



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

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: January 15, 2009
To: Interested Person
From: Sue Donaldson, Land Use Services
503-823-7618 / pksued@ci.portland.or.us

NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it to the Oregon Land Use Board of Appeals (LUBA) at 550 Capitol St. NE, Suite 235, Salem, OR 97301. The phone number for LUBA is 1-503-373-1265. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 09-147026 LDP

GENERAL INFORMATION

Applicant: Joseph S Elkhall,
11320 SE Flavel St
Portland, OR 97266-5917

Representative: Richard Lathrop,
8124 SE Taylor Ct
Portland
OR 97215

Site Address: 451 SE 160TH AVE

Legal Description: LOT 1, PARTITION PLAT 2002-56
Tax Account No.: R649822210
State ID No.: 1N2E36DD 03201
Quarter Section: 3046

Neighborhood: Glenfair, contact Frank Rinella at 503-256-5399.
Business District: Gateway Area Business Association, contact Fred Sanchez at 503-256-3910.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Plan District: East Corridor
Other Designations: None

Zoning: CS, Storefront Commercial

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

Proposal:

Applicant is proposing to divide this 13,704 square foot parcel into two lots. The site is a corner lot in the Commercial Storefront (CS) zone. Existing development includes a 10 unit apartment building and a dental clinic. Parking for both uses is available on site. New development is not proposed.

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

Relevant Approval Criteria:

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

- 33.662.120, Approval criteria for Land Divisions in Commercial, Employment and Industrial Zones.

ANALYSIS

Site and Vicinity: The site is at the northwest corner of SE 160th Ave and SE Stark St. It is now developed with a 10 unit apartment building on proposed Parcel 1 and a dental clinic on proposed Parcel 2. Adjacent to the site, on the west and north, there are a variety of multi-dwelling structures, most of which have ample surface parking lots. Commercial development in the vicinity is mixed and includes convenience stores, personal and business services storefronts, restaurants, pubs and a gas station.

Zoning: The site is zoned CS, Storefront Commercial. It is intended to preserve and enhance older commercial areas that have a storefront character and to provide for redevelopment that will be compatible with this desired character. It allows a full range of retail, service and business uses with a local and regional market area. Household living and office uses are allowed by right. CS Zoning extends east and south of the site across 160th Ave and across SE Stark. There is multi-dwelling residential adjacent to the site on the west and northwest (R1), to the east (RH) and to the south and west, across SE Stark (R2).

The site is within the East Corridor Plan District and across the street from a Pedestrian District. Regulations of the Plan District include development standards that are intended to ensure that development maximizes the public's investment in transit and fosters intense mixed-use development. Because two new lots are being created this proposal must be evaluated against the Plan District's Development Standards, which affect building height, floor area ratios, connectivity, pedestrian standards and parking.

Land Use History: City records indicate that prior land use reviews include the following:

98-00474 MP This was a minor partition that created two lots, of which the existing site was Parcel 1. Parcel 2, which is 13,725 square feet at 405 SE Stark, is adjacent to the site on the west side. It was vacant at the time but is now developed with an apartment building. There are no conditions of approval that remain in effect.

Summary of Applicants Statement: The applicant wishes to create separate lots for the two existing uses on the site. Both the dental clinic and the apartment building have their own parking areas that will be contained within the boundaries of their respective lot lines.

Agency Review: A Notice of Proposal in your Neighborhood was mailed on **September 15, 2009**. 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 **September 15, 2009**. No written responses been received from either the Neighborhood Association or notified property owners in response to the proposal. One neighborhood Association member called to inquire about adequacy of parking for the existing uses.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN A COMMERCIAL, EMPLOYMENT, OR INDUSTRIAL ZONE

33.662.120 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 **33.662.120 [A-K], Approval Criteria for Land Divisions in Commercial, Employment and Industrial 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.

Code Chapter	Criterion	Topic	Applicability Findings
33.613	A	Lots	Applicable - See findings below
33.630	B	Trees	Not applicable - No significant trees or trees in excess of 6 inches in diameter located fully on the site.
33.631	C	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
33.632	D	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.
33.633	E	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
33.635 .100	F	Clearing, Grading and land suitability	Not applicable - The site is primarily flat, is not located in the Potential Landslide Hazard Area, and the site is already developed with primary structures that will remain after final plat approval.
33.635 .200	F	Land Suitability	Not applicable - There is no record of any previous land uses or conditions that would create a hazard.
33.636	G	Tracts and Easements	Applicable – one easement is required. See findings below.
33.639	H	Solar Access	Not applicable – Single Dwelling Detached development is not proposed for the site.
33.640	I	Streams, Springs, and Seeps	Not applicable – There is no evidence of streams, springs, or seeps on the site.
33.641	J	Transportation Impacts	Applicable - See findings below
33.651 - 33.654	K	Services and Utilities	Applicable - See findings below

A. Lots. The standards and approval criteria of Chapters 33.613 must be met;

Findings: Chapter 33.613 contains the lot standards applicable in the commercial zones. Chapter 33.613 works in conjunction with other chapters of the Zoning Code to ensure that land divisions create lots that can support appropriate uses and development. The standards are as follows:

CS Zone	Standard	Lot 1	Lot 2
Front Lot Line	10 feet	65.05 ft	56.83 ft
Minimum Lot Area	none	5473 sq ft	8231 sq. ft.
Minimum Width	none	73 ft	77.5 ft
Minimum Depth	none	75 ft.	110 ft

33.613.100 Minimum Front Lot Line Standard

Each lot must have a front lot line that is at least 10 feet long.

As the table above shows, both proposed lots have a front lot line that is longer than 10 feet; this standard is met.

33.613.200 Minimum Lot Area, Width and Depth Approval Criterion

There are no minimum lot area, width or depth standards. Lots must be of a size, shape, and orientation that is appropriate for the location of the land division and for the type of development and use that is contemplated.

Existing buildings meet applicable development standards, with two exceptions, discussed below, and both office (dental clinic) and residential uses (10 unit apartment building) are allowed by right in the Storefront Commercial zone. There is adequate parking for both uses on their separate lots. Both lots will have access off SE 160th Street. Existing development on the proposed lots meets building setback standards, including the required landscaping on the west lot lines abutting a residentially zoned (R1) lot.

The buildings on the applicant's site do not meet the minimum building coverage standards for the zone and also do not meet the minimum FAR requirements (0.5:1) in the East Corridor Plan District. Proposed Parcel 1 will exceed the minimum building coverage in the CS zone and the minimum FAR standard in the Plan District. This land division will result in Parcel 2 moving further out of conformance with these standards. This issue is discussed later in this report, under Development Standards. In other respects the proposed lots are appropriate for this location in the CS zone and meet this criterion. This criterion can be fully met with a condition of approval requiring an adjustment to building coverage and FAR standards for Parcel 2 prior to final plat approval. This criterion could also be met if enough square footage were added to the building to meet the 50% building coverage standard, but this would have to occur before final plat approval.

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: Tracts are not proposed or required. This standard is not applicable.

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: A 10 foot by 10 foot private storm sewer easement is proposed on Parcel 2 at the northeast corner for the benefit of Parcel 1. This is for the drywell serving development

associated with the apartment building, which cannot be located within the proposed property boundary of Parcel 1.

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 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).

The site has approximately 65 feet of frontage on SE Stark Street, which is classified as a Major City Traffic street, Transit Access street, City Bikeway, City Walkway and a Regional Corridor in the Transportation Element of the Comprehensive Plan. At this location, SE 160th Ave. is classified as a Local Service street for all modes in the TSP. The site is also across the street from the boundaries of the SE 162nd LRT Station Pedestrian District. Tri-Met provides transit service on SE Stark Street via bus 20. Parking is currently allowed on both SE Stark and SE 160th Ave on both sides. There are two driveways on the site that provide access to off-street parking for both of the existing two uses. Both driveways are within the boundaries of the proposed lots they serve.

Both SE Stark and SE 160th Ave are fully improved with a paved roadway, curbs, planting strips, and 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. Portland Transportation has not identified or been made aware of any factors related to this proposal that lead to a conclusion other than that separating the existing lot into two parcels to accommodate existing buildings on each proposed lot can be safely served by this existing street without having any significant impact on the level of service provided.

While the existing sidewalk corridors on both SE Stark and SE 160th do not satisfy the recommended widths, existing development precludes widening the sidewalk. Therefore

frontage improvements will not be required. This criterion is met. See Exhibit E.2 for more detailed analysis.

K. 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 site is in the Rockwood Water District. The existing buildings on the site have water service within their respective lot frontages from a main in SE 160th Ave. This was verified for the dental office on Parcel 2 as part of the previous minor partition final plat approval. Water service for the 10 unit apartment complex was verified as part of the building permit process (09-111432 PT). Water service was inspected and approved on March 31, 2009 (08 180764 CO).
- The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch CSP public sanitary sewer located in SE 160th Ave and an 8-inch PVC public sanitary-only sewer line in SE Stark that can serve the sanitary needs of the proposed lots. Both lots have existing sewer service from SE 160th. See Exhibit E-1 for a more detailed discussion.

There is an existing 10 foot by 15 foot private sanitary sewer easement on proposed Parcel 2, at the southwest corner. It is shown on the plat of the previous land division (98-00474 MP), which separated the site from the property to the west. BES has been unable to confirm that there is a sewer line as shown or that it serves the 24 unit apartment building on that lot (Parcel 2 of the minor partition). Also, a connection permit for this branch is not on record. A microfilm permit (03-152201 CO) for the apartment building indicates that the sanitary connection serving it is to SE 160th through an existing branch that serves the adjacent lot to the north of proposed Parcel 1. Although the sanitary sewer easement is shown on the recorded minor partition plat (Partition Plat # 2002-56), it does not mention it on the plat notes, nor is there evidence of a maintenance agreement for it. Prior to final plat approval, the applicant will be required to provide documentation about the purpose of the easement and existence of a maintenance agreement. Also, BES would like confirmation that the sewer line as shown actually exists in that location. The applicant has stated that he wishes to extinguish the easement because the apartment building gets sanitary service from SE 160th Ave, not from SE Stark. Prior to final plat approval the applicant must show that the easement exists, and if so, has been legally removed; the easement should not be shown on the final plat.

- 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 applicant has proposed to use drywells for cleaning and disposal. The Bureaus have responded as follows (Exhibits E-1 and E-5):

The drywell on proposed Parcel 2 is located within the property lines. It handles stormwater from the dental clinic and its parking area. The drywell for the apartment building on Parcel 1 is also located on Parcel 2 and is shown within a private storm sewer easement. BES has no objection to the proposed 10 foot square private storm sewer easement on Parcel 2 for the benefit of Parcel 1, for the drywell, providing it is shown on the final plat and a maintenance agreement is submitted and approved prior to final plat approval. The easement must be accurately labeled as "private storm sewer easement". The applicant has documented the location of the existing drywell to the satisfaction of Site Development and BES. In addition a Plumbing code appeal (#6749 – see Exhibit A.2) was granted to allow a reduced drywell setback from the new property line between Parcels 1 and 2. This requirement can be met at the time of final plat approval with a correctly labeled private storm sewer easement accurately located and with an approved maintenance agreement.

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 – Street rights of way are fully improved.
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.

Code Section	Topic	Applicability Findings
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.
33.654.130.E	Ownership of Alleys	Not applicable- No alleys 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 at the corner of SE 160th Ave and SE Stark Street so no additional east/west street or north/south avenue is needed at this location. The Portland Master Street Plan (Far Southeast District) document does not identify any new street connections in the vicinity of the site. Therefore, the proposal is consistent with the master street plan. Both SE Stark Street and SE 160th Ave. are improved to City standards, including sidewalks and planter strips along both frontages, so no additional pedestrian connections are needed.

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. At this time no specific utility easements adjacent to the SE Stark Street or SE 160th Ave. have been identified as being necessary. Therefore, this criterion is met.

DEVELOPMENT STANDARDS

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

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

Development Standards: Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and 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.

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

Existing development that will remain after the land division. The existing development on Parcel 1 and 2 will remain. 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 CS zone. The following development standard for Commercial Zones applies to this land division:

- **Building Coverage.** In the CS zone building coverage must be at least 50% of the site area. The table below shows existing building coverage and building coverage on each of the proposed new parcels.

	Lot Area (s.f.)	Building Area	Building Coverage
Existing Lot	13,704 s.f.	5,350.5 s.f. (1,794.5 s.f. + 3556 s.f.)	39%
Proposed Parcel 1	5,473 s.f.	3,556 s.f.	65%
Proposed Parcel 2	8,231 s.f.	1,794.5 s.f.	21.8%

The building coverage for the existing lot is now non-conforming, at 39%. The proposed land division will cause the apartment structure on Parcel 1 to become conforming, at 65% but the dental clinic on Parcel 2 will be further out of conformance, at 21.8%. 33.700.015 requires this standard to be adjusted prior to approval of a building or zoning permit. Because the buildings already exist, and therefore don't need a building or zoning permit, the adjustment must be approved prior to final plat approval, which can be processed concurrently with the Final Plat Review. Alternatively, the applicant may choose to add an addition to the building to bring it into conformance. A condition of approval will require the non-conforming situation to be corrected or approved through an adjustment review.

Development standards for building setbacks from residential zone lot lines, ground floor window standards, pedestrian requirements and required parking standards were met through the final plat review for the minor partition or through the building permit process which approved construction of the 10 unit apartment building.

The East Corridor Plan District also includes development standards that apply to new development. In this case, the Floor Area Ratio requirement applies because the new property line affects FAR. There are parking and vehicle area standards that do not apply because the new property line will not change the existing situation. The table below shows the FAR requirements relate to the existing site and the new lots.

Plan District FAR Standard	Existing Lot	Lot 1	Lot 2
33.521.220 Floor Area Ratios (Map521-3) Maximum FAR is 3:1 Minimum FAR is 0.5:1	Lot Area – 13,704 s.f. Total floor area =8,907 s.f. (7112 s.f. + 1794.5 s.f). FAR = 0.64:1 Meets FAR Standard	Lot area = 5473 Bldg f.a. = 7112 FAR = 1.2:1 Meets FAR Standard	Lot area = 8231 s.f. Floor Area = 1794.5 s.f. FAR = 0.2:1 Does not meet FAR standard

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; 2008 Stormwater Management 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 Bureau requires verification that the new lot line does not cross over any existing water lines serving fire protection systems. This requirement is based on the technical standards of Title 31 and Fire Bureau Policy B-1.

CONCLUSIONS

The applicant proposed to divide a 13,704 square foot parcel in the Storefront Commercial zone into two lots, as shown on the attached preliminary plan (Exhibit C.3). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The land division will create separate lots for the two buildings and uses on the site, both of which will be retained. The dental clinic on the site, which was built in 1934, is

set well back from both SE Stark and SE 160th. The proposed Lot 2 does not meet current development standards in the zone and in the Plan District, which are intended to create an urban, built-up character. The clinic's location on the site has restricted land division options, resulting in a smaller lot for the ten unit apartment building and a larger lot for the dental clinic (a smaller building) with low building coverage and FAR. A condition of approval will require that prior to final plat approval the applicant submit an approved adjustment to the building coverage and FAR standards for Lot 2.

The drywell for the apartment building on Parcel 1 is located on Parcel 2, within a 10 foot square private storm sewer easement. The easement must be shown on the final plat accurately labeled as "private storm sewer easement. A maintenance agreement for the easement must be submitted and approved prior to final plat approval.

A sewer line and 10 foot by 15 foot private sanitary sewer easement is shown on the preliminary plan at the southwest corner of Parcel 2. BES has requested a condition of approval requiring the applicant to verify the location of the sewer line and the existence of the easement, because it does not appear to have a function. Otherwise the applicant will be required to remove it legally from the existing and new plat for the property. There were no responses from neighbors or neighborhood associations regarding the proposal.

ADMINISTRATIVE DECISION

Approval of a preliminary plan for a two-lot partition, per the approved site plans, Exhibit C-3, subject to the following conditions:

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, including building dimensions and heights, all setbacks from property lines, building coverage and FAR calculations for both lots.
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- Location of stormwater facilities for each lot.
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following

1. Prior to final plat approval, a private storm sewer easement, at least 10 feet by 10 feet, granted from Parcel 2 to benefit Parcel 1 must be shown on the plat centered on the existing drywell serving Parcel 1
2. Recording blocks for the maintenance agreement, as required by Condition C-3 below, shall be shown on the final plat. The recording block shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for Private Storm Sewer Easement has been recorded as document no. ___, Multnomah County Deed Records."

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

Land Use Reviews

1. Prior to final plat approval the applicant must submit an approved land use review for adjustments to the building coverage standard in the CS zone and to the minimum FAR standard in the East Corridor Plan District, both for Parcel 2.

As an alternative the applicant can submit and final a building permit to add on to the building to achieve minimum building coverage and FAR standards for Parcel 2.

Existing Development

2. The Fire Bureau requires verification that the new lot line does not cross over any water lines serving fire protection systems.

Required Legal Documents

3. A maintenance Agreement shall be executed for:
 - The private storm sewer easement on Parcel 2 for the benefit of Parcel 1, described in Condition B-1 above.
 - The agreement shall include provisions assigned 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.
4. Documentation of the existence and purpose of the private sanitary sewer easement on Parcel 2 that benefits 405 SE 160th must be provided to the satisfaction of the Bureau of Environmental Services. If the easement exists but is not needed for sanitary sewer service, it must be extinguished, documentation submitted of same, and removed from the plat. If there is no documentation verifying it does legally exist, it must not be shown on the final plat.

Staff Planner: Sue Donaldson

Decision rendered by: _____ **on January 13, 2010.**

By authority of the Director of the Bureau of Development Services

Decision mailed January 15, 2010

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 July 29, 2009, and was determined to be complete on September 10, 2009.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on July 29, 2009.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: February 9, 2010.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any

project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

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

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

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.**

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

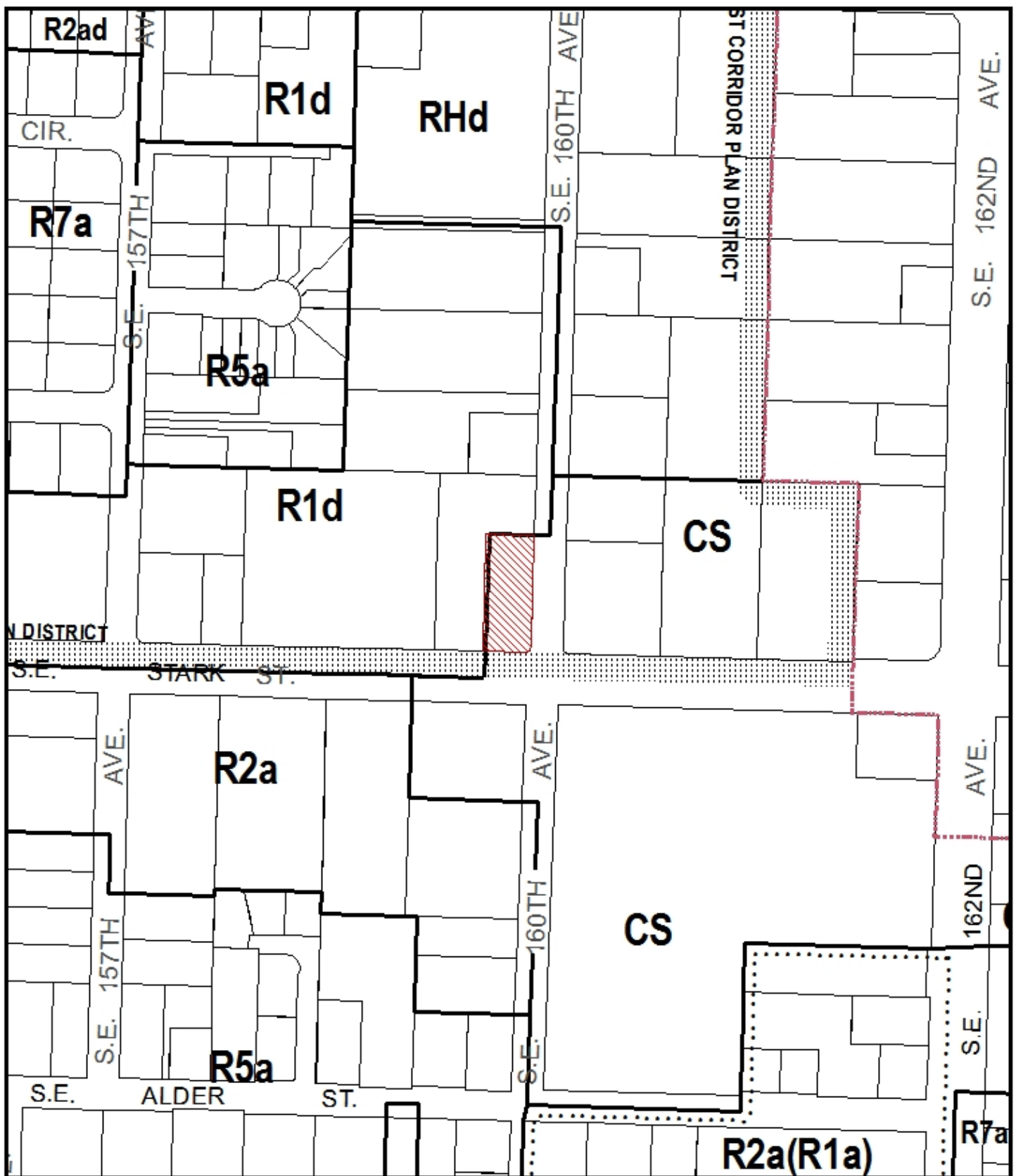
EXHIBITS

Not attached unless indicated

- A. Applicant’s Statement
 1. Response to Approval Criteria
 2. Plumbing Appeal 12/9/09 ID6749
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan
 2. Site Plan Existing Conditions
 3. September 3, 2009 Preliminary Plan, revised (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. Fire Bureau

5. Site Development Review Section of BDS
 - a. Review for Completeness Response
 - b. October 14, 2009 Land Use Response
 - c. December 9, 2009 Addendum
 6. Bureau of Parks, Forestry Division
 7. Life Safety Section of Bureau of Development Services
- F. Correspondence: None
- G. Other:
1. Original LU Application
 2. Site History Research
 3. Incomplete Letter
 4. LUR 98-00474 MP Decision
 5. LUR 98-00474 MP Notice of Final Plat Decision
 6. Partition Plat No. 2002-56

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING

 Site

File No. LU 09-147026 LDP

1/4 Section 3046,3146

Scale 1 inch = 200 feet

State_Id 1N2E36DD 3201

Exhibit B (Jul 29,2009)



NORTH

This site lies within the:
EAST CORRIDOR PLAN DISTRICT

