

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

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FROM CONCEPT TO CONSTRUCTION

Date: December 21, 2016

To: Interested Person

From:Benjamin Nielsen, Land Use Services503-823-7812 / Benjamin.Nielsen@portlandoregon.gov

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

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision.

The reasons for the decision are included in the version located on the BDS website <u>http://www.portlandonline.com/bds/index.cfm?c=46429</u>. 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 16-272804 DZM – E BURNSIDE APARTMENTS BALCONIES

GENERAL INFORMATION

Applicant/

Representative:	Gary Bley, Ankrom Moisan Architects 6720 SW Macadam Ave Portland, OR 97219
Owner:	Jessica Greenlee, 10506 E Burnside LLC 1303 SW 16th Ave Portland, OR 97201
Site Address:	10506 E BURNSIDE ST
Legal Description: Tax Account No.: State ID No.: Quarter Section:	INC VAC ST LOT 22, KILWORTH AC R451000690 1N2E34CC 00500 3041
Neighborhood: Business District: District Coalition:	Hazelwood, contact Arlene Kimura at 503-252-9429. Gateway Area Business Association, contact Paul Wild at paul.wild@mhcc.edu East Portland Neighborhood Office, contact Richard Bixby at 503-823- 4550.
Plan District: Zoning:	Gateway RHd – High Density Residential with Design Overlay
Case Type: Procedure:	DZM – Design Review with Modifications Type II – an administrative decision with appeal to the Design Commission.

The applicant requests Design Review to correct a missed development standard Modification from a previous Design Review case for a proposed new multi-dwelling residential apartment building.

The design of the proposed building has already been approved through Design Review case number LU 15-261089 DZM and has not changed. This case will review only a Modification to the "extensions into required building setbacks" standard in zoning code paragraph 33.120.220.D. Specifically, the Modification requests that the balconies on the south side of the building be allowed to project from the face of the building between 3' to 4' (varies) into the required 14'-0" setback on the south side of the building. The standard normally would allow the balconies to project only 2'-8" into the required setback.

Design review is required for proposed new development and for modifications to the zoning code development standards in the "d" overlay zone of the Gateway Plan District.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:

- 33.825 Design Review
- 33.825.040 Modifications That Will Better Meet Design Review Requirements
- Gateway Regional Center Design Guidelines

ANALYSIS

Site and Vicinity: The subject site, on the south side of E Burnside Street [Neighborhood Collector Street, Community Main Street, Regional Transitway/Major Transit Priority Street, City Walkway, City Bikeway, Minor Emergency Response Street] is located near the eastern edge of the Gateway Plan District.

The MAX Blue Line runs through the median of E Burnside Street past the subject site. No parking is provided on the street, and there the only connections to the north side of the street are provided at NE 108th Ave to the east and NE 102nd Ave to the west. At NE 102nd Ave, there is a MAX station as well. The high-density Russellville housing development lies immediately to the south of this transit station.

Zoning: The <u>High Density Residential</u> (RH) is a high density multi-dwelling zone which allows the highest density of dwelling units of the residential zones. Density is not regulated by a maximum number of units per acre. Rather, the maximum size of buildings and intensity of use are regulated by floor area ratio (FAR) limits and other site development standards. Generally, the density will range from 80 to 125 units per acre. Allowed housing is characterized by medium to high height and a relatively high percentage of building coverage. The major types of new housing development will be low, medium, and high-rise apartments and condominiums. Generally, RH zones will be well served by transit facilities or be near areas with supportive commercial services. Newly created lots in the RH zone must be at least 10,000 square feet in area for multi-dwelling development. There is no minimum lot area for development with detached or attached houses or for development with duplexes. Minimum lot width and depth standards may apply.

The <u>"d" overlay</u> 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. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review. In addition, design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

The <u>Gateway Plan District</u> regulations encourage the development of an urban level of housing, employment, open space, public facilities, and pedestrian amenities that will strengthen the role of Gateway as a regional center. The regulations also ensure that future development will provide for greater connectivity of streets throughout the plan district. This development will implement the Gateway Regional Policy of the Outer Southeast Community Plan. Together, the use and development regulations of the Gateway plan district: promote compatibility between private and public investments through building design and site layout standards; promote new development and expansions of existing development that create attractive and convenient facilities for pedestrians and transit patrons to visit, live, work, and shop; ensure that new development moves the large sites in the plan district closer to the open space and connectivity goals of the Gateway Regional Center; create a clear distinction and attractive transitions between properties within the regional center and the more suburban neighborhood outside; and provide opportunities for more intense mixed-use development around the light rail stations.

Land Use History: City records indicate that prior land use reviews include the following:

- <u>EA 15-118947 PC</u> Pre-application Conference to discuss a Type III Design Review for a proposed 5-story wood framed apartment building containing approximately 40 dwelling units and 21 on-site parking spaces to serve the residents.
- <u>LU 15-261089 DZ</u> Approval of a five-story multi-dwelling residential building, consisting of 52 units in five stories with 15 tuck-under parking spaces.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **November 22, 2016**. The following Bureaus have responded with no issues or concerns:

- Site Development Section of BDS
- Portland Bureau of Transportation

The Fire Bureau responded with comments stating that Fire Code requirements apply at the time of permitting. Please see Exhibit E-1 for additional details.

The Life Safety Section of BDS responded with comments stating that a building permit for the proposal is already under review. Please see Exhibit E-2 for additional details.

The Bureau of Environmental Services responded with comments stating that the Stormwater Management Manual is not triggered by this proposal. Please see Exhibit E-3 for additional details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **November 22, 2016**. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal within the comment period. One written response was received after the comment period:

 Laruen Crow, neighbor, received 12/15/2016: Email with concerns about the scale of the building and request to deny the Modification request.

Staff forwarded the email to the applicant and sent a reply to Ms. Crow noting that the Design Commission had already approved the proposed building. Modification findings for the proposed balconies are below.

ZONING CODE APPROVAL CRITERIA

Chapter 33.825 Design Review

Section 33.825.010 Purpose of Design Review

Design review ensures that development conserves and enhances the recognized special design values of a site or area. Design review is used to ensure the conservation, enhancement, and continued vitality of the identified scenic, architectural, and cultural values of each design district or area. Design review ensures that certain types of infill development will be

compatible with the neighborhood and enhance the area. Design review is also used in certain cases to review public and private projects to ensure that they are of a high design quality.

Section 33.825.055 Design Review Approval Criteria

A design review application will be approved if the review body finds the applicant to have shown that the proposal complies with the design guidelines for the area.

Findings: The site is designated with design overlay zoning (d), therefore the proposal requires Design Review approval. Because of the site's location, the applicable design guidelines are the Gateway Regional Center Design Guidelines.

Gateway Regional Center Design Guidelines

The Gateway Regional Center is the City of Portland's only designated regional center. The area is envisioned to redevelop into a highly urbanized, pedestrian-oriented center, with an overall built size and scale second only to Portland's Central City.

The purpose of design review is to carry out the urban design vision for the District by emphasizing unique district assets in a manner that is respectful, creative, supportive, and compatible with all its areas. Although the District is a complex urban environment, it can become a cohesive whole with the use of these design principles.

Gateway Regional Center Design Goals

Ten goals for design review in the Gateway Regional Center have been established to enhance the area's design quality, support its livability, and guide its transition to a pedestrian-oriented, active, urban regional center. They are:

- **1.** Encourage urban design excellence.
- **2.** Ensure that new development is at a human scale and that it relates to the scale and desired character of its setting and the Gateway Regional Center as a whole.
- **3.** Provide for a pleasant, rich, and diverse experience for pedestrians.
- **4.** Assist in creating a regional center that emphasizes a mix of active uses and experiences and is safe, lively, and prosperous.
- **5.** Provide for the humanization of the Gateway Regional Center through the promotion of parks, plazas, open spaces, public art, and trees.
- **6.** Integrate and honor the diversity and history of Gateway.
- 7. Integrate sustainable principles into the development process.
- **8.** Encourage the development of a distinctive character for subdistricts within the regional center, and link them.
- 9. Encourage and incorporate transit orientation and usage.
- **10.** Enhance the physical and visual linkages between the Gateway Regional Center and adjacent neighborhoods.

Staff has considered all guidelines and has addressed only those guidelines considered applicable to this project.

B1. Convey Design Quality and Building Permanence. Use design principles and building materials that convey quality and permanence.

B3. Design for Coherency. Integrate the different parts of a building to achieve a coherent design.

Findings for B1 & B3: The proposed balconies on the south side of the building match the design of the balconies that were approved on the north side of the building (as well as the south side) through design review case LU 15-261089 DZM. These balconies are composed of flat metal rails and pickets, colored to match the gray metal frame on this façade, and PVC decking—all of which are high quality materials. A commercial grade vinyl door swings out onto each balcony. The balconies are, therefore, well-integrated into the overall

design of the building and consistent with the design of the other three facades.

Therefore, these guidelines are met.

C6. Build on View Opportunities. Incorporate semi-public building spaces to facilitate views to and from public amenities. Develop new buildings to emphasize pedestrian views down streets or corridors at focal points or wayfinding markers.

Findings: Six balconies are provided at the south façade, affording views to points southward in the Gateway Plan District. These complement six balconies that are located on the north façade of the building that provide additional private view opportunities towards E Burnside Street and beyond.

Therefore, this guideline is met.

33.825.040 Modifications That Will Better Meet Design Review Requirements:

The review body may consider modification of site-related development standards, including the sign standards of Chapters 32.32 and 32.34 of the Sign Code, as part of the design review process. These modifications are done as part of design review and are not required to go through the adjustment process. Adjustments to use-related development standards (such as floor area ratios, intensity of use, size of the use, number of units, or concentration of uses) are required to go through the adjustment process. Modifications that are denied through design review may be requested as an adjustment through the adjustment process. The review body will approve requested modifications if it finds that the applicant has shown that the following approval criteria are met:

- A. **Better meets design guidelines.** The resulting development will better meet the applicable design guidelines; and
- B. **Purpose of the standard.** On balance, the proposal will be consistent with the purpose of the standard for which a modification is requested.

Modification #1: Extensions into required building setbacks, PZC 33.120.220.D – Allow the balconies on the south side of the building to project from the face of the building between 3' to 4' (varies) into the required 14'-0" setback on the south side of the building.

Purpose Statement: 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 multi-dwelling development in the City's neighborhoods;
- They promote a reasonable physical relationship between residences;
- They promote options for privacy for neighboring properties;
- 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;
- Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users; 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.

Standard: 33.120.220.D, Extensions into required building setbacks.

1. The following features of a building may extend into a required building setback up to 20 percent of the depth of the setback *[ed: 2'-8"]*. However, the feature must be at least 3 feet from a lot line, except as allowed in 33.120.270, Alternative Development Options:

- a. Eaves, chimneys, fireplace inserts and vents, mechanical equipment, and fire escapes;
- b. Water collection cisterns and stormwater planters that do not meet the standards of Paragraph D.2;
- c. Decks, stairways, wheelchair ramps, and uncovered balconies that do not meet the standard for Paragraph D.2 below; and
- d. Bays and bay windows that meet the following requirements:
 - (1) Each bay and bay window may be up to 12 feet long, but the total area of all bays and bay windows on a building facade cannot be more than 30 percent of the area of the facade;
 - (2) At least 30 percent of the area of the bay which faces the property line requiring the setback must be glazing or glass block;
 - (3) Bays and bay windows must cantilever beyond the foundation of the building; and
 - (4) The bay may not include any doors.
- 2. The following minor features may extend into entire required building setbacks:
 - a. Utility connections attached to the building that are required to provide services, such as water electricity and other similar utility services;
 - b. Gutters and downspouts that drain stormwater off a roof of the structure;
 - c. Stormwater planters that are no more than 2-1/2 feet above the ground;
 - d. Water collection cisterns that are 6 feet or less in height;
 - e. Attached decks, stairs, and ramps that are no more than 2-1/2 feet above the ground. However, stairways and wheelchair ramps that lead to one entrance on the street-facing facade of a building are allowed to extend into the required street setbacks regardless of height above ground; and
 - f. On lots that slope down from the street, vehicular or pedestrian entry bridges that are no more than 2-1/2 feet above the average sidewalk elevation.
- 3. Detached accessory structures. The setback standards for detached accessory structures including detached mechanical equipment are stated in 33.120.280 below. Fences are addressed in 33.120.285, below. Detached accessory dwelling units are addressed in Chapter 33.205.
- *A. Better meets design guidelines.* The resulting development will better meet the applicable design guidelines; and

Findings: Placing balconies on the south side of the building will complete the building's composition, matching identical balconies that will be installed on the north side of the building, and will result in a more-coherent composition, better meeting Guideline B3 – Design for Coherency. In order to fully match the north façade and provide usable balcony space (better meeting Guideline C6 – Build on View Opportunities), the balconies on the south side must be allowed to extend beyond the 2'-8" limit allowed for extensions into required building setbacks.

B. Purpose of the standard. On balance, the proposal will be consistent with the purpose of the standard for which a modification is requested.

Findings: The setback standards are in place to maintain light, air, separation for fire protection; to reflect the general building scale and placement of multi-dwelling

development in the neighborhood; to promote a reasonable physical relationship between residences; to promote options for privacy for neighboring properties; and to provide adequate flexibility to site a building so that it may be compatible with the neighborhood. The extension of six balconies by up to an additional 1'-4" into the required setback on the south side of the building will have a negligible impact on privacy, since views onto adjacent properties are already provided through windows on the building. The scale of the building will not be impacted by these balconies. There will continue to be adequate, and even substantial, separation between buildings on the south side of the site, maintaining light, air, and fire separation protection between buildings. Furthermore, the inclusion of balconies on the south side of the building better defines and identifies it as a multi-dwelling residential building, helping it to be more compatible with development in the existing neighborhood.

Therefore, this Modification merits approval.

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 six balconies proposed to be placed on the south side of the approved, but not yet built, five-story multi-dwelling residential building in the Gateway Plan District will help to complete the building's composition, resulting in increased coherency, and will build on view opportunities to points south in the district. The requested Modification to allow these balconies to extend up to 1'-4" more into the required building setback on the south side of the property will allow this to occur while still maintaining the purpose of the setback requirements.

The design review process exists to promote the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The proposal meets the applicable design guidelines and modification criteria and therefore warrants approval.

ADMINISTRATIVE DECISION

Approval of the proposal to allow six (6) balconies on the south side of the building and the associated Modification request to allow the balconies to project from the face of the building between 3' to 4' (varies) into the required 14'-0" setback, more than the normally-allowed 2'-8" projection. And per the approved site plans, Exhibits C-1 through C-3, signed and dated December 14, 2016, subject to the following conditions:

A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 through C-3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-272804 DZM. No field changes allowed."

Staff Planner: Benjamin Nielsen

Decision rendered by:	Barning. NR	on December 14, 2016.
By a	uthority of the Divector of the Bureau of Develo	opment Services

Decision mailed: December 21, 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 November 14, 2016, and was determined to be complete on **November 18, 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 November 14, 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 further extended by the applicant, **the 120 days will expire on: March 18, 2017.**

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 Design Commission, which will hold a public hearing. Appeals must be filed **by 4:30 PM on January 4, 2017,** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 <u>www.portlandonline.com</u>.

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 Design Commission 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 Design Commission 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 5, 2017 (the day following the last day to appeal).
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

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

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

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

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

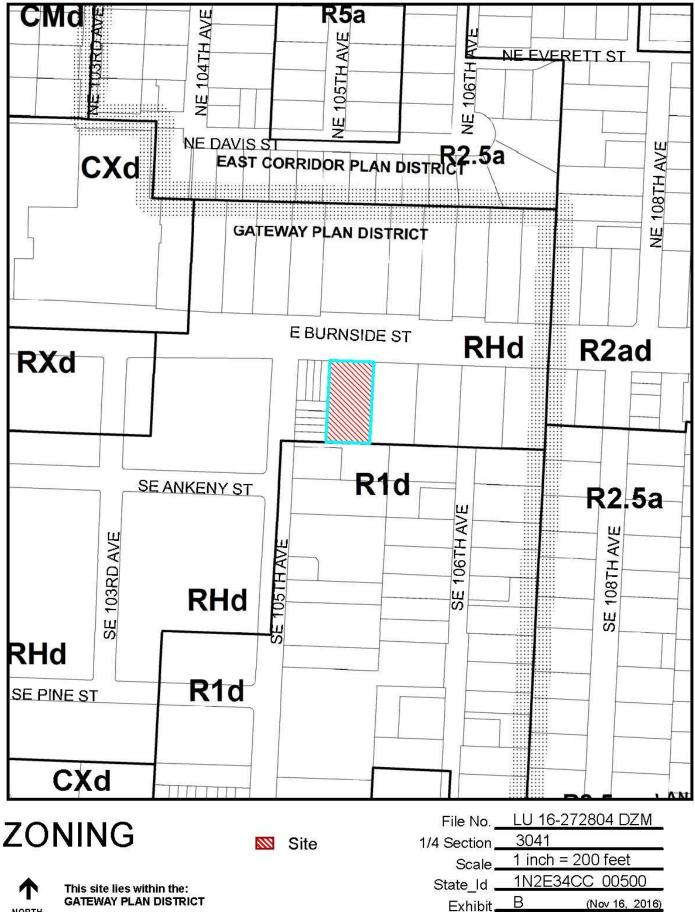
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. South Elevation & Wall Section (attached)
 - 3. Balcony Details
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Portland Fire Bureau
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Bureau of Environmental Services
- F. Correspondence:
- 1. Lauren Crow, neighbor, received 12/15/2016 opposition to proposed Modification G. Other:
 - 1. Original LU Application

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).



NORTH

