



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

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Date: December 23, 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 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 14-146246 AD

GENERAL INFORMATION

Applicant: Michael Dedrickson
 19650 Southend Road
 Oregon City, OR 97045

Owner: Jay H. Mead and Erin Lommen Trust
 3840 Calaroga Drive
 West Linn, Oregon 97068

Representative: Ericka Brendel, Ernest R. Munch Architecture
 111 SW Oak Street, Ste. 300
 Portland, OR 97204

Site Address: 2823 N KILLINGSWORTH ST

Legal Description: BLOCK 13 LOT 13, WILLAMETTE
Tax Account No.: R912203080
State ID No.: 1N1E16CD 13600
Quarter Section: 2427
Neighborhood: Overlook NA, contact Mary Skarie at 206-818-6355.
District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

Plan District: Albina Community
Zoning: R5 (Residential 5,000, High Density Single-Dwelling)
Case Type: Adjustment Review
Procedure: Type II, administrative decision with appeal to Adjustment Committee.

Proposal: The applicant is proposing construction of a new structure, with a garage, bathroom and storage space on the first level, and an accessory dwelling unit (ADU) on the second level. The Portland Zoning Code, Title 33, defines front property lines as the shortest street lot line. The primary dwelling unit on this site is situated on the far east or rear side of the property, with the main entrance facing North Killingsworth Street. The ADU is proposed to be located

on the west side of the site, about 17.25 feet from the front property line on North Atlantic Avenue, and about 16.5 feet from the west side of the primary dwelling unit.

The Portland Zoning Code, Title 33, requires detached ADUs to be located either 60 feet from the front property line or 6 feet behind the primary dwelling unit. Exceptions to this regulation are approved through Adjustment Reviews, if all of the relevant approval criteria are met or if the criteria can be met through conditions of approval. Therefore, the applicant is requesting approval of an Adjustment to Zoning Code Section 33.205.030 D, to reduce the required setback for the ADU, from 60 feet to 17.25 feet, from the front property line.

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 6,600 square-foot lot that is located on the northeast corner of the intersection of North Killingsworth Street and North Atlantic Avenue. The site is developed with a single-dwelling residence that was built in 1912. The house is located on the east side of the property, immediately adjacent to the rear property line. The structure is situated at the top of a bank, with a concrete staircase that leads up to the level of the house. A single garage is built into the bank, below the house, with access at the same grade level as the sidewalk. The western portion of the site consists of a large, densely vegetated, front yard area.

The area around the site consists of a variety of uses and development types. Abutting the site to the east there is a commercially-zoned and developed property that has a convenience store with a customer parking area, which fronts onto North Greeley Avenue. A small retail use occupies the property across Greeley Avenue, on the northeast corner of the intersection with Killingsworth Street. Surface parking lots occupy the other two corners of this intersection. The area around the site on the south side of Killingsworth and to the west and the north abutting Atlantic Avenue is mainly developed with residential uses.

Zoning: The site is zoned Residential 5,000 (R5, High Density Single-Dwelling). This zone is intended to accommodate single-dwelling development, with an average of one primary unit per 5,000 square feet of site area.

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 **November 14, 2014**. The following Bureaus have responded with no issues or concerns:

- Transportation Engineering provided a response that indicated there were no issues with approval of the requested Adjustment, but noted that the original proposal included plans that showed the stairway encroaching into the right-of-way on North Atlantic Avenue (Exhibit E-1). *(Staff Note: The applicant was informed of this response and revised the proposed plan, to move the stairs entirely onto the property so that they were no longer encroaching into the right-of-way).*
- Water Bureau provided information about the existing water service for the site and discussed requirements for expansion of the water service (Exhibit E-2).
- Site Development Section of BDS sent a response that described the physical characteristics of the site and also noted that erosion prevention and sediment control requirements found in Title 10 apply to both site preparation work and development (Exhibit E-3).
- Life Safety Plan Review Section of BDS noted a separate Building Permit is required and the proposal must meet all applicable building codes and ordinances (Exhibit E-4).
- Parks-Forestry Division provided information on street tree requirements (Exhibit E-5).
- The Bureau of Environmental Services and the Fire Bureau each provided a response of, "no concerns." (Exhibit E-6).

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: The applicant is requesting approval of an Adjustment to Zoning Code Section 33.205.030. D.1, to reduce the required setback for the detached ADU, from 60 feet to 17.25 feet from the front property line. 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.*

The proposed building location is based on a retrofit that can work with the existing development on the site and respect the general building scale and placement of structures. The site presents a somewhat unusual situation, where the primary residence was constructed at the rear of the lot, facing the south side property line. This situation leaves no other place to construct an ADU, except beside the house and closer to the front property line. The proposed design makes the best of the situation by orienting the ADU to the opposite street on this corner lot. While meeting all of the other standards of the Portland Zoning Code for the size, height and finish materials for the ADU, the final project would provide a modest, traditional residential presence for each street frontage, which is compatible with the desired character and livability of this residential area. The ADU would not appear to be more dominant than the primary residence, however, because it still is smaller in overall area and height than the main house. Approval of the requested adjustment would provide flexibility in siting the proposed building while still meeting the purpose of the regulation. Therefore, 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 from the front property line for the proposed detached ADU will not significantly detract from the appearance or the livability of the residential area. The proposed structure will fit into this pocket on the property in a way that is consistent with the character of the surrounding area. The proposed building includes architectural detailing that echoes the primary residence and respects the scale and character of the other properties in the vicinity. Therefore, no potential impacts on livability or appearance, based on the requested reduction in the setback from the front property line, are anticipated. Therefore, 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 are met for the requested Adjustment. The purpose of the setback is equally met because the proposed ADU will be far enough from the front property line to create a pleasing front yard area and far enough from the building wall of the main house to ensure that does not crowd the site and so it appears to be accessory to the primary residence. The location will not appear out of scale or character with the surrounding area. The proposed ADU includes attractive architectural features that match the primary residence and the location appears consistent with the development pattern in the 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 33.205.030. D.1, to reduce the setback from the front property line, from 60 feet to about 17.25 feet, in substantial compliance with the approved site plan and elevation drawings, Exhibits C-1 and C-3, signed and dated December 19, 2014, 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.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 14-146246 AD."

Staff Planner: Kathleen Stokes

Decision rendered by:  **on December 19, 2014**

By authority of the Director of the Bureau of Development Services

Decision mailed: December 23, 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 April 22, 2014, and was determined to be complete on October 20, 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 April 22, 2014.

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 by 26 days, as stated with Exhibits A-3 and A-5. Unless further extended by the applicant, **the 120 days will expire on: March 12, 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 January 6, 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 **January 7, 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.

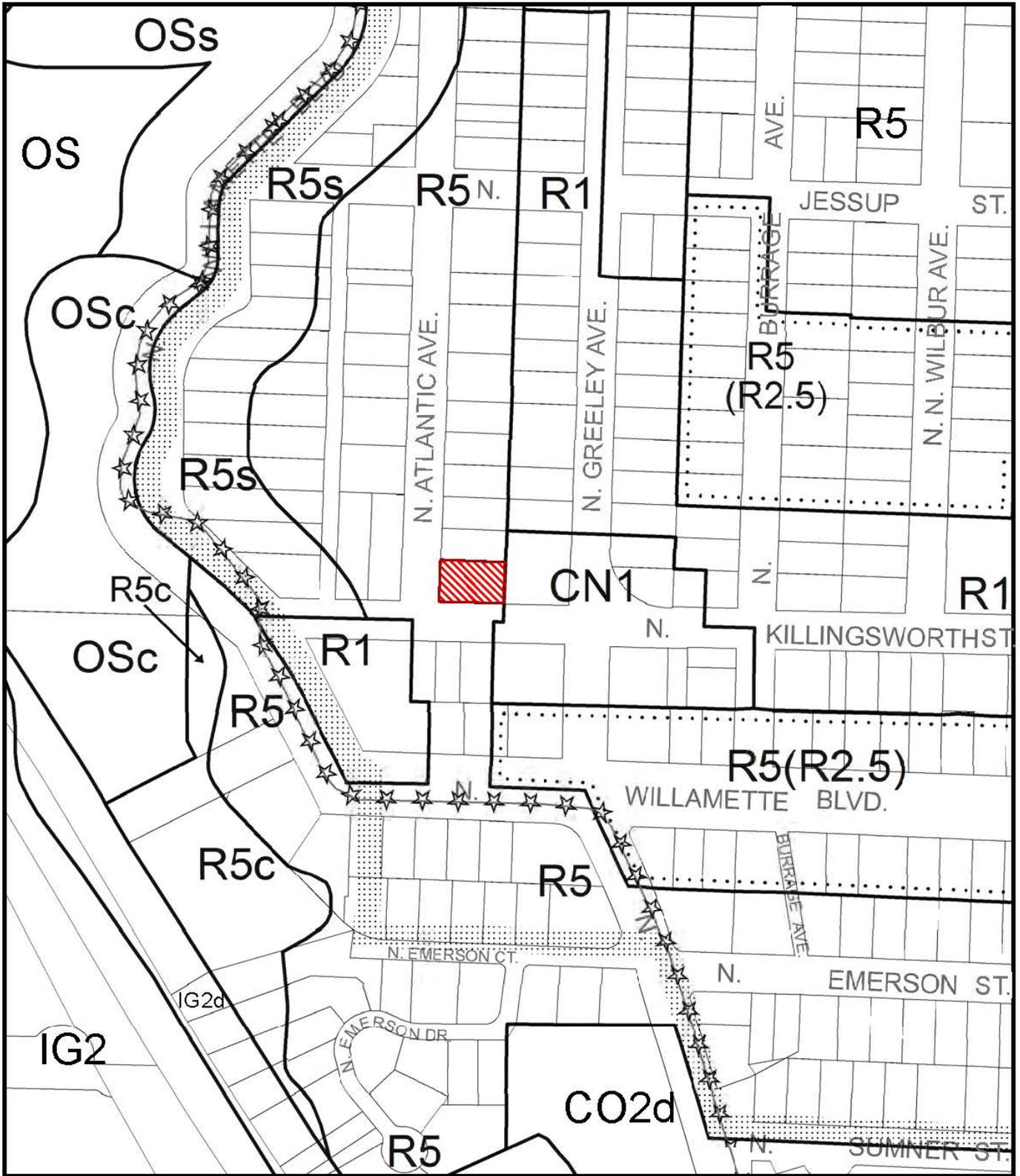
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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
 - 1. Application and original narrative and plans
 - 2. Supplemental information and revisions, received October 20, 2014
 - 3. Request to extend the 120 days for a final local decision
 - 4. Supplemental information and revisions, received November 6, 2014
 - 5. Final revised site plan and second 120 day extension, received December 16, 2014
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation Drawings (south and west, attached)
 - 3. Elevation Drawings (north and east, 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. Site Development Review Section of BDS
 - 4. Life Safety Plan Review Section of BDS
 - 5. Bureau of Parks, Forestry Division
 - 6. Summary of responses from City service agencies, including Bureau of Environmental Services and Fire Bureau
- F. Correspondence: (none received)
- G. Other:
 - 1. Letter from Kathleen Stokes to Michael Dedrickson, May 9, 2014
 - 2. 180 day reminder letter, September 26, 2014

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



Recreational Trail



This site lies within the:
ALBINA COMMUNITY PLAN DISTRICT

File No. LU 14-146246 AD
 1/4 Section 2427
 Scale 1 inch = 417 feet
 State_Id 1N1E16CD 13600
 Exhibit B (Apr 24, 2014)