



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

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Date: February 27, 2009
To: Interested Person
From: Justin Fallon Dollard, 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 08-107698 LDS AD

GENERAL INFORMATION

Applicant: June E. Rodman,
6600 SE 57th Ave
Portland, OR
97206

**Representative:
& Listed Contact** Robert Johnson, 503-998-6105
835 SW 57th Ave
Portland, OR 97221

Richard Lathrop,
Boundary Locaters
8124 SE Taylor Ct
Portland, OR 97215

Site Address: 6600 SE 57th Ave

Legal Description: TL 3900 0.39 ACRES, SECTION 19 1 S 2 E
Tax Account No.: R992190150
State ID No.: 1S2E19AA 03900
Quarter Section: 3736

Neighborhood: Brentwood-Darlington, contact Denise Shook at 971-533-4741.
Business District: Woodstock Community Business Association, contact Angie Even at 503-771-9912.
District Coalition: Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.

Plan District: None

Zoning: R2.5a. Residential 2,500 with Alternative Design Density Overlay

Case Type: LDS AD, Land Division (Subdivision), with Adjustment Review
Procedure: Type II_x, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant is proposing a five-lot subdivision of a site measuring 16,988 square feet total with an existing single-family detached house with a carport and a shed. The carport and shed would be removed to allow street access to newly proposed lots. The proposed land division includes 3 flag lots. The site would be divided as follows:

- Lot 1 will measure approximately 2,412 square feet.
- Lot 2 will measure approximately 3,760 square feet (flag lot).
- Lot 3 will measure approximately 3,528 square feet (flag lot).
- Lot 4 will measure approximately 3,522 square feet.
- Lot 5 will measure approximately 3,753 square feet (flag lot).

A Flag Lot per Chapter 33.910 Definitions, of the Portland Zoning Code, is a lot with two distinct parts: 1. The flag, which is the only building site; and is located behind another lot; and 2. The pole, which connects the flag to the street; provides the only street frontage for the lot; and at any point is less than the minimum lot width for the zone.

This land division proposal is reviewed through a Type IIx procedure because: (1) the site is in a residential zone and (2) five lots are proposed on a site per Section 33.660 Review Procedure. For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year (See ORS 92.010).

As the applicant intends to flag lot provisions of Chapter 33.405 Alternative Design Density Overlay Zone for a R2.5 base zone site, the proposed development must meet the prescriptive development standards stated in Section 33.218.100 Standards for Primary and Attached Accessory Structures in Single-Dwelling Zones.

The applicant also requests an Adjustment to 33.266.120.D. Parking Spaces to reduce the required driveway width to 8 feet from 9 feet of Lot 5 at approximately 30 feet east of the proposed curb cut to better preserve a mature Port Orford Cedar on the proposed Lot 4.

This subdivision proposal is reviewed through a Type IIx procedure because: (1) the site is in a residential zone; (2) four to ten dwelling units are proposed, not including accessory dwelling units; and (3) a concurrent review (Adjustment) is requested (see 33.660.110).

For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year (See ORS 92.010).

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, the City of Portland Zoning Code. The applicable approval criteria are:

- Section 33.218.100 Community Design Standards for Primary and Attached Accessory Structures in Single-Dwelling Zones
- Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.
- Section 33.805.040 Approval Criteria for Adjustments.

ANALYSIS

Site and Vicinity: The 16,988 square feet is located in a neighborhood comprised of single and multiple dwellings. The site is bounded to west by SE 57th Avenue. SE 57th Avenue is designated as a Local Service street for all modes of travel in the Transportation Element of the Comprehensive Plan. Transit service is provided by Trimet less than 500 feet from the site on SE Duke Street (bus line 19), with bus stops located at SE Duke/SE 57th and SE Duke/SE 60th

Existing development is limited to a single story house with a shed, carport, and driveway. The site includes a mature Douglas Fir tree and a mature Port Orford Cedar tree. The site is directly adjacent a nursery facility operated by Portland Parks and Recreation.

Zoning: The Residential 2,500 Single Dwelling Zone [R2.5] is intended to preserve land for housing and to provide housing opportunities for individual households. Single Dwelling zones implements the comprehensive plan policies and designations for single-dwelling housing. The Single Dwelling development standards preserve the character of neighborhoods by providing six different zones with different densities and development standards. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed. The development standards are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.

The purpose of the Alternative Design Density Overlay Zone [a] is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements. Alternative Development Options in the R2.5 Zone offer opportunities for enhancing the variety of housing types and building forms that are found in areas zoned for attached or low-density multi-dwelling residential development. Such areas generally include a mixture of single-dwelling detached and small multi-dwelling development. A variety of types of housing in areas receiving infill development will improve continuity with the character of the existing buildings.

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

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.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on July 16, 2008. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

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	33.611	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.

Criterion	Code Chapter	Topic	Applicability Findings
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	Applicable - See findings below.
G	33.635 .200	Land Suitability	Applicable - See findings below.
H	33.636	Tracts and Easements	Applicable - See findings below.
I	33.639	Solar Access	Not Applicable - Maintaining existing development on the site limits new lot configuration (33.610.200 supercedes 33.639).
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 33.611 contains the density and lot standards applicable in the R2.5 zone. 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.

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 = (16,975 square feet * .80) ÷ 5,000 square feet = 2.72 (which rounds up to a minimum of 3 lots, per 33.930.020.A)

Maximum = 16,975 square feet ÷ 2,500 square feet = 6.79 (which rounds up to a maximum of 7 lots, per 33.930.020.B)

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 Chapter 33.611 of the Zoning Code):

	R2.5 Zone Requirement	Proposed Lot 1	Proposed Lot 2 (Flag Lot)	Proposed Lot 3 (Flag Lot)	Proposed Lot 4	Proposed Lot 5 (Flag Lot)
Minimum Lot Area	1,600 sq. ft.	2,412	3,760	3,528	3,753	3,522
Maximum Lot Area	NA					
Minimum Lot Width*	36 ft.	36 ft.	48 ft.	42 ft.	60 ft.	42 ft.
Minimum Lot Depth	40 ft.	67 ft.	-	-	62 ft.	-
Minimum Front Lot Line	30 ft.	36 ft.	12 ft.	12 ft.	60 ft.	12 ft.
Minimum Flag Lot Width**	40 ft.		48 ft.	42 ft.		42 ft.
Minimum Flag Lot Depth**	40 ft.		61 ft.	66 ft.		66 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.

33.405.070. C. Flag Lots Averaging 2,500 Square Feet in the 'a' Overlay Zone

Lots in the R2 and R2.5 zone may be developed as flag lots with an average area of 2,500 square feet when the proposed development meets all of the following requirements:

- **Both attached and detached dwellings are allowed;**
- **The average area of the lots created must be at least 2,500 square feet. Each must be at least 1,600 square feet;**
- **The pole portion of the flag lot must be part of the flag lot, must connect to a street, and must be at least 12 feet wide for its entire length;**
- **Detached structures on a flag lot are required to have an eight foot setback from all lot lines. Attached structures on flag lots are required to have an eight foot setback along those lot lines that abut a lot that is not a part of the flag lot development; and**
- **Required setbacks must include a landscaped buffer area. The landscaped**

area must be at least 3 feet deep and be landscaped to at least the L3 standard. See Figure 405-1.

The applicant has demonstrated that Lots 2, 3 and 5 can meet the provisions for creation of a flag lot utilizing the above standards, found in the “a” overlay, for the following reasons:

The average area of the lots is 3,3395 square feet. The pole portion of the flag lots connects to SE 57th Avenue and is 12 feet wide for its entire length. The applicant is proposing to develop detached, single family residences on the lots. A development plan was provided with the application indicating compliance with the required 8 foot setback and 3 foot landscaped buffer area. *As a condition of approval, the a landscaping plan in compliance with the L3 standard stated in Chapter 33.248, Landscaping and Screening, must be submitted at the time permitting for the development.*

Land division proposals taking advantage of the Alternative Design Density Overlay (a) must be approved through design review or meet the objective Community Design Standards. The proposal is eligible for use of the Community Design Standards as an alternative to design review since less than 5 dwelling units are proposed in a Single Dwelling Zone. Based on submitted development plans it appears that both of the proposed dwelling units are in substantial conformance with the Community Design Standards. A few design elements of the proposed structures deviate from the required standards. *As a condition of approval, the proposed development shall comply with the applicable sections of Chapter 33.218, Community Design Standards, at the time of permitting or a discretionary Design Review is required.*

The findings above describe how the applicable lot standards are met. *With the conditions of approval described above, this criterion is therefore met.*

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 A-2). 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 or partially within the environmental zone. 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)
384	Grand Fir	18	Y	N	N	15 feet
385	European Hawthorne	9	N	N	N	NA
386	Port Orford Cedar	18	N	N	Y	15 feet

The total non-exempt tree diameter on the site is 18 inches. The applicant proposes to meet Tree Preservation Option 1 by preserving at least 35 percent of the total diameter of trees on the site. The total tree diameter on the site is 45 inches. The Port Orford Cedar measures 18 inches in diameter and therefore its preservation is 40% of the total tree diameter on the site. A proposed driveway near the Port Orford Cedar must reduce in width to minimize impact on the tree. The applicant has requested an adjustment to driveway width standard for the Single Dwelling Zone. See adjustment findings below. *As a condition of approval that the applicant conforms to the arborist’s tree protection requirements stated in Exhibit A-2 at the time of development of the driveway and turnaround for Lot 5, this criterion can be met.*

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. While no significant clearing or grading will be required on the site to make the new lots developable, the tree to be preserved will require careful alignment and grading of the driveway and turnaround for Lot 5. *As a condition of approval that the applicant submit at the time of Final Plat a Supplemental Plan with site grading in conformance with the arborist's tree protection requirements stated in Exhibit A-2, this criterion can be 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.*

H. Tracts and easements. The standards of Chapter 33.636, Tracts and Easements must be met;

33.636.100 Requirements for Tracts and Easements

- A. Ownership of tracts. Tracts must be owned as follows unless otherwise specified in this Title or the land use decision:**
 - 1. The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;**
 - 2. The Homeowners' Association for the area served by the tract;**

3. **A public or private non-profit organization; or**
4. **The City or other jurisdiction.**

Findings: No tracts are proposed or required for this land division, so criterion A does not apply.

B. Maintenance agreement. The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract or easement; however, facilities within the tract or easement that will be maintained by a specified City agency may be recorded in a separate maintenance agreement. The maintenance agreement must be approved by BDS and the City Attorney in advance of Final Plat approval and must be submitted to the County Recorder to be recorded with the Final Plat. For a Planned Development not done in conjunction with a land division, the maintenance agreement must be submitted to the County Recorder to be recorded prior to issuance of the first building permit related to the development.

Findings: The following easements are proposed and/or required for this land division:

- A Reciprocal Access Easement is proposed to allow shared use of a driveway that will straddle proposed lot lines;

The Portland Department of Transportation is requiring that the proposed Lots 2 and 3 share a driveway to access SE 57th Avenue. Therefore a reciprocal access easement is required.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement will be required describing maintenance responsibilities for the easement described above and facilities within those areas. This criterion can be met with the condition that a maintenance agreement(s) is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement(s) with a recording block, substantially similar to the following example:

"A Declaration of Maintenance agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records."

With the conditions of approval discussed above, 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).

Portland Transportation has concluded that the transportation system can support the proposed development for all of the stated evaluation factors. The proposed land division is expected to generate approximately 40 additional daily vehicle trips and four additional PM peak hour trips onto the surrounding transportation system. A traffic impact study was not required for this land division. No intersections in the vicinity of the site are expected to drop below the City's level of service performance standards with the additional peak hour trips. The existing width of SE 57th Avenue is wide enough to accommodate parallel on-street parking on both sides of the street. In addition, the applicant is proposing driveway configurations that will maximize the curb along SE 57th Avenue that is available for on-street parking. There are no significant on-street parking impacts expected with the subject subdivision.

Transit service is provided by Trimet less than 500 feet from the subject site on SE Duke Street (bus line 19), with bus stops located at SE Duke/SE 57th and SE Duke/SE 60th. There is adequate availability of transit service for this site.

There are no major transportation-related neighborhood impacts expected from the five-lot subdivision.

SE 57th Avenue is designated as a Local Service street for all modes of travel in the Transportation Element of the Comprehensive Plan. SE 57th Avenue along the site frontage is improved with 28 feet of pavement and curbs on both sides of the street. There are no sidewalks along the subject site frontage. The site's SE 57th Avenue frontage will be required to be improved to the standards of the City Engineer. These standards have been developed and adopted with the intent of providing safe infrastructure for all modes of transportation including vehicles, pedestrians, bicycles, and transit. Although incremental, frontage improvements that will be constructed along SE 57th Avenue as redevelopment occurs will improve safety for all modes of transportation, including better access to transit service on SE Duke Street

A sidewalk will be required to be constructed along the SE 57th Avenue site frontage in conformance with the City's 11-foot sidewalk corridor standards (0.5' curb, 4' planter, 6' sidewalk, 0.5' frontage zone). It appears that right-of-way is available along the majority of the SE 57th Avenue site frontage to include the required 11-foot sidewalk corridor within public street right-of-way; however, there will be some right-of-way dedication needed along SE 57th Avenue near the site's northern property line where the SE 57th Avenue curbline changes that will be determined at the time of Final Plat. Sidewalk along the new lot frontages will be required as a condition of building permit approval.

This criterion is met, with the condition sidewalk corridor improvements are made, and the required right-of-way dedication is shown on the Final Plat.

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 SE 57th Avenue. Water is available to serve the proposed development from the water main in SE 57th Avenue. Lot 4 has an existing water service from that main. The applicant will need to purchase separate metered service for Lots 1, 2, 3, & 5. Service to Lots 2, 3, & 5 must be installed within the "pole" of the flag lot at the time of development. See Exhibit E-3 for more details.

- The sanitary sewer standards of 33.652 have been verified. There is an existing 8” PVC public sanitary sewer located in SE 57th Avenue that can serve the sanitary needs of the proposed lots. Lot 4 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.
- Chapter 33.654 includes technical standards related to proposed public and private rights of way, including improvements within streets, pedestrian connections, common greens, and alleys. However, no new streets, pedestrian connections, common greens, or alleys are proposed or required within the land division site. Based on analysis provided by Portland Transportation, there is neither need nor opportunity for new streets, pedestrian connections, or alleys within the subject land partition site. The site meets the through street and pedestrian connectivity requirements. As result, the remaining standards and approval criteria related to street connectivity, location, and design are met or not applicable.

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-2), and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Lots 1 & 5:** Stormwater from these lots will be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. Each of these lots 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 drywells.

- **Lots 2 & 3:** Stormwater from these lots will be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. Each of these lots 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 drywells. However, BES had noted that the proposed stormwater management plan does not show adequate treatment of the driveways. The applicant has proposed to provide pervious paving to manage stormwater. BES has no objection to pervious pavements for the shared driveway as long as BDS Site Development can approve this shallow infiltration technique. *As a condition of approval, the applicant must construct the shared driveway with pervious paving acceptable by BDS Site Development at the time of permitting and an Operations and Maintenance Agreement, recorded with Multnomah County and approved by BES, will be required for pervious pavement and must include the parties liable for maintenance procedures.*
- **Lot 4 (the lot with the existing house):** The downspouts of the existing house are connected to underground pipes. There are no city records on where the pipes are directed. Because the house has a basement, stormwater must be collected or otherwise comply with the Stormwater Management Manual. Prior to final plat approval, any existing subsurface stormwater facilities must be decommissioned and final approval of a plumbing permit to install new rain drains and a drywell for the existing house will be required. Gutters and downspouts that are broken or missing must be replaced or repaired, and all downspouts must be connected to the new rain drain/drywell system. Compliance with this condition requires obtaining a plumbing permit, performing the required work and finaling the permit prior to final plat approval.

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.

Adjustment Review

The requested Adjustment is to 33.266.120.D. Parking Spaces, to reduce the required driveway width to 8 feet from 9 feet of Lot 5 at approximately 30 feet east of the proposed curb cut to better preserve a mature Port Orford Cedar on the proposed Lot 4..

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.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I as stated in Section 33.805.040 have been met.

Staff has addressed criteria A through F as the applicable approval criteria for this Adjustment Request.

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified:

Findings for A: Section 33.266.120 of the Zoning Code describes the purpose of the purpose of size and placement of vehicle parking area regulations in association with a house is to enhance the appearance of neighborhoods.

The proposed adjustment will facilitate the preservation of a mature evergreen tree adjacent the proposed flag Lot 5 driveway, also known as a pole. The pole, which connects the flag to the street, provides street frontage to the lot. In this case, the mature tree is at the rear of adjoining Lot 4 and its preservation enhances the visual appearance of the pole. The reduced driveway does not occur at the curb cut and therefore the driveway appearance from the street is consistent with other driveways in the neighborhood.

For the reasons described above, Approval Criterion A is met.

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

Findings for B: The proposed reduction in driveway width will not detract from the livability or appearance of the residential area as the proposed width allows for adequate maneuvering in a linear motion from the SE 57th Avenue to garage entrance and turnaround area proposed for Lot 5. The proposed reduction in driveway width will not affect the required landscaping buffer of the proposed flag lot. The proposed adjustment allows for the preservation of a mature evergreen tree that currently enhances the appearance and livability of the existing the residential area.

For the reasons described above, and the required condition of approval, Approval Criterion B is met.

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone.

Findings for C: Only one adjustment is being requested. *This criterion does not therefore apply.*

D. City-designated scenic resources and historic resources are preserved.

Findings for D: Neither the site nor the existing development are City-designated scenic resources or historic resources. *This criterion does not therefore apply.*

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

Findings for E: As explained under criterion A and B, so that the reduced side setback will not significantly impact the privacy and livability of adjacent properties, nor impact the ability of the applicant to provide the required landscaping buffer for the flag portion of Lot 5. As there is not impact caused by this adjustment, no mitigation is required.

This criterion does not therefore apply.

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 for F: The site is not in an environmental zone. *This criterion does not therefore apply.*

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.

The provisions of Section 33.405.070, by which the applicant is seeking entitlements to the proposed land division and development, require attention at the time of final plat and permitting:

- 33.405.070.C. Flag lots averaging 2,500-- special setback standards landscape standards apply to flag lots in the R2.5 which use provisions in Chapter 33.405 Alternative Design Development Overlay Zone. The applicant must meet these standards stated in subsection 33.405.070.C. at the time of development.
- 33.405.070.D. Design review required—Proposals taking advantage of the provisions of Section 33.405.070 must either meet applicable development standards in 33.218 Community Design Standards at the time of plan review for permitting or a Design Review is required. **Adjustments to the Community Design Standards are prohibited.** *The applicant has provided preliminary development drawings that indicate the proposal can meet the Community Design Standards (Exhibits C-4 & C-5).* However, as a condition of approval, if the proposed development no longer meets the Community Design Standards after final plat, then a discretionary Design Review is required. See Chapters 33.825 Design Review for procedures and applicable Design Review Approval Criteria.

Existing development that will remain after the land division. The existing development, a detached, single-dwelling house on the site, will remain and be located on Lot 4. The applicant is proposing to remove an existing carport and an shed located directly adjacent the house on Lot 4. 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 R2.5 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 5 feet and 16 feet from the side lot lines and 5 feet from the rear lot line. Therefore, the required setbacks are being met. *To ensure this standard continues to be met 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.*
- Required Off-Street Parking - A paved parking pad/garage provides parking for the existing house on Lot 4. As a result of this land division, the parking space for the existing house will be located on a different lot, and will no longer be available to Lot 4.

The Portland Zoning Code does not require off-street parking on sites that are less than 500 feet from a transit street with 20-minute peak-hour bus, streetcar, or light rail service. Tri-Met provides transit service approximately 235 feet from the site on SE Duke Street via bus number 19. Bus number 19 provides peak-hour service meeting this requirement. As a result, no replacement parking is required for Lot 4.

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/
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 applicant must meet the requirements of the Fire Bureau in regards to addressing requirements for flag lots and aerial fire apparatus access:
 - ADRESSING: All addresses shall be permanently displayed as directed by the Fire Marshal's Office (mounted on a building, fence, post, etc.). Numbers/letters shall be contrasting in color to the background and of sufficient size to be plainly visible from the street or road fronting the property. Numbers/letters shall be a minimum 3" high by 2 ¼" wide with at least a 5/16" wide stroke. This office may specify larger numbers/letters. Flag lots shall have their addresses permanently displayed within 5 feet of the flag pole connection to the public way. The addresses shall be clearly visible from all vehicle approach points.
 - AERIAL FIRE DEPARTMENT ACCESS ROADS – This requirement will apply for buildings greater than 30 feet in height as measured to the eave of the structure. Buildings or portions of buildings exceeding 30 feet in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway.

These requirements are based on the technical standards of Title 31 and the Fire Code.

- The applicant must meet the requirements of Urban Forestry for street tree planting in the existing planter strip adjacent to Lot 4 prior to final plat approval. This requirement is based on the standards of Title 20.
- The applicant must meet the requirements of PDOT for curb cuts and driveway construction at the time of building permitting. These requirements stated in the technical standards of Section 17.28, Driveways and Curb Cuts of Title 17.

CONCLUSIONS

The applicant has proposed a 5 lot subdivision, as shown on the attached preliminary plat (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: tree preservation and stormwater management. The approved adjustment will allow for the preservation of a mature Port Orford cedar and the use of pervious paving for the driveway shared by Lots 2 & 3 address these issues.

With conditions of approval that address these requirements this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to 33.266.120.D. Parking Spaces to reduce the required driveway width to 8 feet from 9 feet of Lot 5 at approximately 30 feet east of the proposed curb cut to better preserve a mature Port Orford Cedar on the proposed Lot 4.

Approval of a Preliminary Plan for a 5-lot subdivision, that will result in 3 flag lots and two standard lots meeting the requirements of Section 33.405.070, Alternative Development Options in the R2 and R2.5 Zones as illustrated with Exhibit C-1, 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, BES, Site Development 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 that will remain 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 setbacks for all of the lots.
- The proposed general location of future building footprints and stormwater facilities for each of the vacant lots.
- The proposed location for new all water and sanitary sewer lines; and
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. The applicant shall meet the street dedication requirements of the City Engineer for SE 57th Ave. The required right-of-way dedication must be shown on the final plat.
2. A 10-foot wide Reciprocal Access Easement shall be shown and labeled on the final plat, centered on the common property line between Lot 2 and Lot 3. The easement shall allow shared use of this area for all of the purposes that a driveway would be typically used for.
3. A recording block for each of the legal documents such as maintenance agreement as required by Condition * below. The recording block shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for a

Reciprocal Access Easement 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 meet the requirements of the City Engineer for right of way improvements along the frontage of SE 57th Avenue. The applicant must obtain an approved Right Of Way permit from the Bureau of Transportation Engineering and Development Review to install the required sidewalk and planter strip. The improvements along the frontage of Lot 4, where the existing house will be retained, must be constructed prior to final plat approval. The improvements along the frontage of the remaining lots may be constructed with new development on each lot.

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 sanitary sewer system on the site. Prior to final plat approval, the applicant must obtain and have finalized a separate decommissioning permit.

Existing Development

3. The applicant must obtain a finalized demolition permit for removing a carport and a shed on Lot 4.
4. The applicant must meet the requirements of Site Development for the stormwater systems on the existing house to remain on Lot 4. 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 street tree(s) in the planter strip on SE 57th Avenue adjacent to Lot 4. Street trees will be chosen from the City's approved street tree list for the *- foot planting strip. Tree size requirements for residential sites are to be 2-inch caliper. 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. A Maintenance Agreement shall be executed for the Reciprocal Access Easement area described in Condition 2 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.

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

1. Development on Lots 4 & 5 shall be in conformance with the Tree Preservation Plan (Exhibit A-2) and the applicant's arborist report (Exhibit A-2). Specifically, tree numbered 386 is required to be preserved, with the root protection zones indicated on Exhibit A-2. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root

protection zones 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.

2. The applicant must post the flag pole driveway for Lots 2, 3 & 5 with "No Parking" signs to the satisfaction of the Fire Bureau.
3. The applicant must meet the addressing requirements of the Fire Bureau for Lots 2, 3 & 5, the flag lots.
4. The applicant must provide a fire accessway to the satisfaction of the Fire Bureau or the height of the new structures shall be limited to 30 feet, measured to the gutter line.
5. The applicant must construct the shared driveway with for Lots 2 & 3 with pervious paving acceptable by BDS Site Development at the time of permitting and an Operations and Maintenance Agreement, recorded with Multnomah County and approved by BES, will be required for pervious pavement and must include the parties liable for maintenance procedures.
6. A landscaping plan in compliance with the L3 standard stated in Chapter 33.248, Landscaping and Screening, must be submitted at the time permitting for the development.
7. Development proposals occurring after final plat, must meet the applicable Community Design Standards stated in Chapter 33.218 at the time of permitting or a discretionary Design Review is required as stated in Section 33.405.070.D.

Decision rendered by:  **on February 25, 2009**
By authority of the Director of the Bureau of Development Services

Decision mailed: 2/27/09

Staff Planner: Justin Fallon Dollard

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 February 7, 2008, and was determined to be complete on July 14, 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 February 7, 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 requested that the 120-day review period be extended.

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 3/13/09** 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. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. 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.

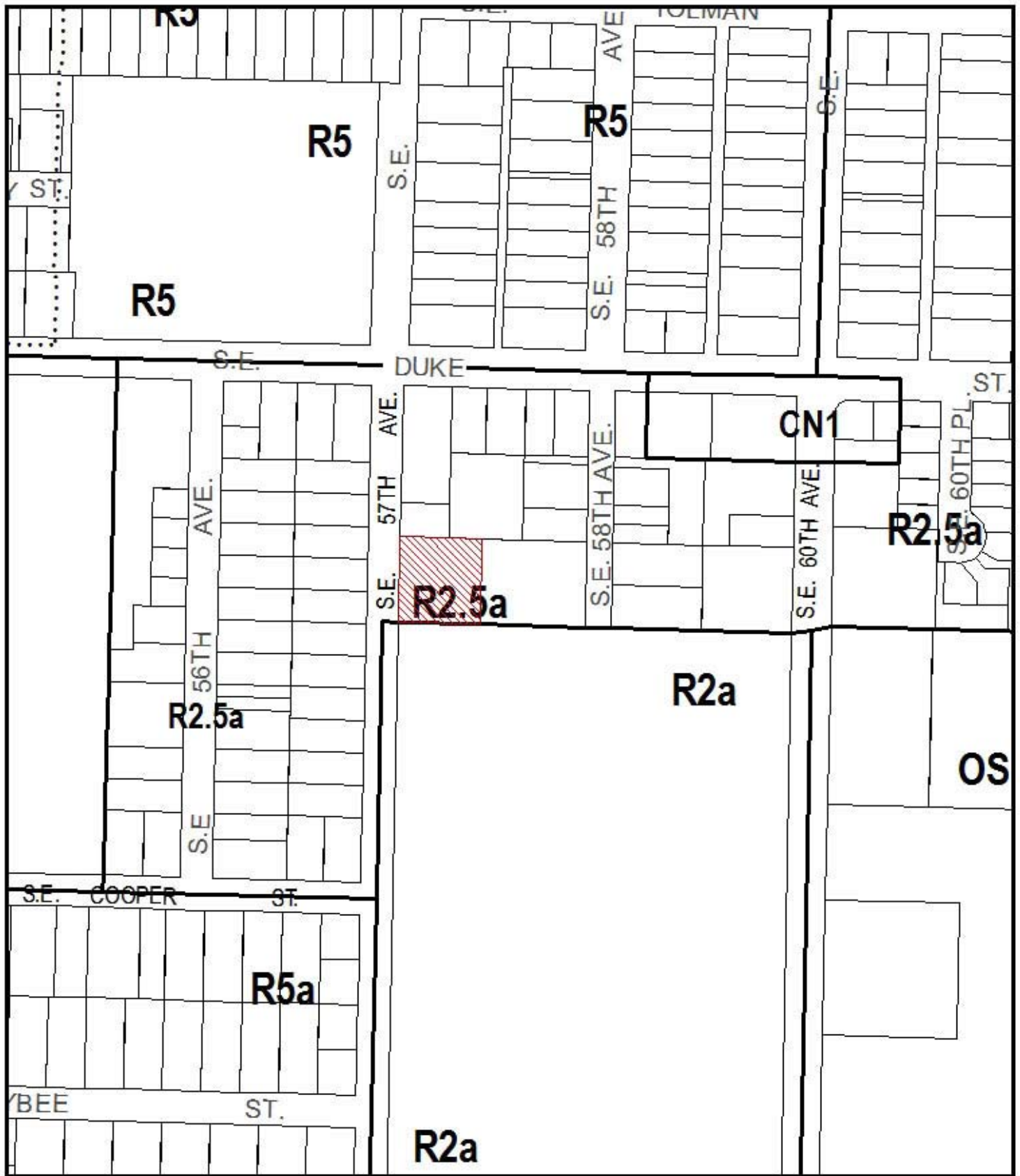
Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City’s final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director 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.**

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Information
 - 1. Applicant's Statement
 - 2. Arborist Report and Tree Preservation Plan
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Preliminary Plat (Attached)
 - 2. Preliminary Development Plan
 - 3. House Plans and Elevations
 - 4. House Plans and Elevations
 - 5. Existing Conditions 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: None
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Applicant Requests to Extend 120 Day Review Timeline

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 08-107698 LDS AD

1/4 Section 3736

Scale 1 inch = 200 feet

State_Id 1S2E19AA 3900

Exhibit B (Jul 15, 2008)



NORTH

