



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

FROM CONCEPT TO CONSTRUCTION

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Date: May 19, 2016
To: Interested Person
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NOTICE OF A REVISED TYPE II_x DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

This decision has been revised to correct the tree preservation plan. The original decision required preservation of Trees #1, 2 and 3 on Exhibit C.2. There was an error on the Tree Preservation Plan referencing Tree #3 as a preserved tree. The revised decision requires preservation of only Trees #1 and #2. This will still meet Tree Preservation Criteria. The findings, conditions and Exhibit C.2 have been updated to reflect this revision.

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 15-221358 LDP AD

GENERAL INFORMATION

Owner/Applicant: David C Coseo
6912 SE Yamhill St / Portland, OR 97215
(503) 348-4713

Site Address: 6912 SE Yamhill St

Legal Description: BLOCK X N 106' OF LOT 6, TABOR HTS
Tax Account No.: R818605710
State ID No.: 1S2E05BA 17600
Quarter Section: 3137

Neighborhood: Mt. Tabor, contact Stephanie Stewart at 503-230-9364.
Business District: Eighty-Second Ave of Roses Business Association, contact Richard Keily at 503-7504-2273.

District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010.
Zoning: R5- Single Dwelling Residential
Case Type: LDP AD- Land Division Partition with an Adjustment Review
Procedure: Type II_x, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant is proposing a two-parcel partition with an adjustment to side building setbacks. Parcel 1 will be 7,000 square feet and Parcel 2 will be 3,600 square feet. The existing home on the site will be retained on Parcel 1. The existing driveway and garage are proposed to be removed. There are four non-exempt trees on the site, three of which are proposed for preservation.

The requested setback adjustment is for the south side of the existing structure to be retained on Parcel 1. The setback is proposed to be reduced from 5 feet to a setback of 2 feet 8 inches to the house and 1 foot 8 inches to the eave.

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

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

Relevant Approval Criteria:

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

- Section 33.660.120, Approval Criteria for Land Divisions in Open Space, and Residential Zones
- Section 33.805.040.A-F, Adjustment Approval Criteria.

FACTS

Site and Vicinity: The subject site is a 10,600 square foot corner lot developed with an existing single dwelling residence which will remain on the site. The site slopes down from the southwest corner of the site to the northeast corner of the site, dropping by approximately 12 feet across the site. There are four non-exempt trees on the site. The vicinity is characterized by single dwelling development, but also includes Mt. Tabor Park, which is just south of the subject site. There are limited commercial uses at the intersection of SE 69th and Belmont, just north of the site. The neighborhood has a well-developed street grid providing good connectivity in the north-south and east-west directions.

Infrastructure:

- **Streets** – The site has approximately 100 feet of frontage on SE Yamhill Street and 106 feet of frontage on SE 69th Avenue. There is one driveway entering the site from SE 69th Avenue that serves the existing house on the site. At this location, SE Yamhill Street is classified as a Major Transit Priority Street, a City Walkway and a Local Service Street for all modes in the Transportation System Plan (TSP). SE 69th is classified as a Local Service Street for all modes. Tri-Met provides transit service adjacent to the site at the northeast corner of SE 69th and Yamhill via Bus #15.

SE Yamhill Street has a 30-foot curb to curb paved surface within a 50-foot right-of-way with parking on both sides. Along the 100-foot wide site frontage the pedestrian corridor includes a 3-foot wide planter area, curb, 6-foot sidewalk and a 1-foot wide buffer at the back of the sidewalk (3-6-1 configuration).

SE 69th Avenue has a 28-foot curb to curb paved surface within a 58-foot right-of-way with parking on both sides. Along the 106-foot wide site frontage the pedestrian corridor includes a 7-foot wide planter area, curb, 6-foot sidewalk and a 2 foot wide buffer at the back of the sidewalk (7-6-2 configuration).

- **Water Service** – There is an existing 6-inch CI water main in SE Yamhill Street and an 8-inch CI water main in SE 69th Avenue. The existing house is served by a 5/8-inch metered service from the 8-inch main in SE 69th Avenue.

- **Sanitary Service** - There is an existing 8-inch VSP public combination sewer line in SE Yamhill Street which ends just east of the subject site and an existing 8-inch VSP public combination sewer line in SE 69th Avenue.

- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property.

Zoning: The R5 designation is one of the City’s single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

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

Agency Review: Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits “E” contain the complete responses.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **November 24, 2015**. Four written responses have been received from the Neighborhood Association and notified property owners in response to the proposal. The following issues were brought up in the letters, with City of Portland response in *italics*:

- Concerns about on-street parking and impacts to transportation system from park traffic.
The applicant is required to address Transportation Impacts as part of the approval criteria for the proposed land division. The applicant submitted a professional transportation impact analysis which found that the proposed addition of a single new residence will not have a measurable impact on the availability of on-street parking or on traffic flow to and from Mt. Tabor Park. Transportation Impacts are addressed in greater detail later in this decision.
- Development will create visual blight and will not preserve the historic character of the neighborhood.
The land division approval criteria do not directly address the historic character of proposed development. While the adjustment criteria do look at neighborhood compatibility, the applicant was found to appropriately address the compatibility component of the adjustment review. Allowing one additional dwelling on a lot that meets minimum lot width standards was found to have minimal impacts on neighborhood compatibility. The adjustment request is addressed in greater detail later in this decision.
- Adjustment will not meet approval criteria for approval.
The full Adjustment approval criteria are addressed later in this decision.
- Concerns about stormwater management on the site and added use of the existing sanitary sewer system.
The Bureau of Environmental Services (BES) has carefully reviewed this proposal for impacts to the existing sanitary and stormwater sewer systems. As a result of this review, the applicant is required to extend the public combined sewer line in SE Yamhill in order to serve the needs of the existing house and serve the stormwater requirements of the proposed development. This meets the requirements of BES for service availability.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

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

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
I	33.639 - Solar Access	Maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 33.639).
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site outside of environmental zones.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required.
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	There are no pedestrian connections proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.

Applicable Approval Criteria are:

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

Findings: Chapter 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. The maximum density is one unit per 5,000 square feet. Minimum density is one unit per 5,000 square feet based on 80 percent of the site area. The site has a minimum required density of 1 unit and a maximum density of 2 units. The applicant is proposing 2 single dwelling parcels. The density standards are therefore met.

The lot dimensions required and proposed are shown in the following table:

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)
R5 Zone	3,000	8,500	36	50	30
Parcel 1	7,000		70	100	70
Parcel 2	3,600		36	100	36

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

The findings above show that the applicable density and lot dimension standards are met. Therefore, this criterion is met.

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

Findings: The regulations of Chapter 33.630 require that trees be considered early in the design process with the goal of preserving high value trees and, when necessary, mitigating for the loss of trees.

To satisfy these requirements, the applicant must provide a tree plan that demonstrates, to the greatest extent practicable, the trees to be preserved provide the greatest environmental and aesthetic benefits for the site and the surrounding area. The tree plan must also show that trees are suitable for preservation, considering the health and condition of the tree and development impacts anticipated. Tree preservation must be maximized, to the extent practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets. If the site is in an overlay zone that has additional environmental resource protection requirements, the tree plan must demonstrate that the benefits from trees are maximized for the site as a whole.

Trees that are healthy, native and non-nuisance species, 20 or more inches in diameter and in tree groves are the highest priority for preservation. Additional considerations include trees that are slower growing native species, buffering natural resources, preventing erosion and slope destabilization and limiting impacts on adjacent sites.

Some trees are exempt from the requirements of this chapter, if they are unhealthy, a nuisance species, within 10 feet of a building to remain on the site, within an existing right-of-way, or within an environmental zone.

In order to identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C.2) that shows the location and size of trees on the site. The applicant also provided an arborist report (Exhibit A.4) that identifies each tree, its condition and suitability for preservation or its exempt status, and specifies a root protection zone and tree protection measures for each tree to be preserved.

Based on this information, four trees, which provide a total of 88 inches of tree diameter, are subject to the preservation requirements of this chapter.

The trees proposed for preservation are in good condition and include native/non-nuisance species. The proposed root protection zones for the trees to be retained will allow for the type of development anticipated in the R5 zone and will not conflict with any existing utility easements, proposed services or site grading.

Specifically, the applicant proposed to retain all of the trees that are 20 or more inches and 70 inches of the total tree diameter. This proposal complies with:

Option 1: Preserve all of the trees that are 20 or more inches in diameter and at least 20 percent of the total tree diameter on the site.

Based on these factors, no additional mitigation is warranted to satisfy the approval criteria.

In order to ensure that future owners of the parcels are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions, at the time of final plat. The acknowledgement must identify that development on Parcel 1 must be carried out in conformance with the Tree Preservation Plan (Exhibit C.2) and the Arborist Report (Exhibit A.4).

With the implementation of the noted conditions, the approval criteria will be met.

At the time of development, the individual parcels must also meet the Title 11-Tree Code provisions, which require a specific amount of site area for tree planting based on the size of the property and the scale of the development. The trees to be retained as part of this review may be applied toward meeting those Title 11 requirements.

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

Findings:

Clearing and Grading

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 relatively steep but is not located within the Potential Landslide Hazard Area. A Geotechnical evaluation was submitted for the purposes of evaluating the placement of a stormwater facility proposed on Parcel 2. This report is addressed later in this decision.

The site is currently developed with an existing single-dwelling structure. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. In addition, all the trees proposed for preservation are located on Parcel 1, which will have no new development. This criterion is met.

Land Suitability

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 a condition requiring final inspection for a decommissioning permit, 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;

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

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

- A Private Storm Sewer Easement is required across the relevant portions of Parcel 1, for a storm sewer lateral connection that will serve Parcel 2.
- A No-Build Easement is required across the relevant portions of Parcels 1 and 2.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) 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 maintenance agreements are prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreements 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,

Findings: The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. The Development Review Section of the Portland Bureau of Transportation has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, and for potential impacts upon transportation services.

PBOT has provided the following findings (see Exhibit E.2):

The regulations of this Chapter allow the traffic impacts caused by dividing and developing land to be identified, evaluated, and mitigated if necessary. The following approval criterion applies to all land divisions in all zones: *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.* To address the approval criteria, the applicant submitted a professional analysis prepared by Nemariam Engineers & Associates, LLC.

Street Capacity and Level-of-Service

The project will result in a net addition of *one new single-family home*. Based upon trip generation estimates obtained from the Institute of Transportation Engineers (ITE) *Trip Generation Manual, 9th Edition*, the new home is projected to generate one additional trip during both the morning and evening peak hours (10 additional trips in total each day).

The applicant's traffic engineer conducted observational analysis of area intersections on Tuesday, March 1, 2016 during the evening peak hour. Based upon these field observations, the existing transportation system in the vicinity was determined to be operating at a Level-of-Service (LOS) A/B. ***The small number of trips that will be added into the transportation system as a result of the proposed development will not adversely impact the operations of area intersections.***

Availability of Transit Service/Facilities and Connections to Transit

There are existing transit facilities in the immediate vicinity and the nearest westbound bus stop (TriMet #15) is located at the northeast corner of SE 69th & SE Yamhill. The eastbound bus stop is located at the northwest corner of SE 69th & SE Yamhill. Typical headway for this bus line is 20 minutes during peak service time. Access to area bus stops is accommodated via existing sidewalks that meet City standards.

Safety for All Modes

The TIS included a review of the most recent available crash history (January 2010 - December 2014) obtained from ODOT's Crash Analysis and Reporting Unit. Based upon the collision data, no significant concerns were identified and no safety mitigations or necessary or recommended. There are also identified bike facilities (Portland Bike/Walk Map) in the area including SE Yamhill and SE 69th Ave which are both identified as Shared Roadways (lower traffic streets). Additionally, pedestrian circulation is accommodated within this area via an existing sidewalk system that meets/exceeds City standards.

On-Street Parking Impacts

To address this evaluation factor, the applicant's traffic engineer conducted an on-street parking survey to determine existing supply/demand in the vicinity of the site. After consult with PBOT staff, the following roadway segments were included in the study area:

- SE Yamhill Street between SE 68th Avenue and SE 69th Avenue.
- SE Yamhill Street between SE 69th Avenue and SE 70th Avenue.
- SE Yamhill Street between SE 70th Avenue and SE 71th Avenue.
- SE 69th Avenue between SE Belmont Street and SE Yamhill Street.
- SE 69th Avenue between SE Yamhill Street and Mt. Tabor Park Entrance.

Within residential areas such as this, PBOT directs applicants to survey the demand for on-street parking during the ***overnight residential peak period***. Accordingly, the study area was surveyed on Tuesday March, 15, 2016 at 11pm and on Wednesday, March 16, 2016 at 7:00am and 7:00pm. While not typically required within a residential neighborhood such as this, the applicant also observed parking conditions on Saturday, March 19, 2016 at 1:00pm to get a complete understanding of parking operations in the vicinity of Mt Tabor Park and in response to concerns expressed by area residents.

Within the study area, the parking study determined that there is a total on-street parking supply of 65 spaces. During the evening peak period the maximum parking occupancy within the study area was 32% or 21 vehicles. However, the analysis concluded that the demand for on-street parking during the weekend survey period (1:00pm) within the segment of SE 69th between SE Belmont and SE Yamhill reach 100%. This reflects the ***existing demand*** for on-street parking generated by Mt. Tabor Park.

As indicated by the applicant, the new lot will have sufficient space to accommodate two on-site parking spaces. Additionally, given that the existing driveway on SE 69th is proposed to remain, with some modification, the supply of on-street parking spaces within the study area will not be reduced as a result of the proposed development. Based upon data from the manual *Parking Generation, Fourth Edition*, published by the Institute of Transportation Engineers (ITE), the proposed development is estimated to result in the demand for 2 on-street parking spaces.

Based upon the results of the parking survey, there is a sufficient supply of on-street parking during the residential peak period to accommodate the addition demand generated by the proposed development of one new home.

While staff acknowledges that there is a significant increase in demand for on-street parking on SE 69th during the park peak hours, this is an existing condition due to the area's proximity to Mt. Tabor Park, not a result of residential demand for on-street parking. The neighborhood may elect to contact PBOT's Parking Control Section to explore permit parking options and/or options for limiting the duration of parking (i.e. 2 hours maximums) during times of peak park demand.

PBOT has reviewed and concurs with the information supplied and the methodology, assumptions and conclusions made by the applicant's traffic consultant. No mitigation is necessary for the transportation system to be capable of safely supporting the proposed development in addition to the existing uses in the area. These criteria are met.

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 criteria and standards are met as shown in the following table:

33.651 Water Service standard – See Exhibit E.3 for detailed bureau comments.

The Water Bureau has indicated that service is available to the site, as noted on page 2 of this report.

As a result of the proposed land division, the water line that provides service to the existing home on Parcel 1 will no longer be located entirely on the same lot as the home. Title 21 requires that the water service connection be located along the frontage of the lot to be served. Water service connections are not allowed by means of an easement. Therefore, prior to final plat, the water service for the existing home must be relocated, so that the service connection will be located along the frontage of Parcel 1. With this condition, the water service standards of 33.651 have been verified.

33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1 for detailed comments.

The Bureau of Environmental Services has indicated that service is currently available to the site, as noted on page 2 of this report.

The existing sanitary lateral serving the existing home is in front of Parcel 2, connecting to the sanitary main in SE 69th Avenue. A new sanitary connection to the sewer in SE 69th will not be allowed due to a potential for additional sewer back-up. Connection to the sewer in SE Yamhill for the existing house on Parcel 1 is proposed. The existing lateral will be used for the new home on Parcel 2.

The sewer in SE 69th is not directly available to Parcel 1. The nearest available sewer is located in SE Yamhill, approximately 40 feet from the site. The applicant must obtain a public works permit to extend the public sewer to this site prior to final plat approval.

In addition, the applicant must obtain a plumbing permit to cap the existing sewer connection to the sewer in SE 69th Avenue and establish a new service for the existing house to the new sewer in SE Yamhill. The sanitary sewer service standards of 33.652 have been verified.

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

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

The applicant has proposed the following stormwater management methods

- **Lots 1 and 2:** Stormwater from these lots will be directed into flow-through planters that remove pollutants and suspended solids. The water will drain from the planters to the new storm sewer extension in SE Yamhill Street. Each lot has sufficient size for individual planter boxes, and the Bureau of Environmental Services has indicated that the treated water can be directed to the extended combination sewer in SE Yamhill Street at the frontage of the site. Prior to final plat, legal access through an easement must be provided across Parcel 1 for the benefit of Parcel 2 in order to provide a feasible stormwater discharge point. Prior to final plat approval, a new flow-through planter is required to be constructed on Parcel 1 with a connection to the new sewer in SE Yamhill to the satisfaction of BES. Any required plumbing permits must have final inspection approval. With these conditions, these criteria are met.

33.654.120.B & C Width & elements of the right-of-way – See Exhibit E.2 for bureau comment

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 one additional dwelling can be safely served by this existing street without having any significant impact on the level of service provided. This criterion is met.

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

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

APPROVAL CRITERIA FOR ADJUSTMENT REVIEW

One Adjustment has been proposed to reduce the minimum building setback for the existing house on Parcel 1 from 5 feet to a setback of 2 feet 8 inches to the house and 1 foot 8 inches to the eave. The purpose of the adjustment is to retain the existing home on Parcel 1 while allowing Parcel 2 to meet lot width requirements for the R5 zone.

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., below, have been met.

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

Setbacks

Findings: Chapter 33.110 contains the setback standards for approval of a Preliminary Plan for a Land Division in the RF through R5 zones. These 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.

The purpose of the Setback Standards 33.110.220.A in single-dwelling zones is as follows:

33.110.220 Setbacks

Purpose. The setback regulations for buildings and garage entrances serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the city's neighborhoods;*
- *They promote a reasonable physical relationship between residences*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

The proposed reduction in the side building setback is necessary in order to retain an existing house on Parcel 1 and to meet lot width standards within the R5 zone on Parcel 2. The applicant was required to obtain a building code appeal to allow the existing structure to be less than 3 feet from the new property line proposed between Parcels 1 and 2. The building code appeal requires a no-build easement to be provided in order to preserve a minimum 6-foot separation between structures.

The proposal will maintain light, air, and separation for fire protection by maintaining a structural separation of 6 feet. Direct access for fire-fighting will be maintained from SE Yamhill Street and SE 69th Avenue. The applicant will be required to meet all necessary building code regulations during the permitting process for the new home on Parcel 2.

Allowing the setback reduction will not be out of scale with existing surrounding development. The surrounding area is a relatively dense single-dwelling zone, with homes that are generally

located at a 5 foot setback from property lines. The 7-foot 8-inch separation between the structures will not appear to be substantially out of scale with surrounding development. Additionally, the required 6-foot separation between structures will maintain a reasonable relationship between residences. Privacy will be maintained between the two homes through existing and added landscaping. The new structure on Parcel 2 will maintain the 10-foot front setback which will continue to provide an open, visually pleasing front yard.

Allowing the setback reduction will allow for Parcel 2 to be 36-feet wide, which will provide greater flexibility to site a building that is more compatible with the neighborhood. The Mt. Tabor neighborhood contains a wide variety of existing housing styles from tall and narrow Queen Anne homes to ranch style homes built in the 1960s, as well as more modern architecture. Because there is no single unifying style of housing in the surrounding area, this purpose can be met with a wide variety of housing types.

The new home will be required to meet garage entrance setbacks or provide a legal parking space outside of the front setback. There will be adequate room provided to park a car in front of the garage without encroaching into the sidewalk.

This criterion is met.

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

Findings: The existing house on the site will be retained and the new parcel will be developed with a single dwelling home in compliance with the existing R5 zoning surrounding the site. Allowing the adjustment will not significantly detract from the livability or appearance of the surrounding area primarily because the adjustment allows the lot width of Parcel 2 to be 36 feet wide and avoid narrow lot development. Development on Parcel 2 will be required to meet base zone design standards which will limit the potential for the new home to be substantially out of scale with surrounding development. Any new structure proposed for the site will be required to meet all other setback, height and building coverage limitations. Additionally, the large building setbacks on Parcel 1 will be maintained on three sides of the existing house. Also, retaining the house in its current configuration will maintain the character of the neighborhood. This criterion 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; and

Findings: Only one adjustment is being requested. This criterion does not apply.

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

Findings: There are no city-designated scenic resources or historic resources on the site. This criterion does not apply.

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

Findings: The impact of the adjustment will be mitigated by the requirement to provide a 6-foot no-build easement between the existing and new structures. This will limit the discernible impact of allowing the decreased setback and will help maintain the visual character of the neighborhood. This criterion is met.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable; or

Findings: This site is not located within an environmental zone. This criterion does not apply.

DEVELOPMENT STANDARDS

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.

Future Development

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

Existing development that will remain after the land division. The existing development on the site will remain and be located on Parcel 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R5 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (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, except for the adjustment to the side building setback addressed above. The adjusted side building setback must comply with the Adjustment Approval described in this review. The existing house will be 2 feet 8 inches from the new property line and the eave will be 1 foot 8 inches from the property line. This has been allowed through an adjustment review. The rear staircase will be removed per the requirements of the Building Code Appeal (Exhibit A.6). To ensure this standard continues to be met as adjusted 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 and any accessory structures on the site.
- Required Off-Street Parking - A garage provides parking for the existing house on Parcel 1. 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 Parcel 1. 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 adjacent to the site via bus number 15. Bus number 15 provides peak-hour service meeting this requirement. As a result, no replacement parking is required for Parcel 1.

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 and Topic
Development Services/503-823-7300	Title 24 – Building Code, Flood plain

www.portlandonline.com/bds	Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 www.portlandonline.com/bes	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 www.portlandonline.com/fire	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 www.portlandonline.com/transportation	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 www.portlandonline.com/parks	Title 11 –Trees
Water Bureau/503-823-7404 www.portlandonline.com/water	Title 21 – Water availability

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; ensuring adequate hydrant flow from the nearest fire hydrant or obtaining an approved Fire Bureau appeal to this requirement; and fire apparatus access, including aerial access. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- The applicant must meet the requirements of Urban Forestry for street tree planting in the existing planter strip adjacent to Parcel 1 in SE 69th Avenue prior to final plat approval. Requirements of Urban Forestry for street tree planting in the planting strip adjacent to Parcel 2 must be met at the time of development. These requirements are based on the standards of Title 11.

CONCLUSIONS

The applicant has proposed a 2 parcel partition, as shown on the attached preliminary plan (Exhibit C.2). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: tree preservation, sanitary and stormwater sewer access and a setback adjustment.

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

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce a side building setback on Parcel 1 from 5 feet to 2 feet 8 inches to the building wall and 1 foot 8 inches to the eave.

Approval of a Preliminary Plan for a 2-parcel partition, that will result in two standard lots as illustrated with Exhibit C.2, subject to the following conditions:

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

- Any buildings or accessory structures on the site at the time of the final plat application, including eaves and accessory structures;
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. A private storm sewer easement, for the benefit of Parcel 2, shall be shown and labeled over the relevant portions of Parcel 1.
2. A no-build easement over the relevant portions of Parcel 1 and 2.

3. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.8 below. The recording block(s) shall, at a minimum, include language 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."

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

Utilities

1. The applicant shall meet the requirements of the Bureau of Environmental Services (BES) for extending a public sewer main in SE Yamhill Street. The public sewer extension requires a Public Works Permit, which must be initiated and at a stage acceptable to BES prior to final plat approval. As part of the Public Works Permit, the applicant must provide engineered designs, and performance guarantees for the sewer extension to BES prior to final plat approval.
2. The applicant shall obtain and have finalized plumbing permits for capping the existing sanitary lateral connection to the house on Parcel 1 and providing a new lateral connection serving Parcel 1 from the new sanitary sewer main in SE Yamhill Street.
3. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning the septic system on the site.
4. The applicant shall meet the requirements of the Water Bureau concerning relocation of the water service connection to the existing home to remain on Parcel 1.
5. The applicant must meet the requirements of BES for the stormwater systems on the existing house to remain on Parcel 1. Plumbing permits must be obtained and finalized to install a new stormwater facility (planter) with a connection to the new combined sewer in SE Yamhill Street.
6. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.

Existing Development

7. The applicant must plant up to 4 street trees in the planter strip on SE 69th Street adjacent to parcel 1. Street trees will be chosen from the City's approved street tree list for the 7- foot planting strip. 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

8. A Maintenance Agreement shall be executed for the Private Storm Sewer Easement described in Condition B.1 above.
9. A Maintenance Agreement shall be executed for the No-Build Easement described in Condition B.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.

10. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcel 1. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

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

1. Development on Parcel 1 shall be in conformance with the Tree Preservation Plan (Exhibit C.2) and the applicant's arborist report (Exhibit A.4). Specifically, trees numbered 1 and 2 are required to be preserved, with the root protection zones indicated on Exhibit C.2. Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. 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/her supervision.
2. The applicant must meet the Fire Bureau requirements for addressing and aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height from the fire access as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.

Staff Planner: Leah Dawkins

Decision rendered by: Leah M. Dawkins **on May 3, 2016**

By authority of the Director of the Bureau of Development Services

Decision mailed (within 5 days of dec. date) May 6, 2016

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 August 20, 2015, and was determined to be complete on November 18, 2015.

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 August 20, 2015.

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 by 120 days (Exhibit A.1). Unless further extended by the applicant, **the 120 days will expire on: July 15, 2016.**

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 June 2, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 2:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 2:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7617 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283 or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the 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 City Planning Director, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City’s approval of the preliminary plan.**

Recording other land use decisions. If the preliminary land division approval also contains approval of other land use decisions (examples include adjustments, conditional uses, and environmental reviews), these other approvals must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

The applicant, builder, or their representative may record the final decisions on these other land use decisions as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless:

- A building permit has been issued, or
- The approved activity has begun, or
- In situations involving only the creation of lots, the land division has been recorded.

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

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

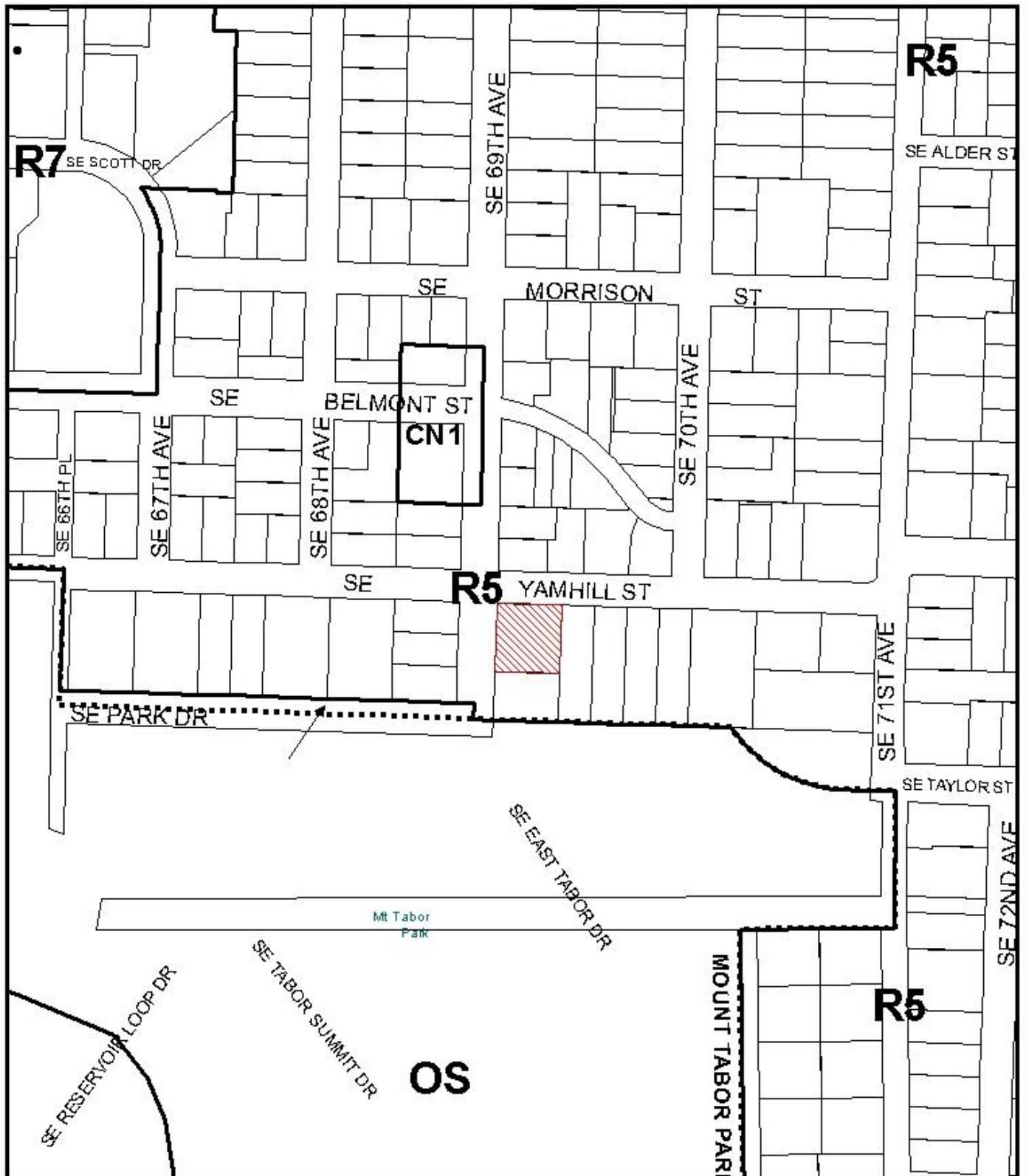
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. 120-Day Timeline Extension Request
 2. Applicant Narrative
 3. Adjustment Narrative
 4. Arborist Report
 5. Simplified Approach Form
 6. Building Code Appeal
 7. Neighborhood Notification and Notes
 8. Geotechnical Evaluation
 9. Revised Geotechnical Evaluation
 10. Original Site Plans
 11. Revised Site Plan- 11/18/16
 12. Revised Site Plan- 4/25/16
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Existing Conditions
 2. Site Plan (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services

2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of BDS
 6. Bureau of Parks, Forestry Division
 7. Life Safety
- F. Correspondence:
1. Carol Sloan, 12/24/15, parking and approvability of application
 2. Jeffery and Amy Benjamin, 12/22/16, concerns about transportation impacts and livability
 3. Kevin Robinson, 12/17/15, concerns about sewer service availability
 4. Mt. Tabor Neighborhood Association, 12/18/16, concerns about stormwater and transportation impacts.
- G. Other:
1. Original LU Application
 2. Incompleteness Letter

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



ZONING

-  Site
-  Historic Landmark



File No. LU 15-221358 LDP AD
 1/4 Section 3137
 Scale 1 inch = 200 feet
 State_Id 1S2E05BA 17600
 Exhibit B (Aug 25, 2015)

