



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** July 20, 2016  
**To:** Interested Person  
**From:** Andrew Gulizia, Land Use Services  
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## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

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

### **CASE FILE NUMBER: LU 16-125452 AD**

#### **GENERAL INFORMATION**

**Applicant:** Stewart Straus  
Stewart Gordon Straus Architect P.C.  
12600 SW Crescent St., Ste. 100  
Beaverton, OR 97005

**Property Owner:** FDC Management Co. LLC  
1300 SW 5th Ave #3000  
Portland, OR 97201

**Site Address:** 2993 SW 11<sup>th</sup> Ave.

**Legal Description:** BLOCK 112 LOT 1&2 INC PT VAC ST, PORTLAND CITY HMSTD  
**Tax Account No.:** R668006650  
**State ID No.:** 1S1E09BA 03900  
**Quarter Section:** 3328

**Neighborhood:** Homestead, contact Anton Vetterlein at 503-866-1667  
**District Coalition:** Southwest Neighborhoods Inc., contact Syla Bogert at 503-823-4592.  
**Zoning:** R1 – Multi-Dwelling Residential 1,000  
**Case Type:** AD – Adjustment Review  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee

**Proposal:** The applicant proposes to construct a new nine-unit apartment building on a site adjacent to two existing apartment buildings. The site abuts an unimproved public right-of-way to the west. Even though this right-of-way is not developed with a roadway or other improvements, for zoning purposes the portion of the lot line which abuts this right-of-way is considered a “front lot line” and the right-of-way itself is considered a “street.” Vehicle access to the building occurs to the east via a private driveway connection to SW 11<sup>th</sup> Avenue. The applicant is requesting approval of two Adjustments:

1. To allow balconies and railings on the west side of the proposed apartment building to be more than 25 feet in height even though they are less than 10 feet from a “front lot line” (Zoning Code Section 33.120.215.B.1); and
2. To waive the requirement that a paved pedestrian walkway connect the proposed apartment building to the unimproved “street” to the west (Zoning Code Section 33.120.255.B.1).

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Section 33.805.040.A-F of the Portland Zoning Code.

## ANALYSIS

**Site and Vicinity:** The site is a 12,970-square-foot lot which is currently vacant. The site has street frontage on an unimproved public right-of-way to the west, but access to the proposed apartment building is provided via a private driveway to the east, which connects to SW 11<sup>th</sup> Avenue. Marquam Nature Park abuts the site to the north and west, while other nearby properties are developed with a mix of single-dwelling houses and multi-dwelling residential buildings. The campus of Oregon Health Sciences University is approximately three blocks east of the site.

**Zoning:** The site is zoned R1. The R1 zoning designation is one of the City’s multi-dwelling zones, which are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing. The development standards work together to create desirable residential areas by promoting aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

**Land Use History:** City records indicate one prior land use review for this site. In 2001, the City vacated a portion of public-right-of-way on the south side of this lot, and the northern half of that former right-of-way became part of this site (LU 00-00573 VA).

**Agency Review:** A “Notice of Proposal” was mailed June 23, 2016. The following Bureaus responded with no concerns:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- Site Development Section of BDS (Exhibit E-5); and
- Bureau of Parks, Forestry Division (Exhibit E-7).

The following Bureaus responded with information on requirements that will apply at the time of building permit review, but with no concerns about the proposed Adjustment:

- Fire Bureau (Exhibit E-4); and
- Life Safety Review Section of BDS (Exhibit E-6).

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the mailed “Notice of Proposal.”

## ZONING CODE APPROVAL CRITERIA

### 33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated 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 Adjustments to the building height standard (for the portion of the building less than 10 feet from the right-of-way) and to the pedestrian standard.

The purpose of the building height standard for the R1 zone is stated in Zoning Code Section 33.120.215.A:

**Purpose.** *The height standards serve several purposes:*

- *They promote a reasonable building scale and relationship of one residence to another;*
- *They promote options for privacy for neighboring properties; and*
- *They reflect the general building scale of multi-dwelling development in the City's neighborhoods.*

Without the proposed Adjustment, the balconies and railings on the west side of the building could not exceed 25 feet in height where less than 10 feet from the adjacent right-of-way. However, the adjacent right-of-way is unimproved and unused, and slopes steeply downward west of the site toward Marquam Nature Park. The nearest developed lot west of this site is more than 1,000 feet away. In this context, stepping down the allowable height of the balconies and railings toward this right-of-way would not promote a more reasonable relationship between residences, increase privacy for neighboring properties, or better reflect the general building scale of multi-dwelling developments. For these reasons, staff finds the proposed Adjustment equally meets the purpose of the building height standard.

The purpose of the pedestrian standard in the R1 zone is stated in Zoning Code Section 33.120.255.A:

**Purpose.** *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 within the site. In addition, they provide for connections between adjacent sites, where feasible. The standards promote configurations that minimize conflicts between pedestrians and vehicles. In order to facilitate additional pedestrian oriented space and less impervious surface, the standards also provide opportunities for accessways with low traffic volumes, serving a limited number of residential units, to be designed to accommodate pedestrians and vehicles within the same space when special paving treatments are used to signify their intended use by pedestrians as well as vehicles.*

Without the proposed Adjustment, the applicant would be required to construct a paved walkway connecting the new apartment building to the edge of the adjacent right-of-way. Since the adjacent right-of-way is unimproved and unused, construction of such a walkway would serve none of the purposes of the pedestrian standard. It would be a pathway with no connection to a public sidewalk or a wider pedestrian system, and would stop abruptly at the edge of an unimproved, steeply sloping, and thickly wooded right-of-way. In the building permit submittal for the proposed apartment building (15-273323 CO), both pedestrian and vehicle access for the new building are shown through the adjacent apartment complex to the east, which connects to the improved right-of-way of SW 11<sup>th</sup> Avenue. As part of the building permit review, the applicant has been required to demonstrate compliance with the pedestrian standard for that connection. For these reasons, staff finds the proposed Adjustment equally meets the purpose of the pedestrian standard. 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:** Because the site is located in a multi-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. As discussed above, the height of the balconies and railings on the west side of the building will not negatively impact neighboring properties, as the nearest developed lot west of this site is more than 1,000 feet away. In this context, stepping down the building height close to the unimproved right-of-way would not serve any purpose to enhance neighborhood livability or appearance. The Adjustment to waive the pedestrian walkway connection to the unimproved right-of-way will not negatively impact livability or appearance, either. As discussed above, such a walkway would not connect to a wider pedestrian network and therefore would not serve any practical purpose. Staff finds 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:** Adjustments are requested for the building height and pedestrian standards for a site in the R1 zone. The R1 zone is one of the City's multi-dwelling zones, which are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing (Zoning Code Section 33.120.010). The R1 zone in particular is a medium-density multi-dwelling zone in which "new housing development will be multi-dwelling structures (condominiums and apartments), duplexes, townhouses, and rowhouses" which are "characterized by one to four story buildings" (Zoning Code Section 33.120.030.C). The applicant intends to construct a three-story apartment building on this site, which is consistent with the purpose of the R1 zone. Two Adjustments to specific development standards are requested, but as discussed under the findings for approval criterion A, the proposal is found to equally meet the purposes of the standards to be modified. The cumulative impact of the Adjustments will not result in a project which is inconsistent with the multi-dwelling residential purpose of the R1 zone. This criterion is met.

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

**Findings:** City-designated scenic resources are identified on the Official Zoning Maps with a lower case "s," and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

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

**Findings:** As discussed in the findings for approval criterion B, the proposal will have no adverse impacts on the livability of the surrounding residential area. As there are no identified adverse impacts for which mitigation would be required, this criterion is not applicable.

- 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 there are no environmental overlay zones mapped on site, 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

The proposal equally meets the intent of the regulations to be modified and will not detract from the livability or appearance of the area. The cumulative effect of the Adjustments is still consistent with the overall purpose of the zone. The applicant has demonstrated that the applicable approval criteria are met. Since the approval criteria are met, the proposal should be approved.

## ADMINISTRATIVE DECISION

Approval of the following Adjustments:

1. To allow balconies and railings on the west side of the proposed apartment building to be more than 25 feet in height even though they are less than 10 feet from a "front lot line" (Zoning Code Section 33.120.215.B.1); and
2. To waive the requirement that a paved pedestrian walkway connect the proposed apartment building to the unimproved "street" to the west (Zoning Code Section 33.120.255.B.1)

per the approved plans, Exhibits C-1 through C-7, signed and dated July 18, 2016, subject to the following condition:

- A. As part of the building permit application submittal, each of the 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 through C-7. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-125452 AD."

**Staff Planner: Andrew Gulizia**

**Decision rendered by:**  **on July 18, 2016.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: July 20, 2016**

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on February 23, 2016, and was determined to be complete on June 20, 2016.

*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 February 23, 2016.

*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 extended by the applicant, **the 120 days will expire on: October 18, 2016.**

**Some of the information contained in this report was provided by the applicant.**

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on August 3, 2016**, at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> 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](http://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 **August 4, 2016**.

- A building or zoning permit will be issued only after the final decision is recorded.

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

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

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

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

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

**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.

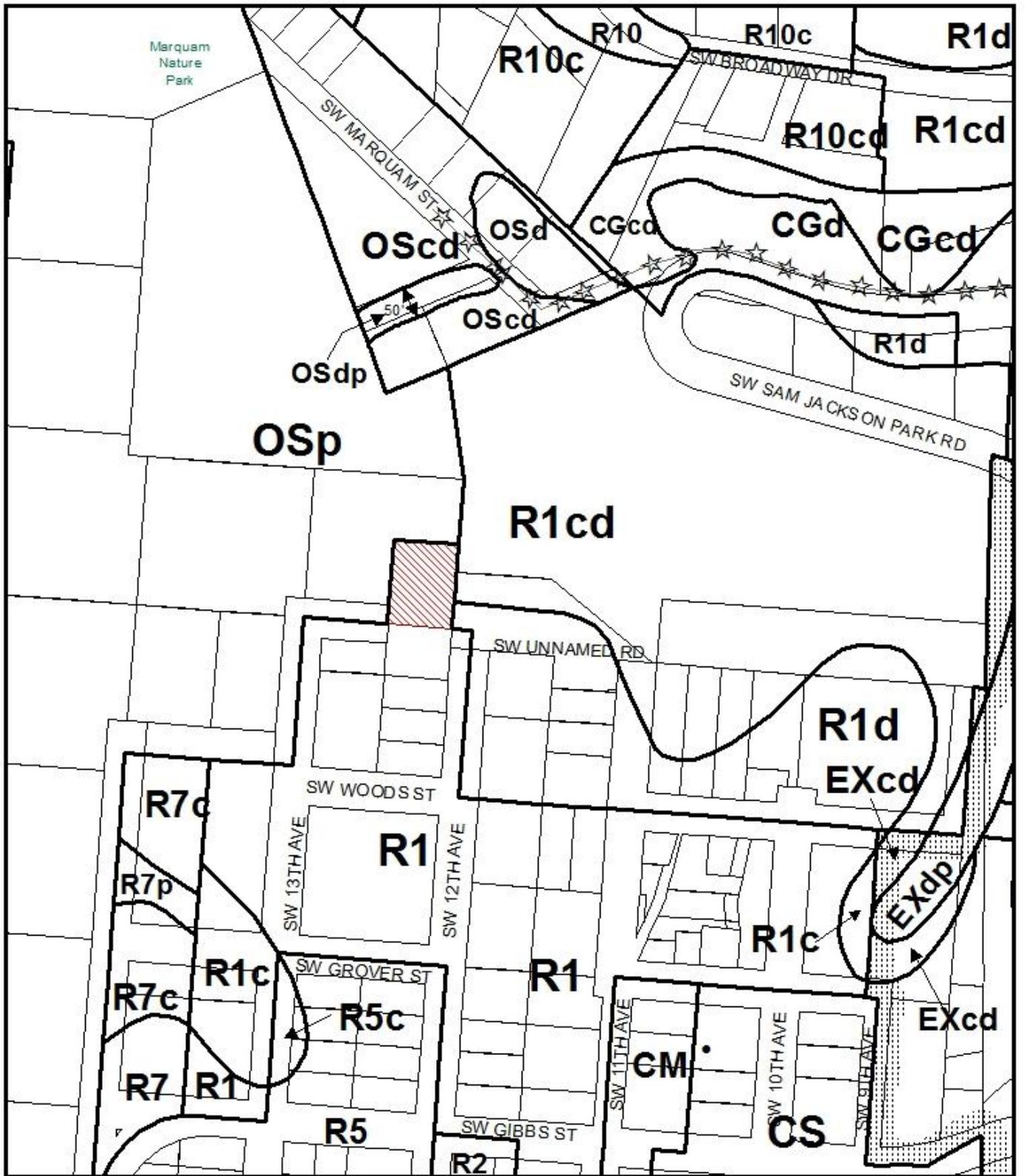
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
  - 1. Applicant's narrative
  - 2. Response to incompleteness determination letter, received April 7, 2016
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site plan (attached)
  - 2. Building elevations (attached)
  - 3. Close-up view of SW corner of site
  - 4. Close-up view of West and South elevations
  - 5. Site plan detailing pedestrian access
  - 6. 11"x17" site plan
  - 7. 11"x17" building elevations
- D. Notification Information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services

2. Portland Bureau of Transportation
  3. Water Bureau
  4. Fire Bureau
  5. Site Development Review Section of BDS
  6. Life Safety Review Section of BDS
  7. Bureau of Parks, Forestry Division
- F. Correspondence – none received
- G. Other:
1. Original LU application form and receipt
  2. Incompleteness determination letter, dated March 22, 2016
  3. Permit checksheet – 15-273323 CO

**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



NORTH

 Site

 Recreational Trails

 Historic Landmark

File No. LU 16-125452 AD

1/4 Section 3327 3328

Scale 1 inch = 200 feet

State\_Id 1S1E09BA 3900

Exhibit B (Feb 25, 2016)



