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

**Date:** January 3, 2012

**To:** Interested Person

**From:** Sue Donaldson, Land Use Services
503-823-7618 / Sue.Donaldson@portlandoregon.gov

# NOTICE OF A TYPE I 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 this notice. If you disagree with the decision, you can appeal it to the Oregon Land Use Board of Appeals (LUBA) at 550 Capitol St. NE, Suite 235, Salem, OR 97301. The phone number for LUBA is 1-503-373-1265. Information on how to appeal this decision is listed at the end of this notice.

# CASE FILE NUMBER: LU 11-149655 LDP

## GENERAL INFORMATION

**Applicant:** Encore Development
105 W Clarendon St
Gladstone, OR 97027-2334

**Representative:** Mark Dane Planning Inc
13005 SW Foothill Dr
Portland, OR 97225

**Site Address:** 6425 SE 15TH AVE

**Legal Description:** S 50' OF LOT 3 & 4 BLOCK 24, TOLMAN TR

**Tax Account No.:** R836602090

**State ID No.:** 1S1E14DC 20200

**Quarter Section:** 3631

**Neighborhood:** Sellwood-Moreland, contact Ellen Burr at 503-234-2233.

**Business District:** Westmoreland, contact Tom Brown at 53-381-6543.

**District Coalition:** Southeast Uplift, contact Leah Hyman at 503-232-0010.

**Plan District:** None

**Zoning:** R5a Single Dwelling Residential 5,000 with Alternative Design Density (a) Overlay

**Case Type:** LDP Land Division Partion

**Procedure:** Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

**Proposal:**

The applicant proposes to divide a 5,000 square foot corner lot into two parcels for attached houses. The existing house will remain on Parcel 1, which will be 2,805± square feet. A second house, to be constructed on Parcel 2, will be attached to the rear (west side) of the existing house. Parcel 2 will be 1895± square feet. Lot sizes reflect a 3-foot street dedication along SE Duke Street. One parking space is proposed for each lot.

The applicant proposes to use the *Duplexes and attached houses on corners* provision in the *Alternative Development Options* section of the *Zoning Code (33.110.240.E*). Units must be designed so that each one is oriented towards a different street in order to create the appearance of one house when viewed from either street.

This partition is reviewed through a Type I land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities or services are proposed with a Potential Landslide Hazard or Flood Hazard Area, and; (4) no other concurrent land use reviews (*such as an Adjustment or Design Review*) are requested or required (*see 33.660.110*).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (*see ORS 92.010*). *ORS 92.010* defines "*parcel*" as a single unit of land created by a partition of land. The applicant's proposal is to create 2 units (parcels) of land. Therefore this land division is considered to be a partition.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of *Title 33*. The relevant approval criteria are found in ***Section 33.660.120 Approval Criteria for Land Divisions in Residential and Open Space Zones.***

## FACTS

**Site and Vicinity:** The site is at the corner of SE Duke Street and SE 15th Avenue. The lot is a relatively flat low terrace raised above the street level. The house on the property was built in 1912 and many of the nearby houses are of the same vintage. Surrounding development is primarily single dwelling homes on 5,000 square foot lots, with a scattering of some double sized lots. There is a school one block west of the site. The block and street pattern is somewhat irregular due to the size and location of the school property as well as the curve of the bluff to the west that slopes steeply down to Oaks Bottom Park and the Willamette River. The irregularities of the street pattern have created a quiet residential enclave that, to the east, transitions to the commercial development along SE Milwaukie Avenue.

**Infrastructure:**

- **Streets –**

SE 15th Avenue is designated as a Local Service Street for all classifications. It has a 28-foot roadway within a 60-foot wide right-of-way. The pedestrian corridor is 16 feet wide and improved with a 9 foot planter strip, 6-foot sidewalk and 1 foot buffer (9-6-1 configuration).

SE Duke Street is designated as a Local Service Street for all classifications. It has a 22-foot wide paved roadway within a 30-foot right-of-way. The 11-foot wide pedestrian corridor is improved with a 0.5 curb, 4-foot wide planter strip, 6-foot sidewalk and a 0.5-foot wide buffer next to the property line. (0.5–4–6–0.5 configuration).

Transit – The nearest transit stop is located approximately 600 feet to the west, at the intersection of SE Milwaukee Blvd and SE Claybourne Street (Route #19).

- **Water Service –** There is an existing 6-inch CI water main in SE Duke Street. It serves the existing house via a 5/8 inch service line.

- **Sanitary Service -** There are public 8-inch vitrified clay combined gravity sewers in SE 15th Avenue and SE Duke Street.

**Zoning:** The site is zoned R5, High-Density Single-Dwelling Residential with an "a" or Alternative Design Density Overlay. The R5 zone allows single-dwelling residential development with a maximum density of one dwelling unit per 5,000 square feet of site area. The "a" overlay zone allows development of additional density for residential projects that comply with specific design criteria. The current proposal is not using the provisions of the "a" overlay zone

**Land Use History:** According to City records there are no prior land use reviews on the site.

**Neighborhood and Agency Review:** A 'Notice of Proposal in your Neighborhood" was mailed on **September 15, 2011**.

**Neighborhood Review:** A total of three written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

Three letters were submitted in response to the public notice. The issues raised concerned traffic, parking, construction management and interpretation of the term 'attached house'. Traffic and parking issues are discussed in the findings of the report and in more detail in Exhibit E.2, the response from Portland Bureau of Transportation (PBOT). Construction activities that extend into the public right-of way and traffic issues arising from them are regulated by PBOT via permits for the temporary use of streets and sidewalks, per *Title 24.*

Neighbors questioned the applicability of the attached houses on corners provision and questioned whether the 7±-foot high outer wall of a recently constructed addition at the rear of the existing house could be used as the common wall for the proposed attached house on Parcel 2. The *Zoning Code* definition of attached houses is discussed under *Findings* for *Lots*, later in this report.

**Agency Review:** Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Please see Exhibits "E" for details.

## ZONING CODE APPROVAL CRITERIA

***APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES***

*33.660.120 The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.*

Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. ***The following table summarizes the criteria that are not applicable.*** Applicable criteria are addressed in the table below.

| Criterion | Code Chapter/Section and Topic | Findings: Not applicable because: |
|---|---|---|
| *B* | *33.630 – Tree Preservation* | No significant trees or trees in excess of 6 inches in diameter are located fully on the site or outside of the environmental zone on the site. |
| *C* | *33.631 - Flood Hazard Area* | The site is not within the flood hazard area. |
| *D* | *33.632 - Potential Landslide Hazard Area* | The site is not within the potential landslide hazard area. |
| *E* | *33.633 - Phased Land Division or Staged Final Plat* | A phased land division or staged final plat has not been proposed. |
| *F* | *33.634 - Recreation Area* | Less than 40 units are proposed. |
| *H* | *33.636 - Tracts and Easements* | No tracts or easements have been proposed or will be required. |
| *I* | *33.639 - Solar Access* | The proposed development is for attached houses so this criterion does not apply. |
| *J* | *33.640 - Streams, Springs, and Seeps* | No streams, springs, or seeps are evident on the site outside of environmental zones. |
| *L* | *33.654.110.B.2 - Dead end streets* | No dead end streets are proposed. |
| | *33.654.110.B.3 - Pedestrian connections in the I zones* | The site is not located within an Industrial zone. |
| | *33.654.110.B.4 - Alleys in all zones* | No alleys are proposed or required |
| | *33.654.120.C.3.c - Turnarounds* | No turnarounds are proposed or required |
| | *33.654.120.D - Common Greens* | No common greens are proposed or required |
| | *33.654.120.E - Pedestrian Connections* | There are no pedestrian connections proposed or required |
| | *33.654.120.F - Alleys* | No alleys are proposed or required |
| | *33.654.120.G - Shared Courts* | No shared courts are proposed or required |
| | *33.654.130.D - Partial rights-of-way* | No partial public streets are proposed or required |

**Applicable Approval Criteria are:**

***A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.***

**Findings:** *Chapter 33.610* contains the density and lot dimension requirements applicable in the RF through R5 zones.

**Density Standards**

In this case, a street is not proposed or required, and the site is ***not*** within the environmental zone, potential landslide hazard area, or flood hazard area. The required 3-foot dedication along SE Duke Street is not subtracted from the total site area for the purposes of calculating density. Therefore, the maximum and minimum density for this site is as follows:

> ***Minimum*** = (5000 *x* .80) ÷ 5,000 square feet = 0.8, which rounds up to a minimum of one lot (per *33.930.020.A*).
>
> ***Maximum*** = 5000 square feet ÷ 5,000 square feet = 1 one lot (per *33.930.020.B*).

This proposal is for two lots, which can be approved if the lots and development meet the requirements for alternative development options in *33.110.240*. This site is a corner lot so the applicant is using the option that allows duplexes and attached houses on corners and allows an additional dwelling unit on the site providing the proposal meets the requirements of *33.110.240.E,* discussed below. As the following findings show, the proposal can meet the applicable requirements and therefore a density of two can be approved.

**Attached Houses on Corner Lots** ***(****33.110.240.E Duplexes and attached houses on corners****)***

This provision allows new duplexes and attached houses in locations where their appearance and impact will be compatible with the surrounding houses. The regulations apply to:

- Density - one extra dwelling unit allowed, up to a maximum of two units;
- Lot dimension standards in the R5 zone (for the site as a whole) and for the R2.5 zone (for each of the proposed two parcels).
- Development standards for entrances, height, architectural detailing and side and rear setbacks

As discussed above, under density requirements, the maximum density for the site is one unit. Two units are proposed as this provision allows. The findings below demonstrate that the lot dimension standards are met. Development standards for attached dwellings on corner lots must be met at the time development is proposed. Therefore, a density of two meets the qualifying requirements and can be allowed.

***Lot Dimensions***

Parcels 1 and 2 are smaller than would normally be allowed in the R5 zone. As described above, these lots are being created through a provision that allows attached houses on corner lots. To use this code provision in the R5 zone the original lot before the division must be at least 4,500 square feet. The subject lot is 5,000 square feet. Therefore, the lot can be partitioned for attached houses. The R 2.5 standards apply to the new lots.

The R2.5 standards and the dimensions of proposed lots, after a 3-foot dedication along SE Duke Street, are shown in the following table:

| Attached Houses on corners in R5 | R2.5 zone standards | Proposed Parcel 1 | Proposed Parcel 2 |
|---|---|---|---|
| Minimum Lot Area | 1600 sq. ft. | 2,805± sq. ft. | 1895± sq. ft. |
| Maximum Lot Area | | | |
| Minimum Lot Width* | 36 ft. | 47 ft | 38.5 ft |
| Minimum Lot Depth | 40 ft | 61 ft | 47 ft |
| Minimum Front Lot Line | 30 ft + | 47 ft. | 38.5 ft. |

\+ *Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.*

As shown in the table above, Parcels 1 and 2 meet the lot area and depth requirements for the R2.5 zone.

***Consistent with the Purpose of Lot Dimension Regulations***

The purpose of Lot dimension regulations are as follows:

The lot dimension regulations ensure that: (1) each lot has enough room for a reasonably-sized house and garage; (2) lots are of a size and shape that development on each lot can meet the development standards of the Zoning Code; (3) lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future; (4) each lot has room for at least a small, private outdoor area; (5) lots are compatible with existing lots; (6) lots are wide enough to allow development to orient toward the street; (7) lots don't narrow to an unbuildable width close to the street; (8) each lot has adequate access from the street; (9) each lot has access for utilities and services; and (10) lots are not landlocked.

The applicant has demonstrated that the proposed Parcels 1 and 2 are consistent with the purpose of lot dimension regulations for the following reasons:

- The building footprints submitted meet all setback requirements and there is a vehicle area for each lot as shown on Exhibit C.2. The parking space for the existing house on Parcel 1 will be relocated to the rear of the lot (with access from SE Duke Street). Parking for Parcel 2 will be in an attached garage, also with access from SE Duke Street. The applicant has submitted a plan that shows that the lots can accommodate a reasonably-sized house and parking. The lots are larger than the R2.5 zone requires for this type of development and there is no indication that the applicable standards cannot be met. The applicant is proposing to attach a new house to the existing house. The definition of attached housing is

  > *…a dwelling unit,* ***located on its own lot*** *that shares one or more common or abutting walls with one or more dwelling units. The common or abutting wall must be shared for at least 25 percent of the length of the side of the building. The shared or abutting walls may be any wall of the buildings, including the walls of attached garages.*

- The applicant proposes to attach a new house to the rear of the existing one. The rear width of the house is 28 feet; therefore the new house must be attached for at least 7 feet along that wall. A 7-foot wide extension has been added to the house, which is less than one story high. An extension of similar size is shown as part of the footprint of the new house (approximately 5 feet wide), which will connect to its garage. The property line jogs west approximately 4.5 feet to create enough space at the rear of the existing house for a required parking space. As a result, the new garage building line will be 6 inches from the west property line of Parcel 2. The side setback along the shared property line of attached houses is reduced to zero because they must be attached along the property line. In this case, the jog in the property line towards the east places the garage wall within 6 inches of the property line. While this is allowed by the *Zoning Code*, the *Building Code* may have additional requirements for construction of the unattached wall of the garage.

- The applicant has submitted elevations of the house on Parcel 2 to be attached to the one on Parcel 1. The proposed house is a traditional bungalow style, but the plans submitted have not been reviewed to determine whether all the standards for attached houses on corners are met and whether the proposed house matches the characteristic features of the existing house. The development standards for entrances, height, materials and architectural detailing do not have to be met at the land division stage, they must be met at the time of building permits.

- The Water Bureau and Bureau of Environmental Services have verified that that each lot has access for utilities and services. The proposed lots are not landlocked nor do they narrow to an unbuildable width close to the street. The lots have enough space for a small outdoor area and are wide enough to allow development to be oriented toward the street. The lots are smaller than those in the area, but attached houses on corners provision allows for lots that meet R2.5 standards.

- This criterion is met because, as discussed above, the proposed lots are consistent with the applicable lot dimension regulations.

***G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.***

The approval criteria of Chapter 33.635 are found in two groups – clearing and grading, and land suitability.

***33.635.100 – Clearing and Grading***

*A. Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion;*

*B. Clearing and grading should be sufficient for construction of development shown on the Preliminary Clearing and Grading Plan;*

*C. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Preliminary Clearing and Grading Plan;*

*D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete; and*

*E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable.*

**Findings:** The regulations of *Chapter 33.635* ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and minimizing impacts of erosion and sedimentation to help protect water quality and aquatic habitat. In this case the site is primarily flat, and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lot suitable for development. In addition, there are no trees required to be preserved in the areas where new development on the site is anticipated. Therefore, this criterion is met.

***33.635.200 – Land Suitability***

*Where geologic conditions or historic uses of the site indicate a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements in order to make the lots suitable for their intended uses and the provision of services and utilities.*

**Findings**: As indicated above, the site is relatively flat and contains no known geological hazards. The site is currently in residential use, and there is no record of any other use in the past. Site Development (*Exhibit E.5*) has responded that there is an old septic system on the site that was not decommissioned when the existing house was connected to the public sewer system. The applicant will be required to obtain final approval of a decommissioning permit prior to final plat approval. With an approved decommissioning permit, this site can be considered suitable for development and this requirement can met.

***K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,***

***L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.***

**Findings:** The regulations of *Chapter 33.641* allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. *Chapters 33.651* through *33.654* address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

| ***33.651 Water Service standard*** - See Exhibit *E-3* for detailed bureau comments. |
|---|
| The Water Service standards have been verified. Service for the existing house via the ⅝-inch metered service line from the 6-inch CI water main in SE Duke Street can continue to be used. Water service is available to serve Parcel 2 from the main. A new metered service line must be installed from the main within the public right-of-way within the frontage of Parcel 2. |
| ***33.652 Sanitary Sewer Disposal Service standards*** - See *Exhibit E-1* for detailed comments. |
| The sanitary sewer standards of 33.652 have been verified. Both BES and BDS Site Development have responded that, according to City records, there is an old cesspool on the site that was used until the sewer connection was established in 1918. The cesspool must be decommissioned prior to final plat approval. The existing house receives sanitary service from the main in SE Duke Street. However, there are two wyes on the north side of the main and it is not clear which one serves the existing house. One lateral may be on Parcel 2 and the other on Parcel 1.<br><br>Due to ambiguity about the location of the laterals, BES will require the applicant to demonstrate that the sewer service branch for the existing house is located on Parcel 1, or, if it is not, that it is capped and it is in a location that can serve the new house on Parcel 2. In the latter case, a new service line will be needed to serve the house on Parcel 1. Prior to final plat approval, the applicant will be required to obtain finaled plumbing permits for a new sanitary sewer connection for either Parcel 1 or Parcel 2, depending upon the actual location of the |

existing lateral relative to the new property lines.

The new service branch must be established and permits finaled prior to final plat approval. The location of the existing private sewer lateral must be adequately documented, such as with a locate report, to the satisfaction of BES. In addition, a supplemental plan must show the location of the lateral. Surface markers will be needed for inspection purposes. With the conditions of approval discussed above, this criterion can be met.

***33.653.020 & .030 Stormwater Management criteria and standards–*** See *Exhibits E.1 & E.*5

BES has verified that the stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.

No stormwater tract is proposed or required. Therefore, criterion A is not applicable.

There is no public stormwater-only sewer available to serve this site. The applicant submitted infiltration test results (3 inches per hour) but did not submit a Simplified Approach stormwater report. The applicant has proposed the following stormwater management methods:

***Parcel 1*** (lot with the existing house)

- The applicant has proposed 3 Flow-Well drywells for on-site infiltration. The drywells are not drawn to scale on the plan, but if they had been, they would not meet minimum setback requirements. The house on Parcel 1 will remain and therefore a new stormwater system is not required and stormwater from the house may continue to flow to its current location, if the discharge point is located within the new property lines of Parcel 1. Due to these uncertainties, BES requires the following prior to final plat approval:
  - Document that the existing storm system for the house on Parcel 1 meets City requirements, or
  - Submit a revised supplemental plan showing that on-site infiltration facilities meet minimum required setbacks,
  - If stormwater from Parcel 1 discharges to the combined sewer via the existing lateral but a new service line is needed, then plumbing permits for the new location must be finaled, as discussed above under *33.652 Sanitary Sewer Standards.*

***Parcel 2***

- For Parcel 2, two Flow-Well drywells are proposed and shown on the utility plan, but they are not drawn to scale. It appears that, if they had been, the minimum setbacks from structures and property lines could not be met. Therefore BES will require a revised supplemental plan showing an on-site infiltration facility that meets setback requirements. Alternatively, the applicant must obtain approval of a plumbing code appeal to allow reduced setbacks.

  The applicant is reminded that drywells, as underground injection control facilities (UIC) must be registered with Oregon Department of Environmental Quality (DEQ). BES has no objections to the proposal with a condition of approval requiring submission of a Supplemental Plan that shows conceptual building footprints and the size and location of stormwater facilities.

***Public Street Improvements***

As a condition of this land use approval, the Office of Transportation requires the applicant to improve the frontage of the site to City standards (discussed later in this report). A new sidewalk is required, but the curb already exists. BES has indicated that the sidewalk must be constructed so that it will slope towards the planter strip, allowing the stormwater runoff from the sidewalk to be deposited in a vegetated area, which meets the requirements of the *Stormwater Management Manual* (*SWMM).*

***33.654.110.B.1 -Through streets and pedestrian connections –*** *See Exhibit E.2.b*

***33.654.130.B - Extension of existing public dead-end streets & pedestrian connections***
***33.654.130.C - Future extension of proposed dead-end streets & pedestrian connections***

This section requires street and pedestrian connections where appropriate and practical, taking a number of factors into consideration. Generally, through streets should be no more than 530 feet apart and at least 200 feet apart. Pedestrian connections should be no more than 330 feet apart.

No street connections have been identified in the vicinity of this property in the Portland Master Street Plan document. The spacing goal for public through streets and for pedestrian connections

is generally satisfied on the subject block. Given that the site is also a corner lot, a connection through the site is not warranted. Portland Transportation has no concerns relative to connectivity or location of rights-of-way associated with the proposed partition.

There are no partial rights of way nor are there any configurations that allow for future extensions of streets or pedestrian connections in the area. Due to this being a corner lot a through street is not required.

For the reasons described above, these criteria are met.

***33.641 – Transportation Impacts – 33.641.020 and 33.641.030***

***33.654.120.B & C Width and elements of the street right-of-way***

In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. The following discussion is based on Portland Transportation's assessment of the transportation impacts for this proposal:

The proposed land division will create one additional parcel to accommodate a single dwelling house. The proposed land division is expected to generate less than 10 additional daily vehicle trips and 1 new trip into the surrounding transportation system during the morning and afternoon peak hours of travel. (*NOTE: These identified additional trips are those beyond what would be generated by a single house on the subject site, which is allowed by right*). The additional peak hour trips may distribute in four possible directions to connect to the broader transportation network in the area. Other considerations in determining potential impacts include overall area include existing sidewalks and availability of alternative modes of transportation located approximately 500 feet from the property.

Given the area in which the site is located, the insignificant number of additional peak trips that will be generated by the proposed partition, and the classification of the streets within the transportation system, PBOT expects that the transportation system will be able to support the existing development in the area as well as the proposed development (see *Exhibit E-2* for a detailed analysis).

SE 15th Avenue meets recommended City Standards for roadway width. Parking is available on both sides of the street. The pedestrian corridor is 16 feet wide (9-6-1 configuration) which meets the Pedestrian Design Guide standards. No dedication or improvements will be required along this frontage.

On SE Duke Street the 22-foot wide roadway and 30-foot right-of-way do not meet Local Service Street standards which require parking on both sides of the street. In this area, there is little opportunity to widen the right-of-way and relocate curb. Improvements will be required within the right-of-way from the back of the curb. The existing 4-foot wide pedestrian corridor has a 4-foot wide curb-tight sidewalk (0-4-0 configuration). This does not meet the P*edestrian Design Guide* standard which recommends a 0.5-foot curb, 4-foot planter strip, 6-foot sidewalk and a 0.5-foot buffer located at the back of the sidewalk (0.5-4-6-0.5 configuration). In lieu of requiring a 7-foot dedication to meet this standard, the applicant applied for, and PBOT has approved, a Design Alternative request (*T11-1644050, Exhibit E.8*). In lieu of a 7-foot wide dedication, a 3-foot dedication and construction of a 7-foot wide curb-tight sidewalk will be required along SE Duke Street. Improvements along the Parcel 1 frontage will be required prior to final plat approval. Improvements along the Parcel 2 frontage will be required at the time Parcel 2 is developed. PBOT has advised that if a retaining wall is needed at the property edge of the new sidewalk, it must be located within the property boundaries and not within the public right-of-way.

With conditions of approval requiring improvements to the pedestrian corridor on SE Duke Street, these criteria are met.

***33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)***

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-ways can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

## DEVELOPMENT STANDARDS

**General Information about Development Standards and Approval Criteria.** The Zoning Code contains two types of regulations: Development standards and Approval criteria.

**Approval criteria,** such as those listed earlier in this report, are administered through a land use review process. Approval criteria are regulations where the decision-maker must exercise discretion to determine if the regulation is met. Public notice is provided and public comments received that address the approval criteria are addressed in the decision.

**Development Standards:** Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and is not considered to be discretionary reviews. Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

Among the various development standards that will be applicable to this lot, the applicant should take note of:

- ***Attached Houses on Corner Lots***-- special requirements apply to development on new lots created using the provisions of *Section 33.110.240.E.*
  - The address and main entrance of each house must be oriented to a separate street frontage.
  - Development on Parcel 1must be oriented toward SE 15th Avenue and development on Parcel 2 must be oriented toward SE Duke Street.
  - The height of the two units must be within 4 feet of each other
  - The exterior finish material must be the same, or visually match in type, size and placement.
  - The predominant roof pitch must be the same.
  - Roof eaves must project the same distance from the building wall.
  - Trim must be the same in type, size and location.
  - Windows must match in proportion and orientation.

## OTHER TECHNICAL REQUIREMENTS

*Per 33.700.015* the division of the property may not cause the existing house on the site to move out of conformance or further out of conformance with any development standard applicable in the R5 zone. As a result of the land division, the rear property line of Parcel 1 will be reduced to 0 feet along the common wall of the attached houses, which is allowed for attached development. For land divisions in the R5 zone (per *33.110.220.D7*) required setbacks may be reduced to 0 as a result of street dedication requirements. The required 3-foot street dedication required along SE Duke Street will reduce the side setback on Parcel 1, but it will still exceed the minimum of 5 feet.

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

| Bureau | Code Authority | Topic | Contact Information |
|---|---|---|---|
| Water Works | Title 21 | Water availability | 503-823-7404<br>http://www.water.ci.portland.or.us/ |
| Environmental Services | Title 17; 2008 Stormwater Manual | Sewer availability<br>Stormwater Management | 503-823-7740<br>http://www.bes.ci.portland.or.us/ |
| Fire Bureau | Title 31<br>Policy B-1 | Emergency Access | 503-823-3700<br>http://www.fire.ci.portland.or.us/ |
| Transportation | Title 17, Transportation System Plan | Design of public street | 503-823-5185<br>http://www.trans.ci.portland.or.us/ |

| Bureau | Code Authority | Topic | Contact Information |
|---|---|---|---|
| Development Services | Titles 24 –27, Admin Rules for Private Rights of Way | Building Code, Erosion Control, Flood plain, Site Development & Private Streets | 503-823-7300<br>http://www.bds.ci.portland.or.us/. |

As authorized in *Section 33.800.070 of the Zoning Code* conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

- The applicant must meet the requirements of the Fire Bureau for fire flow, fire hydrant spacing, aerial access roads and addressing of structures.. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- The applicant must meet the requirements of Urban Forestry for planting one street tree along the SE 15th Avenue frontage of Parcel 1. The curb has been marked for tree placement. Tree to be chosen from the approved street list for an 8 ½ foot planting strip without overhead power lines. This requirement is based on the standards of *Title 20*.
- If the applicant wishes to apply for building permits to construct structures on the site during the review of the Final Plat the units must be permitted as *townhouses,* which is a multi-family development with common walls between units intended for one lot per *Oregon Residential Specialty Code, R317.2.* . However, when the plat is recorded and the new lot lines are created the development will be converted to *rowhouses*, which is a development intended for units on individual lots with common property lines along common walls. Rowhouses require an Operations & Maintenance Agreement for all of the common building elements that will be shared between the units. This Agreement must be recorded with the Final Plat to facilitate the division of the units. The Operations and Maintenance Agreement must be submitted and approved by BDS prior to final plat. In addition the Final Plat must reference the agreement with a recording block substantially similar to the following example:

  *"An Operations and Maintenance Agreement for Common Building Elements has been recorded as document no._____, Multnomah County Deed Records."*

## CONCLUSIONS

The applicant has proposed a two lot partition for attached houses on a corner lot, as shown on the attached preliminary plans (*Exhibit C.1 and C.2*). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: lot dimensions; cesspool decommissioning, location of sanitary sewer laterals, stormwater facilities, meeting standards for attached houses on corner lots and public street improvements. With conditions of approval that address these requirements this proposal can be approved.

## ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a two-lot partition that will result two lots for attached houses as illustrated with Exhibit C-1 and C.2, subject to the following conditions:

**A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use Review to review and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application.
- The proposed general location of future building footprints, driveways, parking areas and required outdoor areas.
- The location of required right-of-way dedications, utilities and all stormwater management facilities, including dimensions showing that all setbacks on Parcels 1 and 2 can be met.
- Any other information specifically noted in the conditions listed below.

**B. The final plat must show the following:**

The applicant shall meet the street dedication requirements of the City Engineer for SE Duke Street. The required right-of-way dedication must be shown on the final plat.

**C. The following must occur prior to Final Plat approval:**

**Streets and Alleys**

1. The applicant shall meet the street dedication requirements of the City Engineer for SE Duke Street. The required right-of-way dedication must be shown on the final plat.
2. The applicant shall meet the requirements of the City Engineer for right of way improvements along the site's street frontage. The applicant must obtain an approved Right-of-Way permit from the Portland Bureau of Transportation to install the required sidewalk corridor. The improvements along the SE Duke Street frontage of Parcel 1, where the existing house will be retained, must be constructed prior to final plat approval.

**Utilities**

3. Prior to final plat approval the applicant demonstrate to the satisfaction of BES that the sewer service branch for the existing structure is located on Parcel 1, or use the existing service branch to provide service to Parcel 2. If the existing lateral is used for Parcel 2 a new service branch must be established and plumbing permits finaled for Parcel 1. The location of the existing private sewer lateral must be documented to the satisfaction of BES, including surface markers as needed for inspection.
4. The applicant must submit the following, to the satisfaction of BES:
   - A Simplified Approach stormwater report showing that the proposed infiltration facilities on Parcels 1 and 2 are adequately sized.
   - A supplemental plan showing that the stormwater systems for Parcel 1 and 2 meet City requirements.
   - The location of any existing or required stormwater systems serving the house on Parcel 1 must be shown on the Supplemental Plan. Specifically, the gutters and downspouts must direct water to an approved disposal point that meets setback requirements from the new lot lines. If modifications to the system are required by BES, the applicant must obtain finalized plumbing permits for this work prior to final plat approval.
5. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the existing sanitary sewer system on the site.
6. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that *Appendix B* of the Fire Code is met, the exception is used, or a Fire Code Appeal has been approved prior final plat approval.

**D. The following conditions are applicable to site preparation and the development of individual lots:**

1. Parcel 1 and 2 must be developed with attached houses meeting the development standards of *Section 33.110.240.E.*
2. Improvements along the Parcel 2 frontage will be required at the time Parcel 2 is developed. If a retaining wall is needed at the property edge of the new sidewalk, it must be located within the property boundaries and not within the public right-of-way.
3. The applicant must provide a fire access way that meets the Fire Bureau requirements related to aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.

**Staff Planner: Sue Donaldson**

**Decision rendered by:** Michael Nayak **on December 29, 2011**

*By authority of the Director of the Bureau of Development Services*

**Decision mailed January 3, 2012**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. 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 June 17, 2011, and was determined to be complete on **September 13, 2011**.

*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 June 17, 2011.

*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: January 11, 2012.**

**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.

**This decision, and any conditions associated with it, is final.** It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

The file and all evidence on this case are available for your review by appointment only. Please call the BDS Request Line at 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.

**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

**EXHIBITS**

*Not attached unless indicated*

A. Applicant's Statement
   1. LD approval criteria
   2. Response to Incomplete Letter
   3. Infiltration Test results
   5. Application for PBOT Design Exception (July 19, 2011)

B. Zoning Map (attached)

C. Plans/Drawings:
   1. Preliminary Plat
   2. Building footprints
   3. Proposed building elevations (attached)

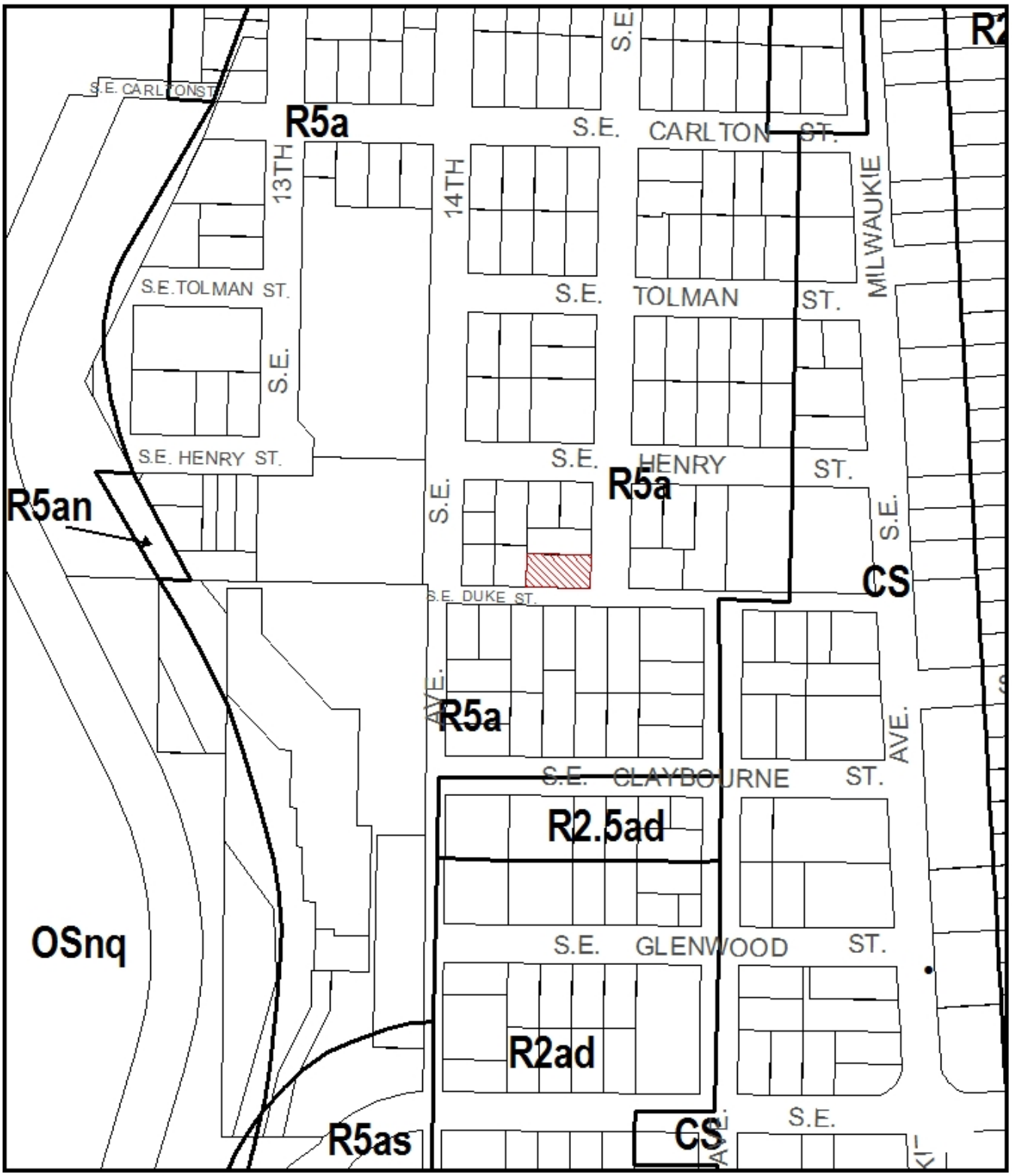
D. Notification information:
   1. Mailing list
   2. Mailed notice

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 – no concerns
   8. Design Exception Approval (TR 11-164405)

F. Correspondence:
   1. Margaret Andres and Paul Notley
   2. Bill Moss
   3. Ellen Burr, Land Use Chair, Sellwood-Moreland Improvement league

G. Other:
   1. Original LU Application
   2. Site History Research
   3. Incomplete letter

**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

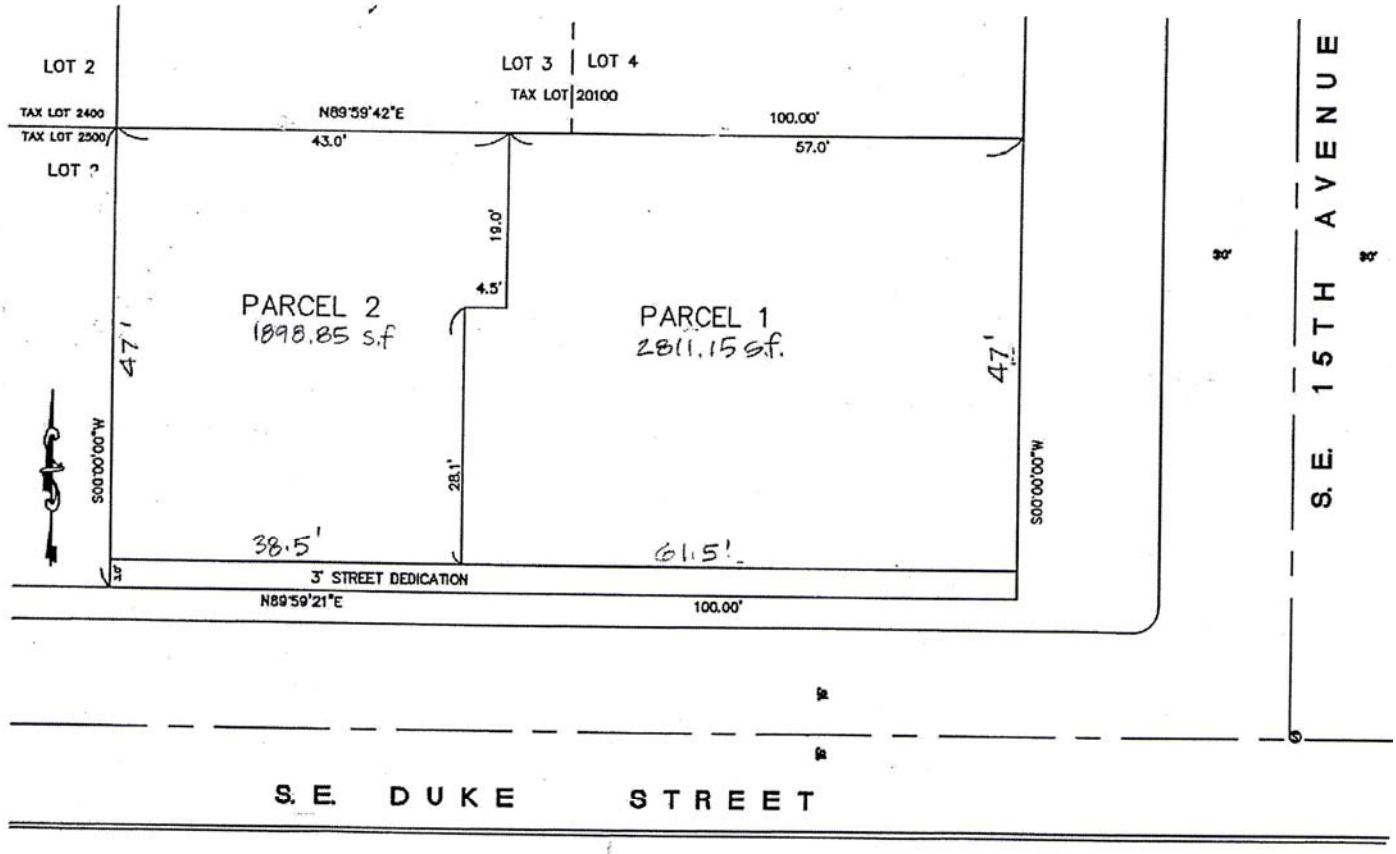
Site

NORTH

| | |
|---|---|
| File No. | LU 11-149655 LDP |
| 1/4 Section | 3631,3632 |
| Scale | 1 inch = 200 feet |
| State_Id | 1S1E14DC 20200 |
| Exhibit | B (Jun 23,2011) |

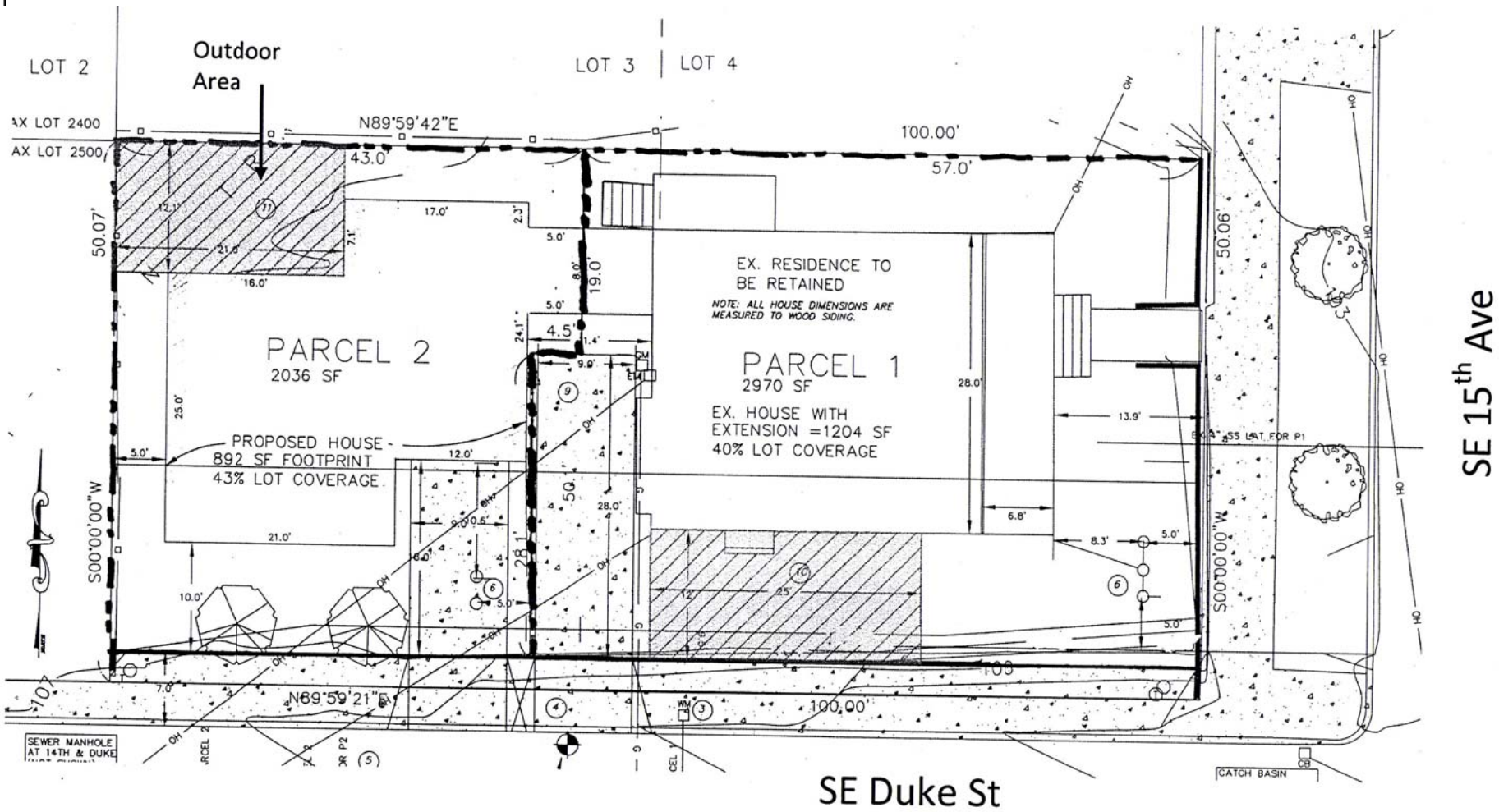
## Proposed Partition Plat

## 6425 SE 15th Avenue




**Lu 11-149655 LDP**

**Exhibit . C.1**




LU 11-149655 LDP
Exhibit C.2