



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: June 17, 2008
To: Interested Person
From: Mieke Stekelenburg, Land Use Services
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NOTICE OF A TYPE II_x 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 and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-115969 LDP AD

GENERAL INFORMATION

Applicant/Owner: David Sohriakoff
10534 NE Skidmore St
Portland, OR 97220

Site Address: 10534 NE Skidmore St
Legal Description: EXC S 75' - W 60' OF LOT A BLOCK 34, PARKROSE & RPLT
Tax Account No.: R647306760
State ID No.: 1N2E22CB 07500
Quarter Section: 2641
Neighborhood: Parkrose Association of Neighbors, contact Marcy Emerson-Peters at 503-254-3794.

Business District: Parkrose Business Association, contact Wayne Stoll at 503-284-1921.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Zoning: R7h – Residential 7,000 with The Aircraft Landing (“h”) overlay
Case Type: LDP AD – Land Division (Partition), Adjustment
Procedure: Type II_x, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant is proposing a two- parcel partition on a site that contains approximately 13,500 square feet of site area, an existing house, and several trees. The land division will create one standard and one flag lot. Parcel 1 will be a standard lot containing approximately 6,240 square feet and the existing house. Parcel 2, the flag lot will contain approximately 7,260 square feet of site area and provide a vacant building site for single family detached development.

As part of this land division, the applicant is requesting an adjustment to the side building setback for the existing house. Code Section 33.110.220 D 2, requires lots in front of flag lots to have minimum of setback along the flag pole lot line of 3'. The applicant is requesting an adjustment to reduce this setback from 3' to 1.73'.

Tree preservation standards apply. No public street improvements are proposed or required.

Relevant Approval Criteria:

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

**33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.
33.805.040, Adjustment Approval Criteria.**

This partition proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) 10 or fewer lots are proposed; and (3) a concurrent review (Adjustment, Design Review) is required (see 33.660.110).

ANALYSIS

Site and Vicinity: The site is relatively flat and located on the south side of NE Skidmore street within close proximity to Prescott Elementary School. There is an existing residence located on the northern portion of the property that will remain on Parcel 1. The surrounding neighborhood is characterized by single family detached homes.

Zoning: The R7 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The Aircraft Landing ("h") overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The allowed height limit for buildings and vegetation on the site per the "h" overlay is 220 feet above the lowest base point at Portland International Airport. The airport low base point is at an elevation of 18.3 feet. Therefore, the topographical elevation of the site PLUS the proposed building cannot exceed 238.3 feet. The highest ground elevation on the site is approximately 133 feet. Therefore, buildings and vegetation on the site cannot exceed 115.3 feet in height. On this site, however, the base zone (R7) height limit of 30 feet is more restrictive than the 'h' overlay allows and cannot be exceeded without a future adjustment review.

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

Agency and Neighborhood Review: A Notice of Proposal in your Neighborhood was mailed on May 5, 2008.

- 1. Agency Review:** Several Bureaus and agencies have responded to this proposal. Please see Exhibits E for details. The comments are addressed under the appropriate criteria for review of the proposal.
- 2. Neighborhood Review:** One written response was received from a neighboring property owner. The property owner is concerned that development on Parcel 2, the flag lot will take away privacy in his back yard. See "Development Standards" provided in this report.

Staff Response: Development on Parcel 2 will be required to meet special setback and landscaping standards. New structures have a minimum 10' building setback to all property lines. In addition a 3' landscaped buffer will be required along the perimeter of flag at the time of development.

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.

The relevant criteria are found in Section **33.660.120 [A-L], Approval Criteria for Land Divisions in Open Space and Residential Zones**. 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 applicability of each criterion.

Criterion	Code Chapter	Topic	Applicability Findings
A	33.610	Lots	Applicable - See findings below.
B	33.630	Trees	Applicable - See findings below.
C	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
G	33.635 .100	Clearing and Grading	Not Applicable - This approval criteria is not relevant because the site is primarily flat, is not located in the Potential Landslide Hazard Area, and the applicant has not proposed any grading on the site to occur prior to obtaining building permits for development on the individual lots.
G	33.635 .200	Land Suitability	Applicable - See finding below.
H	33.636	Tracts and Easements	Not Applicable - No Tracts or Easements are proposed or required.
I	33.639	Solar Access	Not Applicable - All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
K	33.641	Transportation Impacts	Applicable - See findings below
L	33.651 - 33.654	Services and Utilities	Applicable - See findings below

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 standards applicable in the RF through R5 zones. These density and lot dimension standards ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

Density Standards

Density standards match housing density with the availability of services and with the carrying capacity of the land in order to promote efficient use of land, and maximize the benefits to the public from investment in infrastructure and services. These standards promote development opportunities for housing and promote urban densities in less developed areas. Maximum densities ensure that the number of lots created does not exceed the intensity planned for the area, given the base zone, overlay zone, and plan district regulations. Minimum densities ensure that enough dwelling units can be developed to accommodate the projected need for housing.

For Single-dwelling zones:

The method used to calculate density depends on whether a street is created as part of the land division, and whether the site is subject to certain environmental constraints.

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. Therefore, the maximum and minimum density for this site is as follows:

Minimum = $(13,500 \text{ square feet} * .80) \div 7,000 \text{ square feet} = 1.54$ (which rounds up to a minimum of 2 lots, per 33.930.020.A)

Maximum = $13,500 \text{ square feet} \div 7,000 \text{ square feet} = 1.9$ (which rounds up to a maximum of 2 lots, per 33.930.020.B)

If the minimum required density is equal to or larger than the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum. Therefore in this case the minimum density is reduced to 1.

The applicant is proposing 2 lots. The density standards are therefore met.

Lot Dimensions

The lot dimension standards 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 too large relative to the planned density; (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 dimensions of the proposed lots as compared to the required lot dimension standards is shown in the following table (this information is found in Table 610-2 of the Zoning Code):

	R7 Zone Requirement	Proposed Lot 1	Proposed Lot 2
Minimum Lot Area	4,200 sq. ft.	6,240 sq. ft.	7,260 sq. ft.
Maximum Lot Area	12,000 sq. ft.		
Minimum Lot Width*	40 ft.	48 ft.	
Minimum Lot Depth	55 ft.	130 ft.	
Minimum Front Lot Line	30 ft.	48 ft.	
Minimum Flag Lot Width**	40 ft.		60 ft.
Minimum Flag Lot Depth**	40 ft.		95 ft.

- * Width is measured at the minimum front building setback line
- ** For flag lots, width is measured at the midpoint of the opposite lot lines in the "flag" portion of the lot.

Flag Lots

Parcel 2 is a flag lot. Zoning Code standards allow the creation of flag lots in very limited circumstances. The limitations minimize the negative impacts of flag lots on an area while allowing land to be divided when other options are not achievable. A flag lot is allowed only when all of the following is true: (1) an existing dwelling unit on the site is located so that it precludes a land division that meets the minimum lot width standards; and (2) only two lots are proposed; and (3) minimum density requirements for the site will be met. In this case there is an existing house on the site that would preclude the creation of standard lots. The house is located 11 feet from the west property line and approximately 14 feet from the east property line, which would preclude the creation of a lot that would meet the minimum width standard of the R7 zone of 40 feet. Two lots are proposed. As discussed above, minimum density has been met. The proposed flag lot meets applicable Zoning Code standards found in 33.610.400 because it has a "pole" at least 12 feet wide that connects to a street, and as shown above, meets the minimum width and depth standard of 40 feet. Therefore, Parcel 2 is allowed.

B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.

Findings: The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

The applicant has submitted an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A2). Some trees have been exempted by the arborist because they are either too small, unhealthy, a nuisance species, located partially off the property or located within 10 feet of an existing structure to remain on the property. The inventory identifies the following trees on the site:

Tree #	Species	Diameter (inches)	Significant (On Table 630-1)	Exempt (per 33.630.030)	To be retained	RPZ (Root Protection Zone)
1	Western Red Cedar	24"	Yes	No	Y	24'
2	English Holly	19"	No	Yes (Nuisance)	N/A	N/A

The total non-exempt tree diameter on the site is 24 inches. The applicant proposes to preserve trees #1, which comprises 24 inches of diameter, or 100 percent of the total non-exempt tree diameter. This proposal complies with Option 1 of the tree preservation standards, which requires at least 35 percent of the total tree diameter on the site to be preserved. The applicant has provided a Tree Preservation Plan showing the preserved trees and the required root protection zones (Exhibit C-1).

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 limit the 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 lots developable. One tree, located on the north-western boundary of Parcel 2, is required to be preserved. A 24' radius root protection fence must be installed at the time of development. 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.

The site is currently in residential use, and there is no record of any other use in the past. Although the site is currently connected to the public sanitary sewer, there is an old septic system on the site. The City has no record that this facility was ever decommissioned. Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of this facility. With this condition, the new lots can be considered suitable for new development, and this criterion is met.

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

The relevant approval criteria of Chapter 33.641 are found in the two paragraphs below.

33.641.020. The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.

33.641.030. The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets or bicycle, pedestrian, or transit facilities on or off the site or other capital improvement projects such as traffic calming devices.

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. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required).

The site has approximately 60 feet of frontage on NE Skidmore Street. NE Skidmore Street is classified as a local service street for all modes in the Transportation Element of the Comprehensive Plan. Tri-Met provides transit service approximately 600 feet from the site on NE Shaver street via bus 22. Limited parking was observed from aerial photos on NE Skidmore Street. There is one driveway entering the site that provides access to off-street parking for the existing house.

NE Skidmore Street is improved with a 32' wide paved roadway surface within a 60-foot right-of-way. There are no curbs, planter strips, or sidewalks. 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. Because none of the other frontages have been improved on this street, Portland Transportation has determined that an isolated improvement at this location would not be meaningful. If the street is to be improved, it would be more appropriate to complete the improvements as one LID (Local Improvement District) project. Therefore, the applicant will be required to sign street and storm sewer waivers of remonstrance for participation in future street and storm sewer improvements prior to final plat approval.

This criterion is met, with the condition that the required waivers are signed prior to final plat approval.

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

Findings: Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way.

- The water standards of 33.651 have been verified. An existing 6-inch water main is available in NE Skidmore. Water is available to serve the proposed development from the water main in NE Skidmore. Parcel 1 may continue to have water service from that main. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch PVC public sanitary sewer located in NE Skidmore Street that can serve the sanitary needs of the proposed lots. Parcel 1 has an existing sewer service from that main. See Exhibit E-1 for more details.
- The technical standards of Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

33.653.020 Stormwater Management Approval Criteria

A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and

B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.

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

The City of Portland requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the City's Stormwater Management Manual. In order to meet this approval criterion, land division proposals must demonstrate an approved method

of cleaning (water quality treatment), detention (delayed release), and an approved disposal point.

The Stormwater Management Manual contains a hierarchy of acceptable methods of stormwater treatment and disposal. The hierarchy requires that applicants first explore the use of methods that have a lower potential impact on groundwater, such as on-site surface infiltration swales and infiltration planters. If these methods are not feasible on a site, applicants may move lower on the hierarchy, to methods that inject water deeper into the ground through mechanical devices such as drywells or sumps, or carry it off of the site into storm sewers, drainageways, or other approved disposal points.

In addition to determining appropriate treatment and disposal methods by working through the hierarchy in the Stormwater Management Manual, stormwater facilities must be sized, through engineering calculations, to accommodate the expected amounts of stormwater. In some cases, sizing a stormwater facility necessitates testing the infiltration rate of the soil at the site.

The applicant has proposed the following stormwater management methods (Exhibit C.1), and the Bureaus have responded as follows (Exhibits E-1 and E-5).

- Parcel 1:** The downspouts of the existing house are connected variously to the ground and to underground pipes, and are in disrepair in some locations. There are no city records on where the pipes are directed. All stormwater facilities must be located on the same property as the structure they serve and further, must not be situated so as to adversely affect existing development on-site or on adjacent properties. The proposed drywell to serve the existing house on Parcel 1 is acceptable. All gutters and downspouts must be repaired and directed to the new raindrain/drywell system. Final approval of a plumbing permit to install rain drains and the drywell will be required prior to final plat approval.
- Parcel 2:** Stormwater from this parcel will be directed to individual drywell that will treat the water and slowly infiltrate it into the ground. This parcel has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. Site Development has indicated conceptual approval of the drywell.

With the conditions of approval described above, the stormwater management criteria are met. As shown by the findings above, the Services and Utilities criteria are met.

Right of Way Approval Criteria

Chapter 33.654 contains standards and approval criteria for rights of way. Due to the location of this site, and the type of street that is proposed, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

Code Section	Topic	Applicability Findings
33.654.110.B.1	Through streets and pedestrian connections	Applicable - See findings below
33.654.110.B.2	Dead end streets	Not applicable - No dead end streets are proposed.
33.654.110.B.3	Pedestrian connections in the I zones	Not applicable - The site is not located within an I zone.
33.654.110.B.4	Alleys in all zones	Not applicable – No alleys are proposed or required.
33.654.120.C.1	Width of the street right-of-way	Not applicable – The proposal includes a common green/shared court/pedestrian connection instead of a traditional street.

Code Section	Topic	Applicability Findings
33.654.120.C.3.c	Turnarounds	Not applicable – No turnarounds are proposed or required.
33.654.120.D	Common Greens	Not applicable – No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	Not applicable – There are no pedestrian connections proposed or required.
33.654.120.F	Alleys	Not applicable – No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable – No shared courts are proposed or required.
33.654.130.A	Utilities	Applicable - See findings below.
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable – There are no existing public dead-end street or pedestrian connections adjacent to the site.
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Not applicable – No street extensions are required to serve abutting sites that are further dividable.
33.654.130.D	Partial rights-of-way	Not applicable – No partial public streets are proposed or required.

Applicable Approval Criteria are:

33.654.110.B.1 Approval criterion for through streets and pedestrian connections in OS, R, C, and E Zones. In OS, R, C, and E zones, through streets and pedestrian connections are required where appropriate and practicable, taking the following into consideration:

- a. Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;
- b. Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;
- c. Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;
- d. Master street plans for the area identified in Goal 11B of the Comprehensive Plan;
- e. Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.

Findings: The site is located between NE 105th Avenue and NE 109th Avenue which have a distance between them of approximately 981-feet. There are no other north-south through streets between these two streets. The subject property is located approximately 100 feet east

of closest north south through street (NE 105th Avenue). If the distance between NE 105th Avenue is evaluated against the optimum spacing requirement of 530 feet, one can conclude that there should not be a north-south through street provided in the vicinity of the site, rather it should be located farther east to meet the spacing requirement.

The site is located between NE Skidmore Street and NE Shaver Street to the south. There are no other east-west streets located within the vicinity of the site. The property is approximately 223 feet deep. If the distance between NE Skidmore Street and NE Shaver Street is evaluated against the optimum spacing requirement of 530 feet, one can conclude that there should not be an east-west through street provided in the vicinity of the site, rather an east west connection should be established farther south. In addition public street dedications have been granted to the City on lots approximately 300 feet south of NE Skidmore Street.

The site is within an area that has an adopted Master Street Plan but no connection is shown at this location, so criterion d. does not apply.

For the reasons described above, this criterion is met.

Utility Location, Extension of Streets, Partial Rights of Way

33.654.130 Additional Approval Criteria for Rights-of-Way

A. Utilities. Utilities must be located within rights-of-way or utility easements that are adjacent to rights-of-way to the maximum extent practicable. Utility easements up to 15 feet in width may be required adjacent to rights-of-way.

Findings: Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. Any easements that may be needed for private utilities that cannot be accommodated within the right-of-way 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.

APPROVAL CRITERIA FOR ADJUSTMENTS

33.805.010 Purpose

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 to provide certainty and rapid processing for land use applications.

Request: The applicant is requesting an adjustment to reduce the setback along the east property line (the flag- pole) of Parcel 1. Code Section 33.110.220 D 2, requires parcels in front of flag lots to have minimum of setback along the flag pole lot line of 3'. The applicant is proposing a 1.73' setback for the existing house on Parcel 1. There are no eaves on the house. The adjustment is from the east wall of the house. Additionally, there are no windows or overhangs extending from the face of the wall.

33.805.40 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**
- 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**
- 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**
- D. City-designated scenic resources and historic resources are preserved; and**
- E. Any impacts resulting from the adjustments are mitigated to the extent practical; and**
- 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: Only one adjustment to setbacks is requested, the site is not within an environmental zone, and there are no city designated scenic or historic resources on or near the site. Therefore criteria C, D and F do not apply.

The purposes of the setback standards per Section 33.110.220.A are:

- 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

The proposal to reduce the building setback from 3' to 1.73' maintains the purpose of the setback standard. As mentioned earlier, the reduced setback will be located along the "pole" portion of the Parcel 2. No buildings will be constructed within the 12-foot pole ensuring adequate separation between residences. The adjustment is requested for the existing house. Therefore there will be no impact on the appearance of the neighborhood because there will be no change to the distance between adjacent structures. New construction is required to meet the setback standards for flag lots in the R7 zone.

In addition, the applicant was granted a building code appeal (ID #5101) to allowing the existing house to reduce the setback to 1.73 feet. The applicant must meet the condition of the appeal requiring that no fence or other structure be built along the east wall of the house (See Exhibit A-3).

With the condition of approval described above, the adjustment request 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 are 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:

- Flag Lots-- special setback standards apply to flag lots in the RF-R2.5 zone, and special landscape standards apply to flag lots that are 10,000 square feet or less in area in the R7-R2.5 zones (33.110.240.F)

Existing development that will remain after the land division. The existing development on the site will remain and be located on Parcel 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R7 zone (Please see section on Other Technical Standards for Building Code standards.)

In this case, there are two Zoning Code standards that relate to existing development on the site:

Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 1.73 feet from the new property line, as approved as part of this land division. To ensure the setback standard continues to be met in conformance with the adjustment at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.

Accessory Structure – Structures are not allowed to remain on a proposed lot line. Therefore, in order for the proposed new lots to be approved, the accessory structure that straddles the line between proposed Parcels 1 and 2 must be removed prior to final plat. Demolition permits are required. The applicant must provide documentation prior to final plat approval that all required demolition permits have received final inspection. To ensure that this standard is met, a condition of approval is necessary.

With the conditions noted above, this land division proposal can meet the requirements of 33.700.015.

OTHER TECHNICAL REQUIREMENTS

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 http://www.water.ci.portland.or.us/

Bureau	Code Authority	Topic	Contact Information
Environmental Services	Title 17; 2002 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 http://www.bes.ci.portland.or.us/
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 http://www.fire.ci.portland.or.us/
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 http://www.trans.ci.portland.or.us/
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 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 Fire Code requires an access roadway that is 12' in width with a five-foot separation to structures. The existing house will be less than 5' to the fire access road (the pole portion of Parcel 2). A Fire Code Appeal was not submitted prior to this preliminary decision. Therefore the applicant must provide an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers for development on Parcel 2. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy
- The applicant must meet the requirements of Urban Forestry for street tree planting in the existing planter strip adjacent to Parcel 1 prior to final plat approval. One street will be required to be planted adjacent to Parcel #1 at 10534 NE Skidmore St. before final plat approval. The tree shall be 2" caliper and chosen from the City's approved street tree list. This requirement is based on the standards of Title 20.

CONCLUSIONS

The applicant has proposed a two-lot partition, as shown on the attached preliminary plan (Exhibit C-1). 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:

- Adjustment to side building setback
- Fire Access requirements
- Street tree requirements

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 in one standard parcel and one flag lot as illustrated with Exhibit C.1, subject to the following conditions:

Approval of an Adjustment to reduce the side building setback on Parcel 1 to 1.73 feet from the east property line.

A. Supplemental Plan. Three copies of an additional supplemental plan shall be submitted with the final plat survey. 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;
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. A recording block for the acknowledgement of special land use conditions, as required by Condition C.8 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example:

“An Acknowledgement of Special Land Use Conditions has been recorded as document no. _____, Multnomah County Deed Records.”

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

Streets

1. The applicant shall sign street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer. Waiver forms will be provided to the applicant during the final plat review process.

Utilities

2. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the existing septic system on the site.

Existing Development

3. The applicant must obtain a finalized demolition permit for removing the garage on Parcel 1.
4. The applicant must meet the requirements of Site Development for the stormwater systems on the existing house to remain on Parcel 1. Specifically, the gutters and downspouts must function properly, and they 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 Site Development, the applicant must obtain finalized plumbing permits for this work prior to final plat approval.
5. The applicant must plant 1 street tree on NE Skidmore street adjacent to Parcel 1. The tree shall be 2” in diameter and chosen from the City’s approved street tree list. The applicant must contact Urban Forestry at 503-823-4018 prior to selecting trees to discuss the species of trees that are permitted and to obtain the planting permit. Urban Forestry must inspect and approve the newly planted trees prior to final plat approval.

Required Legal Documents

6. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Parcel 2 to contain internal fire suppression sprinklers as needed by Condition C.3 above. The acknowledgement shall be recorded with Multnomah County, and referenced on the final plat.

Other requirements

7. The applicant must meet the addressing requirements of the Fire Bureau for Parcel 2, the flag lot.

8. The applicant will be required to install residential sprinklers in the new house on Parcel 2 to the satisfaction of the Fire Bureau.

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

1. Development on Parcels 1 and 2 shall be in conformance with the Tree Preservation Plan (Exhibit C-1) and the applicant's arborist report (Exhibit A-2). Specifically, tree number 1 is required to be preserved, with a 24' root protection zone as indicated on Exhibit C.1. Encroachment into the specified root protection zone may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zone is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.

Decision rendered by:  **on 6/16/08**
By authority of the Director of the Bureau of Development Services

Decision mailed 6/19/08

Staff Planner: Mieke Stekelenburg

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 March 17, 2008, and was determined to be complete on April 24, 2008.

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 March 17, 2008.

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.

Note: 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 Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on July 3, 2008** at 1900 SW Fourth Ave. Appeals may be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., 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. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-0625 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.ci.portland.or.us .

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 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 Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

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.**

Recording concurrent approvals. The preliminary land division approval also includes concurrent approval of an adjustment. This other concurrent approvals must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with these concurrent land use reviews. The applicant, builder, or their representative may record the final decisions on these concurrent land use decisions 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.

Expiration of concurrent approvals. The preliminary land division approval also includes concurrent approval of an adjustment review for reduction of side setback requirements from 3-feet to 2 feet along the flag pole lot line. For purposes of determining the expiration date, there are two kinds of concurrent approvals: 1) concurrent approvals that were necessary in order for the land division to be approved; and 2) other approvals that were voluntarily included with the land division application.

The following approvals were necessary for the land division to be approved: Adjustment review for reduction of side setback requirements from 3-feet to 2 feet along the flag pole lot line. This approval expires if:

- The final plat is not approved and recorded within the time specified above, or
- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

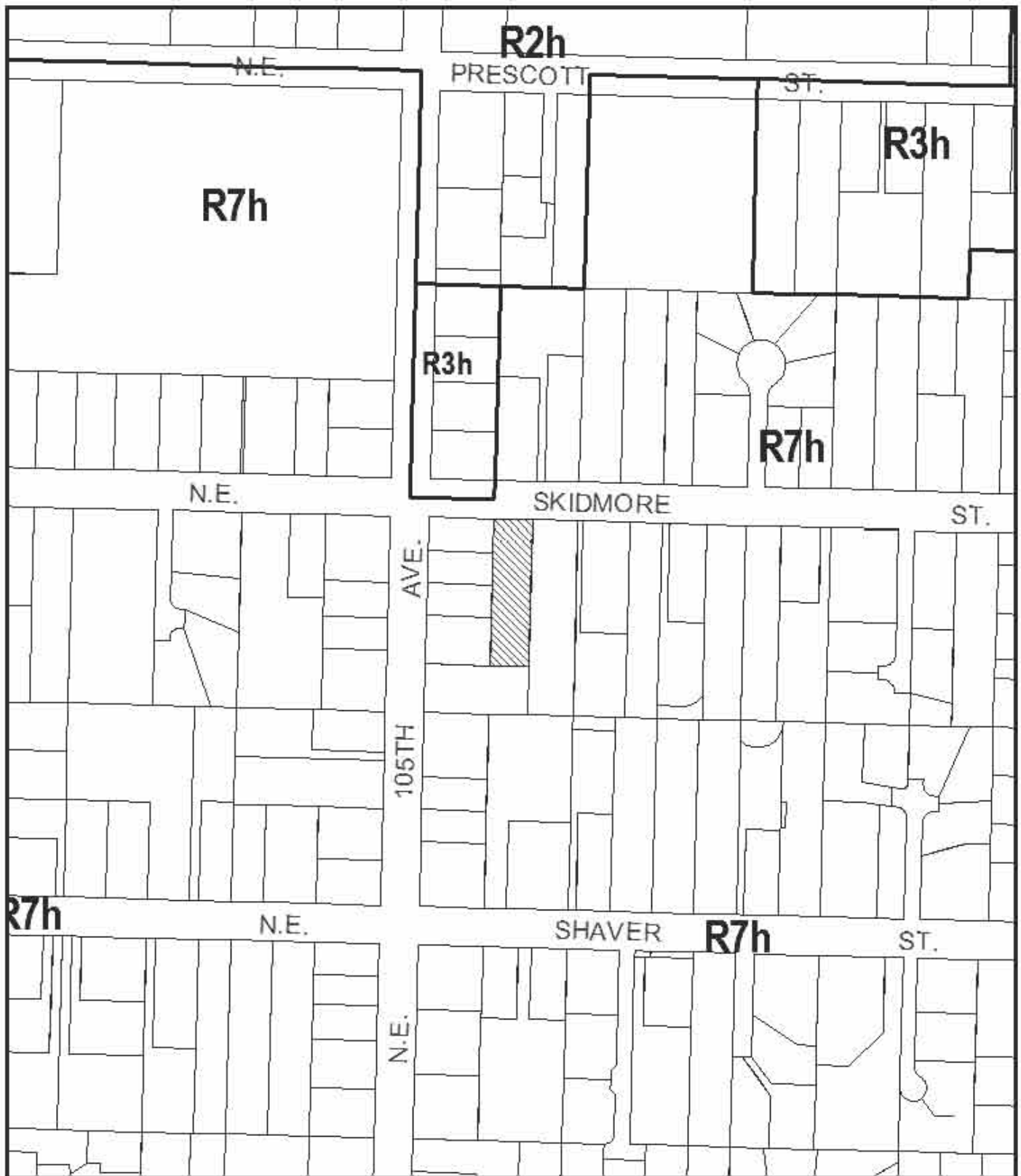
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Narrative
 - 1. Adjustment Summary
 - 2. Arborist Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site and Tree preservation plan (attached)
 - 2. Large size site and tree preservation plan
- 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
- F. Correspondence: R.E. Schafer, 4202 N.E 105th, Portland Oregon 97220
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter

The Bureau of Development Services is committed to providing equal access to information and hearings. If

you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING

 Site



File No. LU 08-115969 LDP,AD
 1/4 Section 2641
 Scale 1 inch = 200 feet
 State_Id 1N2E22CB 7500
 Exhibit B (Mar 19,2008)

N.E. SKIDMORE STREET

N 89°58'18" E

CASE NO. CS-115969
EXHIBIT CA

TOPOGRAPHIC SURVEY

FOR PROPOSED PARTITION PLAT OF

TAX LOT 7500

LOCATED IN THE SOUTHWEST 1/4 OF SECTION 22,
TOWNSHIP 1 NORTH, RANGE 2 EAST, WILLAMETTE
MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY,
STATE OF OREGON

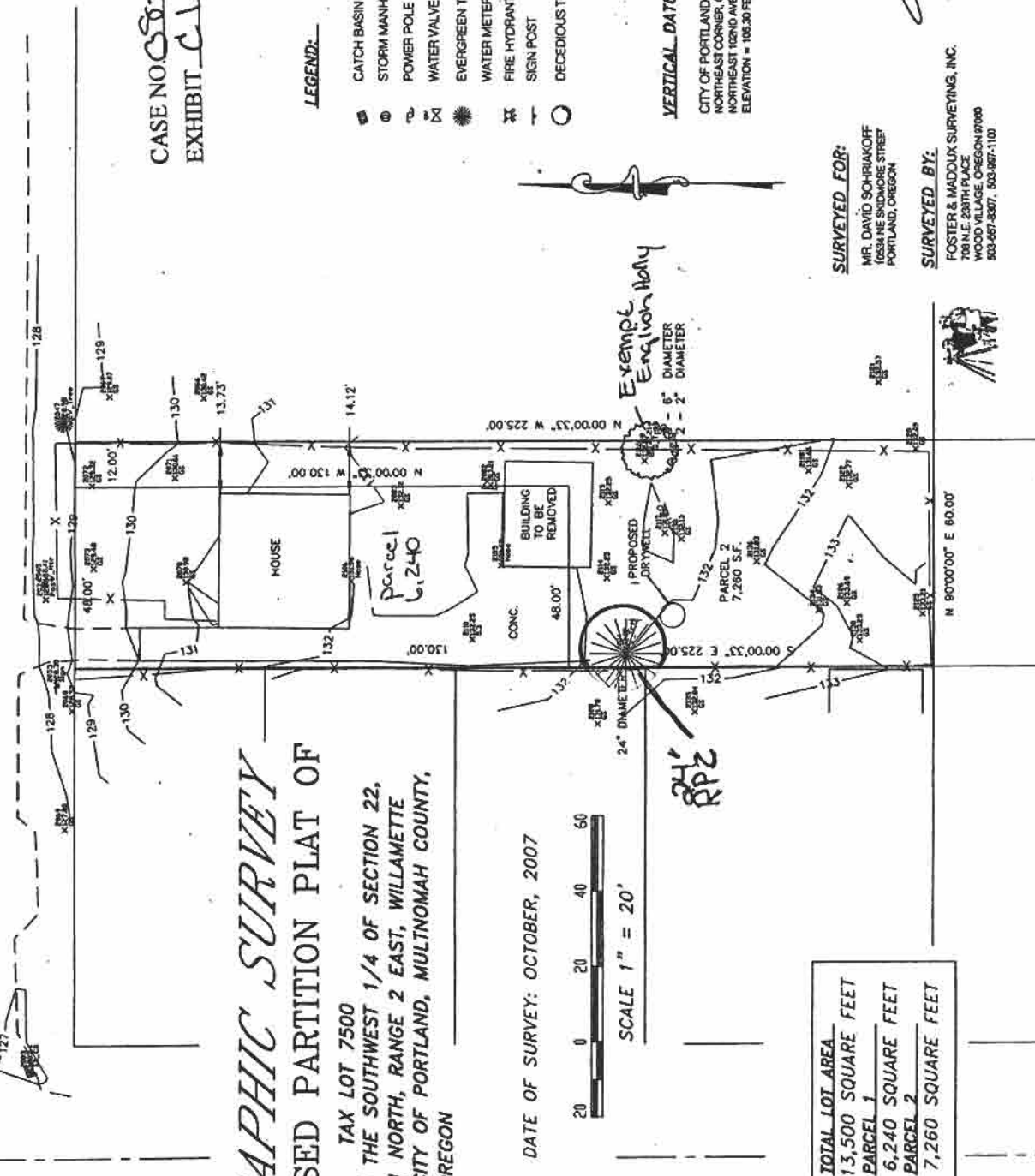
DATE OF SURVEY: OCTOBER, 2007



SCALE 1" = 20'

TOTAL LOT AREA	13,500 SQUARE FEET
PARCEL 1	6,240 SQUARE FEET
PARCEL 2	7,260 SQUARE FEET

N. E. 105TH AVENUE



LEGEND:

- CATCH BASIN
- STORM MANHOLE
- POWER POLE
- WATER VALVE
- EVERGREEN TREE
- WATER METER
- FIRE HYDRANT
- SIGN POST
- DECIDUOUS TREE

VERTICAL DATUM

CITY OF PORTLAND BENCH MARK NO. 4551-
NORTHEAST CORNER CONCRETE CURB RETURN,
NORTHEAST 102ND AVENUE & NORTHEAST PRESCOTT STREET
ELEVATION = 105.30 FEET (CITY OF PORTLAND DATUM)

SURVEYED FOR:

MR. DAVID SOHRBAKOFF
1634 NE SKIDMORE STREET
PORTLAND, OREGON

SURVEYED BY:

FOSTER & MADDOX SURVEYING, INC.
708 N.E. 28TH PLACE
WOOD VILLAGE, OREGON 97060
503-467-8307, 503-907-1100



RENEWED THRU 12/31/2008

Example
English Holly
DIAMETER
DIAMETER

RPT

2008-115969