



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

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Portland, Oregon 97201  
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TTY 503-823-6868  
[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** December 14, 2009  
**To:** Interested Person  
**From:** Sheila Frugoli, Land Use Services  
503-823-7817 / [frugolis@ci.portland.or.us](mailto:frugolis@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 09-158905 ZE**

**GENERAL INFORMATION**

**Applicant:** Bureau of Development Services  
1900 SW 4<sup>th</sup> Avenue, Suite 5000  
Portland, Oregon 97201

**Owner/  
Representative:** Safeway Inc Store  
1850 Mt Diablo Blvd #250  
Walnut Creek, CA 94596-4432

Safeway Stores Inc.  
Diane Phillips, Real Estate Manager  
16300 SE Evelyn St.  
Clackamas, OR 97015

**Site Address:** 8145 SW BARBUR BLVD

**Legal Description:** TL 4200 1.94 ACRES, SECTION 21 1S 1E  
**Tax Account No.:** R991212050  
**State ID No.:** 1S1E21CB 04200  
**Quarter Section:** 3827

**Neighborhood:** Multnomah, contact Mary Verghies at 503-244-3553.  
**Business District:** None  
**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

**Plan District:** None  
**Zoning:** R1, Multi-Dwelling Residential 1,000 and CG, General Commercial

**Case Type:** ZE, Zoning Map Correction  
**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 8145 SW Barbur Boulevard, the Barbur Safeway Store. The correction will

change zoning from R1, Multi-Dwelling Residential 1,000 to CG, General Commercial on a small portion of the developed site. The northwest corner of the store is located within the R1 zone.

**RELEVANT APPROVAL CRITERIA:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are 33.855.070.A-C, Corrections to the Official Zoning Maps.

## ANALYSIS

**Site and Vicinity:** The 84,500 square foot site contains an approximate 20,000 square foot commercial building which houses the Barbur Safeway store. The store is located close to the rear (west) property line. The store's loading area is located on the south side of the store, with access off SW Multnomah Boulevard. Accessory parking is located between the store and the other fronting streets SW Capitol Hill Road and SW Barbur Boulevard. The other sites that abut the intersection of SW Barbur, SW Capitol Hill Road and SW 19<sup>th</sup> Avenue are zoned General Commercial. The uses include an equipment rental business, restaurant and retail shops. Single-dwelling residences are located on the north side of SW Capitol Hill Road, west of the commercial sites. West of the subject site, on the south side of SW Capitol Hill two of the lots are developed with single-dwellings. A tall laurel hedge screens the rear of the store from the residential lots. Further west on SW Capitol Hill Road is an apartment building and a large commercial office development—US West Communications.

**Zoning:** The CG zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market. 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 1,450 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 is prior land use reviews for this site. In 1968 a sign variance (VZ 2-68) was approved for the Safeway store.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **November 16, 2009**. The following Bureaus have responded with no issues or concerns:

- Portland Bureau of Transportation
- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks—Forestry Division

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on November 16, 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

**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:** Building permit records (permit #437475) show the current Safeway store constructed in 1968. The building footprint of the store has not changed since that date. Also in 1968, the City approved a sign Variance (Exhibit A.3). Attached to the decision was a zoning map which showed the northwest section, that is currently zoned R1, was zoned C2. The remaining portion of the site was within the C2 and S zones. The S, Sign Control Zone (Article 34) was applied “in locations where large numbers of advertising signs, business identification signs or outdoor advertising signs (billboards) would adversely affect traffic safety and the appearance and scenic outlook of the City...” It appears that the zoning line for the Sign zone was used as the dividing line between the R1, Multi-Dwelling zone and the C2 zone. The multi-dwelling zoning was applied in 1980 through the adoption of the City’s Comprehensive Plan Map. That zoning line has remained in place since 1980. The C2 zone was renamed CG, General Commercial in 1991 (Commercial Re-Mapping Project) and was not corrected during the Southwest Community Plan process.

According to Bureau of Planning and Sustainability staff, it was the City’s policy when developing the Comprehensive Plan Map to avoid creating split zoning on existing commercial properties (Exhibit A.2). Even though subsequent legislative rezoning projects occurred after 1980, it appears the map error was not identified until recently.

Based on the historic building permit, land use review and previous zoning maps the zoning on the map should be corrected from the current R1 zone to the CG 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.

## 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.

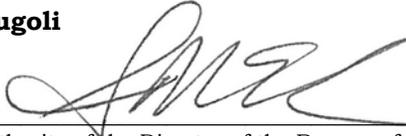
## CONCLUSIONS

There is sufficient evidence that a mapping error occurred during the Comprehensive Plan Map legislative project, prior to 1981. Because it has been the City's policy to avoid creating split zoning on existing commercial properties, a map correction is warranted.

## ADMINISTRATIVE DECISION

**Approval** of a Zoning Map Error Correction on tax lot 4200 (State ID # 1S1E21CB 04200) to change the zoning on the site from R1, Multi-Dwelling Residential 1,000 to CG, General Commercial, per Exhibit B.2.

**Staff Planner: Sheila Frugoli**

**Decision rendered by:**  **on December 10, 2009**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: December 14, 2009**

**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 September 18, 2009, and was determined to be complete on November 12, 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 September 18, 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. Unless further extended by the applicant, **the 120 days will expire on: March 9, 2010.**

**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 December 28, 2009** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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 call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, 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 **December 29, 2009 – (the day following the last day to appeal).**

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.

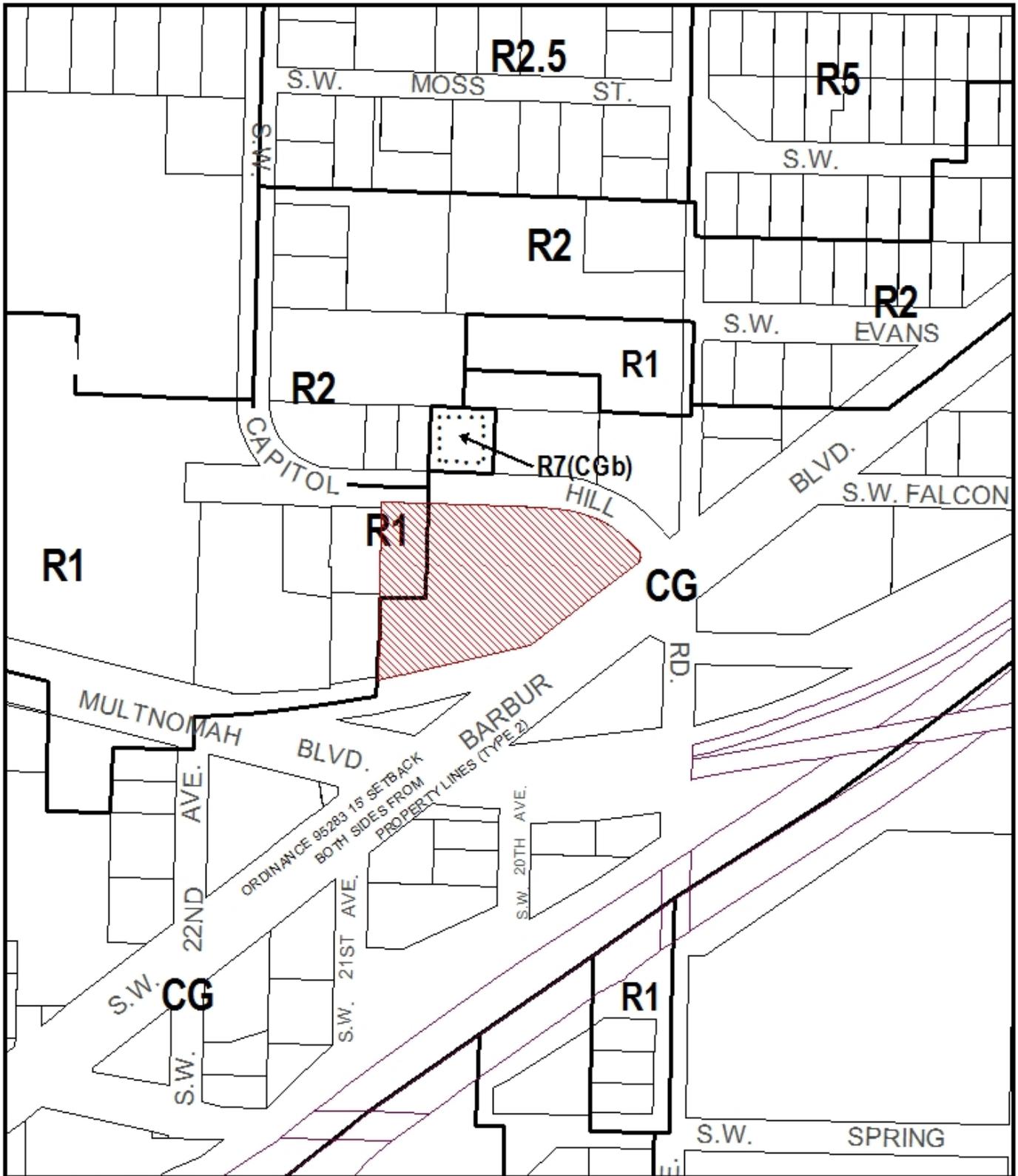
Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Application
  - 1. Request Form
  - 2. Memo from Bureau of Planning and Sustainability
  - 3. Sign Variance decision and map (VZ 2-68)
- B. Zoning Map
  - 1. Existing
  - 2. Proposed/Corrected (**attached**)
- C. Plans/Drawings:
  - 1. Site Plan
- 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. Water Bureau
  - 4. TRACS Printout showing response from Fire Bureau, Site Development Review Section of BDS and Bureau of Parks, Forestry Division
- F. Correspondence: NONE
- G. Other:
  - 1. LU Application form
  - 2. Site History Research

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**

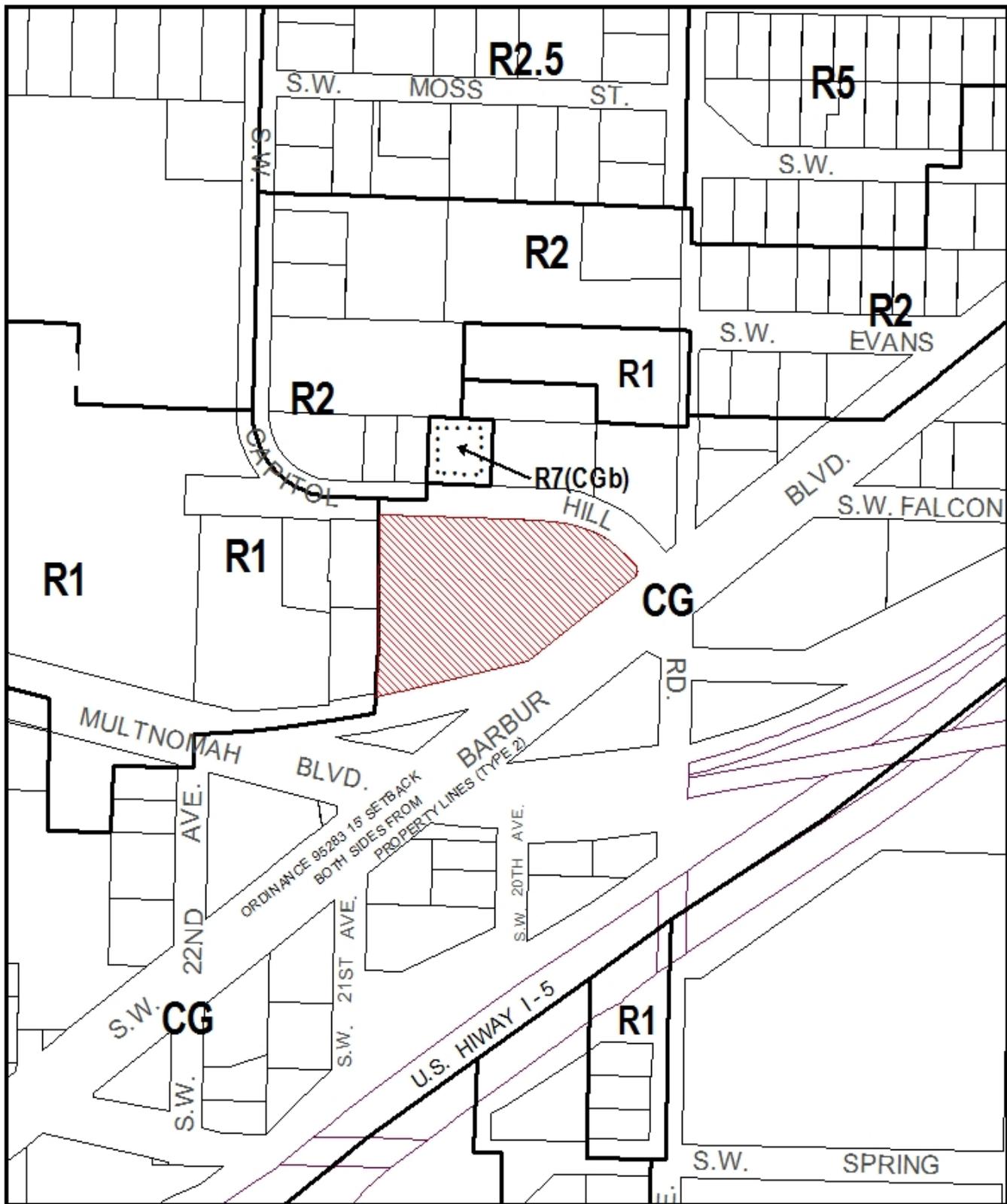


**ZONING  
EXISTING**

 Site



File No.	<u>LU 09-158905 ZE</u>
1/4 Section	<u>3827</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E21CB 4200</u>
Exhibit	<u>B.1 (Sep 23,2009)</u>



# ZONING PROPOSED



 Site

File No. LU 09-158905 ZE  
 1/4 Section 3827  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E21CB 4200  
 Exhibit B.2 (Sep 23,2009)