



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File No.: LU 12-109556 ZC AD (HO 4120019)

Applicant: Irwin Leitgeb
1201 SW 12th Avenue #308
Portland, OR 97205-2031

Applicant's Representative: Mark Dane
13630 SW Butner Road
Beaverton, OR 97005

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representative: Kathleen Stokes

Site Address: 3651 SE Francis Street

Legal Description: TL 10400 0.10 ACRES, SECTION 12 1S 1E; TL 10401 0.11 ACRES, SECTION 12 1S 1E

Tax Account No.: R991122850, R991122980, R991120610

State ID No.: 1S1E12DA 10400, 1S1E12DA 10401, 1S1E12DA 10500

Quarter Section: 3434

Neighborhood: Creston-Kenilworth

Business District: Greater Brooklyn

District Neighborhood Coalition: Southeast Uplift

Existing Zoning: R5 (R1), R5,000, High Density Single-Dwelling Residential with R1,000, Medium Density Multi-Dwelling Residential Comprehensive Plan Map designation

Land Use Review: Type III, Zoning Map Amendment (ZC) and Adjustment Reviews (AD)

BDS Staff Recommendation to Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 9:00 a.m. on October 3, 2012, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 10:31 a.m. The record was held open until 4:30 p.m. on October 22, 2012 for new written evidence, and until 4:30 p.m. on October 29, 2012 for the Applicant's rebuttal. The record was closed at that time.

Testified at the Hearing:

Kathleen Stokes, 1900 SW 4th Avenue #5000, Portland, OR 97201

Mark Dane, 13630 SW Butner Road, Beaverton, OR 97005

Steven McComb, PO Box 82901, Portland, OR 97282

Proposal: Irwin Leitgeb ("Applicant") is proposing a Zoning Map Amendment, in compliance with the Comprehensive Plan Map designation, from R5 to R1, for the three lots commonly referred to as 3651 SE Francis Street in the City of Portland (the "Subject"). If approved, the Subject would then be developed with a multi-dwelling structure with twelve units. Twelve parking spaces would be provided onsite to service residents of the multi-dwelling structure.

The Subject has narrow frontage on SE Francis Street. The Subject extends, via a narrow strip of land, to the north. The rear portion of the Subject provides the most likely building location. The unusual configuration of the property dictates the location of the multi-dwelling structure and necessitated the Applicant's request for several adjustments to the development standards of the R1 zone.

The requested Adjustments include:

- 1) Reduce the minimum lot width for lots in the R1 zone that are proposed for multi-dwelling development, from 70 feet to 40.5 feet at the street edge (Code Section 33.612.200 B).
- 2) Reduce the required width of the onsite pedestrian connection that will run from SE Francis Street to the apartment building, from 5 feet to 4.5 feet (Code Section 33.120.255).
- 3) Reduce the width of the required perimeter landscaping on the either side of the driveway from 5 feet to 4 feet (Code Section 33.266.130.G.2).
- 4) Reduce the required interior landscaping for the parking area from 540 square feet to 115 square feet and reduce the required amount of landscaping materials, from four medium

trees and eighteen shrubs, to two medium trees and six shrubs (33.266.130.G.3, 33.248.020 I).

Relevant Approval Criteria: Zoning Map Amendments, Section 33.855.050. Adjustment Review, Section 33.805.040 A-F.

II. ANALYSIS

Site and Vicinity: The Subject consists of three separate tax lots that are located on the north side of SE Francis Street, approximately midway between the intersections with SE 35th Avenue and SE Cesar Chavez Boulevard. The tax lots are configured so that two are located to the north, with no street frontage, and one is located to the southeast, providing access to SE Francis Street. The slope on the Subject runs down towards the north and west. The abutting properties to those sides appear to be at higher grade level, looking down onto the developable area of the Subject. The tax lot that connects to Francis Street, on the south, is just wide enough to provide vehicular and pedestrian access to the remainder of the Subject. A single-dwelling residence that was previously located on the Subject was demolished under permit number 09-157347 RS.

The area around the Subject has a variety of residential development that ranges from a predominance of single-dwelling structures on the south, and a large multi-dwelling development immediately to the north and east. One single-dwelling structure abuts the west property line. The remainder of the area immediately to the west and to northwest generally consists of duplexes to small-scale, multi-dwelling development. A convalescent care facility is located on the south side of Francis Street, across from the intersection with SE 35th Avenue. Single-dwelling residences abut the aforementioned, large apartment complex, on its north side, and a mix of single dwelling lots and duplexes extend from the east side of the apartments to Cesar Chavez Boulevard. A commercial area is located to the north of the smaller multi-dwelling development area, extending through to SE Powell Boulevard.

Zoning: The Subject is currently zoned R5, High Density Single-Dwelling Residential. This zone is intended to accommodate single-dwelling development, with an average of one unit per 5,000 square feet of site area. The Subject has a Comprehensive Plan Map Designation of R1, Medium Density Multi-dwelling Residential. This zone allows up to one unit per 1,000 square feet of site area and requires a minimum of one unit per 1,450 square feet of site area, or one unit per 2,000 square feet of site area for sites that are smaller than 10,000 square feet. Allowed housing is characterized by one to four story buildings and a higher percentage of building coverage than in the lower density multi-dwelling zones. The major type of new housing will be condominiums and apartments, duplexes, townhouses, and row houses. Generally, R1 zoning will be applied near neighborhood collector and district collector streets, and local streets adjacent to commercial areas, or major streets.

Land Use History: City records include the following prior land use review for this site:

VZ 349-78 - 1978 approval of variances to reduce lot width for two properties from 50 feet to 40 feet, for single-dwelling development and to reduce the minimum building setback from the east property line for an existing residence, in order to allow a division of the property into two lots.

Agency Review: A "Request for Response" was mailed July 30, 2012. The following bureaus have responded with no issues or concerns:

- **Environmental Services ("BES")** provided information regarding sanitary sewers, noting that a connection is available in SE Francis Street. An analysis of the proposed stormwater management system was also provided and found to be adequate, with a condition that requires additional infiltration testing at the time of building permit review (Exhibit E.1).
- **Transportation Engineering ("PBOT")** provided an analysis of how the proposal met transportation-related approval criteria. The PBOT response also noted that existing street improvements are in accordance with the standards of Title 17 for the requested R1 zone (Exhibit E.2).
- **Water Bureau** noted that water service can be provided from SE Francis Street to serve future development of the Subject (Exhibit E.3).
- **Fire Bureau** provided information on conditions that must be met for compliance with the Fire Code at the time of building permit review (Exhibit E.4).
- **Police Bureau** noted that the bureau is capable of serving the proposed change in density (Exhibit E.5).
- **Site Development Section of BDS ("Site Development")** provided an electronic response that noted that the, "Applicant has demonstrated ability to use gravity discharge to the combination sewer."
- **Life Safety Plan Review Section of BDS** provided information on the requirement for submitting information for building permit review (Exhibit E.6).
- **Parks-Forestry Division** sent an electronic response of "no concerns."

Neighborhood Review: A *Notice of Proposal in Your Neighborhood* was mailed on August 23, 2012. A response was received by BDS from the Creston-Kenilworth Neighborhood Association ("C-K NA") in response to the proposal. The C-K NA board voted to oppose the proposed zoning map amendment, stating that they objected to the position of, "the building being set so far back from the street," and what they determined to be a lack of "adequate landscaped space" (Exhibit F.1). One person, Steven McComb ("McComb"), appeared at the October 15, 2012 hearing ("The Hearing") and testified in opposition indicating that the Applicant and/or BDS staff had not properly addressed stormwater issues.

The Hearings Officer will address C-K NA and McComb issues in the findings below.

ZONING CODE APPROVAL CRITERIA

ZONING MAP AMENDMENT

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 issues is found in the findings for PCC 33.700.070.

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.

Findings: The Comprehensive Plan designation for the Subject is Medium Density Multi-dwelling Residential. This designation has only one corresponding zone, R1. Therefore, the Hearings Officer finds that this approval criterion does not apply.

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.

Findings: The Subject does not have a C, E, or I designation or a Buffer overlay. The Hearings Officer finds that this approval criterion does not apply.

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 requested zone change is not from a higher density residential zone to a lower density residential zone or from the CM zone to the CS zone. Therefore, the Hearings Officer finds that this approval criterion does not apply.

B. Adequate public services.

1. Adequacy of services applies only to the specific zone change site.
2. Adequacy of services is determined based on performance standards established by the service bureaus. The burden of proof is on the applicant to provide the necessary analysis. Factors to consider include the projected service demands of the site, the ability of the

existing and proposed public services to accommodate those demand numbers, and the characteristics of the site and development proposal, if any.

- a. Public services for water supply, 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.
- b. Proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services. Performance standards must be applied to the specific site design. Limitations on development level, mitigation measures or discharge restrictions may be necessary in order to assure these services are adequate.
- c. Public services for transportation system facilities are capable of supporting the uses allowed by the zone or will be capable by the time development is complete. Transportation capacity must be capable of supporting the uses allowed by the zone by the time development is complete, and in the planning period defined by the Oregon Transportation Rule, which is 20 years from the date the Transportation System Plan was adopted. Limitations on development level or mitigation measures may be necessary in order to assure transportation services are adequate.

Findings: The Subject is approximately 18,295 square feet in area. The requested R1 zone designation would, theoretically, allow a maximum density of 18 units on the Subject. In practical terms, however, the configuration of the lots makes development to this density difficult. The proposed plan for development includes 12 units.

PCC 33.855.050.B.2.a: The Water Bureau reviewed the proposal at the Subject and stated that it had “no objections to the requested Zoning Map Amendment and Adjustments to existing zoning code standards.” (Exhibit E.3) The Water Bureau response identified water infrastructure in the vicinity of the Subject and found the resources adequate to serve the proposed development. The Fire Bureau stated that, with conditions, that Fire Bureau resources are capable of supporting the proposed use at the Subject. (Exhibit E.4) The Police Bureau reviewed the proposal and stated, “It was determined that the Portland Police Bureau is capable of serving the proposed change at this time.”

The Hearings Officer finds that public services for water supply, police and fire protection are capable of supporting the proposed development at the Subject. The Hearings Officer finds PCC 33.855.050.B.2.a is met.

PCC 33.855.050.B.2.b: Opponent McComb testified at the public hearing and submitted written comments (Exhibit H.9). McComb questioned, “How will sewer output be moved from the property? This would need to be changed to obtain a proper run of a sewer line.” McComb also questioned whether or not additional fill would be placed on the Subject and if so how was the Applicant proposing to handle erosion control and stormwater runoff.

The Hearings Officer notes that BES expressed concern with the shallow "fall" of the sanitary sewer line for the proposed multi-family project on the Subject. BES stated:

"Considering the existing grade of the property, the applicant may be required to pump the sanitary sewage from the development with a pipe slope of 0.5%. BES would allow a lateral if additional slope is not available. The applicant should confer with BDS plumbing to confirm that 0.5% is adequate flow for the private systems."

The Hearings Officer also notes that BES provided comments related to stormwater disposal from the proposed development on the Subject. BES stated:

"BES reviewed the stormwater report from Geo Pacific dated October 8, 2009. The report includes Presumptive Approach infiltration test results of 0.06 and 0.5 inches per hour at a depth of 5 and 6 feet respectively at the back and front of the subject lot. BES recommends not reducing landscaping standards and replacing with impervious area where feasible...The Stormwater Management Plan from Emerio Design, received September 12, 2012, demonstrates a gravity system that provides pollution reduction and flow control from the structure and parking lot which is located just southeast of the structure. The vegetated planter was designed according to the Simplified Approach to be 644 square feet with the slope of the pipe from the planter to be 0.5% from the planter to the main. (1) The developer should recognize that a high degree of accuracy will be necessary during construction to establish adequate slope along the bedding layer from the connection point to the upstream invert elevations of the storm and sanitary systems. (2) Due to the potential for sewer backflow, the developer is strongly advised to install backflow preventers on the private system. Due to the high surcharge in the SE Francis main, the available space on property for onsite stormwater infiltration, and the potential for issues with a shallow sloped stormwater facility, BES requests evaluation of infiltration at depth (beyond the 6 feet already investigated at time of development...BES has no objection to approval of the zone change with adjustments but does request a condition."

The BES proposed condition is:

"Due to the high surcharge in the SE Francis main, the available space on property for onsite stormwater infiltration, and the potential for issues with a shallow sloped stormwater facility, BES requests evaluation of infiltration at depth at time of development."

BES stated that all "development projects are evaluated using the criteria described in Section 1.3" of the Stormwater Management Manual ("SWMM"). The Hearings Officer notes that all stormwater originating on the Subject will be evaluated under the SWMM. BES considers, under SWMM, the feasibility of infiltration, pollution reduction, flow control and off-site discharges when reviewing stormwater projects.

The Hearings Officer finds that approval criterion PCC 33.855.050.B.2.b requires that the "proposed waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of

Environmental Services." The Hearings Officer finds, based upon the above-quoted BES comments, that the proposed sanitary waste disposal and stormwater disposal systems are or can be developed such that they are acceptable to BES. The Hearings Officer finds PCC 33.855.050.B.2.b is met.

PCC 33.855.050.B.2.c: PBOT reviewed the application 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. PBOT provided the following comments (Exhibit E.2):

"At this location, SE Francis Street is classified as a Local Service Street for all modes in the City's Transportation System Plan.

The applicant submitted a professionally prepared Transportation Impact Study (TIS) to address the transportation-related approval criteria associated with this Zone Change request. The TIS compares the existing development scenario for the current R5 zoning with the development scenario for the proposed R1 zoning (proposed multi-dwelling apartments).

The TIS included area intersection capacity analysis utilizing industry standard trip generation methodology as well as a projected trip distribution consideration given observations made at and near the site. (Trip rates from the manual *TRIP GENERATION*, Eighth Edition, published by the Institute of Transportation Engineers, or ITE, were used). The TIS indicates that, under current zoning, three single-family residences would be permitted on the subject site which would result in an approximate total number of 30 daily vehicle trips generated and 3 vehicle trips during the afternoon peak hour of travel. Under the proposed zoning, a total of 14 multi-dwelling units could be permitted (the applicant is proposing a 12-unit apartment building) which would result in approximately 94 total daily vehicle trips with 9 of those trips occurring during the afternoon peak hour of travel. Accordingly, there would be an increase of 66 daily trips and 6 afternoon peak hour trips as a result of the proposed zone change.

The net increase in trips was assigned to the project study area based primarily on the existing distribution of peak hour traffic volumes and the location of surrounding trip destinations. In general, traffic volumes on SE Powell reflect prominent commuter traffic to and from the central areas of Portland to the west of the site. Additionally, there are a number of trip attractors to the north along SE Cesar Chavez Boulevard, and SE Francis Street provides a parallel route to SE Powell Boulevard, to the west. The site is served by a well-connected grid of streets, enabling local drivers to avoid areas of congestion or difficult traffic movements, particularly during the peak hours. The submitted TIS shows the distribution and assignment of the net increase in trips.

To determine the capacity and level of service at the study intersections, a capacity analysis was conducted. The analysis was conducted using the signalized and unsignalized intersection analysis methodologies in the 2000 *HIGHWAY CAPACITY MANUAL* (HCM), published by the Transportation Research Board. Level of Service (LOS) can range from A, which indicates little or no delay, to F, which indicates a significant amount of congestion and delay. City of Portland operational standards require LOS E or better, at unsignalized intersections, and LOS D or better, at signalized intersections.

The TIS intersection capacity analysis included several local intersections in the nearby vicinity, including the signalized intersection at SE 33rd Avenue/SE Powell and the unsignalized intersections at SE 33rd Avenue/SE Francis and SE Cesar E Chavez Boulevard/SE Francis. The analysis shows that the studied intersections at SE 33rd Avenue/SE Powell and at SE 33rd Avenue/SE Francis currently and in the future, (considering the minimal 6 additional afternoon peak hour trips expected with the zone change), will continue to operate at LOS A and B, thereby satisfying City of Portland performance measures for intersection operations.

The TIS intersection capacity analysis for the unsignalized intersection at SE Cesar E Chavez Blvd/SE Francis reveals that under current conditions, the intersection is operating at LOS D (within the City's performance measure). However, taking into consideration current conditions and anticipated and conservative traffic volume growth (1% rate) for year 2013 and within the 2030 planning horizon year (necessary for this proposed zone change), this intersection is expected to deteriorate to LOS E and F during the morning and afternoon peak hours. Taking into account the 2030 planning horizon plus the approximated peak hour trips from the proposed zone change, the intersection will continue to operate at LOS E and F respectively. Therefore, with or without the proposed zone change, the intersection at SE Cesar E Chavez Boulevard/SE Francis will continue to satisfy the City's performance measures during the morning peak hour of travel, but will fail to meet the City's minimal standard during the afternoon peak hour.

Administrative Rule Adopted by Bureau of Transportation Engineering & Development Pursuant to Rule-Making Authority (ARB-TRN-10.27) / Subsection I.3 - ADMINISTRATIVE RULES FOR TRAFFIC CAPACITY ANALYSIS IN LAND USE REVIEW CASES, states as follows:

- '3. An amendment or other land use application that requires analysis of traffic capacity and allows development that either (1) may cause a transportation facility to perform below the standards established in sections 1 and 2, or (2) adds vehicle trips to a facility that is already performing

below the standards established in sections 1 and 2 may be approved if:

a. Development resulting from the amendment or other land use application will mitigate the impacts of the amendment or other land use application in a manner that avoids further degradation to the performance of the facility by the time of development through one or more of the following:

(i) the development is limited to result in no net increase in vehicle trips over what is allowed by existing zoning; OR

(ii) one or more combination of transportation improvements/measures are imposed to mitigate the transportation impacts of the amendment or other land use application in a manner that avoids further degradation to the facility's performance by the time of any development.

If the first referenced measure (3.a.i) noted above is implemented, the applicant would be limited to development on the site that would generate no more than three vehicle trips during the afternoon peak hour. Further, there are no possible transportation improvements that could be made to avoid the further degradation of the intersection's performance (measure 3.a.ii).

PBOT now refers to the most recent amendments to the State's Transportation Planning Rule (TPR) which went into effect at the beginning of this year. Oregon Administrative Rule 660-012-0060(1) states that, 'if an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) [see below] of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be

generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

- (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
- (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

PBOT makes reference to the TPR amendment, and specifically the above noted sections, to assert that as defined in subsection (C) above, the impact resulting from the proposed zone change on the intersection of SE Cesar E Chavez Boulevard/SE Francis does not result in a significant affect. As identified in the submitted TIS (page 15), the refined volume-to- capacity ratio and delay respective comparisons between the 2013 background vs. the 2013 background + net increase (0.66 v/c and 53.5 second delay) and the 2030 background vs. the 2030 Background + zone change (1.16 v/c and 192.6 second delay) will not change. The calculated performance of the SE Cesar E Chavez Boulevard/SE Francis intersection is 'projected to not meet the performance standards identified in the TSP,' however, the intersection performance will not be further degraded by the proposed zone change. Accordingly, the resulting impact on the intersection is not considered a significant affect based on the State's amended TPR.

PBOT concludes its analysis by indicating that although the proposed zone change will 'allow development that will cause a transportation facility to perform below the standards,' the amendment (zone change) can be approved because the 'development resulting from the amendment will avoid further degradation to the performance of the facility' since there will be no 'significant affect,' as defined by the State's amended TPR.

The applicant has adequately demonstrated to PBOT's satisfaction, that there will be an adequacy of (transportation) services in relation to the demands of the proposed Zone Change. PBOT is therefore supportive of the proposed Zone Change request.

The recently amended Transportation Planning Rule (effective January 1, 2012) generally requires a local government to determine whether certain regulatory amendments will 'significantly affect an existing or planned transportation facility.' The land use actions that trigger compliance with this requirement are amendments to a functional plan, comprehensive plan, or a land use regulation (including a zoning map amendment). (OAR 660-012-0060(1)) If the local government finds an amendment has a significant effect, it must take one or more specifically identified steps to address and remedy this conflict. (OAR 660-012-0060(2))

The amended TPR includes an exception to this general requirement for a zoning map amendment where the proposed new zoning is consistent with: (1) the comprehensive plan map designation for the site; and (2) the local Transportation System Plan. If both conditions are satisfied, the local government may find that the amendment 'does not affect an existing or planned transportation facility.' (OAR 660-012-0060(9)). In this case, the proposed R1 zoning is consistent with Comprehensive Plan Map designation for the site and the local Transportation System Plan. Accordingly, the above referenced approval criterion is satisfied."

The Hearings Officer, based upon the above-quoted PBOT comments, finds that the requirements of PCC 33.855.050.B.2.c are satisfied.

The Hearings Officer finds that public services are adequate, pursuant to the requirements of PCC 33.855.050.B, to serve the proposed development at the Subject.

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 requested rezoning is not to IR, Institutional Residential. The Hearings Officer finds that this approval criterion does not apply

C. When the requested zone is IR, Institutional Residential

Findings: The requested zone is R1, Medium Density Multi-dwelling Residential. The Hearings Officer finds that this approval criterion does not apply.

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

Findings: The referenced section in this criterion discusses automatic zoning map amendments for newly annexed properties. This situation does not apply because the Subject is not newly annexed, but has been within the City's boundaries for many years. Because the Subject is within the City's boundary, the Hearings Officer finds that this approval criterion is met.

SUMMARY: The Hearings Officer finds that all of the relevant approval criteria for the requested Zoning Map Amendment can be met with a condition that requires infiltration testing at depth at the time of the review for building permits.

33.805.010 Purpose of Adjustments

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below, have been met.

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified;
and

Findings: The requested Adjustments include:

Adjustment 1: Reduce the minimum lot width for lots in the R1 zone that are proposed for multi-dwelling development, from 70 feet to 40.5 feet at the street edge (PCC 33.612.200 B).

"The lot dimension standards ensure that each lot has enough room for development that meets all the requirements of the zoning code. They also ensure that lots are an appropriate size and shape so that development on each lot can be oriented toward the street as much as possible. The standards ensure that the multi-dwelling zones can be developed to full potential and that housing goals for the City are met."

The proposed development plan for the Subject was crafted to meet the density requirements of the R1 zone and provide elements that come as close to meeting the code standards as the lot configuration will allow. The shape of the tax lots making up the Subject is established; no change of size/shape is requested by the Applicant in this case.

Up to 18 units are permitted under the proposed zoning. The Applicant reduced the number of units to 12 units. The Applicant's stated purpose for reducing the number of units was to bring the building onto the eastern portion of the Subject, so that it would be visible from the street and still provide at least one parking space per unit. The tax lot that extends to the street is not wide enough to allow development of building improvements. This tax lot is just wide enough to provide a

portion of the parking spaces and a 20-foot-wide drive aisle, together with perimeter landscaping and pedestrian access that respond to those code requirements for multi-dwelling development.

Granting this adjustment will ensure that the proposed multi-dwelling project can be developed to its full potential and that the housing goals for the City can be met.

The Hearings Officer finds that the Applicant's proposed design meets the purpose of the regulation. The Hearings Officer finds that this approval criterion is met.

Adjustment 2: Reduce the required width of the onsite pedestrian connection that will run from SE Francis Street to the apartment building, from 5 feet to 4.5 feet (PCC 33.120.255).

"The pedestrian standards encourage a safe, attractive and usable pedestrian circulation system in all developments. They ensure a direct pedestrian connection between abutting streets and buildings on the site and between buildings and other activities on the site."

The proposed pedestrian path provides a direct connection between SE Francis Street and the apartment building, crossing through the parking area, in accordance with the code requirements. The Hearings Officer finds that the slight reduction in width is not significant enough to deter use of the pathway and the path will still meet ADA design guidelines. The request to make a pathway that is six inches less than the Code required five feet still allows the purpose of the regulation to be met. Therefore, for this Adjustment, the Hearings Officer finds this approval criterion is met.

Adjustment 3: Reduce the width of the required perimeter landscaping on the either side of the driveway from 5 feet to 4 feet (PCC 33.266.130.G.2).

Adjustment 4: Reduce the required interior landscaping for the parking area from 540 square feet to 115 square feet and reduce the required amount of planting materials for the interior landscaping area, from four medium trees and eighteen shrubs, to two medium trees and six shrubs (PCC 33.266.130.G.3 and PCC 33.248.020 I).

"The perimeter setback and landscaping requirements and the interior landscaping requirements for parking areas are intended to

- Improve and soften the appearance of parking areas;
- Reduce the visual impact of parking areas from sidewalks, streets, and especially from adjacent residential zones;
- Direct traffic in parking areas;
- Shade and cool parking areas;
- Reduce the amount and rate of stormwater runoff from vehicle areas;
- Reduce pollution and temperature of stormwater runoff from vehicle areas; and

- Decrease airborne and waterborne pollution."

Requested Adjustment 3, the requested reduction in the width of the perimeter landscaping along the edges of the driveway/parking area that connects to SE Francis Street, is a result of the overall design that was created to provide all of the elements that are required for a multi-dwelling development proposal and meet the minimum density requirements of the R1 zone on this awkwardly configured parcel. By reducing the width of the landscaping, the planting requirements can still be met to provide the needed landscape buffering and therefore meet the purpose of this regulation.

Requested Adjustment 4 is a reduction in the required interior landscaping for the parking area and a corresponding reduction in the required numbers of trees and shrubs. The Applicant and BDS staff indicated that this adjustment is necessitated by the awkward configuration of the lots. For example, the configuration of the Subject requires the main landscaped stormwater facility to be placed in a location that is just outside of the area that can count toward interior landscaping (abutting and within 10 feet of the parking area).

Exhibit H.8, provided by the Applicant at the hearing, is useful as an aide to understanding where the 115 feet of landscaping will be located and other landscaped areas on the Subject (reduced sized copy is attached to this decision). The hatched area located in the center portion of Exhibit H.8 is the location of the 115 square feet of landscaping. Exhibit H.8 also shows additional trees/landscaping in close proximity to the proposed multi-family building and alongside the parking lot/accessway. Only the hatched 115 square foot area qualifies, under the PCC, as "interior landscaping" for the parking area.

The landscaping that is being provided that counts as interior landscaping, together with the immediately adjacent stormwater facility, will provide shading and cooling for the parking area and will also improve and soften its appearance. The stormwater facility will adequately reduce the amount and rate of stormwater runoff from the vehicle area, as well as the other portions of the Subject and will, likewise, decrease airborne and waterborne pollution. The trees and shrubs that will be planted in this area are adequate for this portion of the landscaped area. Additional trees and shrubs will be included in the landscaped areas that are located beyond the recognized "interior landscaping" boundaries. It should also be noted that the overall requirement, for 20 percent of the site area to be landscaped, will be met by this proposal. The Hearings Officer finds that the purpose of these regulations are equally met, and, for these Adjustments, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The development proposal for the Subject provides landscaping at the front of the Subject, adjacent to the SE Francis right-of-way. This landscaped area will create a buffer for the streetscape, screening the view of the parking areas. The onsite parking will provide one space for each unit. Direct pedestrian access will still be provided, making a connection to the street edge. A

portion of the apartment building will be located to the north of the connection to the street, and though the lot configuration requires the building to be located in the north portion of the Subject, the position of the building and the pedestrian and vehicle connection to Francis Street still allows for surveillance to preserve neighborhood safety.

C-K NA, in its written submission, asserts that the proposed multi-family building is set back too far from SE Francis and that the proposed landscaping is not adequate. C-K NA suggests that the excessive setback from SE Francis and inadequate landscaping "will lead to substandard housing for tenants and will not be in context with the surrounding properties." (Exhibit F.1) The Hearings Officer finds that the awkward configuration of the Subject will, under any reasonable development alternative, place residential buildings at the north end of the Subject; a significant set back from SE Francis. The Hearings Officer finds that the proposed development of the Subject includes landscaping in the vegetated swale adjacent to SE Francis, landscaping along both sides of the "driveway," and landscaping around the parking lot (in front of the building). The Hearings Officer finds that the Applicant's proposed landscaping is adequate and generally consistent with the landscaping on nearby properties. (See Exhibit H.11, slides 7 through 33) The Hearings Officer finds no evidence in the record to support the C-K NA assertion that the Applicant's proposal, even with the requested adjustments, will "lead to substandard housing and will not be in context with the surrounding properties."

The Hearings Officer finds, even with the requested adjustments, the Applicant's proposal will ensure that there are no significant detrimental impacts to the appearance or the livability of the residential area. Therefore, the Hearings Officer finds that this approval criterion is met.

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Four Adjustments have been requested. However, the Hearings Officer finds that the impacts from approval of the Adjustments will not be cumulative. The purpose of the R1 zone is to provide opportunities for multi-dwelling development. In this case, the Subject has been configured in such a way that the development proposal that meets the density requirements of the Comprehensive Plan. The Hearings Officer finds that approval of the adjustments will allow development of the awkwardly shaped Subject to be developed with a multi-dwelling development meeting the R1 density requirements. The Hearings Officer finds that the Applicant's proposal, with the requested adjustments, will fit into the neighborhood pattern with only slight modifications to the standards.

The Hearings Officer finds that this approval criterion is met.

D. City-designated scenic resources and historic resources are preserved; and

Findings: There are no scenic or historic resources on the site. Therefore, this criterion does not apply.

E. Any impacts resulting from the adjustment are mitigated to the extent practical.

Findings: The Applicant has requested approval of four Adjustments that are exceptions to the regulations for development on the Subject. The Applicant reduced the maximum allowed number of units from 14 to the proposed 12 units and provided a design that comes as close to meeting the required development standards as the configuration of these lots will allow. Approving these Adjustments will actually allow development that comes so close to meeting the code requirements that there should not be any noticeable impacts and therefore no additional mitigation is required. Therefore, this criterion is met.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.

Findings: The site is not located in an environmental zone. Therefore, this criterion does not apply.

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.

III. CONCLUSIONS

All of the relevant approval criteria have been met for the requested Zoning Map Amendment and Adjustments to the development standards. The requested zone change, from R5 to R1, is in compliance with the existing Comprehensive Plan Map designation and will not be a change from a higher to a lower residential density. The City's service agencies analyzed the proposal and found that services are adequate to support the 12 residential units that are proposed for the Subject. A Condition of Approval will require later deep infiltration testing at the time of building permits, in order to ensure that the mechanics of the stormwater management system are adequately engineered. The requested Adjustments allow the development of the awkwardly configured parcels in such a way that the intent of all of the development standards will still be met and there will be no significant detrimental impacts to the appearance or the livability of the residential area. The proposal can be approved, in general compliance with the proposed site plan.

IV. DECISION

Approval of a Zoning Map Amendment, in substantial compliance with the Comprehensive Plan Map designation, from R5 to R1, and approval of Adjustments to:

- 1) Reduce the minimum lot width for lots in the R1 zone that are proposed for multi-dwelling development, from 70 feet to 40.5 feet at the street edge (Code Section 33.612.200 B).
- 2) Reduce the required width of the onsite pedestrian connection that will run from SE Francis Street to the apartment building, from 5 feet to 4.5 feet (Code Section 33.120.255).
- 3) Reduce the width of the required perimeter landscaping on the either side of the driveway from 5 feet to 4 feet (Code Section 33.266.130.G.2).
- 4) Reduce the required interior landscaping for the parking area from 540 square feet to 115 square feet and reduce the required amount of planting materials for the interior landscaping area, from four medium trees and eighteen shrubs, to two medium trees and six shrubs (33.266.130.G.3, 33.248.020 I).

Approvals are subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) must be noted on each of the four required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 12-109556 ZC AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. As a part of the submittal for building permits, the Applicant must provide evaluation of infiltration feasibility, at depth. (While the Applicant has demonstrated the ability to discharge stormwater offsite, infiltration tests deeper than the previous submittal will need to be submitted to meet the Stormwater Hierarchy of the City's SWMM).



Gregory J. Frank, Hearings Officer



Date

Application Determined Complete:	July 25, 2012
Report to Hearings Officer:	October 5, 2012
Decision Mailed:	November 5, 2012
Last Date to Appeal:	4:30 p.m., November 19, 2012
Effective Date (if no appeal):	November 20, 2012 Decision may be recorded on this date.

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.

Appeal of the decision. The decision of the Hearings Officer may be appealed to City Council, who will hold a public hearing. 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.

Who can appeal: You may appeal the decision only if you write a letter which is received before the close of the record for the hearing, if you testify at the hearing, or if you are the property owner/applicant. Appeals must be filed within 14 days of the decision. **Appeals must be filed within 14 days of the decision. An appeal fee of \$4,350 will be charged (one-half of the BDS application fee, up to a maximum of \$5,000).**

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 Chairperson 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.

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.

If the Zone Change or Comprehensive Plan Map Amendment approval also contains approval of other land use decisions, other than a Conditional Use Master Plan or Impact Mitigation Plan, those approvals expire three years from the date the final decision is rendered, unless a building permit has been issued, or the approved activity has begun.

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.

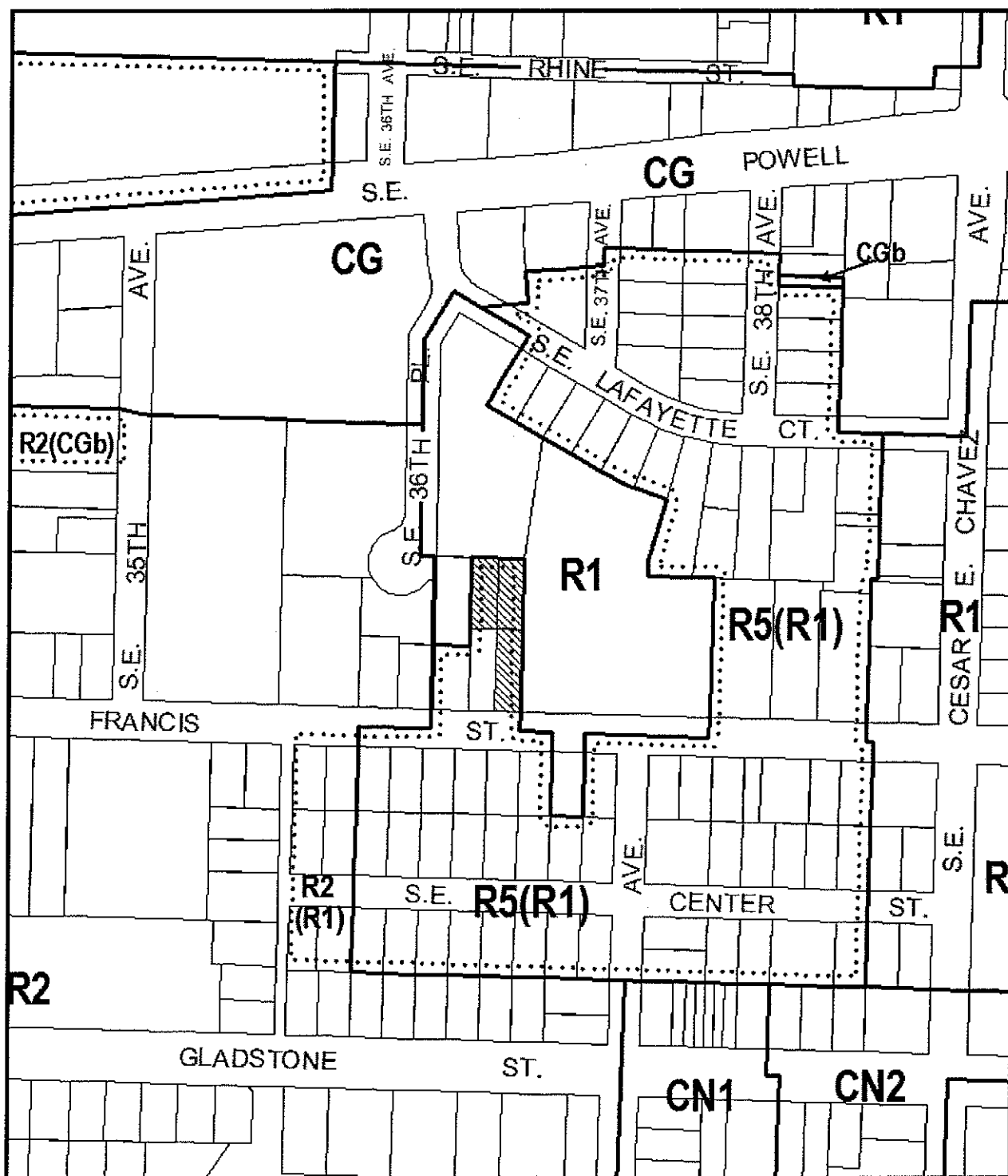
EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Application and original plans and narrative
 - 2. Revised plans, received June 4, 2012
 - 3. Supplemental Information, Adjustment narrative, received July 25, 2012
 - 4. Supplemental Information, TIS Addendum, received August 30, 2012
 - 5. Supplemental Information, revised storm water plan received September 12, 2012
- B. Zoning Map (**attached**)
 - 1. Existing Zoning
 - 2. Proposed Zoning
- C. Plans and Drawings
 - 1. Site Plan (**attached**)
- D. Notification information
 - 1. Request for response
 - 2. Posting letter sent to applicant
 - 3. Notice to be posted
 - 4. Applicant's statement certifying posting (received, but misplaced)
 - 5. First mailing list
 - 6. First mailed notice
 - 7. Cancellation mailing list
 - 8. Cancellation notice
 - 9. Second posting letter to applicant
 - 10. Second notice to be posted
 - 11. Second statement certifying posting
 - 12. Second notice mailing list
 - 13. Second 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. Police Bureau
 - 6. Life Safety Plan Review Section of Bureau of Development Services
 - 7. Summary of electronic responses from City agencies
- F. Letters
 - 1. Creston-Kenilworth Neighborhood Association (c/o Tylor King)
- G. Other
 - 1. Site History Research
 - 2. Letter from Kathleen Stokes to Mark Dane, February 22, 2012
 - 3. Second letter from Kathleen Stokes to Mark Dane, July 9, 2012

4. Pre-application Conference Summary Notes (EA 11-170865)

H. Received in the Hearings Office

1. Hearing Notice - Stokes, Kathleen
2. Request to Reschedule - Poelwijk, Yvonne
3. Hearing Cancellation Notice - Stokes, Kathleen
4. Request to Reschedule - Poelwijk, Yvonne
5. Hearing Notice - Stokes, Kathleen
6. Staff Report Stokes, Kathleen
7. 10/8/12 Letter - Holloway, Susan
8. Drawing - Dane, Mark (**8 ½" x 11" size attached**)
9. 10/14/12 Letter - McComb, Steven
 - a. Photos - McComb, Steven
10. Record Closing Information - Hearings Office
11. PowerPoint presentation - Stokes, Kathleen



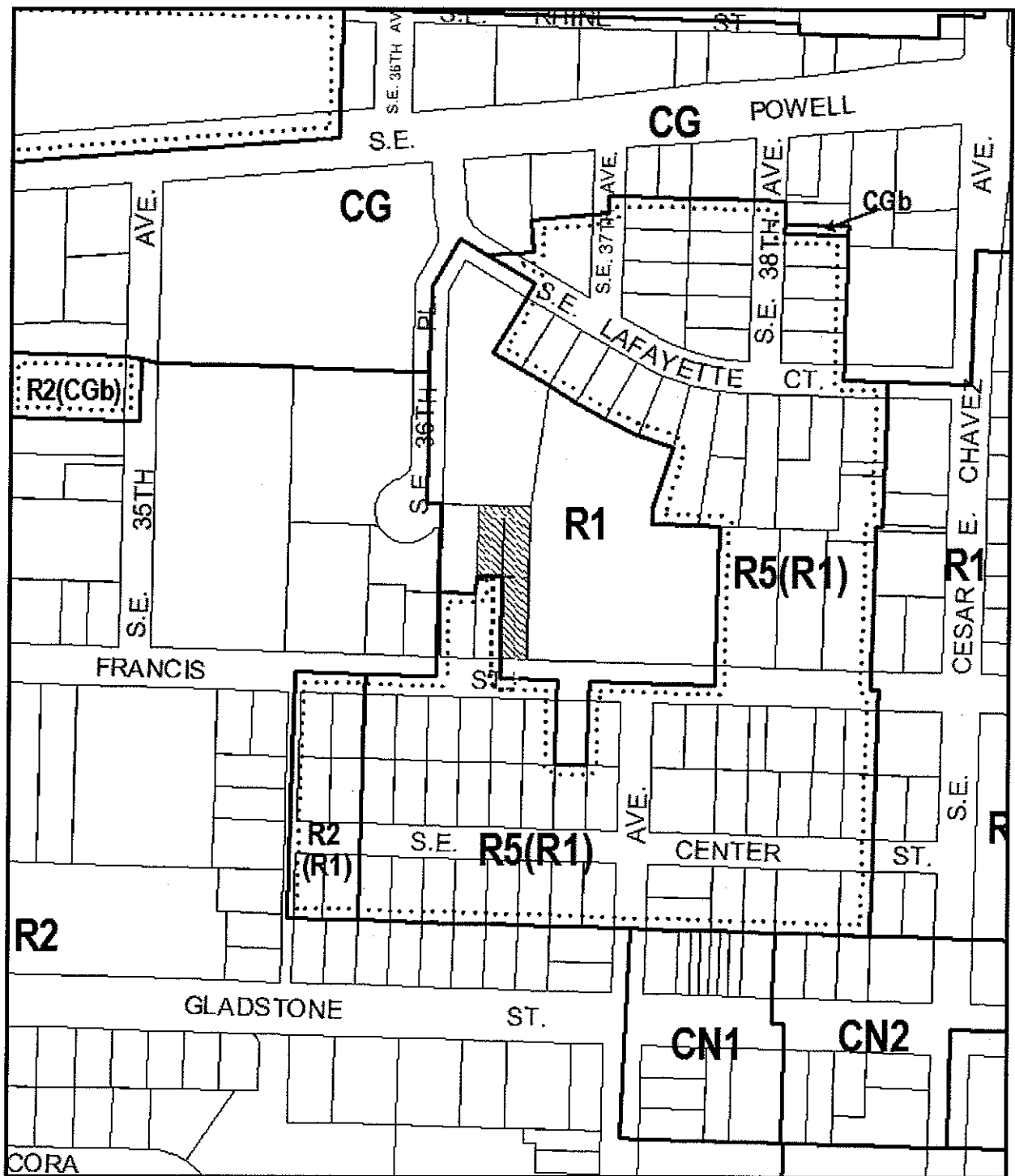
ZONING  Site

EXISTING



NORTH

File No.	<u>LU 12-109556 ZC</u>
1/4 Section	<u>3434</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E12DA 10500</u>
Exhibit	<u>B</u> (Feb 03,2012)

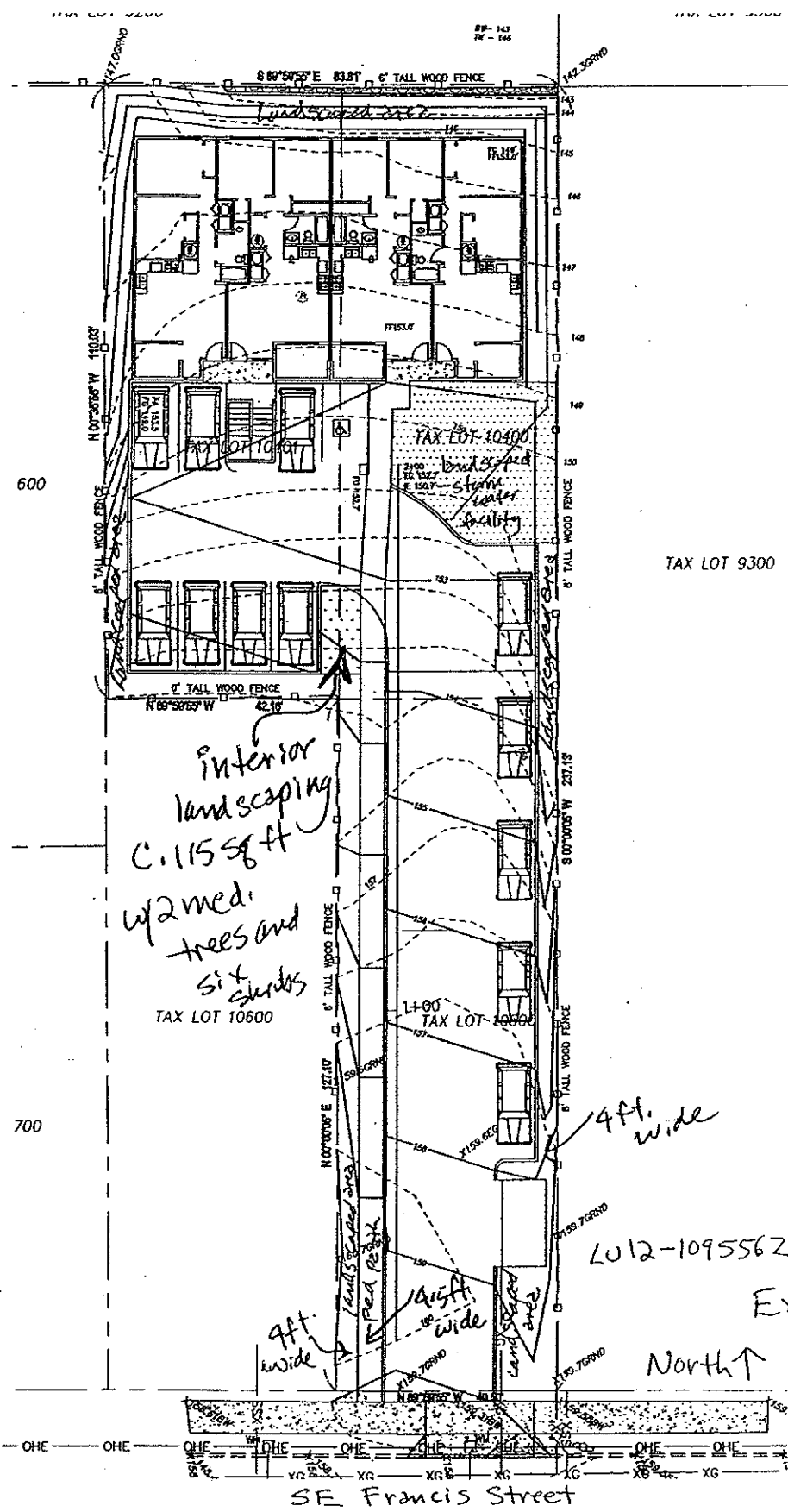


ZONING PROPOSED



 Site

File No. LU 12-109556 ZC
 1/4 Section 3434
 Scale 1 inch = 200 feet
 State Id 1S1E12DA 10500
 Exhibit B (Feb 03, 2012)



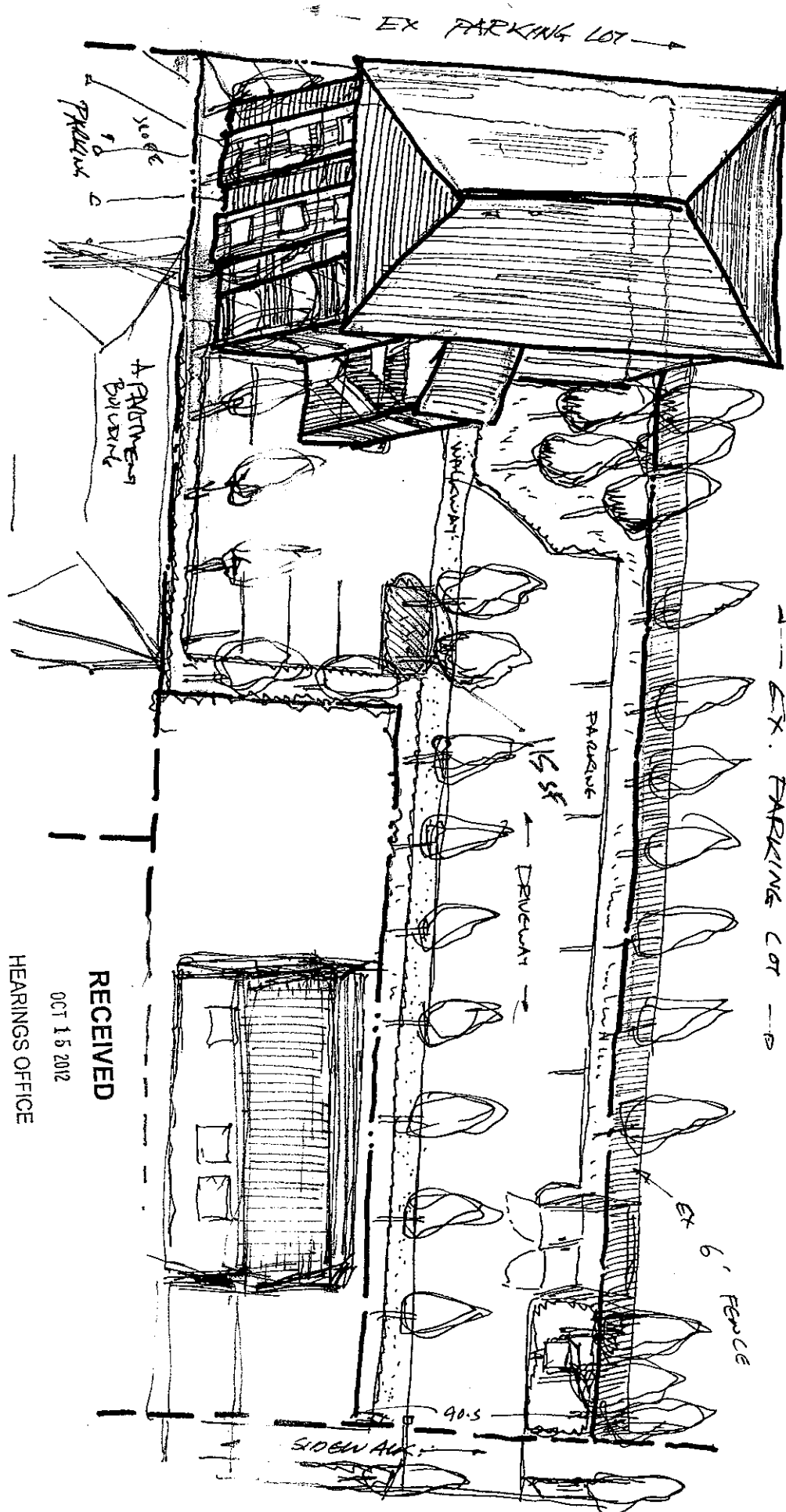
TAX LOT 9300

L012-109556ZC

Exhibit C.1.

North ↑

SE Francis Street



RECEIVED
OCT 15 2012
HEARINGS OFFICE