



Date: September 21, 2015
To: Interested Person
From: Marguerite Feuersanger, Land Use Services
 503-823-7619 / Marguerite.Feuersanger@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 15-207341 AD

GENERAL INFORMATION

Applicant: Aaron Mickelberry
 2202 NE 56th Ave / Portland, OR 97213-3521

Owners: Jeanette J Madrid
 2210 NE 56th Ave /Portland, OR 97213

Anita Punja and Aaron Mickelberry
 2202 NE 56th Ave / Portland, OR 97213-3521

Site Address: 2202 NE 56th Avenue and 2210 NE 56th Avenue

Legal Description: BLOCK 9 LOT 5 S 10' OF LOT 6, MERLOW & EXTD; BLOCK 9 N 40' OF LOT 6, MERLOW & EXTD

Tax Account No.: R562200880, R562200900

State ID No.: 1N2E30DB 10600, 1N2E30DB 10700

Quarter Section: 2836

Neighborhood: Rose City Park, contact Tamara DeRidder at 503-249-6977.

Business District: Hollywood Boosters, contact Angela McKenzie at 503-281-1800.

District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

Zoning: R5, Single-Dwelling Residential 5,000 Zone

Case Type: AD, Adjustment

Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal: Two accessory dwelling units (ADUs) are proposed. Each will be accessory to the single-dwelling houses on 2202 and 2210 NE 56th Avenue. The ADUs are proposed as one building, located at the rear of the properties. The ADUs are attached with a common wall

located over the shared side property line. As a result, the 5-foot minimum side setback is not provided and the ADU eave design standard is not met at the shared property line.

A narrow driveway is located between the two houses, centered on the shared property line. The ADUs are proposed in the location of an existing garage (to be removed) on 2210 NE 56th Avenue and an onsite parking space on 2202 NE 56th Avenue. The site is considered well-served by transit and therefore, on-site parking is not required. Rather than remove the driveway and onsite parking, the applicant proposes to retain or replace parking as follows:

- 2210 NE 56th: the existing driveway at the north side will continue to serve as the on-site parking.
- 2202 NE 56th: on-site parking will be replaced with a 14-foot wide by 26-foot long parking pad behind the house.

Two Adjustments are requested for the attached ADUs at the shared property line:

1. Waive the minimum 5-foot side setback (Section 33.110.220); and
2. Waive the ADU design standard for eaves (Section 33.205.030).

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are: 33.805.040. A. – F., *Adjustment Approval Criteria*

ANALYSIS

Site and Vicinity: The site comprises two abutting residential lots; one is 4,875 square feet, the other is 5,000 square feet, both homes were built circa 1923, with a shared garage behind, where the attached ADUs are proposed. The immediately surrounding area is all residential, zoned R5, and developed with a variety of single dwelling homes, many were constructed during the early 1900s. The east side of NE 56th Avenue has multiple mature street trees providing significant canopy for pedestrians. At this location, NE 56th is a designated Local Service Street for all modes. One block east is NE 57th, a designated Transit Access Street.

Zoning: The site is zoned R5, Single Dwelling Residential 5,000. The R5 zone is one of several single dwelling zones that implement the Comprehensive Plan designation for single dwelling residential.

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

A “Notice of Proposal in Your Neighborhood” was mailed **August 24, 2015**.

Agency Review: The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Fire Bureau
- Bureau of Parks-Forestry Division
- Life Safety/Plans Examiner
- Site Development Section of BDS

The Water Bureau responded with no concerns regarding the Adjustment, and included technical data and details that will be required at time of building permit review.

Bureau of Environmental Services responded with no concerns regarding the Adjustment, and included technical data and details that will be required at time of building permit review.

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 (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 providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

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

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

Findings: The applicant is requesting two Adjustments: one to reduce the setback of the structure and to waive the requirement that the ADUs have eaves along the interior lot line, where they will be attached to one another.

The purpose of the setback regulation is found at 33.110.220.A., *Purpose*, which states:

The building setback regulations serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They 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; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

The applicant proposes to build two attached ADUs that will be located in approximately the same place as a shared double garage. The two ADUs will be attached at the common side property line of the two lots.

The proposal to attach the two ADUs will maintain light and air better than if they were separate buildings located 10 feet apart. The Fire Bureau has no concerns regarding access and separation for fire fighting. The attachment design is reminiscent to the shared garage in this location. By attaching the ADUs a reasonable physical relationship between residences is maintained and they reflect the general scale and placement of other detached accessory structures in the immediate residential area. There is no impact on privacy by attaching the ADUs to share a common wall; the structure meets all of the other applicable setbacks and development standards for ADUs except for the setback and eaves that are inherently eliminated by the attached

configuration. The proposal has no impact on the front yard setback and provides more flexibility in locating the ADUs such that onsite parking is maintained. Also, by consolidating the two ADUs into one structure, additional useable outdoor square footage on each lot remains that would otherwise be eliminated by locating the ADUs with 10 feet between the buildings. For these reasons, this criterion is met for the setback request.

The purpose for the regulation to require eaves on ADUs is found at 33.205.030, *Accessory Dwelling Unit Design Standards* which states:

Purpose. Standards for creating accessory dwelling units address the following purposes:

- *Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;*
- *Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;*
- *Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and*
- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

As discussed above, the applicant proposes to construct an ADU on each lot, but attach them along the common side property line. Inherent in that configuration is the elimination of eaves on both ADUs where they attach. However, the other rooflines will end in eaves meeting the requirements for ADUs. By proposing the ADUs to be attached, the development is reminiscent of the shared garage that crosses the same shared side property line. Therefore, the ADUs are of a scale and placement that allows sharing of common space and provides onsite parking. The ADUs are smaller than the primary house on each lot and otherwise meet all of the other applicable ADU design standards. For these reasons, this criterion is met for the eave request.

- 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 site [two lots] are zoned R5, single dwelling residential 5,000. By attaching the proposed ADUs, the structure will be less visible to passersby because of the location to the rear of the property and the attached/common wall configuration. By including areas on site for parking, and by meeting all of the other development standards for ADUs and the R5 zone, the proposal will have no significant impact on livability or appearance. 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: Two adjustments are requested, both stemming from the proposal to attach the ADUs along the common property line. The cumulative effect of the adjustments will allow the ADUs to be attached and located in generally the same place as a shared garage. The ADUs will provide additional residential options, consistent with the overall purpose of the R5 zone. This criterion is met.

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

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation

districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: There are no discernible impacts that would result from granting the requested adjustment. 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 overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As the site is not within an environmental zone, this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

Two accessory dwelling units (ADUs) are proposed. Each will be accessory to the single-dwelling houses on 2202 and 2210 NE 56th Avenue. The ADUs are proposed as one building, located at the rear of the properties. The ADUs are attached with a common wall located over the shared side property line. As a result, the 5-foot minimum side setback is not provided and the ADU eave design standard is not met at the shared property line. The proposal meets all of the applicable approval criteria and therefore should be approved.

ADMINISTRATIVE DECISION

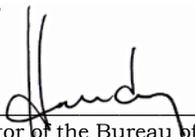
Approval of:

- An Adjustment to reduce the side setback from 5 feet to 0 feet from the common property line for an attached structure containing 2 ADUs; and
- An Adjustment to waive the required eaves along the common property line/roofline,

per the approved site plans, Exhibits C-1 through C-2, signed and dated September 16, 2015, subject to the following conditions:

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 15-207341 AD."

Staff Planner: Marguerite Feuersanger

Decision rendered by:  **on September 16, 2015**
By authority of the Director of the Bureau of Development Services

Decision mailed: September 21, 2015

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 July 27, 2015, and was determined to be complete on **August 19, 2015**.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on July 27, 2015.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: December 17, 2015.**

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 October 5, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

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

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the 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 **October 6, 2015 – (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.

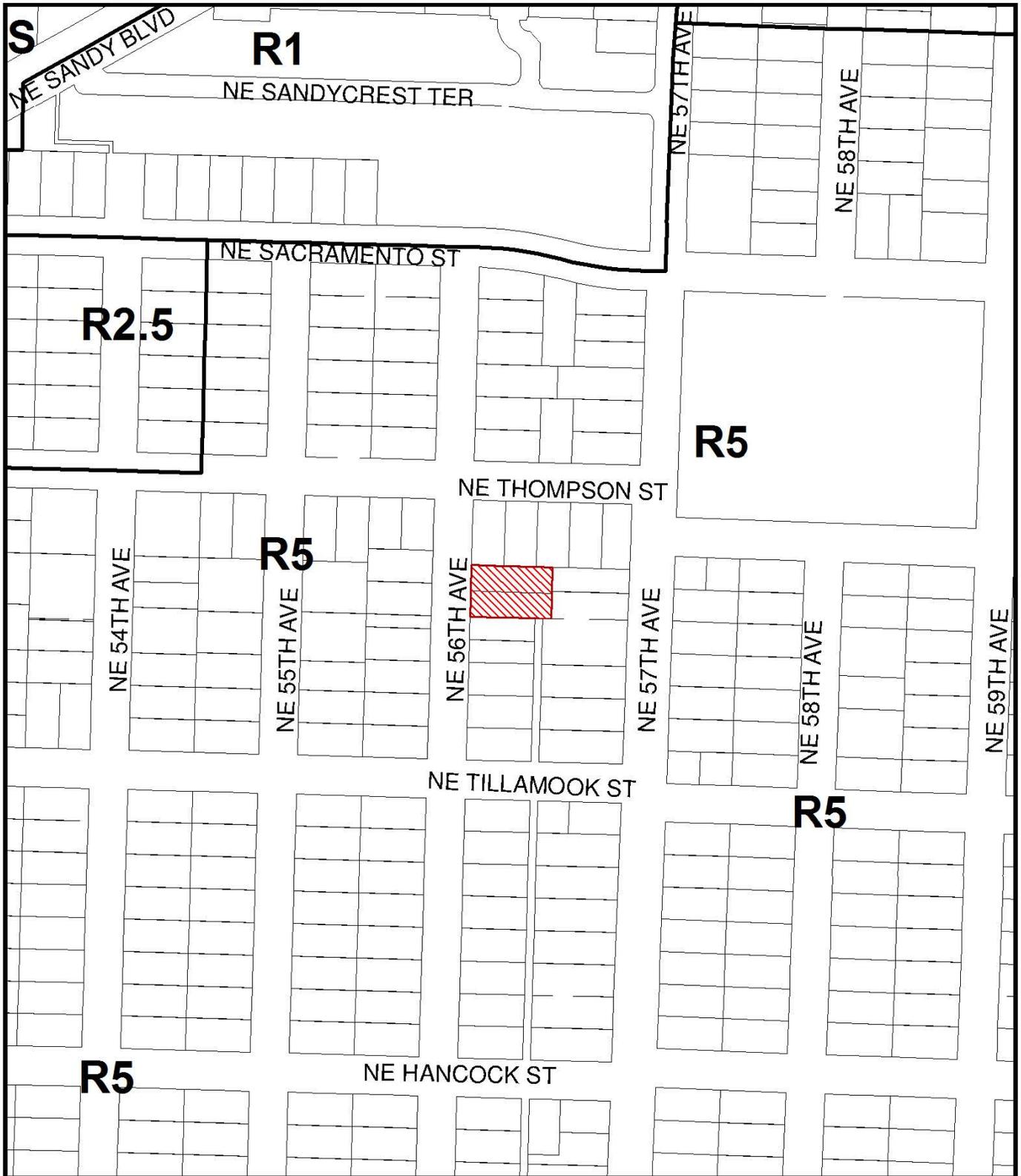
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Plans Examiner Section of BDS
- F. Correspondence: *none received*
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete letter, August 13, 2015; re: need additional information

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

 Site



NORTH

File No. LU 15-207341 AD
 1/4 Section 2836
 Scale 1 inch = 200 feet
 State_Id 1N2E30DB 10700
 Exhibit B (Jul 29, 2015)

