

To:



City of Portland, Oregon

Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

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

Date: November 30, 2016

From: Amanda Rhoads, Land Use Services

Interested Person

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 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 16-244725 AD

GENERAL INFORMATION

Applicant: Barb Anderson

Convergence Architecture

7441 N Leavitt Ave Portland, OR 97203

Owner: Daniel Ribeiro

9537 N Exeter Ave Portland, OR 97203

Site Address: 9537 N EXETER AVE

Legal Description: BLOCK 15 LOT 13&14, COLLEGE PL

Tax Account No.: R169805340 **State ID No.:** 1N1E05CC 12900

Quarter Section: 2025

Neighborhood: Portsmouth, contact Tatiana Xenelis-Mendoza at 503-756-2559.

Business District: None

District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at

503-823-4099.

Plan District: None

Zoning: R5 – Single-Dwelling Residential 5,000

Case Type: AD – Adjustment Review

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

Committee.

Proposal:

Currently at the site, a large accessory structure stretches across much of the backyard. It is made up of a one-car garage, probably the original one on the site, and a 1-and-a-half-story addition to that garage, constructed without permits decades ago. Currently, the garage and the upper story of the addition are living space, and much of the first story of the addition is

storage. The applicant is working to legalize the entire addition as an Accessory Dwelling Unit, or ADU, while demolishing the garage portion. The proposal is for a one-and-a-half story structure that is 14 feet, 4 inches tall; 24 feet, 4 inches deep by 30 feet, 4 inches long; and 1,039 square feet. Any windows, openings or eaves on the sides of the structure in the building setbacks will be removed.

In order to get permits, the applicant must request Adjustments to the Zoning Code. First, the building is located in the side and rear building setbacks. While accessory structures are allowed to be located in side and rear setbacks if certain criteria are met, this structure is not allowed by right in its current location because its dimensions exceed 24 feet by 24 feet and its walls exceed 10 feet in height.

• Therefore, the applicant requests Adjustments to Zoning Code Section 33.110.220.B and Table 110-3 to reduce the north (side) setback from 5 feet to 0 feet, and the west (rear) setback from 5 feet to 2 feet for the building's walls.

Also, the building is to be permitted as an Accessory Dwelling Unit, or ADU. ADUs are limited in size to 75 percent of the living area of the primary house, or 800 square feet, whichever is less. In this case, the primary house has 2,136 square feet according to County records. The reconfigured accessory structure is proposed at 1,039 square feet. This is less than the 75% of living area, but 239 square feet greater than the 800-square-foot limit.

• The applicant requests an Adjustment to 33.205.040.C.3 to increase the maximum ADU size from 800 to 1,039 square feet.

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 5,000-square-foot site is developed with a house constructed in 1906, and a large accessory structure converted to living space and made up of the site's original one-car garage plus an accessory structure attached to that garage and constructed several decades ago. The current proposal would remove the original garage and legalize the remaining structure as an Accessory Dwelling Unit.

The immediate area is residential, with houses constructed in a variety of time periods; several houses to the north and east of the subject site are on "skinny lots" and were constructed in the past decade. A school and park are located 2 blocks away. North Exeter is a local service street for all modes.

Zoning: The <u>Residential 5,000</u> (R5) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 5,000 square feet of site area.

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

Public Review: A "Notice of Proposal in Your Neighborhood" was mailed October 25, 2016.

Agency Review: The following Bureaus have responded with no issues or concerns:

Bureau of Environmental Services (Exhibit E.1);

- Bureau of Transportation (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5); and
- Life Safety (Building Code) Plans Examiner (Exhibit E.6).

Neighborhood Review: A total of two written responses were received, both from notified property owners in response to the proposal. One neighbor who is located behind the subject site was concerned about the proximity of the proposed patio close to their shared property line. While the patio is allowed by right, the applicant agreed to extend an existing wood fence along the rear and side property line where the original garage is proposed to be removed, in order to maintain a sense of privacy. A condition of approval will require that this fence be at least 6 feet tall.

A second letter expressed no objections to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (Adjustments)

The regulations of the Zoning Code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The Adjustment Review process provides a mechanism by which the regulations in the Zoning Code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the Zoning Code's regulations would preclude all use of a site. Adjustment Reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the Zoning Code to continue providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

A. Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The purpose for the setback regulations of Zoning Code Section 33.110.220.B is listed below. Each applicable purpose statement will be addressed separately.

33.110.220.A Setbacks

- **A. Purpose.** The setback regulations for buildings and garage entrances serve several purposes:
 - They maintain light, air, separation for fire protection, and access for fire fighting;
 - They reflect the general building scale and placement of houses in the city's neighborhoods;
 - They promote a reasonable physical relationship between residences;
 - They promote options for privacy for neighboring properties;
 - They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;
 - They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and

- They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.
- They maintain light, air, separation for fire protection, and access for fire fighting; The expanded accessory structure has been located on the site for at least two decades and possibly much longer. A 1996 aerial photograph clearly shows the accessory structure, and a 1969 Sanborn Insurance map shows only the original garage, placing the accessory structure expansion between the 1970s and 1996. The applicant states it was a 1970s addition.

The proposal will remove the original garage to create more light and airflow through the site, and better access to the rear of the accessory structure. This removal brings the site into conformance with building coverage standards and limits the size of the accessory structure located in the required building setbacks, reducing life safety concerns. Aerial photographs show no accessory structures nearby in the lot to the north, and the proposed building is more than 20 feet from the house to the west.

- They reflect the general building scale and placement of houses in the city's neighborhoods;
- They promote a reasonable physical relationship between residences;

The scale of the accessory structure would be allowed outright outside of the building setbacks, and would be allowed almost 6 feet taller by right. Garages and other accessory structures are allowed at a 0-foot property line at a size of 24 feet by 24 feet, with 10-foot walls and a 15-foot overall height. This building is below the maximum height and does retain a 2-foot setback from the west property line where the building is longest; to the north, where the building is at the property line, the building is just over the maximum limit of 24 feet with 11-foot walls.

The building as currently configured, extending across the entire backyard, is out of character in the neighborhood. However, removing the existing garage to make a more compact accessory structure is more in line with rear garages and ADUs seen elsewhere in the R5 zone. The location behind the house minimizes the visual impact of the structure from the street. As stated above, there is no accessory structure on the lot to the north and, to the west, the nearest house is more than 20 feet away. This results in a structure that has a reasonable physical relationship with its surroundings.

Further, this area has development from a variety of eras, made up of houses like that on the subject site from the turn of the 20th century, to mid-century ranches, to "skinny houses" that have been erected more recently. This lack of coherency allows for a broader interpretation of "reasonable physical relationship" than would be appropriate in other city neighborhoods.

They promote options for privacy for neighboring properties;

The neighbor to the west raised concerns regarding the removal of the original garage and the patio that will take its place. While a patio at the property line is allowed outright for any single-dwelling residence, the removal of the garage and the reorientation of the main entry to the ADU to the south will open up new oblique views into the rear neighbor's yard.

The applicant has agreed to extend the existing 6-foot fence along the south and west property lines in the area where the original garage will be removed to maintain privacy for other properties. A condition of approval will require the applicant to extend the fence as proposed along the south and west property lines, to ensure privacy for the neighboring properties. In a similar vein, the existing 20 feet of 6-foot-tall wood fencing

on the north side must remain in place to provide a separation from the new sliding glass doors on the ADU and the house to the north.

The proposal also calls for removing all openings on the sides of the structure in the building setbacks. This is a building code requirement but also ensures privacy and limits views from inside the building onto adjacent properties. Instead, the applicant will add skylights to ensure natural light.

For the reasons above, the proposal at least equally meets the purpose for the setback regulations. Staff finds this criterion is met for the Adjustment for reduced setbacks.

The purpose for the maximum ADU size regulation of Zoning Code Section 33.205.040.C.3 is listed below. Each applicable purpose statement will be addressed.

33.205.040 Development Standards

- A. Purpose. 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 single-dwelling residential zones are intended to preserve land for housing and to provide housing opportunities for individual households. The development standards for single-dwelling zones work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The applicant requests locating the proposed accessory structure in the north and west required building setbacks, and increasing the maximum size for an ADU to 1,039 square feet. The proposed structure is $1\frac{1}{2}$ stories rather than 2 full stories, with no dormers to expand this upper area further. Windows on the two walls closest to the property line will be removed to ensure privacy to neighboring properties, while skylights will provide natural light. Staff finds the proposal effectively reduces the visual prominence of the proposed ADU in a manner consistent with the intent of the ADU standards.

The ADU will be substantially smaller than the 2,136-square-foot main house, with much of the bulk of the accessory structure located behind the main house as viewed from the street. Consistent with the character of the single-dwelling residential zone, the site design will maintain an aesthetically pleasing environment, with an accessory structure that is visible but clearly subordinate to the main house. The site plan (Exhibit C.1) shows that the configuration allows room for a shared yard and patio space for both the main house and the ADU in the southwest portion of the lot, and this area will be substantially larger than the minimum outdoor area required by Zoning Code Section 33.110.235.

For these reasons, staff finds this criterion is met for the Adjustment to maximum ADU size.

Summary: As demonstrated above, the proposal equally meets the purpose for each of the regulations to be modified. This criterion is met.

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

Findings: The proposal brings the site in compliance with the building coverage standard, and lessens the amount of building located in the rear setback. The removal of windows in the setbacks and the condition of approval to maintain an existing fence and extend another in the southwest corner of the site will both lessen privacy impacts of the proposal. As described above, the proposed structure is clearly accessory to the primary house on the site. A condition of approval will further unify the two structures by requiring the accessory structure to be clad in lap siding to match the primary house, and for the two structures to be painted the same color. With these conditions of approval, this criterion can be 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: As stated above, the single-dwelling residential zones are intended to preserve land for housing and to provide housing opportunities for individual households. The proposal legalizes an accessory structure located largely behind the primary house, with limited views from the street. Despite the increase in maximum ADU size, the accessory structure will still be only about 49% of the size of the primary house, well under the 75% maximum. In order to improve aesthetics and unify the site, a condition of approval will require that the accessory structure have lap siding to visually match the primary house, and be painted in the same color.

Privacy is maintained by a condition of approval to extend the existing 6-foot-tall fence along the south and west property lines in the area of the removed garage, and to maintain the existing fence (or an equivalent fence) for the 20 feet on the north property line. Further, the applicants will close all openings in the building walls located in the setbacks.

With these conditions of approval, the proposal is still consistent with the overall purpose of the zone. This criterion is met.

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 proposal will bring the site's building coverage into conformance and reduce the length of the structure located in the building setbacks. The conditions of approval to extend a fence in areas where new openings might provide views onto neighboring properties, and to use lap siding and the same color paint on the accessory structure as on the primary house, will ensure any impacts to livability or neighborhood appearance are mitigated. With these conditions of approval, 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 overlay zones are designated on the Official Zoning Maps with either a lowercase "p" (Environmental Protection overlay zone) or a "c"

(Environmental Conservation overlay zone). As the site is not within an environmental zone, this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The proposal will improve the site over existing conditions. With the conditions of approval, the accessory building will be clearly tied to the primary structure, and nearby properties will maintain their privacy. The approval criteria can be shown to be met with the conditions of approval, and therefore these Adjustments should be granted.

ADMINISTRATIVE DECISION

Approval of three Adjustments for a detached accessory structure:

- An Adjustment to Zoning Code Subsection 33.110.220.B and Table 110-3 to reduce the north (side) building setback from 5 feet to 0 feet;
- An Adjustment to Zoning Code Subsection 33.110.220.B and Table 110-3 to reduce the west (rear) building setback from 5 feet to 2 feet; and
- An Adjustment to Zoning Code Paragraph 33.205.040.C.3 to increase the maximum allowed ADU size from 800 square feet to 1,039 square feet.

Approval is per the approved plans, Exhibits C.1 through C.6, signed and dated November 23, 2016, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through E) must be noted on each of the 4 required site 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 16-244725 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. At time of building permit, a fully sight-obscuring wood fence must be installed along or near the south and west property lines in the area of the original garage to be removed. The fence must extend from the southwest property point north to the start of the remaining accessory structure, and from that point east to the existing fence.
- C. Along/near the north property line, the applicant must keep a 6-foot-tall, fully-sight-obscuring fence for a length of 20 feet from the east wall of the accessory structure, heading east from the ADU toward the street.
- D. The accessory structure must be clad in an exterior finish material that is the same or visually matches the primary house in type, size, and placement.
- E. The accessory structure must be painted the same color as the primary house.

Staff Planner: Amanda Rhoads

Decision rendered by:

By authority of the Director of the Bureau of Development Services

On November 23, 2016

Decision mailed: November 30, 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 September 16, 2016, and was determined to be complete on October 20, 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 September 16, 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: February 17, 2016.**

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 December 14, 2016** 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 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 **December 15, 2016** (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

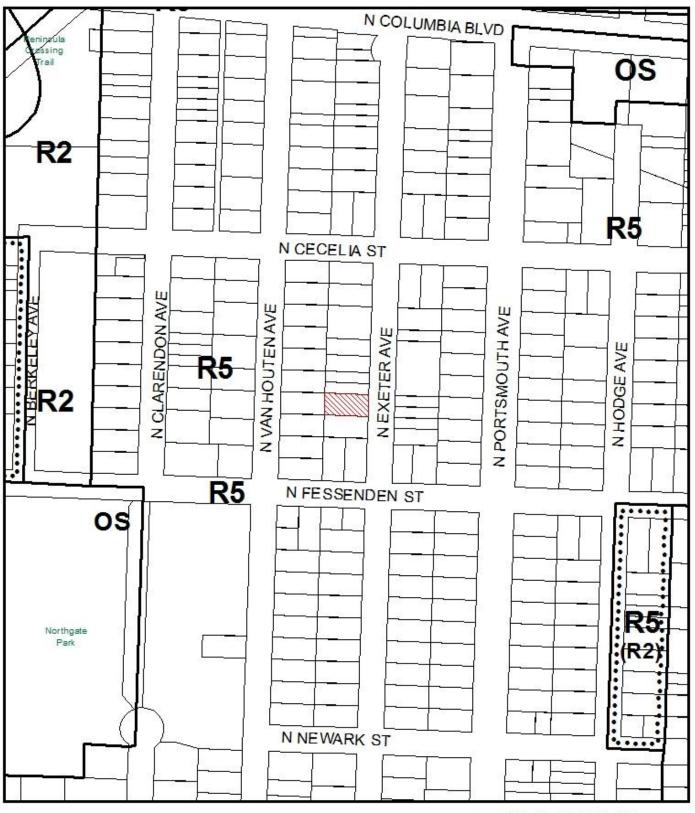
• All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant Original Narrative
 - 2. Site Survey Existing Conditions
 - 3. Original Plan Set
 - 4. Revised Narrative, October 14, 2016
 - 5. Revised Plans, October 14, 2016
 - 6. Final Narrative, October 20, 2016
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. East and South Elevation Drawings (attached)
 - 3. West and North Elevation Drawings (attached)
 - 4. First Floor Plan
 - 5. Second Floor Plan
 - 6. Living Area Diagram
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety (Building Code) Plans Examiner
- F. Correspondence:
 - 1. Andrew and Valerie Kinman, November 1, 2016, with privacy concerns
 - 2. Carol Leonard, November 4, 2016, with no objections
- G. Other:
 - 1. Original Land Use Application and Receipt
 - 2. Incomplete Letter, October 7, 2016
 - 3. Follow-up email from staff to applicant, October 20, 2016

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

File No. LU 16-244725 AD

1/4 Section 2025

Scale 1 inch = 200 feet

State_Id 1N1E05CC 12900

Exhibit B (Sep 21, 2016)



