



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

FROM CONCEPT TO CONSTRUCTION

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Date: March 12, 2014
To: Interested Person
From: Kathleen Stokes, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The reasons for the decision are included in 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 13-218633 AD

GENERAL INFORMATION

Applicant: Terry Hellem, Projective Building Designs
PO Box 6542
Beaverton OR 97007

Owners: Hayli H Hay and Morgan Hay
3305 NE 50th Ave
Portland, OR 97213

Site Address: 3305 NE 50TH AVE

Legal Description: BLOCK 154 LOT 8, ROSE CITY PK
Tax Account No.: R723125370
State ID No.: 1N2E30BA 04400
Quarter Section: 2735

Neighborhood: Beaumont-Wilshire, Michael Rounds at 503-936-0740.
Business District: Beaumont Business Association, Dan Johnson at 503-445-2157.
District Coalition: Central Northeast Neighbors, Alison Stoll at 503-823-3156.

Zoning: R5h - R5,000, High Density Single-dwelling Residential, with an Aircraft Landing (height) Overlay

Case Type: Adjustment Review
Procedure: Type II, administrative decision with appeal to Adjustment Committee.

Proposal: The applicant is proposing to increase the ground level foot print and add a second-story to the existing detached garage, in order to create a home office space. The garage is located 2.5 feet from the rear property line. The proposed addition would increase the length of the structure to 25.5 feet and increase the width to 18 feet. The second-story portion of the addition, which will be set back an additional 2.5 feet from the existing garage wall, will raise

the height of the structure to approximately 19.5 feet, as measured from grade to the average height of the highest gable,

The Portland Zoning Code, Title 33, requires structures to be located 5 feet from the side and rear property lines in the R5 zone. There is an exception for garages that meet certain thresholds, including but not limited to, requirements that they are no more than 24 feet wide or deep and that they are no more than 15 feet tall, with walls that are no more than 10 feet tall. These garages are also restricted to use only as garages and may not have any living area in them.

The upper level addition will meet the 5-foot setback requirement. However, raising the height of the structure, increasing the length of the building and adding the office space makes it so that the ground level garage wall is now not allowed within the required setback area without approval of an exception to the setback requirement.

An exception to the requirements can be requested for approval through an Adjustment Review. Adjustments are approved if they meet the approval criteria or if the approval criteria can be met through conditions of approval.

Therefore, the applicant is requesting approval of an Adjustment to Code Section 33.110.220 B, to reduce the minimum building setback from the west or rear property line, from 5 feet to 2.5 feet for the proposed alterations to the accessory structure.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

ANALYSIS

Site and Vicinity: The site is a 5,000 square-foot lot that is located on the northwest corner of the intersection of NE 50th Avenue and NE Klickitat Street. The property is developed with a single-dwelling residence that was built in 1922. A detached garage is located on the west side of the property, to the rear of the house, with access from the south on Klickitat Street. The area around the site is generally developed with other single-dwelling residences. Many of these have detached garages that are also located within the side and/or rear building setbacks. The property to the west of the site has a large accessory structure, with a second level above the garage, that is located immediately adjacent to the applicant's garage.

Zoning: The site is zoned R5, High-Density Single-Dwelling Residential with an "a" or Alternative Design Density Overlay. This zone is intended to accommodate single-dwelling development, with an average of one unit per 5,000 square feet of site area and a maximum density of one unit per lot (generally 8.7 units per acre.)

This site also has an "h" or Aircraft Landing Overlay. The provisions of this overlay zone, that limit the height of structures within the aircraft landing approach patterns for the Portland International Airport, are not relevant to this proposal.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **February 11, 2014**. The following Bureaus have responded with no issues or concerns:

- Environmental Services provided information for the applicant on the existing sanitary infrastructure and noted permit requirements for storm water management (Exhibit E-1).
- Transportation Engineering provided informal comments that described the street classifications and the existing improvements for the adjacent street frontages and further noted: "frontage improvements exceed current City standards; there will be no frontage improvements or property dedication associated with the proposed project. It is not evident

that a car is or can be parking in either the existing garage or driveway given the size of both. Accordingly, PBOT will not require the applicant to reconstruct the existing driveway to current City standards,” (Exhibit E-2).

- Water Bureau gave information on the existing water service and requirements for any upgrades that may be needed (Exhibit E-3).
- Site Development Section of BDS summarized physical characteristics of the site and noted requirements for erosion control, in accordance with Title 10 of the City’s Code (Exhibit E-4).
- Life Safety Plan Review Section of BDS responded to say that building permits are required for the work and that the proposal must meet all applicable building codes and ordinances, including fire-rating standards for walls and roof eaves (Exhibit E-5).
- Parks-Forestry Division gave information on the requirements for street trees, in accordance with the City’s Title 20 (Exhibit E-6).
- Fire Bureau indicated that the bureau has no concerns with the proposal (Exhibit E-7).

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 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: Adjustment to Code Section 33.110.220, to reduce the required minimum building setback from the north property line, from 5 feet to 1 foot for the proposed structure.

The purpose of building setback requirements are to maintain light, air, separation for fire protection, and access for fire fighting. Setback standards also reflect the general building scale and placement of development in the City’s neighborhoods and promote a reasonable physical relationship between residences. They promote options for privacy for neighboring properties and provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity.

The location of the garage is not changing. The addition will extend the footprint within the setback, so that the ground floor wall is longer. The proposed second level portion of the addition will be set back the required five feet from the property line. Because the higher portion of the structure will meet the setback requirement, there should be no impacts on light, air, privacy, fire protection or access for fire fighting. Further, the structure that is adjacent to the garage on the adjoining property is a much larger accessory structure that will continue to shield the neighbors to the west from any potential impacts that could result from the expanded structure. The garage, including the proposed additions is in keeping with many other detached garages along this street which were built close to the side property lines so it will reflect the general building scale and placement of development

and continue a reasonable physical relationship between residences and be compatible with the neighborhood. Therefore, the purpose of the regulation is equally met and so, 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: Approval of the request to reduce the required setback for the ground level of the two-story garage/office structure, from 5 feet to 2.5 feet from the west property line will not significantly detract from the appearance or the livability of the residential area. The original structure has been in this location for many years, The remodeled and enlarged building will still only be 19.5 feet tall and have a relatively modest footprint of 18 by 25.5 feet. The design includes features that are in keeping with the main house and with the general architectural character of the neighborhood. The appearance will be similar to many accessory structures that were built to the rear of residences in the Portland area in the first decades of the 1900s and will be smaller than the accessory structure that is located next to it on the adjacent property to the west. Therefore, no potential impacts on livability or appearance, based on the location of the structure have been noted and so, this 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: Only one adjustment is being requested. Therefore, this criterion does not apply.

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

Findings: City-designated scenic resources are shown on the City's zoning maps by an "s" or Scenic Overlay Zone. City-designated historic resources are shown on the City's zoning maps, either as an adopted landmark, or as a site that is located within the boundaries of a Historic Conservation or Historic Design District. There are no City-designated 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: No potential impacts from approval of the requested Adjustment have been identified by staff. Therefore, no mitigation is needed and 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: Environmental zones are designated with either a lower case "c," for the Environmental Conservation Overlay, or "p," for the Environmental Protection Overlay. 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.

CONCLUSIONS

All of the relevant approval criteria have been met for the requested Adjustment to reduce the minimum building setback from the west (rear) property line. The purpose for building

setbacks will be equally met because the proposed building will not significantly impact light, air or privacy and will not cause fire safety issues. It will be in keeping with the scale and placement of structures in the area and will not significantly detract from the appearance or the livability of the surrounding area. The proposal can be approved in general compliance with the site plan and elevation drawings.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.110.220 B, to reduce the minimum building setback from the west or rear property line, from 5 feet to 2.5 feet for the proposed alterations to the accessory structure, in general compliance with the approved site plan and elevation drawings, Exhibits C-1 through C-2, signed and dated March 7, 2014, and subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-218633 AD."

Staff Planner: Kathleen Stokes



Decision rendered by: _____ **on March 7, 2014**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 12, 2014

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 October 18, 2013, and was determined to be complete on November 1, 2013. The case was placed on hold on November 7, 2013 and was reactivated on February 6, 2014.

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 October 18, 2013.

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 requested that the 120-day review period be extended for 91 days, as stated with Exhibit A-2. Unless further extended by the applicant, **the 120 days will expire on: May 31, 2014.**

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 Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on March 26, 2014** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee 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 Adjustment Committee 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 **March 27, 2014– (the day following the last day to appeal).**
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the

County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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

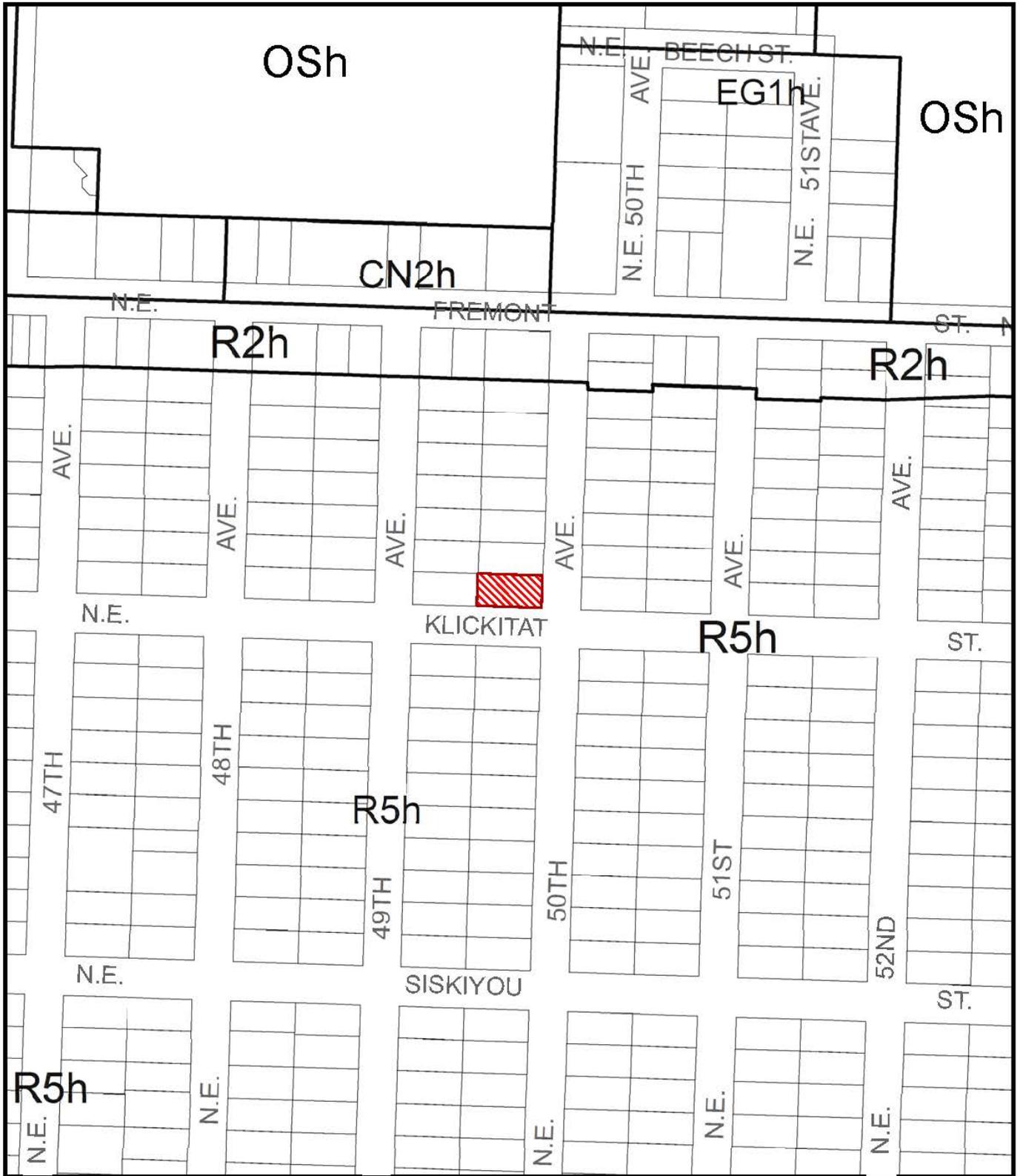
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Application and original plans and narrative
 - 2. Email, documenting request to postpone processing case, November 8, 2013
 - 3. Revised plans, received February 5, 2014
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation Drawings (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Site Development Review Section of BDS
 - 5. Life Safety Plan Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Summary of electronic responses from City service agencies, including Fire Bureau
- F. Correspondence: (none received)

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING



File No. LU 13-218633 AD
 1/4 Section 2735
 Scale 1 inch = 200 feet
 State_Id 1N2E30BA 4400
 Exhibit B (Oct 24, 2013)

