



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

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Date: May 6, 2020
To: Interested Person
From: Diane Hale, 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 19-253988 TR

GENERAL INFORMATION

Applicant: Mercedes Butchas, Studio 3 Architecture (503) 967-9844
275 Court St NE / Salem, OR 97301

Owner: Town Developments Inc. / 3520 SE 142nd Ct / Vancouver, WA 98683

Site Address: 8042 N WILLAMETTE BLVD

Legal Description: LOT 1, PARTITION PLAT 2016-39

Tax Account No.: R649671530

State ID No.: 1N1W12AC 08901

Quarter Section: 2122

Neighborhood: Cathedral Park, contact Steve Capoccia at cpna.landuse@gmail.com.

Business District: St. Johns Boosters Business, contact at info@stjohnsboosters.org & St. Johns Center for Opportunity, contact at info@stjohnsopportunity.org.

District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-8877.

Plan District: St. Johns

Zoning: R1d – multi-dwelling residential 1,000 with a “d” Design overlay

Case Type: TR – Tree Review

Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant is requesting to modify the tree preservation requirements that apply to the site. A 12” and 6” apple tree are required to be preserved on Parcel 1 as a condition of approval through LU 14-254027 LDP AD (3-parcel partition approved in 2015). The applicant is proposing to remove these trees and plant 7 new native trees and make a payment into the tree fund as mitigation. The enclosed site plan shows the trees to be removed and a future development footprint with landscaping that would meet a variety of landscaping requirements (e.g. Title 11), including mitigation for removing these apple trees. Future development is not part of this review.

Please note that the zoning on the site changed from R1 to RM2 on March 1, 2020. Per 33.730.080, land use reviews are reviewed under the regulations in effect when the application was submitted; therefore this land use review is being evaluated with the R1 zoning that was in effect when the application was submitted.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of *Title 33*. The relevant criteria are found in Section **33.853.040.B, Approval Criteria for changes to tree preservation requirements following land use approval.**

ANALYSIS

Site and Vicinity: The site is a 9,052 square foot parcel created through a partition in 2015. The existing house on the lot is currently being removed. The site is generally surrounded by single family homes. The St Johns commercial district is approximately 3 blocks to the northwest of the site, and the Willamette River is approximately ¼ mile to the south.

Zoning: R1d – multi-dwelling residential 1,000 with a “d” Design overlay

Residential 1,000 – The R1 zone allows multi-dwelling residential development up to a maximum density of one unit per 1,000 square feet of site area, or up to one unit per 800 square feet with an inclusionary housing bonus, and requires a minimum density of one unit per 1,450 square feet of site area. For sites less than 10,000 square feet in area, the minimum density is 1 unit per 2,000 square feet. Newly created lots in the R1 zone must be at least 10,000 square feet in area for multi-dwelling development. There is no minimum lot area for developments with detached or attached houses or duplexes. Minimum lot width and depth standards may apply.

Design Overlay Zone (33.420) – The “d” overlay promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development and exterior modifications to existing development are subject to design review or community design standards.

33.583 – The St. Johns plan district provides for an urban level of mixed-use development including commercial, employment, office, housing, institutional, and recreation uses. Specific objectives of the plan district include strengthening St. Johns’ role as the commercial and civic center of the North Portland peninsula. This plan district stimulates business and economic vitality; promotes housing and mixed-use development; discourages auto-oriented uses and development; enhances the pedestrian environment and the character of buildings; and supports the Willamette greenway and opportunities to celebrate the Willamette River as a unique element of the urban environment.

Land Use History: City records indicate the following prior land use reviews for this site:

- **LU 14-254027 LDP AD:** Approval of an Adjustment to the minimum lot area for a multi-dwelling lot in the R1 zone and approval of a Preliminary Plan for a 3-parcel partition.

Agency Review: Several Bureaus have responded to this proposal with no concerns. Exhibits “E” contain the complete responses.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **December 24, 2019**. One written response was received from a neighbor in response to the proposal. The comment expressed concerns about allowing the applicant to remove these mature trees, noting the environmental and aesthetic benefits of mature trees that exceed those of newly planted young trees. While staff understands the neighbor’s concerns and agrees that mature trees provide many benefits in the city, the requirements of 33.630 allow tree removal to accommodate reasonable development and the installation of utilities. The site is zoned R1,

which is a medium intensity zone intended for multi-dwelling development (e.g. apartment buildings). Given the expected intensity of the zone and the *relatively* small size and non-native species of the trees proposed to be removed, staff finds that it is reasonable to allow removal in this case. Please see the finding below for more information.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR TREE REVIEW

33.853.040 Approval Criteria

B. Changes to tree preservation requirements following land use approval. The approval criteria for changes to tree preservation or mitigation requirements are:

1. If the tree preservation requirement was approved as part of a land division or planned development, the requested change will be approved if the review body finds that the applicant has shown that the revised method will continue to meet the requirements of Chapter 33.630, Tree Preservation.
2. If the tree preservation requirement was approved through a land use review other than a land division or planned development, the requested change will be approved if the review body finds that the applicant has shown that the revised method continues to meet the approval criteria of the original review. Any impacts resulting from the requested change must be mitigated to the extent practicable.

Findings: The site was created as part of a 3-parcel partition approved in 2015 (Parcel 1 of LU 14-254027 LDP AD). At the time of the land division, there were 4 trees on the site that were subject to the tree preservation requirements of 33.630, totaling 51 inches of non-exempt tree diameter. The applicant proposed to preserve trees #1 (12 inch apple) and #2 (6 inch apple), totaling 18 inches of tree diameter or 35 percent of the total non-exempt tree diameter on the site at the time of the review. Both trees are located on Parcel 1. The applicant must demonstrate that the requested change to the tree preservation requirement will continue to meet the Tree Preservation requirements of Chapter 33.630.

To satisfy these requirements, the applicant must provide a tree plan that demonstrates, to the greatest extent practicable, the trees to be preserved provide the greatest environmental and aesthetic benefits for the site and the surrounding area. The tree plan must also show that trees are suitable for preservation, considering the health and condition of the tree and development impacts anticipated. Tree preservation must be maximized, to the extent practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets.

Trees that are healthy, native and non-nuisance species, 20 or more inches in diameter and in tree groves are the highest priority for preservation. Additional considerations include trees that are slower growing native species, buffering natural resources, preventing erosion and slope destabilization and limiting impacts on adjacent sites.

Preservation of trees #1 and #2 met Option 1 of the minimum tree preservation standards at the time of the land division review. Therefore, no additional mitigation was warranted in order to meet the requirements of Chapter 33.630, Tree Preservation. It should be noted that these requirements have since changed to place emphasis on preservation of native trees and trees that are 20 or more inches in diameter, as well as the addition of tree preservation approval criteria.

The site is zoned R1d with a minimum density of 4 units and a maximum density of 9 units, which can be increased through amenity bonuses per 33.120.265. The applicant has proposed a 12-unit apartment building on the site (CO 20-110871), as shown on Exhibit C.1. Although the location of the trees to be preserved would allow construction of a small structure near the

front of the site, their location and required protection zone does not provide much room or site design flexibility for a structure that accommodates the allowed maximum density of the site. As shown on Exhibit C.1, the trees to be preserved are located within the proposed footprint of the new development. Given the scale of the development allowed in the R1 zone and the requirement to provide services (water, sewer, street, storm) to the proposed development, options to retain trees in accordance with chapter 33.630 are limited. Therefore, in this case it is reasonable to consider mitigation options that will replace the functions of the trees to be removed.

Options for mitigation may include tree planting, payment into the City's Tree Planting and Preservation Fund, or other options that are consistent with the purpose of 33.630. The applicant has proposed to mitigate for the removal of the 2 trees by planting 7 mitigation trees on the site and paying into the tree fund for ½ an inch. The mitigation trees will be planted in addition to trees that are required by other sections of the Zoning Code and Title 11 (e.g. required landscaping and tree density standards).

The City of Portland technical specifications require newly planted trees to be at least 1.5" for deciduous varieties and at least 5' tall for conifer species (see PCC 11.60.060). The applicant is required to mitigate for the full 18" of on-site tree diameter that was required to be preserved. At a rate of 1.5" per new tree, the specifications call for 12 new mitigation trees. The applicant has proposed to plant native species, which better meet the approval criteria that prioritize native trees, have a higher likelihood of survival due to their suitability to the local climate, and will provide higher quality habitat for urban wildlife. Given these benefits it is reasonable to provide additional mitigation credit for planting native species. At a rate of 2.5" of credit per tree, planting 7 mitigation trees represents 17.5" of tree diameter. With the proposed tree planting and a payment to the Tree Planting and Preservation Fund for ½ an inch (currently \$450 per inch), the mitigation proposal is acceptable for removal of 18" of on-site trees.

This mitigation will be consistent with the purpose of the tree preservation regulations since it will provide for the installation of other trees that will contribute to the general beauty and natural heritage of the City, help absorb air pollutants and contamination; provide visual screening from the adjacent properties; filter stormwater runoff and the reduce the possibility for erosion; and provide habitat to support wildlife.

In order to ensure the mitigation is provided, the applicant must plant 7 native trees with the new development (CO 20-110871) on the site and make a payment to Tree Planting and Preservation Fund in the amount equivalent to ½ inch. The trees to be retained as part of this review may not be applied toward meeting other Zoning Code or Title 11 requirements.

With the implementation of the noted conditions, this approval criterion is met.

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 requirements of Title 11 can be met, and 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

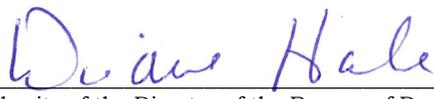
The applicant has proposed to remove a 6-inch and a 12-inch apple tree, required to be preserved as a part of a land division review (LU 14-254027 LDP AD). With conditions requiring planting of replacement trees and a payment into the City Tree Fund to replace the functions of the tree being removed, this proposal may be approved.

ADMINISTRATIVE DECISION

Approval of a Tree Review to remove a 6-inch and a 12-inch apple tree required to be preserved as a part of a land division review (LU 14-254027 LDP AD), subject to the following conditions:

- A. The applicant must plant 7 native trees as part of the proposed development on the site. The landscaping plan for the building permit (20-110871 CO) must show the location of the trees and be in substantial conformance with Exhibit C.1. Any sheet on which this information appears must be labeled, "Tree planting proposal and design as approved in Case File # LU 19-253988 TR. No field changes allowed."
- B. The applicant must pay into the City Tree Preservation and Planting Fund the amount equivalent to 1/2 inch of trees, prior to approval of a building permit on the site. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

Staff Planner: Diane Hale

Decision rendered by:  **on May 4, 2020**
By authority of the Director of the Bureau of Development Services

Decision mailed May 6, 2020

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 November 18, 2019, and was determined to be complete on December 18, 2019.

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 November 18, 2019.

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 75 days. Unless further extended by the applicant, **the 120 days will expire on June 30, 2020.**

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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received by 4:30 PM on May 20, 2020. **Towards promoting social distancing during the COVID-19 pandemic, the completed appeal application form must be e-mailed to BDSLUSTeamTech@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. An appeal fee of \$250 will be charged. Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations for the appeal of Type II and IIX decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in the file, please contact the planner listed on the front of this decision. The planner can provide some information over the phone. Please note that due to COVID-19 and limited accessibility to files, only digital copies of material in the file are available for viewing. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <https://www.portlandoregon.gov/citycode/28197>.

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 Hearings Officer 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 Hearings Officer 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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **May 20, 2020** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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:

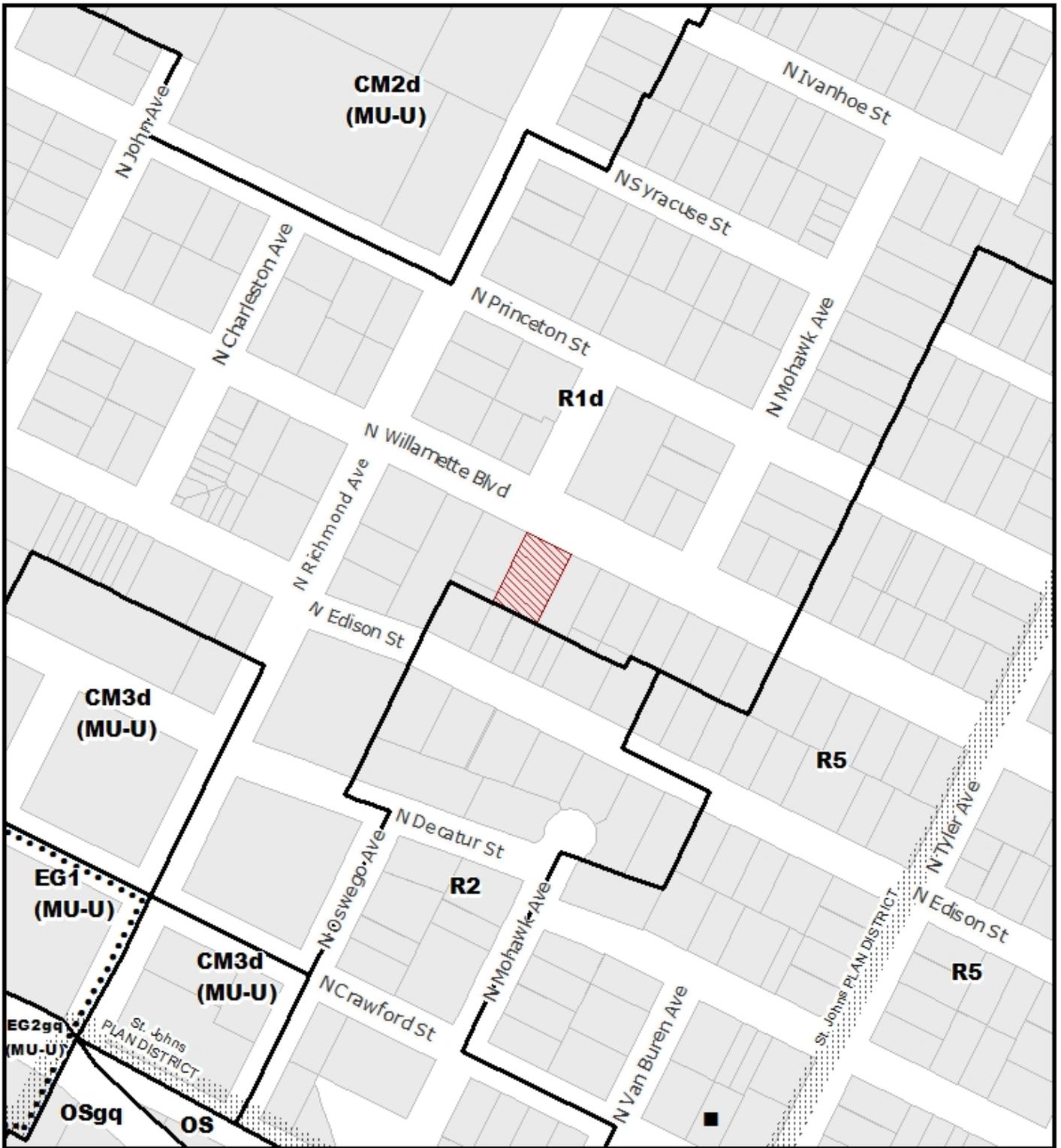
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original submission
 - 2. Applicant's response, 2/3/20
 - 3. Applicant's response, 4/6/20
 - 4. Applicant's response, 4/10/20
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 5. Life/Safety Review Section of BDS
 - 6. Fire Bureau
 - 7. Site Development Review Section of BDS
 - 8. Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. Sean Osaki, December 31, 2020 – 8016 N Willamette Blvd, Portland OR 97203
- G. Other:
 - 1. Original LU Application
 - 2. Extension forms

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

ST. JOHNS PLAN DISTRICT



Site



Historic Landmark

File No.	LU 19 - 253988 TR
1/4 Section	2122
Scale	1 inch = 200 feet
State ID	1N1W12AC 8901
Exhibit	B Nov 22, 2019

