



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

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Date: June 2, 2010
To: Interested Person
From: Susan McKinney, 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 10-134283 ZE

GENERAL INFORMATION

Applicant: Bureau Of Development Services - Land Use Services Division
Contact: Susan McKinney
1900 SW 4th Ave Ste 4500
Portland, OR 97201

Lori H Petersen, property owner
14150 SE Stark St
Portland, OR 97233-2157

Site Address: 14150-14154 SE STARK ST

Legal Description: EXC N 10' IN RD-N 130' OF LOT 1 BLOCK 1, HOOD ACRES & PLAT 2 & 3
Tax Account No.: R401400020
State ID No.: 1S2E02AA 00100
Quarter Section: 3144

Neighborhood: Hazelwood, contact Arlene Kimura at 503-252-9429.
Business District: Gateway Area Business Association, contact Fred Sanchez at 503-256-3910.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Current Zoning: R3a (Multi-Dwelling Residential 3,000 with an Alternative Design Density Overlay zone)
Proposed Zoning: CO1 (Office Commercial 1)

Case Type: Zoning Map Error Correction (ZE)
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal: The Bureau of Development Services (BDS) is initiating a Zoning Map Error Correction, on the advice of the Bureau of Planning and Sustainability (BPS), to change the

zoning for this site from the existing designation of multi-Dwelling Residential with an Alternative Design Density Overlay (R3a) to Office Commercial 1 (CO1). The purpose of this review is to confirm that the correct zoning on the site should be CO1.

ANALYSIS

Site and Vicinity: The subject site is a 12,000 square foot corner lot with approximately 100 feet of frontage along SE Stark and 120 feet of frontage along SE 142nd. The site is developed with a one-level office building originally constructed in 1969, and parking. A site visit and photos submitted by the applicant show a few shrubs in front of the east façade of the building, a free-standing sign near the Stark Street frontage and additional landscaping adjacent to the intersection of Stark and 142nd Avenue.

The nearby properties along SE Stark Street and 142nd Avenue are used for a combination of residential and commercial uses. Adjacent to the south is multi-dwelling development in the R3 zone. To the east north and west are commercial properties; some that are zoned for commercial use (CN2, CN1, CG and CO1) and others that are in residential R3 and R7 zones. There is a vacant lot on the corner of 141st and Stark. There are sidewalks on both Stark Street and 142nd Avenue.

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 in this zone 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.

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. See section **Land Use History** below for more information about the nonconforming status of this site.

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. The existing development and intended future addition on this site is consistent with the intent of the CO1 zone

Zoning Background/History: The earliest available Multnomah County zoning maps from 1961 show C-3 (commercial) zoning for this site. At some point prior to annexation in 1994, the zoning changed to MR-4. 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, as part of 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 “a” overlay designation was added with zoning adopted for the Outer Southeast Community Plan, March 25, 1996. The “a’ overlay is used only with residentially zoned areas.

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.” According to building permit history, a documented, approved office use existed on this site prior to 1994.

The existing structure was constructed in 1969 (permit number 45532) as a medical clinic, allowed in the C-3 commercial retail district as stated in the 1968 Multnomah County Code (MCC). It is unknown if the zoning at the time of development was still C-3 commercial, or if it had changed to MR-4, multi-family residential. However, uses other than residential were allowed in the MR-4 zone by the MCC under Chapter 3.15 Suburban Residential District. Therefore, the office that existed at time of annexation was a documented and approved office use and the new City zoning designation at time of annexation should have been CO1.

Land Use History: City records indicate there are two prior land use reviews for this site. In 2004, city staff was not aware of the zoning error on this site and processed case **LU 04-019857 NU AD** which was a request to expand the existing (legal nonconforming) office use on the site. The case type was a Nonconforming Situation Review with an Adjustment to front setback. The decision was for approval and contained conditions related to the offering of subsidized transit passes to employees and landscaping. Only a portion of the decision was acted on, therefore the approval for the remaining approved development expired after 3 years. In April, 2010, the property owner submitted a second Nonconforming Situation Review in order to develop that portion of the previously approved expansion that had expired. It was at that time that staff realized the zoning error and subsequently the second Nonconforming Situation Review (**LU 10-130954 NU**) was voided and this Zone Map Error Correction review took its place.

A “Notice of Proposal in Your Neighborhood” was mailed May 7, 2010.

Agency Review: The following Bureaus have responded with no issues or concerns related to the Zone Map Error Correction:

- The Bureau of Environmental Services indicated that future development of the property would be subject to the BES standards and requirements during building plan review.
- The Water Bureau has no concerns.
- The Fire Bureau has no concerns.
- The Site Development Section of BDS provided comments related to decommissioning of the septic system (cesspool) on the site.
- The Bureau of Parks-Forestry Division has no concerns.
- The Bureau of Transportation has no concerns.

Neighborhood Review:

A Notice of Proposal in Your Neighborhood was mailed on May 7, 2010. 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. 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 Zoning Code.

Staff Comment: After a request for research from BDS, the BPS determined that a mapping error occurred on the subject property. Subsequently, the Director of BDS initiated this review to correct the official zoning 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 zone 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: Based on the information provided in the Analysis Section above, 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

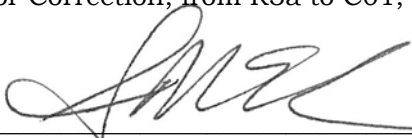
Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be 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 and Sustainability 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 C01, in conformance with Exhibit B.2

Decision rendered by:  on June 1, 2010
By authority of the Director of the Bureau of Development Services

Decision mailed: June 2, 2010

Staff Planner: Susan McKinney

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 May 4, 2010, and was determined to be complete on May 7, 2010.

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 May 4, 2010.

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 June 16, 2010** 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.

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 **June 17, 2010 – (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, Zone Map Error Corrections and Comprehensive Plan Map Amendment approvals do not expire.

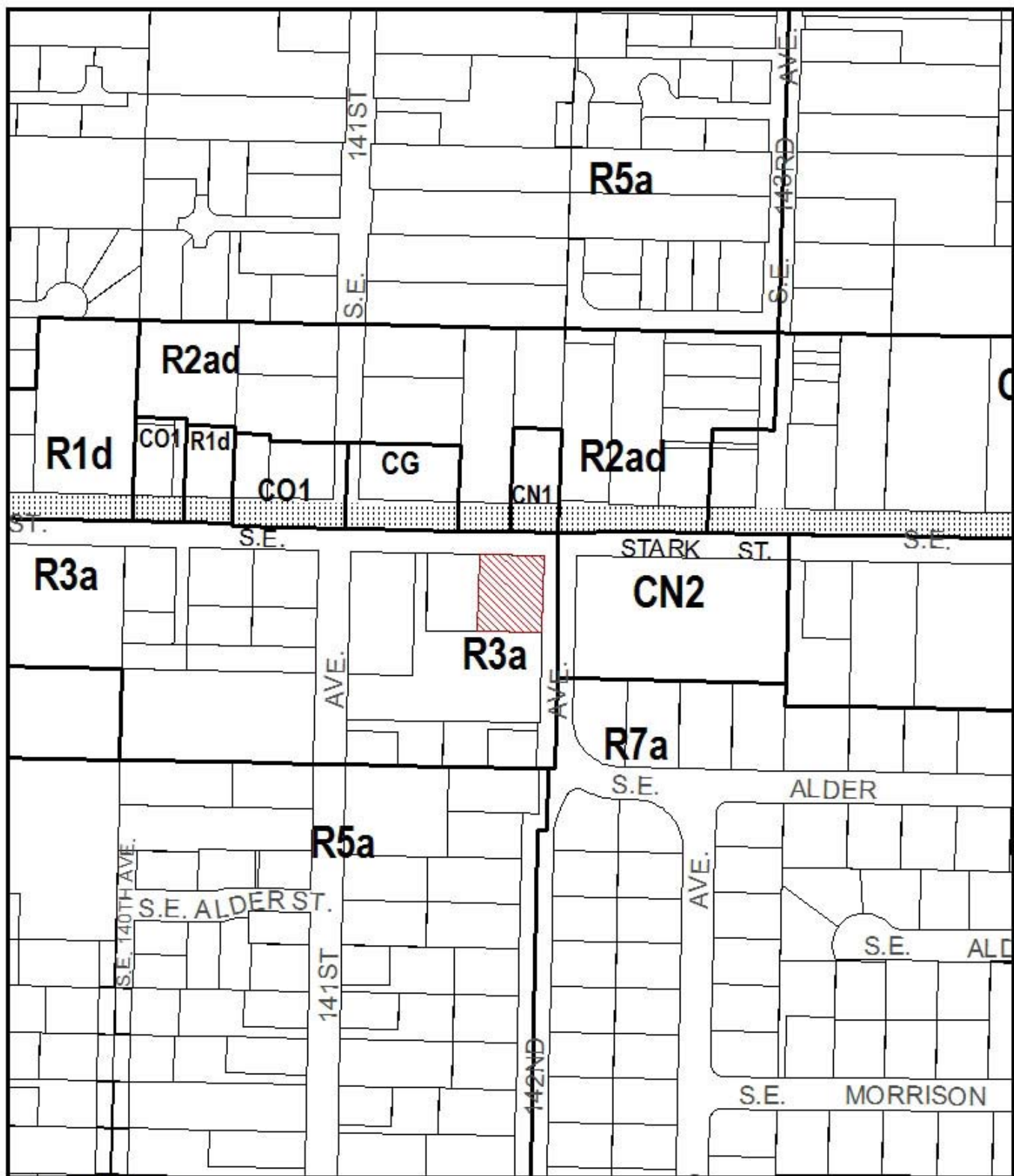
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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)
 - 1. Existing Zoning (attached)
 - 2. Proposed Zoning (attached)
- C. Plans/Drawings:
 - 1. Site Plan
 - 2. Elevation
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services (no concerns – TRACS)
 - 2. Bureau of Transportation Engineering and Development Review (no concerns TRACS)
 - 3. Water Bureau (written response)
 - 4. Fire Bureau (no concerns TRACS)
 - 5. Site Development Review Section of BDS (written response)
 - 6. Bureau of Parks, Forestry Division (no concerns TRACS)
- F. Correspondence: None
- G. Other:
 - 1. BPS Research information and memorandum dated 5/3/10
 - 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).

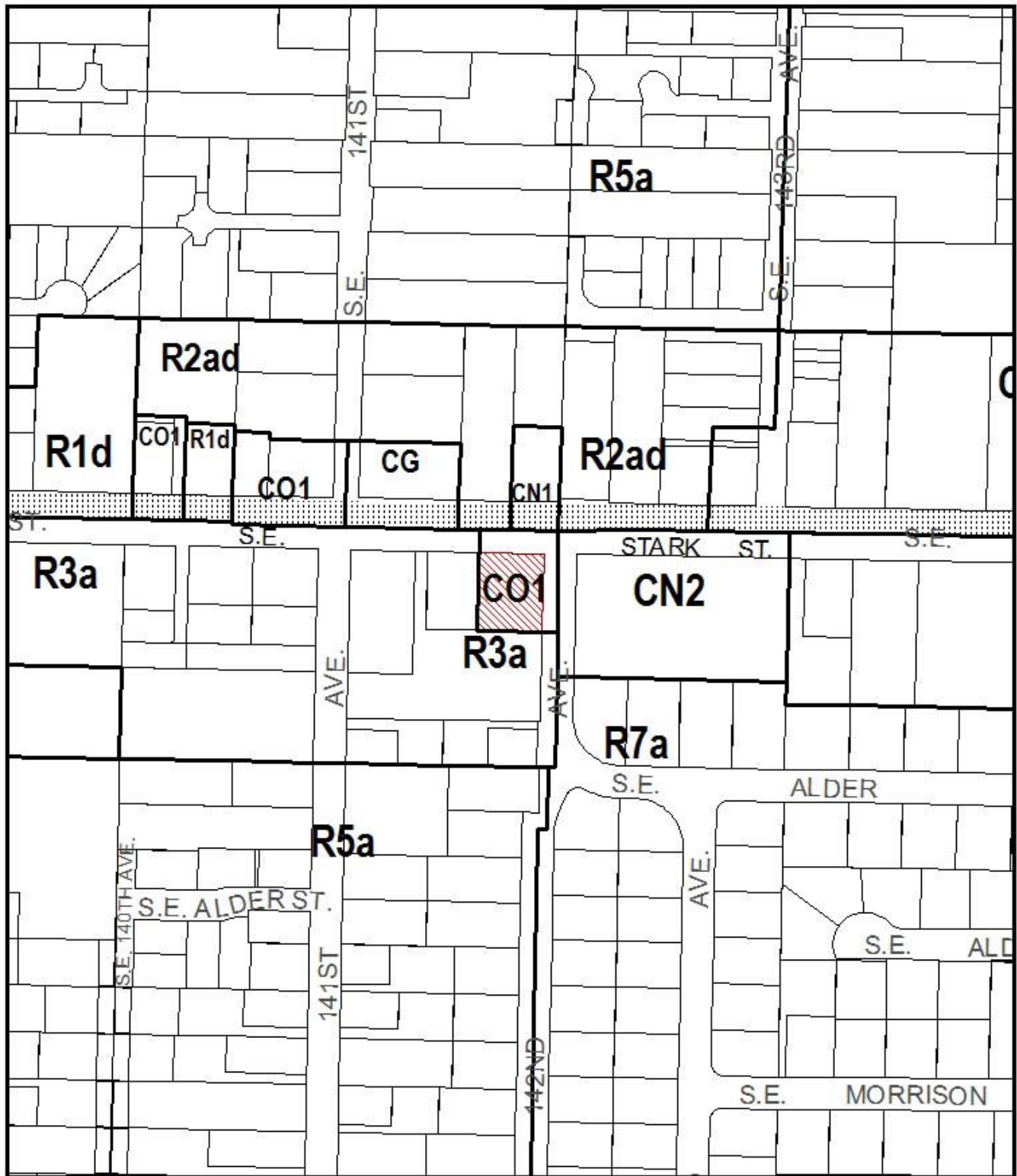


ZONING EXISTING

 Site



File No.	<u>LU 10-134283 ZE</u>
1/4 Section	<u>3144,3145</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E02AA 100</u>
Exhibit	<u>B (May 04,2010)</u>



ZONING PROPOSED

 Site



File No.	LU 10-134283 ZE
1/4 Section	3144,3145
Scale	1 inch = 200 feet
State_Id	1S2E02AA 100
Exhibit	B (May 04,2010)