dwelling residential development up to a maximum density of one unit per 1,000 square feet of site area, and requires a minimum density of one unit per 2,000 square feet for sites less than 10,000 square feet in area.

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

Agency Review: A “Request for Response” was mailed June 16, 2009. The following Bureaus have responded:

- The Site Development Section of BDS responded with no objections to the proposal. The response notes that additional infiltration testing may be required at the time of building permit review (Exhibit E-1).
- The Police Bureau responded with support of the Zoning Map Amendment and suggested the applicant to contact the Bureau in the future regarding development of the site (Exhibit E-2).
- The Water Bureau responded with information on water service for the site. The response notes no objections to the proposal and no conditions of approval (Exhibit E-3).
- The Development Review Section of the Bureau of Transportation responded with no objections to the proposal. The response notes a relatively small net increase in vehicle trips which would result from the zone change, no critical shortage of on-street parking and the proximity of the site to a light rail stop and two bus lines (Exhibit E-4).
- The Bureau of Environmental Services responded with no objections to the proposal. The response provides information on sanitary services, stormwater management and building permits (Exhibit E-5).
- The Parks Bureau and the Life Safety Section of BDS responded with no concerns (Exhibit E-6).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on July 6, 2009. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal. One neighbor (Liesl Close) expressed concerns regarding traffic, on-street parking, and the results of approval of the application on neighborhood livability. The Hearings Officer responded to Ms. Close’s comments, when relevant, in the approval criteria findings below.

ZONING CODE APPROVAL CRITERIA

Zone Change

PZC 33.855.010 Purpose

This chapter states the procedures and approval criteria necessary to process an amendment to the base zones, overlay zones, plan districts, and other map symbols of the Official Zoning Maps. The chapter differentiates between amendments which are processed in a quasi-judicial manner and those processed in a legislative manner. A discussion of quasi-judicial and legislative is found in PZC 33.700.070.

PZC 33.855.050 Approval Criteria for Base Zone Changes

An amendment to the base zone designation on the Official Zoning Maps will be approved (either quasi-judicial or legislative) if the review body finds that the applicant has shown that all of the following approval criteria are met:

A. Compliance with the Comprehensive Plan Map. The zone change is to a corresponding zone of the Comprehensive Plan Map.

1. When the Comprehensive Plan Map designation has more than one corresponding zone, it must be shown that the proposed zone is the most appropriate, taking into consideration the purposes of each zone and the zoning pattern of surrounding land.
2. Where R zoned lands have a C, E, or I designation with a Buffer overlay, the zone change will only be approved if it is for the expansion of a use from abutting nonresidential land. Zone changes for new uses that are not expansions are prohibited.
3. When the zone change request is from a higher-density residential zone to a lower-density residential zone, or from the CM zone to the CS zone, then the approval criterion in 33.810.050 A.2 must be met.

Findings: The applicant requests a zone change from R5 (Residential 5,000) to R1 (Residential 1,000). There is only one corresponding zone for the Residential 1,000 designation, which is R1; the site does not have a C, E, or I designation with a Buffer overlay; and, the request does not include a change in zoning from a higher-density residential zone to a lower-density residential zone, or from the CM zone to the CS zone. Based on this information, the Hearings Officer finds this approval criterion is met.

B. Adequate public services. Public services for water supply, transportation system facilities and capacity, and police and fire protection are capable of supporting the uses allowed by the zone or will be capable by the time development is complete, and proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services.

1. Adequacy of services applies only to the specific zone change site.

2. Adequacy of services is based on the projected service demands of the site and the ability of the public services to accommodate those demands. Service demands may be determined based on a specific use or development proposal, if submitted. If a specific proposal is not submitted, determination is based on City service bureau demand projections for that zone or area which are then applied to the size of the site. Adequacy of services is determined by the service bureaus, who apply the demand numbers to the actual and proposed services to the site and surrounding area.
3. Services to a site that is requesting rezoning to IR Institutional Residential, will be considered adequate if the development proposed is mitigated through an approved impact mitigation plan or conditional use master plan for the institution.

Findings: The Site Development Section of BDS responded that the results of the simplified open pit infiltration testing submitted by the applicant demonstrates that the stormwater services approval criterion can be met using on-site infiltration of stormwater.

The Police Bureau responded with no objections to the proposal.

The Water Bureau responded with no concerns about the proposal at this time. The response does not note any deficiencies in water service for this site.

The Development Review Section of Portland Transportation (“PBOT”) reviewed the proposal for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services. The PBOT response notes that the frontage of the site is improved with a 4-foot wide sidewalk and a 6-foot wide landscape strip for a 10-foot wide pedestrian corridor. The PBOT response notes that for a site in the R1 zone along a Local street, the Pedestrian Design Guide recommends an 11-foot pedestrian corridor. The PBOT response also discusses trip generation noting that currently the site could generate 10 daily trips with 1 trip occurring in each of the peak hours. With up to 5 multi-dwelling units the site could generate approximately 28 additional trips with 3 of those occurring within each peak hour. The PBOT response notes that this is a relatively small net increase in trips which is not expected to have any significant impact on the level of service or street capacity of nearby intersections. The PBOT response states that the site is in proximity to a light rail stop and two bus lines and that based on information provided by the applicant, there appears to be no critical shortage of on-street parking. Finally, the PBOT response notes that the area streets are mostly fully improved with curbs and sidewalks. PBOT concluded its response by stating “after a review of transportation related approval criteria and evaluation factors, Transportation Engineering/Development Review finds that the transportation system can safely support the proposal in addition to the existing uses in the area.”

Ms. Close testified that she had talked with a number of her neighbors and they were concerned with the quantity of traffic now using the street; in particular traffic generated by industrial and office uses at the south end of 63rd. Ms. Close also related neighbor concerns regarding a perceived shortage of on-street parking in the neighborhood.

Mr. Haley, a representative from PBOT, also provided testimony at the hearing regarding transportation issues. Mr. Haley emphasized, during his testimony, that NE 63rd is a local service street and his observations support that the industrial, office and residential uses are using 63rd for local service purposes. Mr. Haley noted that no traffic counts were taken, as part of this application, but he estimated that the street and intersection (Halsey and 63rd) were operating well within capacity. Mr. Haley testified that if the subject property was developed to its maximum allowed density for R1 zoning, the additional vehicle trips would be insignificant in the context of the street and intersection capacity. Mr. Haley did agree with Ms. Close that on-street parking is a factor to consider when looking at “adequacy of services.” Mr. Haley stated that he requested the applicant take photos in the evening and weekend hours of on-street parking on NE 63rd. Mr. Haley stated that photos were submitted by the applicant showing approximately 50% utilization of on-street parking during the evening and/or weekend times. Mr. Haley concluded that there is adequate on-street parking to accommodate additional residential units that may result if this application is approved.

The Hearings Officer finds that transportation services are adequate if this application is approved.

The Bureau of Environmental Services (BES) responded with no objections to the proposal and noted that future development of the site will be subject to BES standards and requirements during the building plan review process. The response also provides information on sanitary services, stormwater management and building permit requirements.

Based on the foregoing agency responses, services are adequate for the uses and maximum density that would be allowed in the R1 zone, so Criterion B.1 and B.2 are met. Since this proposal does not include a request for IR zoning, Criterion B.3 does not apply.

The Hearings Officer finds this approval criterion is met.

- C. When the requested zone is IR, Institutional Residential.** In addition to the criteria listed in subsections A and B of this Section, a site being rezoned to IR, Institutional Residential must be under the control of an institution that is a participant in an approved impact mitigation plan or conditional use master plan that includes the site. A site will be

considered under an institution's control when it is owned by the institution or when the institution holds a lease for use of the site that covers the next 20 years or more.

Findings: The applicant is not requesting that the site be rezoned to IR; therefore, the Hearings Officer finds this criterion is not applicable.

- D. Location.** The site must be within the City's boundary of incorporation. See Section 33.855.080.

Findings: The site is within Portland's boundary of incorporation, so the Hearings Officer finds 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 PZC 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.

III. CONCLUSIONS

The applicant requests a Zoning Map Amendment to change the zoning on this 5,000 square foot site from R5 (Residential 5,000) to R1 (Residential 1,000) in compliance with the Comprehensive Plan Map designation for the site. The R1 zone allows a maximum density of 1 unit per 1,000 square feet of site area. This would allow a maximum of 5 dwelling units on the site provided that amenity bonuses are not used. Since the service agencies have determined that police, water, sewer and transportation services are adequate to support the uses and development allowed in the R1 zone, the proposal satisfies the relevant approval criteria. Based on this information and the findings in this report, the proposal should be approved.

IV. DECISION

Approval of a Zoning Map Amendment (33.855.040) to change the zoning from R5 (Residential 5,000) to R1 (Residential 1,000).

Gregory J. Frank, Hearings Officer

Date

Application Deemed Complete: June 10, 2009

Report to Hearings Officer: July 17, 2009
Decision Mailed: July 31, 2009
Last Date to Appeal: 4:30 p.m., August 14, 2009
Effective Date (if no appeal): August 17, 2009 Decision may be recorded on this date.

Conditions of Approval. 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.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER’S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201 (823-7526. Until 3:00 p.m., Monday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., file the appeal at the Reception Desk on the 4th Floor. **An appeal fee of \$3,552.50 will be charged (one-half of the application fee for this case).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization’s bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

BDS may also grant fee waivers to low income applicants appealing a land use decision on their primary residence that they own in whole or in part. 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. Individuals requesting fee waivers must submit documentation certifying their annual gross income and household size (copies of tax returns or documentation of public assistance is acceptable). Fee waivers for low-income individuals must be approved prior to filing your appeal; please allow three working days for fee waiver approval.

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.

- 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.

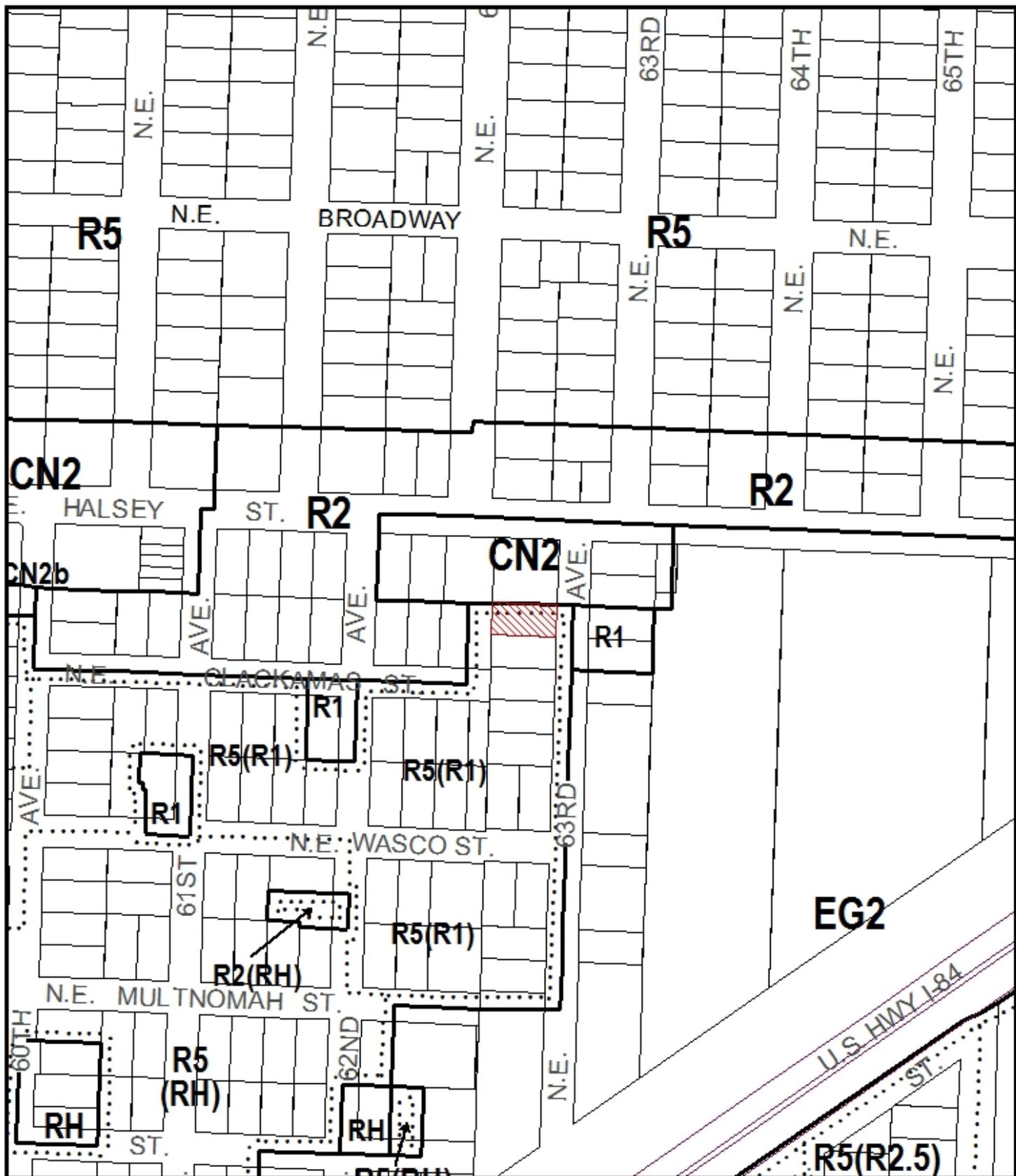
Expiration of approval. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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 Maps
 - 1. Existing Zoning (**attached**)
 - 2. Proposed Zoning (**attached**)
- C. Plans & Drawings
 - 1. Site Plan
- D. Notification information
 - 1. Request for response
 - 2. Posting letter sent to applicant
 - 3. Notice to be posted
 - 4. Applicant's statement certifying posting
 - 5. Mailing list
 - 6. Mailed notice
 - 7. Mailing list – Proposed Zoning Map
 - 8. Mailed notice – Proposed Zoning Map
- E. Agency Responses
 - 1. Site Development Section of BDS
 - 2. Police Bureau
 - 3. Water Bureau
 - 4. Development Review Section of the Bureau of Transportation
 - 5. Bureau of Environmental Services
 - 6. Summary sheet of Agency responses
- F. Letters: None received
- G. None
- H. Received in the Hearings Office
 - 1. Notice of hearing - Wickstrom, Matt
 - 2. Hearing Notice - Wickstrom, Matt
 - 3. Staff report - Wickstrom, Matt
 - 4. PowerPoint presentation - Wickstrom, Matt

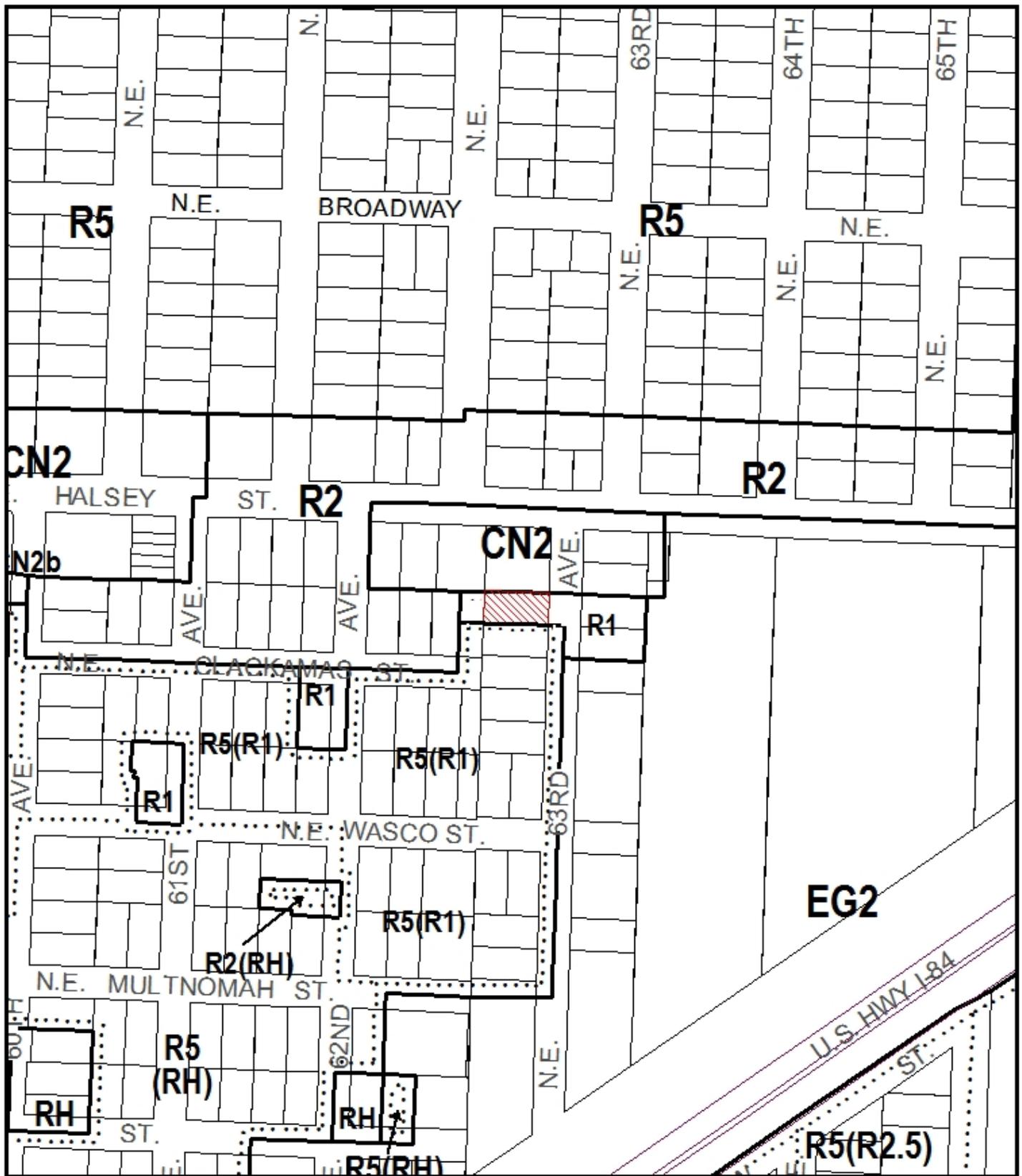


ZONING EXISTING

 Site



File No.	<u>LU 09-131599 ZC</u>
1/4 Section	<u>2937</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1N2E32BB 1600</u>
Exhibit	<u>B</u> (May 28, 2009)



ZONING PROPOSED

 Site



File No. LU 09-131599 ZC
 1/4 Section 2937
 Scale 1 inch = 200 feet
 State_Id 1N2E32BB 1600
 Exhibit B (May 28, 2009)