



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

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

**NOTICE OF A PUBLIC HEARING BEFORE
THE CITY COUNCIL ON AN APPEAL OF THE
PORTLAND LAND USE HEARINGS OFFICER**

CASE FILE: LU 13-219755 ZC AD LDP (HO 4130027)
WHEN: April 10, 2014 @ 2:00 PM
WHERE: COUNCIL CHAMBERS, 1221 SW FOURTH AVENUE

Date: March 7, 2014
To: Interested Person
From: Sean Williams, Land User Services
503-823-7612 / sean.williams@portlandoregon.gov

A public hearing will be held to consider an appeal of the Hearings Officer decision to approve a Zone Map Amendment (ZC), Adjustment (AD) and Land Division Partition (LDP) at 3058 SE Woodstock Boulevard. The Hearings Officer decision of approval with conditions has been appealed by the Eastmoreland Neighborhood Association. At the hearing City Council will consider the appeal. You are invited to testify at the hearing.

This will be an On-the-Record hearing, one in which new evidence cannot be submitted to the City Council. For a general explanation of the City Council hearing process please refer to the last page of this notice.

File No.: LU 13-219755 ZC AD LDP (HO 4130027)

Appellant: Eastmoreland Neighborhood Association
c/o Robert McCullough, President
6123 SE Reed College Place
Portland, OR 97202

Applicant: Rob Humphrey
Faster Permits
14334 NW Eagleridge Lane
Portland, OR 97229

Representative: Michael C. Robinson
Perkins Coie LLP
1120 NW Couch Street, Tenth Floor
Portland, OR 97209-4128

Owner: Vic Remmers
Everett Custom Homes Inc.
735 SW 158th Avenue, Suite 180
Beaverton, OR 97008

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representative: Sean Williams

Site Address: 3058 SE Woodstock Boulevard
Legal Description: BLOCK 39 LOT 6&7 TL 300, EASTMORELAND
Tax Account No.: R231508470
State ID No.: 1S1E13CD 00300
Quarter Section: 3633
Neighborhood: Eastmoreland
Business District: None
District Neighborhood Coalition: Southeast Uplift
Plan District: Eastmoreland
Zoning: Residential 7,000 (R7) w/ Residential 5,000 (R5) Comprehensive Plan
Land Use Review: Type III, Zoning Map Amendment (ZC), Adjustment (AD) and Land Division Partition (LDP)

BDS Staff Recommendation to Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 9:00 a.m. on January 15, 2014, in Room 2500A, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 12:01p.m. The record was held open until 4:30 p.m. on January 22, 2014 for new evidence, and until 4:30 p.m. on January 29, 2014 for the Applicant's final rebuttal.

Testified at the Hearing:

Sean Williams
Michael Robinson
Peter Livingston
Robert McCullough
Rod Merrick
Bud (Robert) Oringdolph
Joanne Carlson
Kathleen Taylor
Kurt Krause
Mary Rogers
Phyllis Markee
Rob Buys
Kimberly Koehler
Jeff Bowman
Patricia Bowman
Kyle Gernhart
Catherine Mushel
Maria Baker
Marylu Gray
Robert Schlesinger
Sharon Webber
Mike Ard

Proposal:

The applicant (the "Applicant") is proposing to partition the property commonly referred to as 3058 SE Woodstock Boulevard (the "Subject Property") into two parcels of approximately 7,068 (Parcel 1) and 6,113 (Parcel 2) square feet in size in conjunction with a Zone Map Amendment in conformance with the Comprehensive Plan from Residential 7,000 (R7) to Residential 5,000 (R5). An adjustment review is additionally requested to allow the creation of through lots, as both street frontages are not designated as Local Service.

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines "parcel" as a single unit of land created by a partition of land. The applicant's proposal is to create 2 units of land. Therefore this land division is considered a partition.

Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- **33.855.050, Approval Criteria for Base Zone Changes.**
- **33.805.040 A.-F., Approval Criteria for Adjustments.**
- **Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.**

REVIEW BODY DECISION

Approval of a Zoning Map Amendment, in compliance with the Comprehensive Plan Map designation, from R7 to R5;

Approval of an Adjustment to allow Parcels 1 and 2 to be created as through lots;

Approval of a Preliminary Plan for a 2-parcel partition that will result in two through lots, as illustrated with Exhibits C.1-C.5, subject to the following conditions:

A. The Final Plat must show the following:

1. A recording block for the Acknowledgement of Tree Preservation Requirements as required by Condition B.2 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "An Acknowledgement of Tree Preservation Requirements has been recorded as document no. _____, Multnomah County Deed Records."

B. The following must occur prior to Final Plat approval:

1. A finalized permit must be obtained for demolition of the existing residence on the site and capping the existing sanitary sewer connection. (if the demo includes a primary residential structure, add:) Note that Title 24 requires a 35-day demolition delay period for most residential structures. The site plan for the demolition permit must show all trees to be preserved and root protection zones as shown on Exhibit C.5. All demolition work must be in conformance with the recommendations in the applicant's arborist report (Exhibit A.2).
2. The applicant shall execute an Acknowledgement of Tree Preservation Requirements that notes tree preservation requirements that apply to Parcel 1. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be recorded with Multnomah County and referenced on the final plat.

C. The following conditions are applicable to site preparation and the development of individual lots:

1. Development on Parcel 1 shall be in conformance with the Preliminary Grading Plan (Exhibit C.5) and the applicant's arborist report (Exhibit A.2). Specifically, tree #2 (28-inch Douglas fir) is required to be preserved, with the root protection zone indicated on Exhibit C.5. Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.
2. The applicant must provide a fire access way that meets the Fire Bureau requirements related to aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height as measure to the bottom of the eave of the structure or the top of the parapet for a flat roof.
3. The address and main entrance of development on Parcels 1 and 2 must be oriented towards SE Woodstock Boulevard and vehicle/garage access must be from SE Moreland Lane.
4. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal.

Decision mailed: February 14, 2014

APPEAL

The Hearings Officer decision of approval with conditions has been appealed by the Eastmoreland Neighborhood Association. According to the appellants' statement, the appeal of the Hearings Officer decision is based on arguments that:

Comprehensive Plan Map and Zoning Map

The Hearings Officer erred by omitting the information that the assumed zoning designation was not referenced in the comprehensive plan, the archives of the comprehensive plan at the city archives, Eastmoreland's archives, SE Uplift's archives, or the contemporaneous press. The map should have been amended long ago under PC 33.810.080.A.2.

PC 33.855.050.B and PC 33.660.120.K

The Hearings Officer did not address the argument that the public works decision is a land use decision that was made without notice.

PC 33.855.050.A

There is more than one corresponding zone associated with the R5 Comprehensive Plan map designation.

PC 33.660.120.K

The identified location of on-street parking in the vicinity is not practical to serve the subject property based on its proximity. With respect to adequate, the Hearings Officer chose to rely on the conclusions of the applicant's traffic engineer that on-street parking would be adequate,

rather than take seriously the opponents' traffic engineer, who pointed out that the parking numbers in the study were calculated at a time when residential parking is not anticipated to be as high as at other times.

PC 33.805.010

An adjustment is not required as it does not meet the purpose of Adjustments, and should not be allowed.

PC 33.610.300.B

The standard for through lots has no substance and can always be avoided by conditioning development so that it faces the major City traffic street and turns its back on the local service street.

PC 33.805.040.B

Adjustment approval criteria that states: "If in a residential zone, the proposal will not significantly detract from the livability of appearance of the residential area" should also be applied to the partition proposal as opposed to just the Adjustment proposal.

PC 33.805.040.D and PC 33.540

The Hearings Officer incorrectly finds Adjustment approval criteria pertaining to City designated scenic resources and historic resources inapplicable.

Review of the case file: The Hearings Officer decision and all evidence on this case are now available for review at the Bureau of Development Services, 1900 SW 4th Avenue, # 5000, Portland OR 97201. Copies of the information in the file can be obtained for a fee equal to the City's cost for providing those copies. I can provide some of the information over the phone.

We are seeking your comments on this proposal. The hearing will be held before the City Council. To comment, you may write a letter in advance, or testify at the hearing. In your comments, you should address the approval criteria, as stated above. Please refer to the file number when seeking information or submitting testimony. Written comments **must be received by the end of the hearing** and should include the case file number and the name and address of the submitter. It must be given to the Council Clerk, in person, or mailed to 1221 SW Fourth Avenue, Room 130, Portland, OR 97204. A description of the City Council Hearing process is attached.

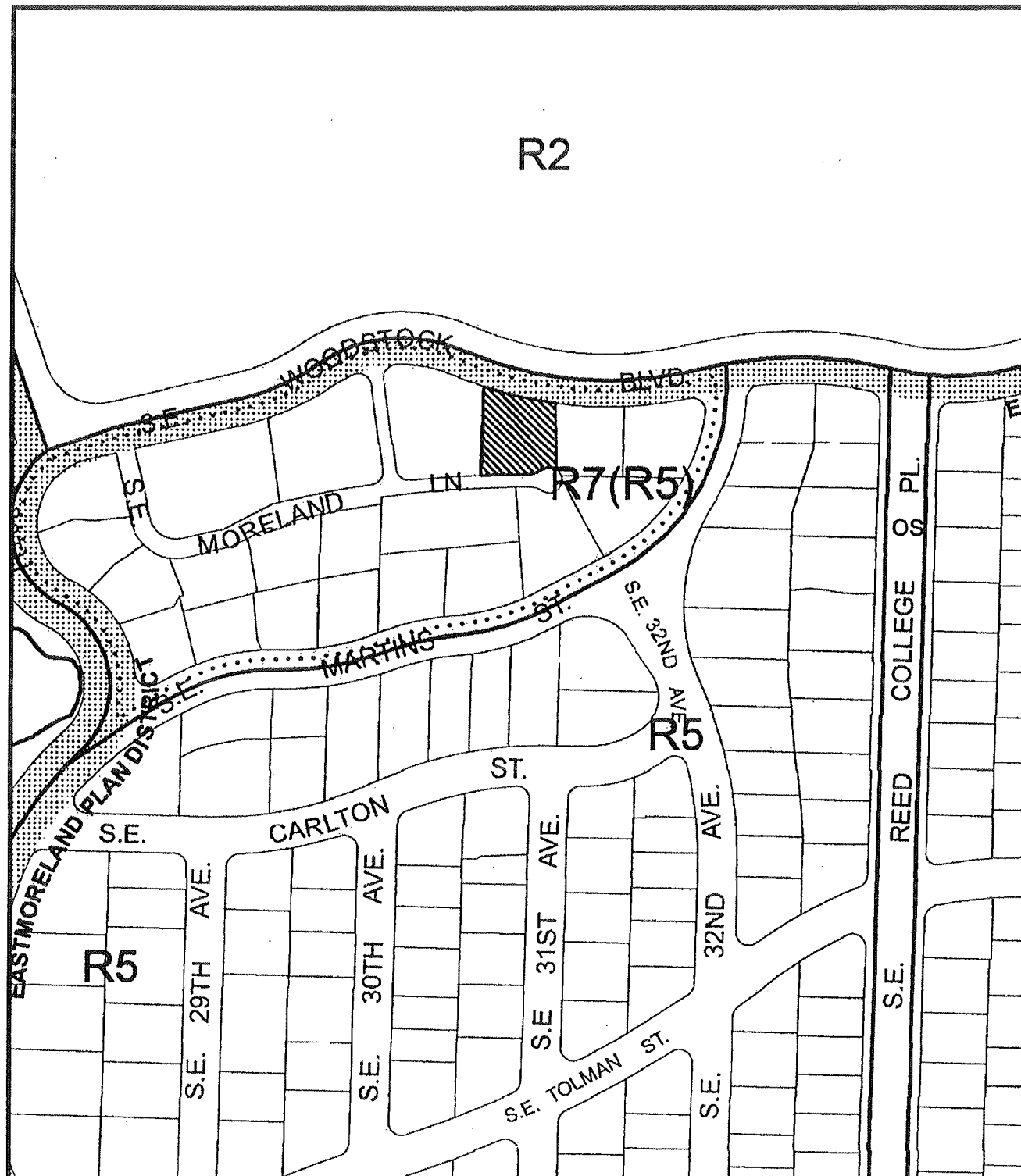
If you choose to provide testimony by electronic mail, please direct it to the Council Clerk [karla.Moore-Love@portlandoregon.gov]. Due to legal and practical reasons, City Council members cannot accept electronic mail on cases under consideration by the Council. Any electronic mail on this matter must be received no less than one hour prior to the time and date of the scheduled public hearing. The Council Clerk will ensure that all City Council members receive copies of your communication.

City Council's decision is final. Any further appeal must be filed with the Oregon Land Use Board of Appeals (LUBA). Failure to raise an issue in a hearing, in person or by letter, by the close of the record or at the final hearing on the case or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to LUBA on that issue. Also, if you do not provide enough detailed information to the City Council, they may not be able to respond to the issue you are trying to raise. For more information, call the Auditor's Office at (503) 823-4086.

If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.

Attachments

1. Zoning Map
2. Site plan(s)
3. Appeal Statement
4. City Council Appeal Process



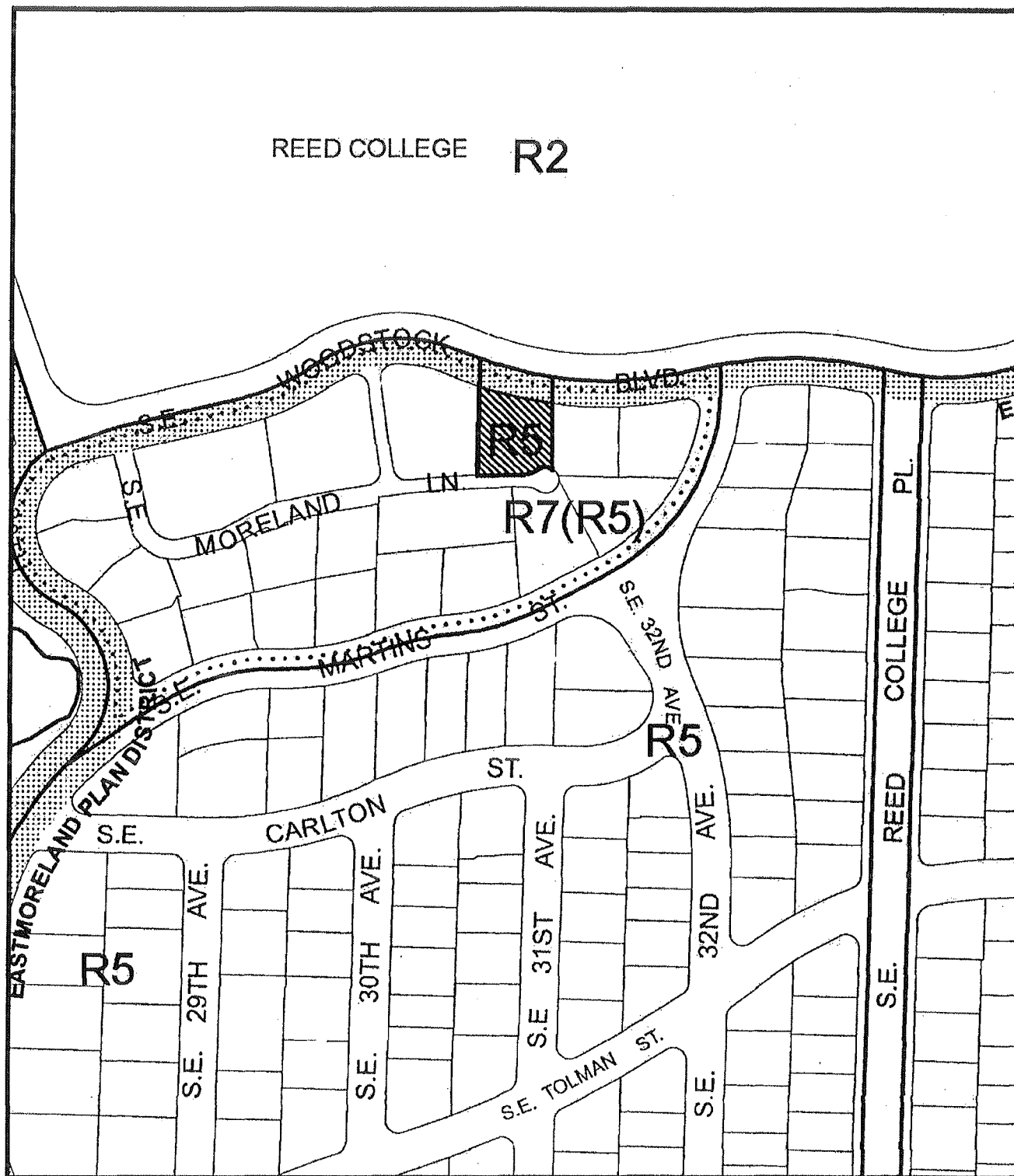
ZONING EXISTING



This site lies within the:
EASTMORELAND PLAN DISTRICT



File No. LU 13-219755 ZC,LDP,AD
 1/4 Section 3633
 Scale 1 inch = 200 feet
 State_Id 1S1E13CD 300
 Exhibit B.1 (Dec 31, 2013)



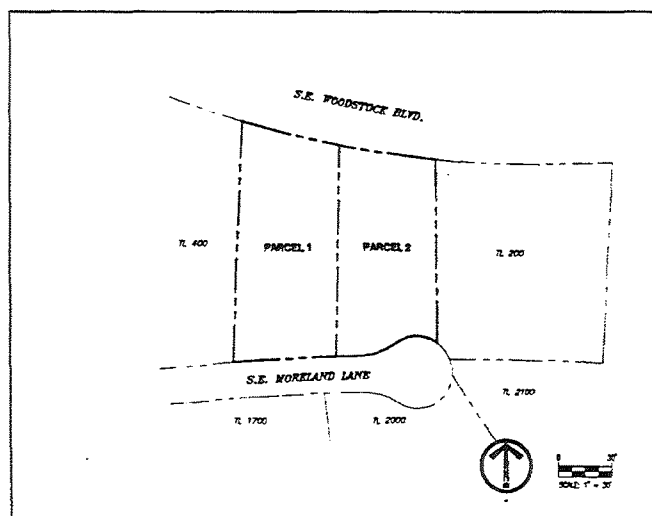
ZONING PROPOSED



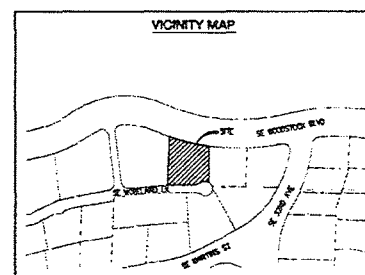
This site lies within the:
EASTMORELAND PLAN DISTRICT

File No. LU 13-219755 ZC,LDP,AD
 1/4 Section 3633
 Scale 1 inch = 200 feet
 State Id 1S1E13CD 300
 Exhibit B.2 (Dec 31, 2013)

S.E. 1/4, S.W. 1/4, SECTION 13, T.1S., R.1E., W.M.,
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON



- ### LEGEND
- | | |
|-------------|---------------------------------|
| ———— | BOUNDARY LINE |
| — · — · — · | ADJACENT/FOLLOWING LOT LINE |
| ——— | CENTER LINE ROW |
| ——— | EXISTING 1" CONTOUR LINE |
| ——— | EXISTING 5" CONTOUR LINE |
| ⊙ ⊙ | EXISTING POLE |
| ⊙ | EXISTING SANITARY SEWER MANHOLE |
| ⊙ | EXISTING WATER METER |
| ⊙ | EXISTING ELECTRIC METER |
| ⊙ | EXISTING UTILITY POLE |
| ⊙ | EXISTING LIGHT POLE |
| ⊙ | EXISTING UTILITY AND LIGHT POLE |
| ——— | EXISTING DRAINAGE LINE |
| ——— | EXISTING COMBINED SEWER LINE |
| ——— | EXISTING WATER LINE |
| ——— | PROPOSED SANITARY LATERAL |
| ——— | PROPOSED WATER METER |
| ⊙ | PROPOSED MANHOLE |
| ——— | PROPOSED SEWERAGE FORCE |
| ⊙ | CLAMPED SEWERAGE ATTENUATOR |
| ——— | DIRECTION OF SURFACE DRAINAGE |



SITE INFORMATION

SITE ADDRESS: 3056 SE WOODSTOCK BOULEVARD
TAX MAPS: T1S R1E SEC. 13
TAX LOTS: 300
GROSS AREA: 13,199 SF
ZONING: ZONE CHANGE TO R5

APPLICANT:

EVERETT CUSTOM MONIES
735 SW 196TH AVE. STE. 100
BEAVERTON, OREGON 97008
CONTACT: VICTOR REIMERS
503-726-7080 | TEL
503-726-7108 | FAX

ENGINEER:

EMERO DESIGN, LLC
5107 SW MURRAY BLVD, SUITE 147
BEAVERTON, OR 97008
CONTACT: ERIC EVANS, PE
503-653-1810 | TEL
503-638-9992 | FAX

DRAWING INDEX:

- 1 COVER SHEET
2 EXISTING CONDITIONS
3 PRELIMINARY PLAN
4 PRELIMINARY SITE/UTILITY PLAN
5 PRELIMINARY GRADING PLAN

3058 SE WOODSTOCK BOULEVARD

TAX MAP T1S R1E 13CD
TAX LOT 300
PORTLAND, OREGON

COVER SHEET

HEMERIG
Design

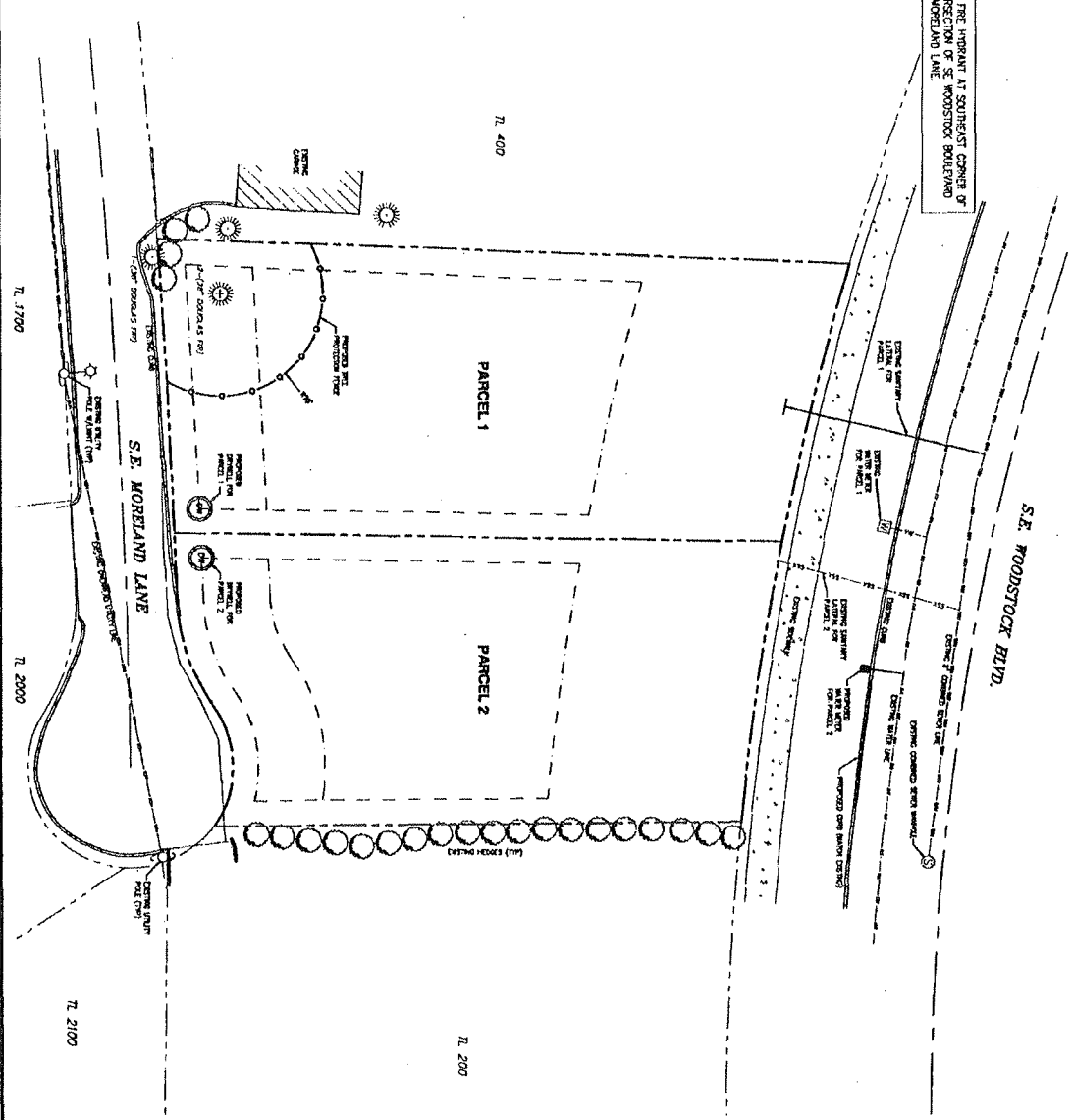
107 SW MURRAY BLVD. SUITE 107
BEAVERTON, OREGON 97008
PH: (503)-744-0812

File: 100-748-2002

<div style="text-align: center;">  2 5 </div>	<div style="text-align: center;">  8107 SW MURRAY BLVD. SUITE 147 BEAVERTON, OREGON 97008 PH: (503) 746-8812 </div>	<div style="text-align: center;"> REVISIONS <table border="1" style="width: 100%;"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table> </div>	NO.	DATE	DESCRIPTION																															<div style="text-align: center;"> EXISTING CONDITIONS </div>	3058 SE WOODSTOCK BOULEVARD TAX MAP T1S R1E 13CD TAX LOT 300 PORTLAND, OREGON
		NO.	DATE	DESCRIPTION																																	
<div style="text-align: center;"> 3058 SE WOODSTOCK BOULEVARD TAX MAP T1S R1E 13CD TAX LOT 300 PORTLAND, OREGON </div>																																					

CASE NO. 13-21975
EXHIBIT C-4

NEAREST FIRE HYDRANT AT SOUTHEAST CORNER OF THE INTERSECTION OF SE WOODSTOCK BOULEVARD AND SE WOODLAND LANE.



S.E. WOODSTOCK BLVD.

PARCEL 1

PARCEL 2

π 200

7. 400

S.E. MORELAND LANE

7. 1700

2000

π 2100

LETTER	PROPERTY LINE
—	WANDER/ADJACENT LOT LINE
---	COMMON LINE ONLY
⊗	EXISTING POLE
⊕	EXISTING DEPT/INT STREET LIGHT
⊙	EXISTING WATER METER
⊖	EXISTING UTILITY POLE
⊗	EXISTING LOT/INT. POLE
⊙	EXISTING UTILITY AND LOT/INT. POLE
⊖	EXISTING OVERHEAD LINE
⊙	EXISTING COMMONED STREET LIGHT
⊖	EXISTING WATER LINE
⊙	PROPOSED SEWER/STORM DRAINAGE
⊖	PROPOSED WATER METER
⊗	PROPOSED OVERHEAD



SOLD

PRELIMINARY SITE/
UTILITY PLAN

305A SE WOODSTOCK BOULEVARD

TAX MAP T1S R1E 13CD
TAX LOT 300
PORTLAND, OREGON

EMERIO
Designs

6107 SW MURRAY BLVD. SLATE 147
BEAVERTON, OREGON 97008
PH: (503)-748-6812

DAISON STAFF, Pretime Oct 07, 2013 - 6:50am, P:\124-133 3026 of Woodstock\eng\lrm\124-133_Org\stang



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7300 • www.portlandoregon.gov/bds



Type III Decision Appeal Form

LU Number: 13-219755 ZC AD LDP

FOR INTAKE, STAFF USE ONLY

Date/Time Received <u>2/27/14 @ 2:05</u>	<input checked="" type="checkbox"/> Action Attached
Received By <u>gmm</u>	Fee Amount <u>5,000</u>
Appeal Deadline Date <u>2/28/14 4:30pm</u>	<input checked="" type="checkbox"/> [N] Fee Waived
<input type="checkbox"/> Entered in Appeal Log	Bill # <u>3534993</u>
<input checked="" type="checkbox"/> Notice to Auditor <u>2/28/14</u>	<input checked="" type="checkbox"/> [Y] [N] Unincorporated MC
<input checked="" type="checkbox"/> Notice to Dev. Review <u>2/28/14</u>	

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS 3058 SE Woodstock Blvd DEADLINE OF APPEAL 2/28/14

Name Eastmoreland Neighborhood Association

c/o Robert McCullough, President Portland

Address 6123 SE Reed College Place City Portland State/Zip Code OR, 97202

Day Phone 503-771-5090 Email Robert@mresearch.com Fax _____

Interest in proposal (applicant, neighbor, etc.) Neighborhood Association

Identify the specific approval criteria at the source of the appeal:

Zoning Code Section 33. <u>805</u> . <u>010</u>	Zoning Code Section 33. <u>805</u> . <u>040</u>
Zoning Code Section 33. <u>610</u> . <u>300</u>	Zoning Code Section 33. <u>660</u> . <u>120</u>

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

See attached memorandum for discussion of these and additional criteria.

Appellant's Signature _____

FILE THE APPEAL - Submit the following:

- ☒ This completed appeal form
- ☒ A copy of the Type III Decision being appealed
- ☒ An appeal fee as follows:
 - ☐ Appeal fee as stated in the Decision, payable to City of Portland
 - ☒ Fee waiver for ONI Recognized Organizations approved (see instructions under Appeals Fees A on back)
 - ☐ Fee waiver for low income individual approved (attach letter from Director)
 - ☐ Fee waiver for Unincorporated Multnomah County recognized organizations is signed and attached

CASE NO. _____

EXHIBIT 1-01

The appeal must be filed by the deadline listed in the Decision. To ensure the appeal is received within this deadline, the appeal should be filed in the Development Services Center at 1900 SW 4th Ave, 1st Floor, Suite 1500, Portland, Oregon, between 8:00 a.m. and 3:00 p.m. on Tuesday through Friday. On Mondays, and between 3:00 - 4:30 p.m. on Tuesday through Friday, the form(s) must be submitted at the Reception Desk on the 5th Floor.

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

Information about the appeal hearing procedure and fee waivers is on the back of this form.

**MEMORANDUM IDENTIFYING APPROVAL CRITERIA
EASTMORELAND NEIGHBORHOOD APPEAL**

Comprehensive Plan Map and Zoning Map.

The Hearings Officer erred by omitting the information that the assumed zoning designation was not referenced in the comprehensive plan, the archives of the comprehensive plan at the city archives, Eastmoreland's archives, Southeast Uplifts archives, or the contemporaneous press. Seven board members of the Eastmoreland board submitted affidavits that no such change had been made, discussed, or published in spite of extensive discussions with the then mayor, planning officials, and neighbors. Given the city's frequently stated goal of involving neighborhoods in the planning process, the absence of *any* discussion anywhere of the 1980 comprehensive plan designation to R-5 of the Moreland Block, which includes the subject property, is strong circumstantial and substantial evidence that either it was mapped that way by mistake or (far less likely) that the city planners intended to avoid a controversy by failing to disclose it to the neighborhood representatives. The map should have been amended long ago under PC 33.810.080 A.2.

PC 33.855.050 B. and PC 330.660.120 K.

The Hearings Officer rejects (page 9), the argument that Public Works decision (LU 13-219755-000-00-LU), which waived street dedication and sidewalk requirements, was improperly granted/approved. The Hearings Officer adopts the applicant's position that the argument is a collateral attack on a final decision. However, he does not address the argument that the Public Works decision is a land use decision that was made without notice. Obviously, because there was no notice, as required by ORS 227.175(10(a)(C), the decision could not be appealed until the prospective appellant "knew or should have known of the decision." ORS 197.830((3)(b). For the same reason, the decision could also not be stayed pending an appeal. Because a neighbor of the subject property has now appealed the Public Works decision to LUBA, the decision is not really final. Consequently, an argument that the Public Works decision waiving street dedication and sidewalk requirements was erroneous is *not* a collateral attack on a final decision

PC 33.855.050 A.

In support of his conclusion that the zone change is in compliance with the comprehensive plan map, the Hearings Officer says (page 13) that the R5 comprehensive plan map designation "has only one corresponding zone – R5." In fact, the R5 comprehensive plan map designation has another corresponding zone, R7, in the Moreland Block.

PC 33.660.120 K.

The Hearings Officer found (page 22) that there will be on-street parking "in the vicinity (on a portion of SE Moreland Lane and across from the SE Woodstock; the parties [sic] only dispute appears to be the practicality of such on-street parking because of its distance to the Subject Property." After stating the "dispute," the Hearings Officer ignored it with no explanation. With respect to adequate parking, the Hearings Officer chose to rely on the conclusions of the

applicant's traffic engineer that on-street parking would be adequate, rather than take seriously the opponents' traffic engineer, who pointed out that the parking numbers in the study were calculated at a time when residential parking is not anticipated to be as high as at other times.

PC 33.805.010

The Hearings Officer cites (page 32) PC 33.805.010 "Purpose" as one of the "Approval Criteria for Adjustments." The purpose standard explains that "because of the city's diversity, some sites are difficult to develop in compliance with the regulations." However, this site is *not* difficult to develop in compliance with the regulations. Therefore, an adjustment is not required, does not meet the purpose of an adjustment, and should not be allowed.

PC 33.610.300 B.

The Hearings Officer applies (pages 35-36) the variance criteria for a through lot, without any more justification than the applicant's desire. There is no "difficulty." Under the Hearings Officer's analysis, the standard stated in PC 33.610.300 B. ("Through lots are allowed only where both front lot lines are on local service streets") has no substance. It can *always* be avoided by conditioning development so that it faces the collector street or major city traffic street and turns its back on the local service street. The drafters of the PC could not have intended to propose for City Council adoption a standard that can always be avoided through a condition. They could simply have provided that when a through lot goes fronts a connector street or major city traffic street and a local service street, development must face the connector street. That would have avoided the need for an adjustment (and payment of the substantial fee for an adjustment review).

PC 33.805.040 B.

PC 33.805.040 states the adjustment criteria. PC 33.805.040 B. states the requirement that "If in a residential zone, the *proposal* will not significantly detract from the livability or appearance of the residential area." The Hearings Officer chose (page 39) to define *proposal* narrowly, to mean the *adjustment* proposal. It could have just as easily been defined to mean the *partition* proposal. There was ample testimony to justify a finding that the partition proposal that the adjustment enables would significantly detract from the livability or appearance of the residential area, as those terms were interpreted by the Hearings Officer. The applicant's attorney observed, "Opponents have not explained how that single additional through lot destabilizes the area. In fact opponents have already conceded that the lot could be partitioned in an east/west direction." The observation is not on point, because it is not necessary to demonstrate that the additional through lot will "destabilize" the area. It is enough to demonstrate that it will significantly detract from the livability or appearance of the area. If the lot is partitioned in an east/west direction, the appearance of the house on SE Woodstock would not have to change, and the impression of ample lots would remain intact.

Eastmoreland's character was established when it was first developed. It is now under attack in certain, specific ways. Allowing the map error to drive the decision will mean that in a short time the entire block – with many old fine dwellings – will be razed. The proposed partition

should not be viewed in isolation. It is another shoe to drop. Eastmoreland is being transformed by an aggressive effort on the part of developers to line their own pockets by creating greater density that reduces neighborhood livability. This proposal will have significant and damaging visual impacts on views from Reed College and SE Woodstock.

PC 33.805.040 D. and PC chapter 33.540

In response to PC 33.805.040 D. ("City-designated scenic resources and historic resources are preserved"), the Hearings Officer finds (page 42) the approval criterion to be inapplicable. He is mistaken. In fact, PC chapter 33.540 praises "the established character of the Laurelhurst and Eastmoreland areas, characterized by homes with larger than normal building setbacks from the street." While there is no specific mention of the side setbacks, it can and should be inferred that these are also an important part of the "established character" of Eastmoreland. The PC does not define *designated*, but it is reasonable to interpret it to mean *described*, in the sense of the term "established character."

GENERAL EXPLANATION OF CITY COUNCIL APPEAL HEARING PROCESS FOR ON-THE-RECORD APPEALS

1. SUBMISSION OF LEGAL ARGUMENT

- a. On-the record appeals are limited to legal argument only. The only evidence that will be considered by the City Council is the evidence that was submitted to the HEARINGS OFFICER prior to the date the HEARINGS OFFICER closed the evidentiary record. Parties may refer to and criticize or make arguments in support of the validity of evidence received by the HEARINGS OFFICER. However, parties may not submit new evidence to supplement or rebut the evidence received by the HEARINGS OFFICER.
- b. Legal argument may be mailed to the Council Clerk, 1221 SW Fourth Avenue, Room 140, Portland, OR 97204. Written legal argument must be received by the time of the hearing and should include the case file number.
- c. Legal argument may be submitted orally (see below).

2. COUNCIL REVIEW

- a. The order of appearance and time allotments are generally as follows:

Staff Report	10 minutes
Appellant	10 minutes
Supporters of Appellant	3 minutes each
Principal Opponent	15 minutes
Other Opponents	3 minutes each
Appellant Rebuttal	5 minutes
Council	

- b. The applicant has the burden of proof to show that the evidentiary record compiled by the HEARINGS OFFICER demonstrates that each and every element of the approval criteria is satisfied. If the applicant is the appellant, the applicant may also argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied or additional approval criteria should be applied.
- c. In order to prevail, the opponents of the applicant must persuade the City Council to find that the applicant has not carried the burden of proof to show that the evidentiary record compiled by the HEARINGS OFFICER demonstrates that each and every element of the approval criteria is satisfied. The opponents may wish to argue the criteria are being incorrectly applied, the wrong approval criteria are being applied or additional approval criteria should be applied.

3. OTHER INFORMATION

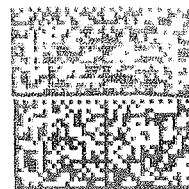
- a. Prior to the hearing, the case file and the REVIEW BODY decision are available for review, by appointment, at the Bureau of Development Services, 1900 SW 4th Avenue, #5000, Portland, OR 97201. Call 503-823-7617 to make an appoint to review the file.

If you have a disability and need accommodations, please call 823-4085 (TDD: 823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.



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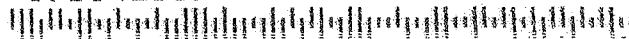
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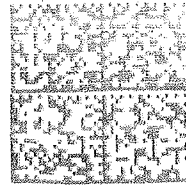




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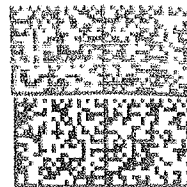
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