

City of Portland, Oregon

Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

Date: September 6, 2013 **To:** Interested Person

From: Amanda Rhoads, Land Use Services

503-823-7837 / Amanda.Rhoads@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 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 13-183333 AD

GENERAL INFORMATION

Applicant/Owner: Robert D. Green

7537 SE 116th Ave / Portland, OR 97266

Site Address: 5318 SE LAFAYETTE ST

Legal Description: BLOCK 4 LOT 13&14, OAKDALE Tax Account No.: R621801210

State ID No.: 1S2E07DB 11400 Quarter Section: 3436

Business District: Foster-Powell, contact Lynden Evans at 541-633-3187. Foster Area, contact Seth Richardson at 503-771-1737. **District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.

Zoning: R1a (Multi-Dwelling Residential 1,000 with an "a" Alternative Design

Density Overlay Zone)

Case Type: AD (Adjustment)

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

Committee.

Proposal:

The applicant received a building permit for an addition and has begun construction to convert the 600 sf house on the lot into a duplex, which is allowed in the R1 zone. Because the structure, as built, does not meet the 5-foot side and rear setbacks that are required for dwellings in the R1 zone, the applicant requests an Adjustment to the setback standard [33.120.220] to allow the structure to remain as built. According to the applicant, the building is located 4 feet 6 inches from both the south [rear] and west [side] property lines, with a 20-inch eave on each side extending to 2 feet 10 inches from the property lines.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. 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 subject site is a 5,000 square foot lot located in the area between Foster Rd. and Powell Blvd. just east of SE 52nd Ave. Most of the single-dwelling houses in this area were constructed in the early 1900s on standard 5,000 square foot lots. At least half a dozen multi-dwelling buildings are within one block of the subject site. They were all built in the late 1960s/early 1970s. Commercial buildings, a food cart pod, a church and a private fraternal lodge are also all located close by. SE Foster, SE 52nd Ave. and SE Powell are designated as Major City Traffic Streets and create strong edges to the neighborhood from a pedestrian perspective.

Zoning: The site is zoned R1, which is a medium density multi-dwelling zone. It allows approximately 43 units per acre. Density may be as high as 65 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one to four story buildings and a higher percentage of building coverage than in the R2 zone. The major type of new housing development will be multi-dwelling structures (condominiums and apartments), duplexes, townhouses, and rowhouses. Generally, R1 zoning will be applied near Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.

The site has an Alternative Design Density (a) Overlay. The purpose of the Alternative Design Density Overlay Zone is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements. This overlay is not relevant for the consideration of the requested Adjustment.

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 **August 5, 2013**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

The Portland Bureau of Transportation (PBOT) has no objections to the proposed adjustment. PBOT written comments included the following regarding right-of-way improvements:

According to Portland Maps, the latest assessed value for the existing improvements on the site is \$44,890.00. The Building Permit (13-103328 RS) for the proposed building addition indicates a value of \$160,000. Accordingly, the project is a "significant alteration" and therefore PBOT has the authority to require frontage improvements as noted above.

The City's Pedestrian Design Guide recommends an 11-ft wide sidewalk corridor comprised of a 0.5-ft curb, 4-ft wide furnishing zone, 6-ft wide sidewalk and 0.5-ft wide frontage zone. The site's existing 3-6-2 sidewalk configuration satisfies the overall 11-ft wide width standard, but the current furnishing zone is deficient. Accordingly, and as already noted by PBOT Permit Review staff in a checksheet that was prepared in February of this year for the aforementioned Building Permit, the applicant will be required to reconstruct the existing sidewalk corridor to satisfy the above referenced standard.

The applicant has the opportunity to challenge PBOT's frontage improvement requirements if he objects to them or to propose an alternative frontage improvement solution. The applicant may elect to appeal the aforementioned r.o.w. improvements via the Public Works Administrative Appeal process.

Additional information on this appeal process can be found at the following link: http://www.portlandonline.com/index.cfm?c=53147&a=375532.

The Bureau of Environmental Services states the site plan has already been reviewed and approved under permit number 13-103328 RS. Stormwater and sanitary requirements are met through the building permit.

The BDS Life Safety (Building Code) Plan Review Section states: "Eaves less than three feet to a property line must be protected on the underside as required for one-hour fire-rated construction. ORSC R302.1"

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on August 5, 2013. Two written responses were received by the deadline from notified property owners in response to the proposal.

A neighbor, owning property that abuts the subject site to the south, submitted an email expressing opposition to the proposal (Exhibit F.1). The neighbor states that the only purpose for the adjustment was to make up for a mistake the builder made, and there was no benefit to neighbors or the neighborhood. The neighbor states that "the structure is a dominating feature looming over our properties, obstructing previous light and views, and eliminating any privacy." The neighbor expressed concerns over the height of the structure and how the building, so close to the rear property line, was out of context with the neighborhood. In addition to privacy, there are concerns about noise and stormwater runoff and questions about safety in the event of a fire.

Two other neighbors who own property abutting the subject site submitted an email expressing opposition to the proposal (Exhibit F.2). They have concerns about reduced property value, fire, runoff, the height of the structure, and loss of privacy at their home. They state the window allows people inside to look down into their home.

Also, a letter was received from a neighbor on August 28, 2013 (Exhibit F.3). Because the letter was received after the comment period ended on August 26, 2013, the content of the letter is not addressed below.

BDS Response: Many of the concerns are addressed in the findings below. In regards to stormwater runoff, stormwater requirements were addressed in the building permit process. The two rear downspouts connect to pipes that run under the house to a drywell located at the front of the property. Hence, there will not be runoff from the gutters draining to the rear of the house.

ZONING CODE APPROVAL CRITERIA

Relevant Approval Criteria:

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

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

Findings: The purposes of the setback standard requested for Adjustment are found in Section 33.110.220, Setbacks. The setback regulations for buildings and garage entrances serve several purposes. Below, each purpose statement is discussed as it relates to this proposal.

1. They maintain light, air, separation for fire protection, and access for fire fighting;

Along the lot lines where the Adjustment is requested, the new development faces onto open neighboring yards (two properties along the rear) and an accessory structure (on the west side). Because of the open backyards of the properties to the south, the proposed project will not create issues for fire protection or access for fire fighting. The Fire Bureau has responded to the proposal with no concerns.

Because the development is to the north of its rear neighbors, it will not impact those yards' access to the sun's light from the south. The open backyards ensure airflow around nearby buildings.

2. They reflect the general building scale and placement of multi-dwelling development in the City's neighborhoods;

Many surrounding single-dwelling homes have a much larger footprint than did the original 600-sf house on the same lot size. Compared to other multidwelling developments in the neighborhood, including the one immediately east of the subject site, the scale of this project is comparable to and not taller than two-story apartment buildings nearby.

The building coverage on the site will be increased from the previous 600 square foot home. However, the site will not be as intensely developed as allowed in the R1 zone for multi-dwelling development. In terms of building coverage, the proposed duplex provides a good transition between the larger single-dwelling homes and the nearby multi-dwelling buildings.

3. They promote a reasonable physical relationship between residences;

The Zoning Code applies a 5 foot setback requirement; hence, the City has determined that 5 feet creates a reasonable physical relationship between residences. A reduction of six inches does not significantly affect the physical relationship of the duplex with its neighbors. The building is not immediately adjacent to living quarters; as stated above, abutting the property to the south are open backyards and to the west is an accessory shed. The building is not proposed to go into the setback on the east side, where the adjacent apartment complex is also built close to the property line. Therefore, the physical relationship between residences will remain reasonable.

4. They promote options for privacy for neighboring properties;

The back wall of the proposed duplex will be located 35' to 40' away from the houses to the south. At this distance, the 6" encroachment into the setback

does not impact privacy at the lower level significantly. There is a six foot tall privacy fence that separates the two adjacent properties.

However, the second-story window proposed on the south-facing wall offers new views onto the southern abutting lots. In the neighborhood context, privacy due to the new duplex being built six inches into the setbacks will be diminished somewhat, and has been identified as a primary neighbor concern. To address this impact, a condition will require that the second story south-facing window be removed.

To address the resulting solid, blank south-facing wall, a condition will also require the addition of a "belly band," or a horizontal trim board between the levels of a building. This horizontal, decorative band will help provide visual interest on the building's rear façade.

On the west side, only one second-story window is proposed, and one new ground floor window; neither of these is located in the part of the building that is in the setback. The part of the development that is located in the west side setback is a single-car garage, meaning it will not be occupied living space, and further has no windows on the ground floor. The accessory structure on the adjacent property to the west also has no windows, so there will be no loss of privacy adjacent to the building.

5. They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;

The front setback remains the same under the addition proposal; the original porch begins more than 20 feet back from the property line.

6. 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

The development was designed to fit in with the adjacent single-dwelling structures while creating additional living space with off-street parking.

7. Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users.

This purpose statement is not applicable to the subject site. The site is not located on a transit street.

8. 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.

A new driveway will provide off-street parking potentially for the first time on the site. The 600 square foot home did not have a driveway or garage. The design provides a spot in each of two one-car garages, as well as 70 feet of new driveway. As mentioned above, the front setback remains unchanged and the addition is occurring behind the original house, meaning the ability to back out of the new driveway safely is not impeded by the addition.

Summary: As explained above, the purpose of the setback standard will be met. The duplex will be sufficiently sensitive to its context, both at a lot and neighborhood scale, when the conditions that the rear second-story window is removed and a belly band is used to diminish the massing of the south-facing wall are 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: As discussed above, the immediate neighborhood has a variety of uses and architectural styles. The historic single-dwelling homes are now interspersed with multi-family dwelling units from the 1960s and 1970s; the residential streets intersect into very busy roads with commercial areas along them. The project creates a duplex out of an existing 600 square foot home by building an addition behind the house. The original home has a small footprint on the lot compared to most other single-dwelling homes nearby, including the two immediately behind the site. With the addition, the footprint will be much larger, but in line with some of the larger homes and not as massive as the more boxy multi-dwelling sites nearby.

The six-inch difference between the 5 foot setback and the requested 4.5 foot setback will not cause significant livability impacts. From the street, the difference will be negligible. As discussed earlier, the lot lines on which the addition is built do not abut houses directly, but rather backyards and an accessory structure. The rear of the property has a 6 foot privacy fence that will mask any perceived impact of the six inches. Removing the window from the rear of the structure will address the neighbors' privacy concerns.

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: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

Findings: The privacy fence along the rear property line mitigates the impact of the addition encroaching six inches into the setback (with the eave going 20" into the setback beyond the wall). The rear second-story window will be removed through condition to address neighbor concerns. Since the duplex structure is legal as built with the exception of this six-inch encroachment into the setback, and all ground-story windows are blocked by the fence, 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

While the area began as a single-dwelling neighborhood, it has become much more diverse. The multi-dwelling R1 zoning encourages further development with an increase in the density. The proposed project is designed to increase density on the site without losing the single-dwelling scale by building an additional unit behind an existing home while keeping the front yard as is and providing sufficient onsite parking to prevent additional cars on the street.

The number of windows on the duplex abutting neighboring properties has been kept to a minimum. A six foot tall privacy fence along the rear property line adequately addresses privacy impacts at the lower level.

On the west side, no living space has been placed in the setback, and no windows are located on that side of the garage. The removal of the rear second-story window will address privacy issues. The required construction belly band will ensure the rear façade will have visual interest.

ADMINISTRATIVE DECISION

Approval of Adjustment to reduce required building setback from five feet to four feet six inches on the south and west sides, for the conversion of the single-dwelling home to a duplex per the approved plans, Exhibits C.1 through C.3, signed and dated September 4, 2013, subject to the following conditions:

- A. To implement this decision, the applicant must submit an application for a Permit Revision to building permit # RS 13-103328, to identify the actual depth of the building setbacks. The following development-related conditions (B through C) must be noted on each of the required plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE Case File LU 13-183333 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The proposed south-facing second-story window must be removed.
- C. A "belly band," a 5-6 inch wide decorative horizontal band between the first and second stories along the south (rear) wall must be installed.

Note: To address building code requirements, if it is determined by inspectors that the eaves are closer to the property line than three feet, the owner must protect the eaves on the underside as required for one-hour fire-rated construction (ORSC R302.1).

Staff Planner: Amanda Rhoads

Decision rendered by: ______ on September 4, 2013.

By authority of the Director of the Bureau of Development Services

Decision mailed: September 6, 2013

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 July 23, 2013, and was determined to be complete on August 5, 2013.

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 July 23, 2013.

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: December 3, 2013.**

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 September 20, 2013** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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. 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 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 **September 23, 2013.**
- 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:

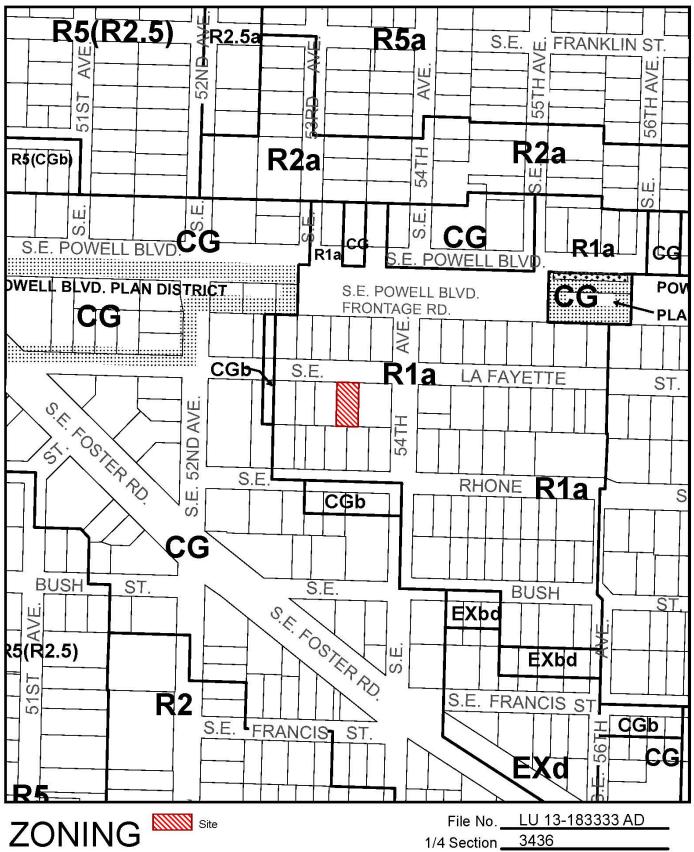
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Rear elevation (attached)
 - 3. West side elevation (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety
- F. Correspondence:
 - 1. B. Jenkins, August 25, 2013, in opposition
 - 2. G. and J. Lais, August 25, 2013, in opposition
 - 3. L. Chowning, August 28, 2013, received after the deadline
- 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. 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).



3436 1/4 Section 1 inch = 200 feet Scale. 1S2E07DB 11400 State Id В (Jul 24,2013) Exhibit_



