



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

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Date: January 14, 2016
To: Interested Person
From: David Besley, 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 mailed copy of this document is only a summary of the decision. 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 15-267975 ZE

GENERAL INFORMATION

Applicant: Land Use Services Division
City of Portland, Bureau of Development Services
1900 SW 4th Ave., Suite 5000
Portland, OR 97201

Owners: Arnold Hopfer
PO Box 26575
San Francisco, CA 94126-6575

Barbara Gordon
7401 N Oatman Ave
Portland, OR 97217-1213

Site Address: 0604-0608 SW NEBRASKA ST *

Legal Description: BLOCK 11 LOT 9, SOUTHERN PORTLAND
Tax Account No.: R780201180, R780201180
State ID No.: 1S1E15CD 16700, 1S1E15CD 16700
Quarter Section: 3629

Neighborhood: South Portland NA., contact Jim Gardner at 503-227-2096
Business District: South Portland Business Association, contact Kevin Countryman at 503-750-2984
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592

Zoning: R2 (Multi-Dwelling Residential 2,000)

Case Type: ZE (Zone 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 application to correct the zoning on this site. The proposal would change the zoning from R2 (Multi-Dwelling Residential 2,000) to CSd (Storefront Commercial with a Design Overlay zone). The applicant states that the property should be commercially zoned per a previously adopted zone map change request and related ordinances. A memo provided by the City of Portland Bureau of Planning and Sustainability concludes that there is sufficient evidence of legislative intent to show that the property was intended to be commercially zoned.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Zoning Code Section 33.855.070 Corrections to the Official Zoning Maps.

ANALYSIS

Site and Vicinity: The 6,000 square foot site is on the south side of SW Nebraska Street between SW Virginia Avenue and SW Macadam Avenue. The site is relatively flat and currently developed with a 2,916 square foot building. The surrounding vicinity is developed with a mix single-dwelling residences, multi-dwelling residences and commercial buildings.

Zoning: The R2 zone is a multi-dwelling zone that is intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

The Storefront Commercial (CS) zone is intended to preserve and enhance older commercial areas that have a storefront character. The zone intends that new development in these areas will be compatible with this desired character. The zone allows a full range of retail, service and business uses with a local and regional market area. 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. The desired character includes areas which are predominantly built-up, with buildings close to and oriented towards the sidewalk especially at corners. Development is intended to be pedestrian-oriented and buildings with a storefront character are encouraged.

The Design Overlay Zone (d) promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The Design Overlay Zone also promotes quality high-density development adjacent to transit facilities. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review or compliance with the Community Design Standards. In addition, design review or compliance with the Community Design Standards ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

Land Use History: History demonstrated in Zoning Code Approval Criteria below.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **December 11, 2015**. The following bureaus/agencies have responded with the following information:

- The Water Bureau responded with no concerns and provided information on water service (Exhibit E-1);
- The Bureau of Environmental Services responded with information on sanitary service and stormwater management (Exhibit E-2); and
- The Bureau of Planning and Sustainability (BPS) responded a history of the site and evidence supporting the Zone Map Error Correction (Exhibit E-3).

The following Bureaus have responded with no concerns:

- The Life Safety Section of the Bureau of Development Services (BDS)
- The Site Development Section of BDS;
- The Fire Bureau; and
- The Bureau of Transportation (PBOT).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on December 11, 2015. 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
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: Section 33.855.070 is intended to provide a quasi-judicial process in which Zoning Map Errors can be evaluated and corrected if necessary. It is important to note that the language in Subsection A states, “The correction may be made for mapping errors *such as...*” Zoning Code Section 33.700.070.D.4 clarifies that lists of items in the Code that include the phrase “such as” or similar language are not limited to just those items. The list is intended to provide examples, but not be an exhaustive list of all possibilities. As such, the language included in Subsections A.1 and A.2, above, is intended to provide examples of situations in which Zoning Map Errors may be addressed, but is not intended to present an exclusive list.

City records show that a 1972 request to change zoning on this property from Apartment Residential (A2.5) to General Commercial (C2) was filed with the Planning Commission under case PC 6001. On March 20, 1972 the Planning Commission recommended approval of this request. City Council then passed ordinance #134406 officially changing the zone from R2.5 to C2 for this property. On January 16, 1975, due to a failure on the part of the applicant to record the approval in the required timeframe, City Council repealed the original approval under Ordinance 139338. On January 29, 1975, City Council having received verification that the proper requirements and recording had been submitted rescinded their repeal of the prior zone change approval under Ordinance 139391. The site appears to have been developed with commercial uses at least from the time of the 1972 Council zone change approval.

Subsequent maps (including a Height Restriction map and a zoning map) show the site as General Commercial (C2), however, the adopted 1980 Comprehensive Plan Map shows the site as Multi-dwelling Residential 2,000 (R2). Adopted maps from this point forward show the site as R2.

While it is clear that Council approved a zone change on this site in 1972 and 1975, it is less clear that the zone changed in error in subsequent years. The Comprehensive Plan was updated in 1980 and it appears to be at this juncture that the zoning changed back to Multi-dwelling Residential 2,000 (R2). No evidence has been found as to why the change from C2 to R2 occurred.

The C2 zone does not exist today and there have been legislative planning projects in the area during the intervening years. Staff has also considered which current zoning

designation would be most appropriate today. The properties directly south and east of the site are zoned Storefront Commercial (CS). Given the allowances under the former C2 zone, the current CS zoning on abutting properties, and the proximity of the site to SW Macadam, if the site were to be zoned commercial, the CS zone would be appropriate for this site.

Had this site been zoned commercially during the time the Macadam Plan District was adopted in 1985, it would have been included in that Plan District Boundary. Inclusion in the Plan District would have given the property the Design (d) overlay zone as well, which all other properties in the Plan District carry. This would also make the property subject to the height and setback requirements of the Plan District.

Summary

Based on the findings above, it has been demonstrated that, while BPS cannot say conclusively that a zone map error occurred, BPS concluded that on balance there is sufficient evidence of legislative intent to show that the property was intended to be commercially zoned. Any change to the zoning should add the Design overlay zone (d) and include a change to the boundary of the Macadam Plan District to include the property.

This criterion is met.

- 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 case, the Zoning Map error is not the result of 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

It has been demonstrated that, while BPS cannot say conclusively that a zone map error occurred, BPS concluded that on balance there is sufficient evidence of legislative intent to show that the property was intended to be commercially zoned. Any change to the zoning should add the Design overlay zone (d) and include a change to the boundary of the Macadam Plan District to include the property, as illustrated in Exhibit B-2.

ADMINISTRATIVE DECISION

Approval of a Zoning Map Error Correction (Zoning Code Section 33.855.070) to update the zoning map for this site as illustrated in Exhibit B-2.

Staff Planner: David Besley



Decision rendered by: _____ **on January 12, 2016.**
By authority of the Director of the Bureau of Development Services

Decision mailed: January 14, 2016

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 November 20, 2015, and was determined to be complete on **December 4, 2015.**

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 November 20, 2015.

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: April 2, 2016.**

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 January 28, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to

12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th 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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 **January 29, 2016**
- 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:

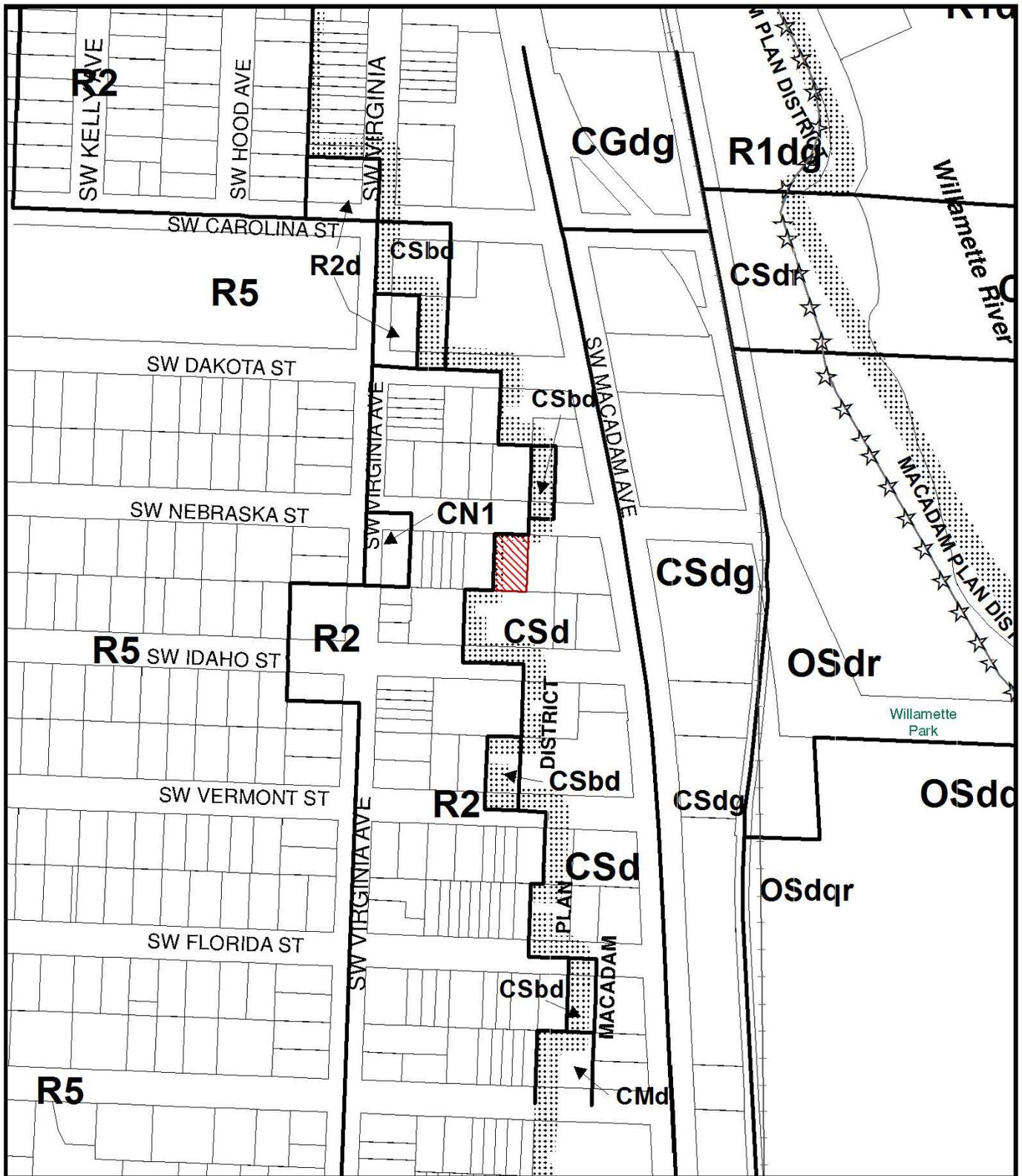
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Maps
 - 1. Existing Zoning Map (attached)
 - 2. Proposed Zoning Map (attached)
- C. Plans/Drawings: None
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Water Bureau
 - 2. Bureau of Environmental Services
 - 3. Bureau of Planning and Sustainability
- F. Correspondence: None
- G. Other:
 - 1. Original LU Application

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).



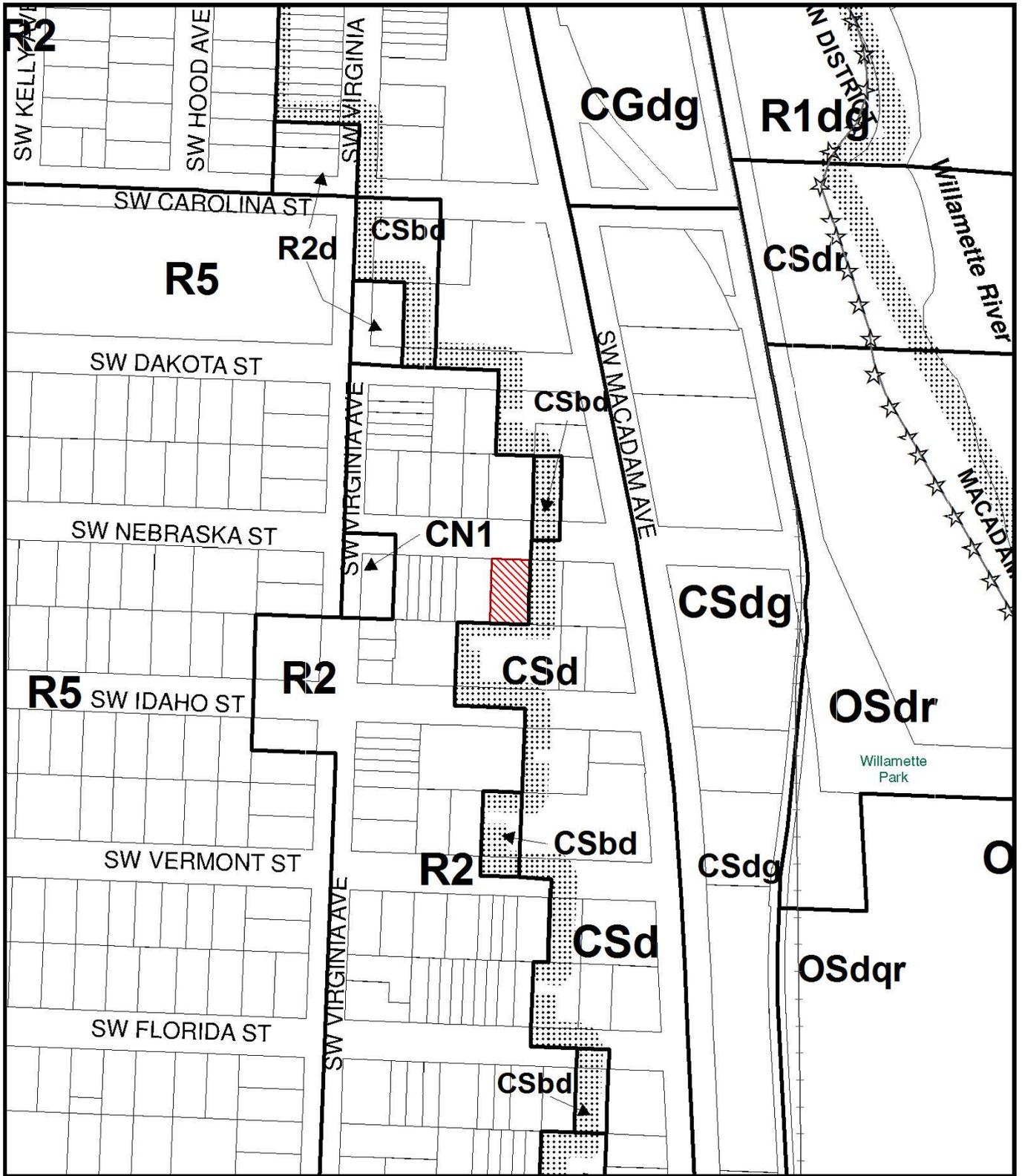
PROPOSED ZONING

- Site
- Recreational Trails



This site lies within the:
MACADAM PLAN DISTRICT

File No.	<u>LU 15-267975 ZE</u>
1/4 Section	<u>3629</u>
Scale	<u>1 inch = 231 feet</u>
State Id	<u>1S1E15CD 16700</u>
Exhibit	<u>B2 (Nov 30, 2015)</u>



**EXISTING
ZONING**

-  Site
-  Recreational Trails



File No. LU 15-267975 ZE
 1/4 Section 3629
 Scale 1 inch = 200 feet
 State_Id 1S1E15CD 16700
 Exhibit B1 (Nov 20, 2015)