

CITY OF PORTLAND, OREGON - BUREAU OF DEVELOPMENT SERVICES



1900 SW Fourth Avenue, Suite 5000 • Portland, Oregon 97201 • www.bds.ci.portland.or.us

Date: June 9, 2008

To: Interested Person

From: Crystal Hitchings, Land Use Services

503-823-7583 / Crystal.Hitchings@ci.portland.or.us

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 this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-125398 AD UNINCORPORATED MULTNOMAH COUNTY

GENERAL INFORMATION

Applicant: Brian Elliott

2814 NE 37th Ave. Portland, OR 97212

Property Owner: Steven and Penelope Fain

01529 SW Palatine Hill Rd Portland, OR 97219-7931

Site Address: 01529 SW PALATINE HILL RD

Legal Description: INC PT VAC ST LOT 1-4 BLOCK 116 INC PT VAC ST-S 25' OF LOT 5

BLOCK 116 S 25' OF LOT 14 BLOCK 116 LOT 15-18 BLOCK 116,

PALATINE HILL 3

Tax Account No.: R639005210

State ID No.: 1S1E34AA 02000

Quarter Section: 4130

Neighborhood: None

Other Designations: Unincorporated Multnomah County

Zoning: R20, Single-Dwelling Residential 20,000

Case Type: AD, Adjustment Review

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

Committee.

Proposal:

The applicant is proposing to construct a 1,930 square-foot addition at the northeast corner of the property. The addition will include a three-car garage, general storage area, office space, family room, and a hallway link between the new addition and existing home.

The north wall of the garage portion of the addition will encroach into the 10-foot north side building setback by 2 feet, 2 inches, and the roof overhang will encroach by 1 additional foot. The wall will be located 7 feet, 10 inches from the north property line, and the roof overhang will be located 6 feet, 10 inches from the north property line.

Therefore, the applicant requests an Adjustment to the 10-foot side building setback, as required by Zoning Code Section 33.110.220, to allow the proposed structure to be located at 7 feet, 10 inches and to allow the associated roof overhang to be located at 6 feet, 10 inches from the north side property line.

The applicant has noted on the site plan that, along the northeastern area of the property, adjacent to the proposed construction, "areas [of vegetation] disturbed significantly or where screening is removed...will be replanted with like or approved plantings."

Relevant Approval Criteria:

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity:

The 48,500 square foot site is developed with a single-dwelling residence that was originally built in 1945. The site is a corner lot located at the intersection of SW Palatine Hill Road and SW Collina Avenue. Access to the site is via a long graveled driveway off of SW Palatine Hill Road. SW Palatine Hill Road is designated as a neighborhood collector street. SW Collina is a local collector. Neither street is improved with sidewalks. The abutting lot directly to the north is accessed from SW Collina Avenue.

The site is vegetated densely with trees and shrubs all around the perimeters, with open lawn in the central area of the site. Large canopy trees exist on the site to the west, east and south of the existing home. A large fir on the adjacent property to the north is located approximately 20 feet from the proposed location of the garage. A large cherry tree is located approximately 10' from the southwest corner of the proposed garage. Other medium sized trees are located east of the proposed garage, within the ROW, and are located at least 25 feet from the proposed garage.

The site is well screened from both streets and from nearby homes by dense vegetation both on the property and in the ROW between the site and the streets. The property generally slopes gently toward the south; from the location of the proposed garage the site slopes toward the east/southeast. At the southeast corner of the lot, the site slopes steeply downward toward the intersection of SW Palatine Hill and SW Collina. The eastern edge of the property, and the land in the ROW to the east of the site, slopes steeply down to SW Collina and is thickly vegetated with trees, shrubs, and ferns. Both SW Collina and SW Palatine Hill are improved with drainage ditches running between the subject site and the road. A stream is located just south of the site across Palatine Hill Road. The general vicinity is zoned R20 and is developed with single-dwelling residences on large, well vegetated lots.

Zoning: The site and general vicinity is zoned R20, Single-dwelling Residential 20,000. The single-dwelling zones are intended to preserve land for housing and provide housing opportunities for individual households. The R20 zone allows attached and detached residential development. An environmental protection overlay zone is located to the south across Palatine Hill Road for the protection of a stream (R20p (Single-dwelling Residential 20,000 with a resource area environmental protection zone) and R20c (Single-dwelling Residential 20,000 with a conservation area environmental protection zone)). The side building setback in the R20 zone is 10 feet, and the applicant is proposing to construct a portion of the proposed garage within that setback.

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

Agency Review: A Request for Response was sent on May 13, 2008. The following Bureaus have responded with no issues or concerns (Exhibit E.1 – E.4):

- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Bureau of Parks-Forestry Division

The following agencies responded with no concerns but submitted additional comments:

- The **Bureau of Environmental Services** (Exhibit E.5) submitted informational comments to assist with the building permit process and stated that further development of the property would be subject to BES standards and requirements. To reduce stormwater runoff and help protect water quality, BES recommended that the applicant explore the following strategies:
 - a. Minimize impervious surfaces.
 - b. Minimize disturbance, particularly in sloped areas.
 - c. Preserve as many existing trees on the site as possible.
 - d. Use native vegetation in landscaping. Replant all disturbed areas.
- The **Site Development Section of BDS** (Exhibit E.6) commented that plans for stormwater management would need to be submitted at the time of building permit. Site Development stated that they would support the use of a flow-through planter with a connection to the public storm system, with Bureau of Environmental Services and Multnomah County approval.
- The **Life Safety Bureau** (Exhibit E.7) submitted informational comments to assist with the building permit process.
- The **Lake Oswego Fire Bureau** (Exhibit E.8) stated that the fire hydrant location is adequate and gave information about water pressure requirements. They also submitted comments regarding adequate driveway width.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **May 13, 2008**. One written response was received from a notified property owner in response to the proposal. The letter expressed the neighbor's concerns with the proposal. Those concerns relate to: impact to vegetation, particularly trees, and the potential for the health of large trees to be degraded by construction; water run-off, and the potential for the project to generate more runoff onto Collina Avenue, thereby affecting the integrity of the road; noise impact during construction; and traffic impact to NW Collina Avenue during construction. The respondent asked that an environmental review and impact statement be conducted on the proposal.

Staff comments: The proposal does not call for significant site excavation or tree removal. The site is not within an environmental zone. Therefore an environmental review and/or impact statement is not triggered. The applicant has expressed concern for preserving existing trees and will designate protection zones; larger specimen shrubs may be removed during construction and then replanted, as is possible. The applicant has stated that the location of the garage was chosen, among other reasons, to have the least impact to large trees existing on the site. Any permit that may be required for removal of the one tree proposed to be removed from the construction area is not subject to the Adjustment Review process. The Urban Forestry Bureau has reviewed the proposal and commented that they have no concerns. Maintenance of vegetation around the portion of the project which encroaches into the side setback is related to privacy and appearance and is addressed under review criteria A and B below. At the time of building permit, the applicant must show that stormwater runoff generated by the proposed development (both within and outside of the setback) will be managed appropriately. Site Development and the Bureau of Environmental Services have both reviewed the proposal and responded with no concerns, and gave recommendations as to how runoff could be managed. The applicant has expressed a plan to infiltrate water on site, through rain gardens or soakage trenches, and these plans will be finalized as part of the building permit process. Noise is an inherent part of construction, but is subject to regulation under Title 18, which outlines allowed hours and noise levels during

construction projects; there is no access to the site off of SW Collina Avenue, and construction vehicles will only be able to enter the site via the driveway off SW Palatine Hill Road.

One letter of support was included by the applicant in the original application package. This letter, written by the property owner of the lot directly adjacent and to the north of the subject site, expresses support of the application and states that the neighbor does not anticipate any adverse effect as a result of the request.

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

Section 33.110.220 Setbacks

Purpose: 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.

Findings: The applicant is proposing to construct a new 1,930 square foot addition onto the north side of the existing home. The north wall of the garage portion of the addition, which is 39 feet long, will encroach into the 10-foot north side building setback by 2 feet, 2 inches, and the roof overhang will encroach by 1 additional foot. The total square footage of structure proposed within the setback and subject to this Adjustment review is approximately 90 square feet; the associated eave within the setback and subject to review totals approximately 39 square feet. The proposed garage is a one-story structure; the wall height is approximately 9.5 feet. At its highest point within the setback, the total height to the top of the roof is approximately 10.5 feet. The proposed garage is located approximately 21 feet diagonally from the southeast of the existing home on the adjacent site to the north. Directly to the north of the proposed garage and on the adjacent lot is the neighbor's driveway. The north wall of the proposed garage does not have any windows.

Shrubs and trees located on both lots separate the structures on the properties and currently provide adequate screening between the properties. As per a note included on the site plan, any vegetation disturbed significantly or removed during the

construction process will be replaced. The applicant has stated that, as a measure of protection, several of the larger shrubs will be removed prior to construction and replaced when the construction is over. With existing screening retained or replaced to achieve the same degree of screening, the proposal equally or better meets the purpose statement for setbacks regarding privacy. In order to ensure that a similar degree of landscaping is retained, a condition of approval is warranted requiring the applicant to submit, at the time of building permit application, a landscape plan that shows the existing vegetated screening in the area north of the proposed garage. Because the encroachment into the setback is minor, and because the proposed garage will be located at a distance from other structures, and because the applicant has included the replacement of disturbed plants as a note on the site plan, no condition of approval will be imposed to require the replacement of any shrubs removed during the construction process. However, this replacement is expected, as is stated on the site plan, as part of the findings of this Decision.

Sites to the south, east, and west of the proposed garage are separated from the subject site and the proposed garage by streets, distance, and vegetation. Privacy for these lots is not affected. The garage does not encroach into the east building setbacks, and the nearest home to the east is approximately 150 feet away from the proposed garage. The property owner across from Collina Avenue has expressed concerns about the construction process degrading the vegetated screening between the proposed garage and the front property line. Landscaping can not be required for the front setback as a part of this Adjustment Review (because the proposed structures do not encroach into the front setback). However, the applicant has noted that landscaping will be retained or replaced in the general area of construction, and may wish to also consider replacing any existing landscaping along the front property line that is significantly disturbed by or removed during the construction process.

Due to the location of the garage away from any existing structures on the adjacent property to the north, adequate fire separation and access is maintained. Due to the low height and small amount of structure proposed within the setback, the degree of available air and light is maintained. Due to the scale of the proposed structure located within the setback, and the location of the structure away from buildings on the adjacent property, a reasonable relationship between residences is maintained. Due to the lack of windows on the north wall, the existing vegetative screening between the subject site and the adjacent property to the north, and the applicant's intent to retain or replace this screening, privacy is maintained. For these reasons, this Criterion is met.

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

Findings: The addition to the home, including the portion of the garage within the setback, is proposed to be architecturally compatible with the existing home in both scale and appearance. The garage is located approximately 50 feet from SW Collina Avenue, 120 feet from the existing residence located across SW Collina Avenue, and 210 feet from SW Palatine Hill Road. The area between the proposed garage and the streets is densely vegetated with trees, shrubs, and herbaceous groundcover; views into the site are limited from either street. The area with the most significant views into the site and toward the proposed garage is from the lot to the north. The applicant has included a note on the site plan calling for maintenance or replacement of any portions of the vegetated screening to the north of the proposed garage that are significantly disturbed or removed during construction. A neighbor across Collina Avenue expressed concern about large trees being damaged by construction, potentially jeopardizing their home or property. The applicant has verbally expressed a desire to protect existing trees located near the construction area. According to the applicant, the location of the addition to

the home was chosen in part as an effort to minimize damage to large trees existing on the site. Most of the trees are safely outside of the construction area, except for one 14" cherry which is located approximately 10 feet east of the proposed garage. Again, this tree is located in an area not subject to this Adjustment review, and conditions cannot be imposed to protect this tree. It is recommended that the applicant take special care to protect this tree during construction, and, should the tree deteriorate or die as a result of construction damage, remove the tree and replace it with a similar species tree or another species chosen from the Portland's Tree and Landscaping Manual Recommended Plants List, and that species on the Prohibited or Nuisance plant lists be avoided.

Due to the compatibility of the proposed architecture with the existing architecture, the distance of the proposed garage from a street, and the degree of vegetated screening to be protected and maintained on the site, this proposal does not detract from the livability or appearance of the residential area. For these reasons, 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 requested. This criterion is not applicable.

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

Findings: There are no such resources present on the site. This criterion is not applicable.

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

Findings: As per a note on the site plan, any vegetation in the area north of the proposed garage that is significantly disturbed or removed during construction will be replaced. The applicant will protect existing large trees to the extent possible. This serves to mitigate any potential impacts to the property located directly adjacent and to the north of the lot, which is the area affected by the Adjustment. For this reason, there are no discernable impacts that will result from this 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: 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

The proposed garage is located far from adjacent streets and retains a reasonable distance from the adjacent residence to the north. Access, privacy, light, and air are maintained. The existing degree of vegetated screening around the proposed new garage will be maintained. The

proposal remains compatible with the residential nature of the neighborhood. The Adjustment criteria are met.

ADMINISTRATIVE DECISION

Approval of an Adjustment to the 10-foot side building setback, as required by Section 33.110.220, to allow the proposed garage to be located at 7 feet, 10 inches and to allow the associated roof overhang to be located at 6 feet, 10 inches from the north side property line, per the approved plans, Exhibits C-1 through C-3, signed and dated June 5, 2008 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 the land use review as indicated in Exhibits C.1-C.2. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE Case File LU 08-125398 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. A landscaping plan showing existing vegetation in the area north of the proposed garage wall shall be submitted at the time of building permit application.

Decision rendered by: ______ on June 5, 2008.

By authority of the Director of the Bureau of Development Services

Decision mailed: June 9, 2008

Staff Planner: Crystal Hitchings

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 April 29, 2008, and was determined to be complete on May 5, 2008.

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 April 29, 2008.

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.

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 June 23, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., 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.

Appeal fee waivers. Multnomah County may cover the appeal fees for their recognized associations. An appeal filed by a recognized association must be submitted to the City with either the appropriate fee or the attached form signed by the County. Contact Multnomah County at 503-988-3043, 1600 SE 190th, Portland, OR 97233.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 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 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, 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 June 24, 2008 (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.

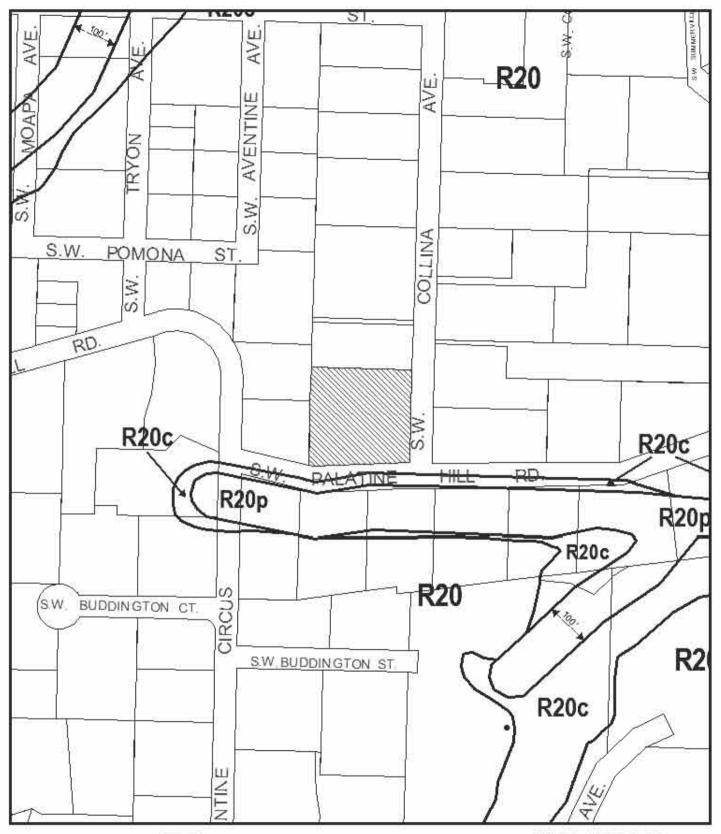
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Transportation Engineering and Development Review
 - 2. Water Bureau
 - 3. Fire Bureau
 - 4. Bureau of Parks, Forestry Division
 - 5. Bureau of Environmental Services
 - 6. Site Development Review Section of BDS
 - 7. Life Safety Bureau
 - 8. Lake Oswego Fire Department
- F. Correspondence:
 - 1. George and Virginia Feldman; June 1, 2008; concern regarding impact on vegetation, water runoff, and noise and traffic impact during construction.
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If

you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING Ste



LU 08-125398 AD File No. 4130 1/4 Section 1 inch = 200 feet Scale 1S1E34AA 2000 State Id В (May 02,2008) Exhibit.



