



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Ted Wheeler, Mayor
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: September 20, 2018
To: Interested Person
From: Brandon Rogers, Land Use Services
503-823-7597 / Brandon.Rogers@portlandoregon.gov

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

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 18-144155 LDP AD

Applicant: Michael Manwell, Michael Manwell Land Surveying
2847 SE 18th Circle, Gresham, OR 97030
mmanpls@aol.com / 503-830-8593

Owner: John M Goodwin
15390 SW 82nd Pl, Portland, OR 97224-7502
503-780-8714

Site Address: 6133 SE Tenino St
Legal Description: BLOCK 20 LOT 8 EXC S 100' OF W 49.5' & EXC N 60', DARLINGTON
Tax Account No.: R197905200
State ID No.: 1S2E19DD 00200
Quarter Section: 3836
Neighborhood: Brentwood-Darlington, contact bdlanduse@gmail.com.
Business District: Woodstock Community Business Association, contact norberg@myexcel.com.

District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010.
Zoning: Residential 5,000 (R5) with the "a" Alternative Design Density overlay zone.

Case Type: Land Division Partition (LDP) and Adjustment (AD).
Procedure: Type Iix, an administrative decision with appeal to the Hearings Officer.

Proposal: The applicant proposes a two-parcel partition of a 11,551 square foot site into two parcels for single dwelling development. Parcel 1 is proposed to be 3,000 square feet and will contain the existing house which is proposed to remain. Parcel 2 is proposed to be an 8,400 square-foot flag lot for development of a detached, single family residence. The site contains trees subject to the tree preservation standards of Title 33. Stormwater is proposed to be managed with on-site drywells. Sanitary sewer service and water service are proposed from the existing utilities located in SE Tenino Street. Shared driveway access is proposed from a single driveway approach connecting to SE Tenino Street. The existing, detached accessory structure on the site is proposed to be removed.

An Adjustment is proposed to reduce the interior building setbacks for the existing house to remain from the proposed new lot line. The R5 zone requires a minimum side building setback

of 5-feet, which is allowed to be reduced to 3-feet (2-feet for eaves) when adjacent to a flag pole lot line, per paragraph 33.110.220.D.2. The proposed Adjustment request is to allow the side building setback adjacent to the flag pole lot line to be reduced from the minimum of 3-feet to 2.50 feet from the wall of the building and 1.5-feet from 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 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 found in **Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones and Section 33.805, Adjustments**.

FACTS

Site and Vicinity: The site is developed with a single-family residence which is proposed to remain, and a detached accessory structure which is proposed to be removed. Topography at the site is level. The surrounding neighborhood is comprised of a variety of lot size and shape configurations with a mix of street patterns and block configurations. The neighborhood is developed primarily with single and multi-family dwellings. An adjacent lot of record to the north of the site (8057 SE 62ND AVE) shares the existing driveway through the project site, but is not part of the proposed partition.

Infrastructure:

- **Streets** – The site has approximately 50 feet of frontage on SE Tenino Street, which is improved with a 28-ft paved roadway and no sidewalk corridor, in a 50-ft ROW. There is one driveway entering the site that serves both the existing house on the site and a 6,003 square-foot parcel (8057 SE 62nd Avenue) under the same ownership, which is not part of the proposed land division site. At this location, SE Tenino Street is classified as a Local Service Street for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 1,300 feet north of the site at SE Flavel Street via Bus 71.
- **Water Service** – There is an existing 4-inch water main in SE Tenino Street. The existing house is served by a 5/8-inch metered service from this main.
- **Sanitary Service** - There is an existing 8-inch public sanitary sewer line in SE Tenino Street.
- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property.

Zoning: Residential 5,000 (R5) with the “a” Alternative Design Density overlay zone. 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. The “a” overlay is intended to allow increased density that meets design compatibility requirements. It fosters owner-occupancy, focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This land division is not using any provisions of the “a” overlay.

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 **July 20, 2018**. No written responses have been received from the Brentwood-Darlington Neighborhood Association or the Southeast Uplift Neighborhood Coalition. One comment was received from a notified property owner in response to the proposal.

Staff Response: Issues raised in the neighbor’s letter include access, the removal of buildings on the site, tree removal and street improvements. Driveway access is shared for Parcel 1 and Parcel 2 and is located at the east property line, as depicted on Exhibit C.2. The existing house will remain, and all other buildings on the site are proposed to be removed. Tree preservation is discussed below in Criterion B, *Trees*. The site contains one tree subject to the tree preservation requirements of Chapter 33.630, which is proposed to be preserved and protected at the site. Street improvements are described below in Criteria K *Transportation Impacts* and L *Services and Utilities*, below. The applicant is proposing to pay the Local Transportation Infrastructure Charge (LTIC) in lieu of constructing street frontage improvements.

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	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, Seeps and Wetlands	No streams, springs, seeps or wetlands are evident on the site.
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. Based on the applicant's survey, the site area is 11,551 square feet in area. The maximum density in the R5 zone is calculated at one unit per 5,000 square feet. Minimum density is calculated at one unit per 5,000 square feet based on 80 percent of the site area.

Based on this information, the site has a maximum density of two units and a minimum required density of two units. Because the minimum required density is equal to the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum. Therefore, in this case the minimum density is reduced to one unit. The applicant is proposing two single dwelling lots. The density standards are therefore met. The required and proposed lot dimensions 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)	Min. Flag Lot Width ** (feet)	Min. Flag Lot Depth ** (feet)
R5 Zone	3,000	8,500	36	50	30	40	40
Parcel 1 (standard lot)	3,000		38.66	77	38.66	N/A	N/A
Parcel 2 (flag lot)	7,464 ** (without pole)		N/A	N/A	Exempt 33.610.40 O.E.1	101	89

* 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.

** For flag lots: (1) width and depth are measured at the midpoint of the opposite lot lines in the "flag" portion of the lot; and (2) lot area calculations do not include the pole portion of the lot.

Flag Lots

When allowed

In this case the applicant is proposing two parcels, only one of which is a flag lot. The existing dwelling unit has been located on the property for at least 5-years and is located so that it precludes a land division that meets minimum lot width standards. The minimum density standards are met. Therefore, the thresholds for when a flag lot is allowed to be created have been met.

Dimensions

The proposed flag lot meets applicable Zoning Code standards found in 33.610.400 because it has a "pole" portion that is at least 12 feet wide and that connects to a street, and as shown above, meets the minimum lot area, width and depth standards.

Vehicle Access

Where it is practical, vehicle access must be shared between the flag lot and the lots between the flag portion of the lot and the street. Factors that may be considered include the location of existing garages, driveways, and curb cuts, stormwater management needs, and tree preservation. Access easements may be used.

In this case, the pole portion of Parcel 2 is proposed to provide vehicle access for both Parcel 1 and Parcel 2. The shared vehicle access minimizes the need for additional curb-cuts along the street and the impervious area resulting from paved surfaces for vehicle access. In addition, to ensure shared access is continued in the future, a condition is necessary stating that access to Parcel 1 must be via the easement on Parcel 2.

Parcel 2 has met the thresholds for when a flag lot is allowed. Therefore, Parcel 2 is allowed. 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.

Trees that are healthy, native and non-nuisance species, 20 or more inches in diameter and located 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 (dead, dangerous, dying), a nuisance species, located within 10 feet of a building to remain on the site, located within an existing right-of-way, or within an environmental zone.

To identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C.2) illustrating the surveyed location and size of trees located on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.3) that identifies each tree, its condition and suitability for preservation or its exempt status. The report specifies a root protection zone and tree protection measures for each tree to be preserved.

The arborist report states that the site contains three on-site trees; Tree #1 a 37-inch diameter black locust; Tree #2, a 7-inch diameter flowering dogwood; Tree #6, a 20-inch diameter sweet cherry. Trees #1 and 6 are exempt because they are identified as nuisance species by the Portland Plant List. Tree #2, the 7-inch diameter flowering dogwood, is proposed to be preserved. Based on this information, one tree, which provides a total of 7-inches of tree diameter is subject to the preservation requirements of this chapter.

The tree proposed for preservation is in good condition, is a non-nuisance species, and none of the trees at the site are 20 or more inches in diameter. The proposed root protection zone for the tree 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. The applicant's proposal complies with the following tree preservation option:

Option 4: All the trees are less than 20 inches in diameter and the applicant proposes to retain 7-inches of tree diameter, which is equivalent to 100 percent of the total tree diameter, so the proposal complies with Option 4.

In addition, the applicant's arborist report has also identified two trees located on an adjacent site (6055 SE TENINO ST) that are located within 15-feet of potential disturbance areas on the proposed lots. To protect these off-site trees from construction impacts, the arborist recommends 16-foot and 14-foot Root Protection Zones (RPZ), which is reflected on the tree preservation plan. Only the portion of the RPZs located on the project site is required to be fenced at the time of development of Parcel 2.

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 Parcels 1 and 2 must be carried out in conformance with the Tree Preservation Plan (Exhibit C.2) and the Arborist Report (Exhibit A.3).

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 tree to be retained on Parcel 2 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, topography of the site is primarily level and the site is not located within a floodplain or a Potential Landslide Hazard Area. No significant clearing or grading will be required on the site to make the new lots developable. In addition, the tree proposed for preservation is located outside of any areas proposed for 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 cesspool 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. A Private Access Easement is required over the flag pole of Parcel 2 to provide a shared access serving Parcels 1 and 2.

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 with a recording block substantially similar to the following example:

“A Declaration of Maintenance agreement for a private access easement 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. 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. Mitigation may be necessary to reduce impacts.

The Development Review Section of the Portland Bureau of Transportation (PBOT) has reviewed the application against the evaluation factors and has provided the following findings (see Exhibit E.2):

The applicant proposes to divide one parcel into two parcels on which one single-family home currently exists. One new single-family dwelling will be constructed on the new parcel, thereby increasing the total number of dwellings on the parcels by one. According the ITE Trip Generation Manual, 9th Edition, one new single-family dwelling is expected to generate nearly ten trips per day, including one additional trip during the morning peak hour and one additional trips during the evening peak hour. The proposed development is therefore not expected to significantly impact street capacity or level-of-service. The applicant proposes to provide access to the two homes via a single shared driveway, thereby retaining on-street parking, and a parking space is proposed on Parcel 1. Additionally, the shared driveway is 12-ft in width, thereby minimizing impacts to on-street parking. The surrounding street network is gridded and provides sidewalk corridors with furnishing zones. Existing right of ways in the area are low-volume and provide sufficient pedestrian and bicycle access. The proposed development is expected to result in relatively few impacts on the transportation system, and few negative impacts on immediate and adjacent neighborhoods.

PBOT has reviewed and concurs with the information supplied and available evidence. 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.

While limited, PBOT has indicated that there will be additional traffic and parking demands as a result of this project. The parking impacts will be minimized by providing on-site parking and a shared driveway as discussed above. In addition, as discussed in more detail in the findings for Criterion L, Services and Utilities, the applicant will provide a 3-foot right-of-way dedication along the frontage of the site. This will allow standard street improvements to be made in the future to address cumulative transportation impacts of additional development on this street and in the surrounding area. Further, waivers of remonstrance for future street improvements are required, which will obligate future owners of the land division site to participate in the event a local improvement district (LID) is organized to fund a larger collective improvement project along SE Tenino Street. The future residents of the land division site will benefit from future improvements by having improved facilities for walking, cycling, and driving.

With conditions for street dedication, waivers and a shared driveway serving the lots, the transportation system is capable of 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:

<p>33.651 Water Service standard – See Exhibit E.3 for detailed bureau comments.</p>
<p>The Water Bureau has indicated that service is available to the site, as noted on page 2 of this report. The water service standards of 33.651 have been verified.</p>
<p>33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1 for detailed comments.</p>
<p>The Bureau of Environmental Services 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 existing sewer connection that serves the house on Parcel 1 will be located within the frontage of Parcel 2, which is not permitted. The applicant must cap the existing sewer connection and establish a new service for the house located entirely on Parcel 1. All required plumbing permits must receive final inspection approval prior to Final Plat approval. With this condition, the sanitary sewer service standards of 33.652 are verified.</p>
<p>33.653.020 & .030 Stormwater Management criteria and standards – See Exhibits E.1</p>
<p>No stormwater tract is proposed or required. Therefore, criterion A is not applicable. The applicant has proposed the following stormwater management methods: Stormwater from existing development on Parcel 1 is provided by downspouts meeting setback requirements of the Stormwater Management Manual. Stormwater from proposed development on Parcel 2 will be directed to a drywell that will treat the water and slowly infiltrate it into the ground. Parcel 2 has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards and accommodate water from a reasonably-sized home. BES has indicated conceptual approval of the drywell. The stormwater criteria and standards are met.</p>
<p>33.654.110.B.1 Through streets and pedestrian connections</p>
<p>Generally, through streets should be provided no more than 530 feet apart and pedestrian connections should be provided no more than 330 feet apart. Through streets and pedestrian connections should generally be at least 200 feet apart.</p>
<p>The dimensions of the block on which the subject property is located are approximately 600 feet by 450 feet, which does not meet the noted spacing requirements. The site does not contain sufficient width to allow the creation of a public north-south through street, and it is located too close to the intersection of SE 62nd Avenue (approximately 100-feet) and therefore is not an optimal location for a north-south connection. The properties adjacent to the portion of the site where the street would terminate are already developed, and not configured in a manner that would easily allow the further extension of a street from the site. In addition, the site is not within an area that has an adopted Master Street Plan, so criterion d. does not apply. For the reasons described above, this criterion is met.</p>
<p>33.654.120.B, C & H Width & elements of the right-of-way and Street Tree Standards – See Exhibits E.2 & E.6</p>
<p>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. At this location, SE Tenino is improved with a 28-ft paved roadway and no sidewalk corridor, within a 50-ft right of way. Portland’s public right-of-way standards document, “Creating Public Streets,” recommends a 26-ft paved roadway and a 15-ft sidewalk corridor, to consist of a 0.5-ft curb, 8-ft stormwater facility, 6-ft sidewalk, and 0.5-ft frontage zone. In order to construct these improvements, a 3-foot dedication is required. In this case, the applicant has elected to pay the Local Transportation Infrastructure Charge (LTIC) in lieu of constructing improvements that would otherwise be required by PBOT technical standards for elements in the right-of-way. To ensure this requirement is met prior to final plat approval, a condition of approval is necessary. As described under Criterion K above, a dedication to increase the width of the right-of-way is required as a condition of the land division to ensure that improvements can be made in the future to address increased demand for transportation facilities over time.</p>

The Urban Forestry section of Portland Parks has commented (Exhibit E.6) that prior to the land division, the site provides adequate spacing for 2 street trees. After the proposed land division, adequate spacing is reduced to 1 tree because 1 street tree is required to be planted for every 25 linear feet of frontage. Therefore, a fee of \$487.50 (1 tree x 1.5" required size x \$325.00 per inch) is required to be paid for the permanent loss of the available street tree planting space.

With conditions for dedication and LTIC payment, 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 ADJUSTMENTS

33.805.010 Purpose

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

The approval criteria for signs are stated in Title 32. All other 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

Findings: The regulation to be modified is found at Section 33.110.220 *Setbacks*. Paragraph 33.110.220.D.2 allows the lot in front of a flag lot a reduced side building setback along the flag pole lot line from 5-feet to 3-feet. The applicant proposes to reduce this setback to 2.50 feet from the building wall, with the eave located 1.5 feet from the flag pole lot line.

The purpose statement for setbacks is found at Subsection 33.110.220.A and states:

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 applicant has provided a narrative (Exhibit A.1) addressing elements of the purpose statement for setbacks. The narrative states that the existing residence will be located 14.5-feet from the furthest lot line of the flag lot pole, which ensures separation, light and privacy between residences as well as emergency vehicle access. The site is currently developed with a driveway in the proposed location of the shared driveway access.

- 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 site is located within a residential zone. The applicant's narrative states that a driveway exists in the location of the proposed flag lot pole area, so the proposal would not significantly detract from the livability or appearance of the residential area.

- 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: One adjustment is requested. Therefore, this criterion does not apply.

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

Findings: The site does not contain any City-designated scenic or historic resources. Therefore, this criterion does not apply.

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

Findings: Oregon Residential Specialty Code 302.1 requires that buildings located closer than 3-feet from property lines must be of fire rated construction with no openings and that eaves on habitable structures may be located no closer than 24-inches to a property line. Therefore, prior to approval of the Final Plat, the applicant will be required to obtain a building permit with an approved final inspection to alter the existing residence to meet the requirements of the Life Safety section of BDS (Exhibit E.7), or to utilize a "No-Build" easement and an approved building code appeal. With a condition of approval requiring compliance with the Life Safety standards prior to approval of the final plat, 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;

Findings: The site is not located within an environmental zone, therefore, 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. Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 11 can be met, and those 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.

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

- Flag Lots-- special setback standards apply to flag lots in the RF-R2.5 zone, and special landscape standards apply to flag lots that are 10,000 square feet or less in area in the R7-R2.5 zones (33.110.240.F). These standards apply to Parcel 2 at the time of development.

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 Section 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 several 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. An Adjustment is proposed concurrently with the proposed land division, which approves an alternative setback for the house to remain. The existing house will be located 2.51 feet from the new eastern property line, in conformance with the Adjustment approved under this review and 15.7 feet from the north property line. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental plan showing the surveyed location of the existing building relative to the adjacent new lot lines.
- Accessory Structures – In this zone, accessory structures are not allowed on a lot without a primary structure. Therefore, for the proposed new lots to meet this standard, all accessory structures on Parcel 2 must be removed prior to approval of the final plat. The applicant must provide documentation prior to final plat approval that the required demolition permits have received final inspection approval. For structures less than 200 square feet in size, a demolition permit is not required. The applicant must submit before and after photos to document removal of the structure.
- Required Off-Street Parking – In this zone, one parking space per dwelling unit is required. A paved parking pad and garage provides this required parking for the existing house on Parcel 1. As a result of this land division, the required parking space for the existing house will be located on a different lot. In order to ensure that parking requirements continue to be met, a new parking space for the existing house must be constructed on Parcel 1 prior to final plat approval. Permits must be obtained to construct a new parking space. Documentation of final inspection of this new parking space will be required prior to final plat approval.
- Title 11 Tree Density Standard – This site has a minimum tree density requirement per Section 11.50.050 that is currently met on the site. Due to the land division, Parcel 1 with existing house will no longer meet this standard. Parcel 1 is 3,000 square feet in area, therefore 1,200 square feet of tree area is required. Prior to final plat approval, the applicant must meet this requirement by either planting trees on Parcel 1 or making the equivalent payment into the City Tree Preservation and Planting Fund. Tree planting must be documented with a finalized Zoning Permit.

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 www.portlandonline.com/bds	Title 24 – Building Code, Flood plain 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 regard to: addressing requirements; ensuring adequate hydrant flow from the nearest fire hydrant or obtaining an approved Fire Bureau appeal to this requirement; 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 the Life Safety section of BDS regarding eaves and exterior wall protection for the reduced setback for the existing house to remain (See Exhibit E.7).
- The applicant must meet the requirements of PBOT for right-of-way dedication, the Local Transportation Infrastructure Charge (LTIC), and waivers of remonstrance, which are based on the technical standards of Title 17 and the Administrative Rule 1.26 for LTIC.

CONCLUSIONS

The applicant has proposed a two-parcel partition as shown on the attached preliminary plan (Exhibit C.2) and an Adjustment to the setback requirements for the existing house to remain. 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: building setbacks and building code standards for the existing house to remain, tree preservation, relocation of the sanitary sewer service lateral for the existing house to remain, providing replacement parking for the existing house, removal of the accessory structures on Parcel 2. With conditions of approval that address these requirements this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to the required side setbacks for the existing house to remain on Parcel 1 adjacent to the flag pole portion of Parcel 2, from a minimum of 3-feet to 2.50 feet, 1.5-foot for the eaves, as shown on Exhibit C.2, and;

Approval of a Preliminary Plan for a two-parcel partition that will result in one standard lot and one flag lot, 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 review and approval by the Land Use Services section of BDS. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. The applicant shall meet the street dedication requirements of the City Engineer and BES for SE Tenino Street. The required right-of-way dedication must be shown on the final plat.
2. A Private Access Easement over the “flag pole” portion of Parcel 2 for the benefit of Parcel 1 shall be shown and labeled on the final plat. The easement shall allow shared use of this area for all the purposes that a driveway would be typically used for.
3. If required, a No Build Easement must be shown over Parcel 2 for the benefit of Parcel 1 to the satisfaction of the Life Safety Section of BDS.
4. A recording block for each of the legal documents such as maintenance agreement, as required by Conditions C.10, C11 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example:

“A Declaration of Maintenance Agreement for a private access easement has been recorded as document no. _____, Multnomah County Deed Records.”

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

Streets

1. The applicant shall pay the Local Transportation Infrastructure Charge (LTIC) to the satisfaction of the City Engineer.
2. The applicant shall complete street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer. Waiver forms and instructions will be provided to the applicant during the final plat review process.

Utilities

3. 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.
4. The applicant shall meet the requirements of BES to 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 sanitary sewer main in SE Tenino Street.

Existing Development

5. The applicant must obtain a finalized demolition permit for removing the accessory structure on Parcel 2. Prior to removal, tree protection must be installed in accordance with the approved Tree Preservation Plan, per Condition D.1.
6. The applicant must remove the shed on Parcel 2. The applicant must submit before and after photos of the removal (with the same perspective). Prior to removal, tree protection must be installed in accordance with the approved Tree Preservation Plan, per Condition D.1.
7. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning the cesspool on the site.
8. The applicant shall meet the requirements of the Life Safety section of BDS to: 1) obtain a finalized building permit for modifications to the existing house that will remain on proposed Parcel 1 to comply with building code requirements; or 2) obtain an approved building code appeal and provide a no-build easement to the satisfaction of the Life Safety Section of BDS. The permit plans must include the note: *This permit fulfills requirements of Condition C.7 of LU 18-144155.*
9. A parking space shall be installed on Parcel 1, in conformance with the applicable requirements of the Portland Zoning Code. The applicant must obtain a finalized Zoning Permit for installation of the parking space. The permit plans must include the note: *This permit fulfills requirements of Condition C.8 of LU 18-144155.* The new parking space must also be shown on the supplemental plan.
10. The applicant must meet the tree density standard of 11.50.050 on Parcel 1 with the existing house by either planting trees on the lot or making the equivalent payment into the City Tree Preservation and Planting Fund. A finalized Zoning Permit must be obtained to document tree planting prior to final plat approval.

Required Legal Documents

11. A Maintenance Agreement shall be executed for the private access 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.
12. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcels 1 and 2. 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.

Other requirements

13. The applicant must pay into the City Tree Preservation and Planting Fund [Street Trees – Fee in Lieu of Planting and Establishment (per inch)] the amount equivalent to 1.5 inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

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

1. Development on Parcels 1 and 2 shall be in conformance with the Tree Preservation Plan (Exhibit C.2) and the applicant's arborist report (Exhibit A.3). Specifically, tree

number 2 (a 7-inch DBH flowering dogwood) is required to be preserved, with the root protection zones indicated on Exhibit C.2. An off-site tree (located at 6055 SE Tenino Street) is required to be protected during house construction, with the root protection zone indicated on Exhibit C.2. Tree protection fencing is required along the root protection zone of each tree to be preserved/protected. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground.

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.
3. Vehicle access to Parcel 1 must be from the flag pole of Parcel 2. A driveway is not allowed along the frontage of Parcel 1.

Staff Planner: Brandon Rogers

Decision rendered by:  **on September 18, 2018**
By authority of the Director of the Bureau of Development Services

Decision mailed: September 20, 2018

About this Decision. This land use decision is **not a permit** for development. 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 April 2, 2018, and was determined to be complete on July 25, 2018.

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 April 2, 2018.

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: November 26, 2018**

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 October 4, 2018** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 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.portlandoregon.gov

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 Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

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

- *Unless appealed*, the final decision will be recorded after **October 4, 2018** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder. For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of concurrent approvals. The preliminary land division approval also includes concurrent approval of an Adjustment. For purposes of determining the expiration date, there are two kinds of concurrent approvals: 1) concurrent approvals that were necessary in order for the land division to be approved; and 2) other approvals that were voluntarily included with the land division application.

The following approvals were necessary for the land division to be approved: Adjustment. This approval expires if:

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

All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun.

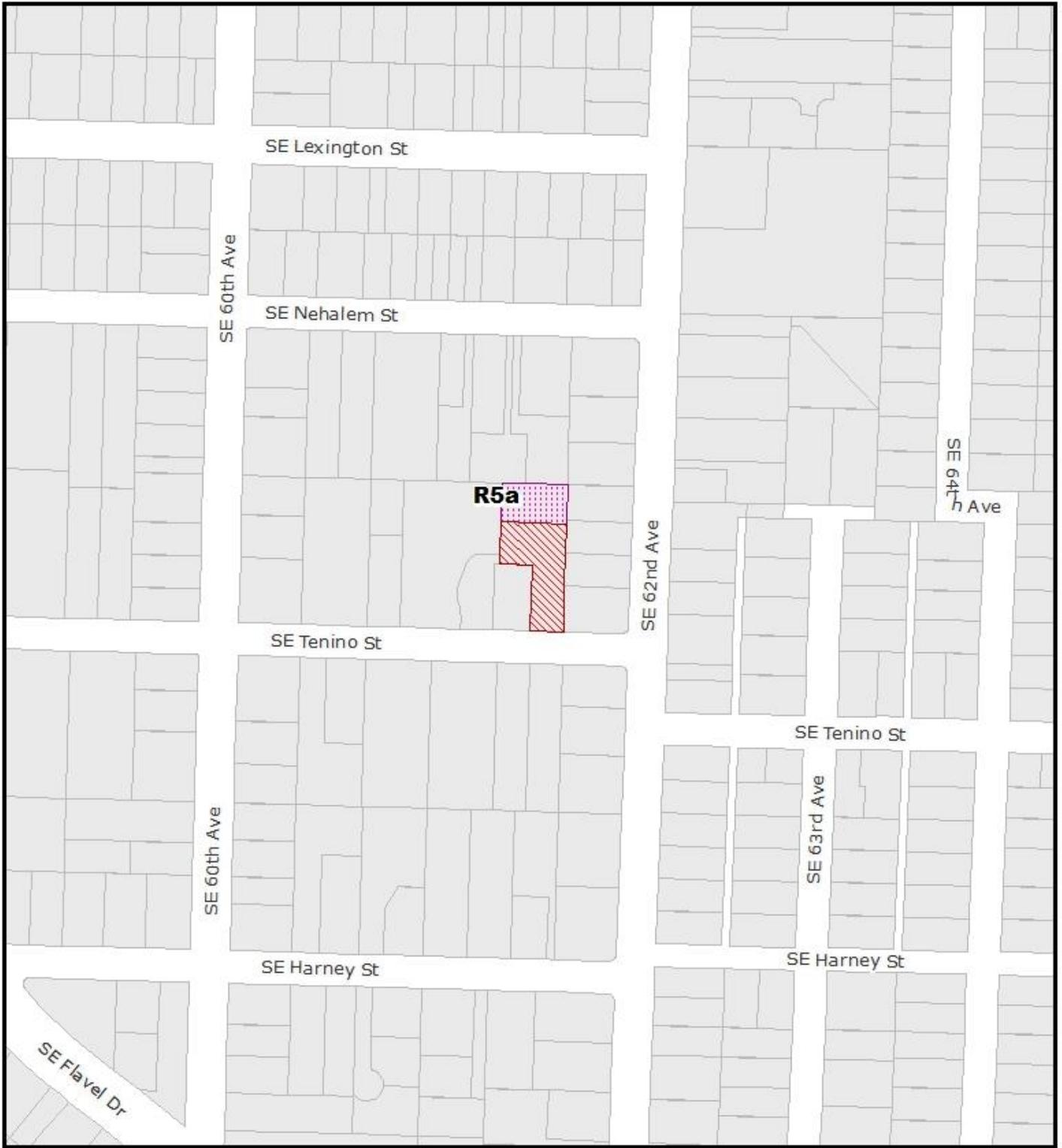
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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 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. Original Submittal and Applicant's Narrative
 2. Applicant's Response to Completeness Letter
 3. Arborist Report
 4. Simplified Stormwater Approach Form
 5. Neighborhood Notification Letters
 6. Applicant Correspondence
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Existing Conditions Plan
 2. Preliminary Land Division Plan, Tree Inventory, Tree Preservation 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. Kirsten Sandahl, 08/03/2018
- G. Other:
 1. Original LU Application
 2. Expedited Land Division Acknowledgement Form
 3. Completeness Letter
 4. Deeds for 8057 SE 62ND AVE from Applicant

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
-  Also Owned Parcels

File No.	LU 18-144155 LDP
1/4 Section	3836
Scale	1 inch = 200 feet
State ID	1S2E19DD 200
Exhibit	B Jun 22, 2018

