



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: June 27, 2012
To: Interested Person
From: Douglas Hardy, Land Use Services
503-823-7816 / Douglas.Hardy@portlandoregon.gov

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 the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 11-199896 ZE
GENERAL INFORMATION

Applicant: Bureau of Development Services
1900 SW 4th Avenue, Suite 5000 / Portland, OR 97201

Owner: C. J. Scholze-Hantke, Ltd., property owner
19405 NE Kings Grade / Newberg, OR 97132

Representative: Russ Goddard / GCS Inc.
18395 Wood Thrush Street / Lake Oswego, OR 97035

Site Address: 9155 SW Barbur Boulevard

Legal Description: Lot 9 & 10, TL 7800, Werlock
Tax Account No.: R892300720
State ID No.: 1S1E29AB 07800
Quarter Section: 3926
Neighborhood: Multnomah, contact Moses Ross at 503-309-9785
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592
Existing Zoning: CG General Commercial
R7 Single-Dwelling Residential 7,000

Case Type: Zoning Map Error Correction (ZE)
Procedure: Type II, Administrative decision with appeal to Hearings Officer

PROPOSAL

The Bureau of Development Services is initiating a Zoning Map Error Correction to change the zoning on a portion of this site from the existing designation of Single-Dwelling Residential 7,000 (R7) to General Commercial (CG). The site is 23,600 square feet in its entirety, with a northerly triangular section (1,537 square feet in area) being located in the R7 zone (see attached "Existing Zoning" map). The remainder of the site is located in a CG zone.

Based on Multnomah County tax records, the site boundaries have existed in their current configuration since at least 1951. A City of Portland ordinance from 1980 (Ordinance #

150323) zoned a portion of the neighborhood when it was annexed into the city. Language in that ordinance stated the proposed zoning designations were intended to “reflect the uses to which much of the property has previously been put.” In 1980, both the portion of the site in the CG zone and in the R7 zone were in common ownership, with the vast majority of this ownership being in commercial use (and mapped with a commercial designation). Because the majority of this ownership was in commercial use, the small triangular R7 zoned area of the ownership should also have been mapped in 1980 with the CG commercial designation.

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 23,630 square foot site fronts the north side of SW Barbur Boulevard, a designated Major City Traffic Street, Regional Transitway, and a City Bikeway and Walkway. The majority of the site is relatively flat, except where it slopes substantially upward toward the west and north lot lines. The site is developed with a one to two story building oriented to SW Barbur Boulevard, with a tall open canopy located to the west and rear of the building. Paved vehicle areas are located along much of the site’s SW Barbur Boulevard frontage, and to the rear of the building. The portion of the site located in the R7 zone is largely a sloped, treed bank, with a small paved vehicle area.

Surrounding properties fronting SW Barbur Boulevard are developed with a variety of lower density commercial uses, interspersed with multi-dwelling apartments. Single-dwelling residential uses are located just north of the subject site along SW Primrose Street.

Current Zoning: The majority of the site is located in a General Commercial (CG) zone, with a 1,537 square feet triangular portion toward the rear of the site located in a Single-Dwelling Residential 7,000 (R7) zone.

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. Industrial uses are allowed but are limited in size to avoid adverse effects different in kind or amount than commercial uses and to ensure that they do not dominate the character of the commercial area. Development is expected to be generally auto-accommodating, except where the site is adjacent to a transit street or in a Pedestrian District. The zone's development standards promote attractive development, an open and pleasant street appearance, and compatibility with adjacent residential areas. Development is intended to be aesthetically pleasing for motorists, transit users, pedestrians, and the businesses themselves.

The use regulations of the Single-Dwelling zones are intended to create, maintain and promote single-dwelling neighborhoods. They allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood. The development standards of the Single-Dwelling zones work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. The development standards are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.

City Ordinance #95283 requires a special setback of 15 feet from the SW Barbur Boulevard frontage of this site and nearby sites.

Land Use History: City records indicate there is one prior quasi-judicial land use review for this site. In 1984, an Alternative Design Adjustment (ADA 14-84) to the building orientation requirements along SW Barbur Boulevard was approved with conditions.

As for legislative land use history, in 1980, Ordinance #150323 was passed which established zoning for recently annexed properties. The subject site was one of the properties located within this annexation area. The mapping placed C2S on the majority of the subject site, and R7 on the rear triangular portion of the site.

Agency Review: A Notice of Proposal was mailed May 29, 2012. The following City bureaus have responded with no issues or concerns:

- Bureau of Environmental Services;
- Bureau of Transportation Engineering;
- Water Bureau;
- Fire Bureau;
- Site Development Section of BDS; and
- Bureau of Parks-Forestry Division.

Neighborhood Review: No written comments have been received from either the Neighborhood Association or notified property owners in response to the Notice of 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: The findings for the 1980 City Council ordinance (Ordinance # 150323) that first established zoning on the subject property and surrounding properties made clear that the “The [proposed] zoning designations...reflect the uses to which much of the property has previously been put” (Section I, Paragraph 7).

The applicant has provided property tax information documenting that both the commercially zoned portion of the site and the residentially zoned portion of the site were in common ownership in 1980 when the split zoning was put on the site. The applicant has also provided documentation in the form of a telephone directory that Capp Homes occupied the site in 1979, prior to the establishment of the split zoning. Capp Homes is identified as a division of Evans Products, which was a manufacturer of wood siding. The structure built on the site was intended to showcase the Evan Products material. (Site plans associated with building permits from the early 1980s confirm that a commercial use that covers the majority of the site.) This information documents that the site in its entirety was in single-ownership the year the split zoning was put in place, and that the majority of the lot was in commercial use. Given the intent of the original Council ordinance was to place zoning on the site that reflected the use to which existed on much of the site, it was an error to not map the commercial zone on the triangular portion located at the rear of the ownership.

Based on the information provided, the R7 zoned portion of the site should be corrected to reflect the CG zone mapped on the remainder of the site.

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 via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

Information in the record adequately demonstrates that the R7 zoned portion of the ownership should be corrected and mapped with the CG zone that is currently mapped on the remainder of this site. The intent of the ordinance that established the split zoning on the site makes clear that commercial zoning should have been mapped on the entire ownership given the majority of the site at the time of the zoning was in commercial use.

ADMINISTRATIVE DECISION

Approval of a Zoning Map Error Correction for the rear triangular portion of the property legally described as Lot 9 & 10 TL 7800, Werlock (State ID # 1S1E29AB 7800) to change the zoning from R7, Single-Dwelling Residential 7,000 to CG, General Commercial, per Exhibit B.2.

Staff Planner: Douglas Hardy

Decision rendered by:  **on June 26, 2012.**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 27, 2012

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 9, 2011, and was determined to be complete on **May 29, 2012**.

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 9, 2011.

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 September 26, 2012**.

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 July 11, 2012** 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 **July 12, 2012 – 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.

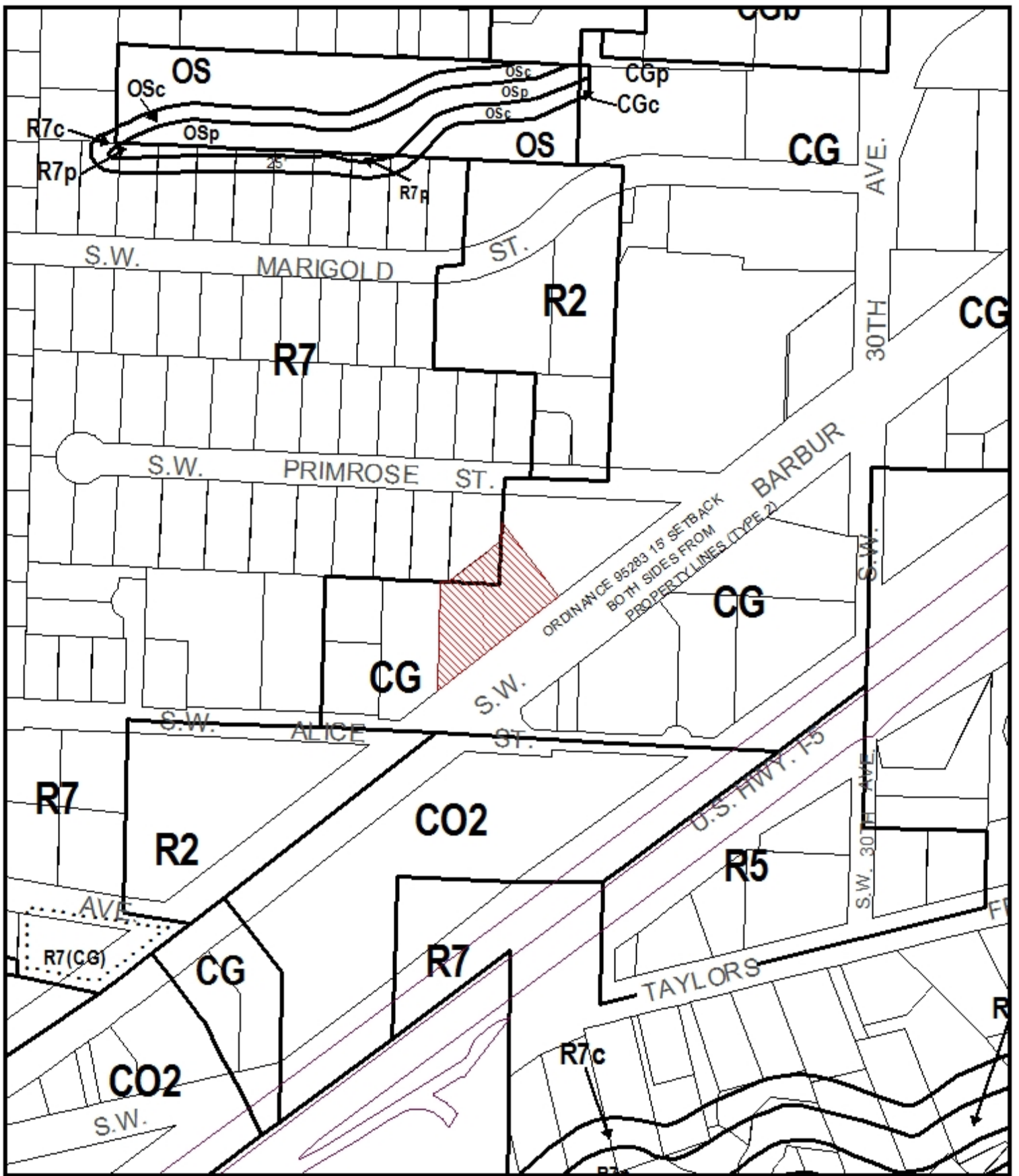
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. 1980 Property Tax Information
 2. 1979 Telephone Directory Listing

3. Ordinance # 150323
 4. 1984 Building Permit (Permit # 84-102853)
 5. E-mail from Cindy Sturm, dated January 25, 2012
- B. Zoning Map
1. Existing (attached)
 2. Proposed (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. Fire Bureau
 5. Site Development Review Section of BDS
 6. Bureau of Parks, Forestry Division
- F. Correspondence (none)
- G. Other:
1. Original LU Application
 2. Letter of Incompleteness
 3. E-mail from Marian Hantke regarding change in applicant, received May 23, 2012

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).

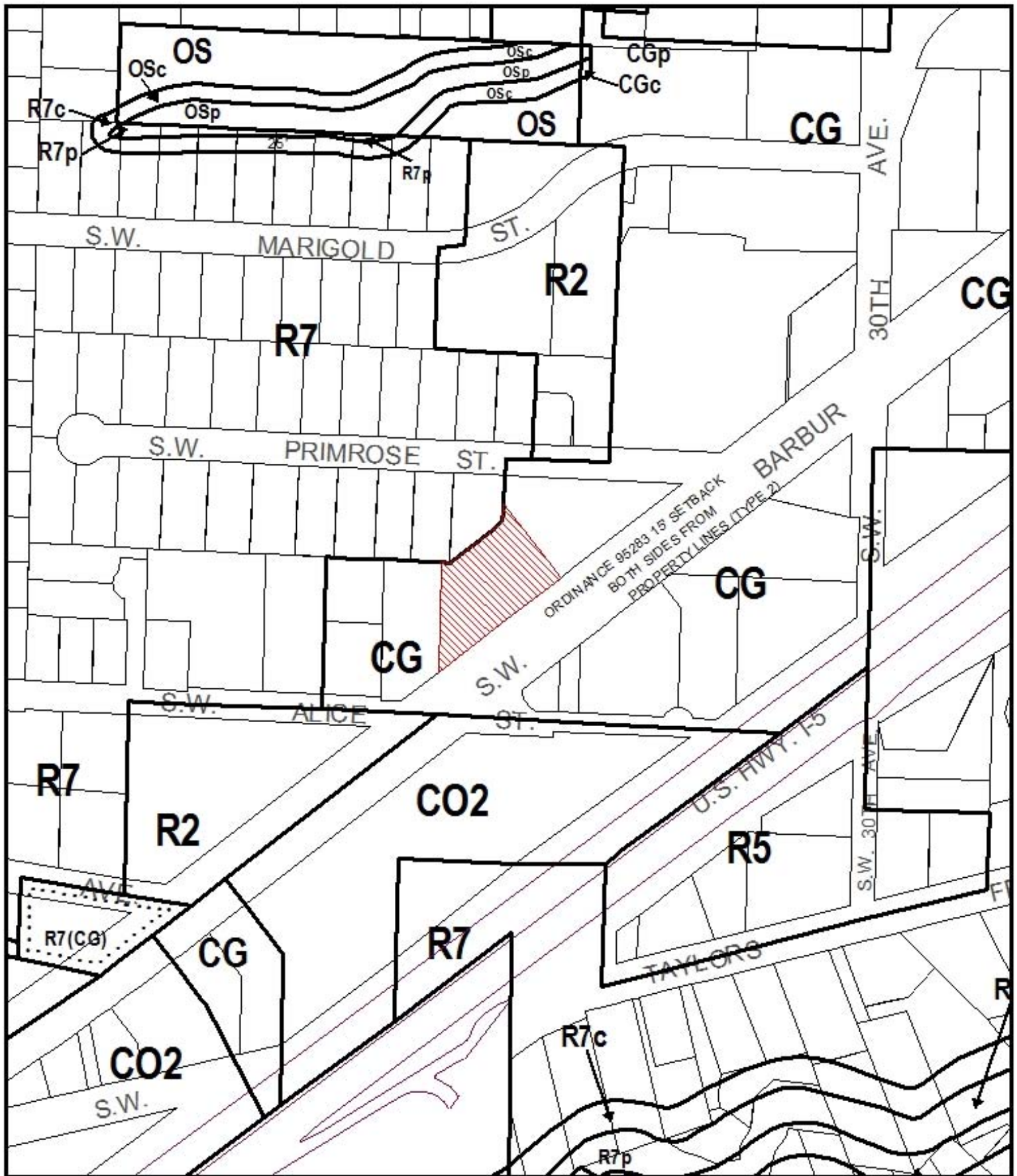


ZONING EXISTING

 Site



File No.	LU 11-199896 ZE
1/4 Section	3926
Scale	1 inch = 200 feet
State_Id	1S1E29AB 7800
Exhibit	B (Dec 20, 2011)



ZONING PROPOSED

 Site



NORTH

File No.	LU 11-199896 ZE
1/4 Section	3926
Scale	1 inch = 200 feet
State_Id	1S1E29AB 7800
Exhibit	B (Dec 20, 2011)