



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

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Date: March 15, 2019
To: Interested Person
From: Stephanie Beckman, Land Use Services
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NOTICE OF A TYPE Ix 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 18-261114 LDP

GENERAL INFORMATION

Applicant: Danelle Isenhardt | Emerio Design
6445 SW Fallbrook Pl #100
Beaverton, OR 97008
(503) 880-4979 | danelle@emeriodesign.com

Property Owner: Ian Curtis | Milk & Honey Investments LLC
4424 SE Stark St
Portland, OR 97215

Site Address: 5019 SE STEELE ST

Legal Description: TL 5700 0.26 ACRES, SECTION 18 1S 2E
Tax Account No.: R992180660
State ID No.: 1S2E18BD 05700
Quarter Section: 3535
Neighborhood: Woodstock, contact Sage Jensen at sage.wna@gmail.com
Business District: Woodstock Community Business Association, contact at norber@myexcel.com.
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010.

Zoning: R5 – Residential 5,000
Case Type: LDP – Land Division (Partition)
Procedure: Type Ix, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

Proposal: The applicant is proposing a partition on this 11,220 square foot lot that would result in one 4,830 square foot standard lot and one 6,258 square foot lot flag lot. The existing house on the site would remain on Parcel 1 and Parcel 2 would be available for future development. There are three non-exempt trees greater than 20-inches on the site, all

of which will be preserved. To reduce the impacts from development on the 46-inch red oak on Parcel 2, the applicant is requesting a modification to better meet tree preservation per 33.630.400. The modification would reduce the special 10-foot side setback and 5-foot landscape buffer along the eastern property line of the flag lot (Parcel 2). The modification would allow for a 5-foot setback and reduced landscaping within that setback. One off-street parking space is proposed on each lot, both of which are accessed from the existing driveway on the site in a shared access easement. The Bureau of Transportation is requiring a 2-foot right-of-way dedication along SE Steele Street and the construction of a sidewalk corridor. Stormwater will be managed on-site.

This partition is reviewed through a Type Ix land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities, or services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or 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 two parcels. 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.**

FACTS

Site and Vicinity: This relatively flat site is presently developed with a two-story single dwelling unit constructed in 1923. There are a number of trees on the site and the adjacent sites, six of which are subject to the tree preservation requirements of Chapter 33.630. The surrounding area is primarily characterized by single dwelling development of one and two stories with a node of neighborhood-scale commercial development a few blocks to the east at SE Steele and SE 52nd Avenue. Woodstock Park is located across the street from the site.

Infrastructure:

- **Streets** – The site has approximately 66 feet of frontage on SE Steele Street. There is one driveway entering the site that serves the existing house on the site. At this location, SE Steele Street is classified as a Neighborhood Collector, Community Transit Street, City Bikeway, City Walkway, and a Local Service Street for all other modes in the Transportation System Plan (TSP). Tri-Met provides transit service adjacent to the site on SE Steele Street via Bus 10 and approximately 490 feet on SE 52nd Avenue via Bus 71.

SE Steele Street has a 40-foot curb-to-curb paved surface within a 60-foot right-of-way with parking on both sides. Along the 66-foot wide site frontage the pedestrian corridor includes an 4-foot planter strip, 5-foot sidewalk, and a 1-foot buffer zone (4-5-1 configuration).

- **Water Service** – There is an existing 6-inch CI water main in SE Steele Street. The existing house is served by a 5/8-inch metered service from this main.
- **Sanitary Service** - There is an existing 6-inch CSP public combination sewer line in SE Steele Street.
- **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 **December 27, 2018**. Two written responses have been received from a notified property owner and that property owner’s representative in response to the proposal, summarized below:

- **Flag Lot Side Setback and Landscaping Modification:** As mentioned above in the proposal description, the applicant has requested a modification to the development standards that require a larger (10-foot) setback and 5-foot landscape buffer for flag lots less than 10,000 square feet. The owner of the property to the east of the site raised concerns about the impacts that this could have on his property. The neighbor’s representative disputed the code allowance for such setback modifications.

***Staff Response:** To address this concern, it is first necessary to clear up a misunderstanding about the proposal. In subsequent email communication with the neighbor’s representative, staff realized that the neighbor thought the modification was to completely eliminate the side setback on Parcel 2 and allow the proposed new dwelling to be built up to the property line. The proposal in fact would allow the setback to be reduced from 10 feet to 5 feet, which is the standard side setback in the R5 zone. An additional misunderstanding was the code authority allowing for such a modification. The neighbor’s representative cited Section 33.110.220.D.7, which does allow some reductions to setbacks, though (as was pointed out in the correspondence) those code allowances are not applicable in this case. The applicant is proposing, however, to use the code allowance for modifications that will better meet tree preservation requirements found in Section 33.630.400, which allows for modifications to site-related development standards if the modification will result in improved tree preservation and, on balance, would be consistent with the purpose of the regulation being modified.*

A full discussion of how the modification would better meet the tree preservation requirements (in this case to preserve a 46-inch red oak located on the western portion of Parcel 2); however, in summary this high-value tree requires a large protection zone for the root structure that would either be damaged by the construction of a new dwelling or would severely restrict the area that would be able to be developed on Parcel 2. Staff finds that, since the setback will be reduced from the larger flag lot setback to the standard R5 setback, there will still be adequate separation between the proposed dwelling and the adjacent property. Privacy will be maintained by installation of a fence and planting trees on the east property line of Parcel 2.

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:
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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, 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 11,220 square feet. The maximum density in the R5 zone 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 maximum density of two units and a minimum required density of two units. If the minimum required density is equal to or larger than the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum. Therefore, in this case the minimum density is reduced to one.

The applicant is proposing two 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)	Min. Flag Lot Width (feet)	Min. Flag Lot Depth (feet)
R5 Zone	3,000	8,500	36	50	30	40	40
Parcel 1	4,830		52.5	92.0	52.5	n/a	n/a
Parcel 2	5,016 without pole 6,258 with pole		n/a	n/a	n/a	66.0	76.0

* 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 on the property for at least 5-years and is located so that it precludes a land division that meets minimum lot width. 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" at least 12 feet wide 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, shared vehicle access is proposed via the existing driveway which straddles the proposed lot line between Parcel 1 and Parcels along the flag pole. 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 and also allows for the two large Douglas fir trees on the east side of the existing house to be preserved. A reciprocal access easement will be placed over the driveway to allow the shared access.

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 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.3) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.6) 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, six trees, which provide a total of 142 inches of tree diameter are subject to the preservation requirements of this chapter.

The three trees proposed for preservation are in good condition, include native/non-nuisance species, are 20 or more inches in diameter. 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 proposes to retain all of the trees that are 20 or more inches and 106 inches of the total tree diameter, so the 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.

In addition, the applicant's arborist report has also identified four trees on adjacent sites that are within 15 feet of potential disturbance area on the proposed lots. There is no ground disturbance proposed within the root protection zone for any of those trees.

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

In order to ensure that future owners of the parcels tract 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 and must be carried out in conformance with the Tree Preservation Plan (Exhibit C.3) and the Arborist Report (Exhibit A.6).

Modifications That Will Better Meet Tree Preservation Requirements

In situations when modification to a site-related development standard for the proposed development would allow for better tree preservation on the site, Section 33.630.400 allows for the modifications to be approved as part of the land division process. In order to approve the modification, the applicant must demonstrate that the modification will result in improved tree preservation, considering the tree preservation priorities for the site, and will, on balance, be consistent with the purpose of the regulation being modified.

In this case, the applicant has requested two modifications to site-related development standards in order to better preserve the 46-inch red oak tree on Parcel 2:

- Reduce the the10-foot flag lot setback standard (33.110.240.F.1) to 5 feet along the eastern property line of Parcel 2.

- Modify the required 5-foot landscape buffer area for flag lots (33.110.240.F.2) and instead provide screening with a 6-foot high, wooden, sight-obscuring fence and the planting of two trees at the northeast and southeast corners of the “flag” portion of Parcel 2.

The proposed modifications would allow the proposed building footprint to shift further to the east and outside of the root protection zone of the red oak. The standard root protection zone for a tree of that size would be a 46-foot radius from the trunk of the tree, which would essentially preclude development on the lot. The applicant’s arborist indicated that a minimum 24-foot root protection zone, coupled with other measures to be taken at the time of construction, will adequately protect the health of the tree. The modification would allow the house to be shifted to the east 5 feet thereby maintaining the 24-foot protection zone recommended by the arborist, resulting for the preservation of the tree while also allowing for a reasonably sized building footprint on the lot. The landscape buffer modification works in concert with the reduced setback since it would be impractical to meet the L3 standard (which requires a 6-foot high landscape screen and a certain number of trees to be planted, determined by the size of the tree) between the proposed new house and the existing fence on the property line. Staff finds that, taken together, the two modifications would allow for better protection to the 46-inch red oak tree from construction impacts associated with development on the site.

In order to approve the modifications, it must also be demonstrated that, on balance, the modification must be consistent with the regulation(s) being modified. Section 33.110.240.F states that the flag lot development standards “include specific screening and setback requirements to protect the privacy of abutting residences.” In this case, the setback would be reduced from 10-feet to 5-feet, which, though less than the flag lot setback, is still in line with the standard side setback for structures in the R5 zone. For screening purposes, the applicant has proposed a 6-foot, wooden, sight-obscuring fence and to plant two trees at the eastern corners of the “flag” portion of Parcel 2 (Exhibit A.7). Staff finds that, taken together, these two modifications will still meet the intent of the setback and landscape buffer regulations since the setback will meet the standard R5 side setback while also providing adequate screening from the adjacent lot with the fence and the trees to be planted. To ensure the trees provide the intended screening for the neighboring property, they should be large canopy tree species. With that requirement the tree planting will be generally consistent with the requirement to plant one large canopy tree for every 30 linear feet along that property line, which would normally be required for flag lot landscaping.

Presently the, portion of the neighboring property to the east that abuts the flag lot with is undeveloped yard area for the house on that lot, which is located near to the street. That lot has the potential to divide in a similar fashion as the subject site (as a flag lot), in which case, new development on that site would also be subject to the flag lot setback and screening standards, meaning that the new development adjacent to the flag lot would be further separated and screened from the proposed development.

Additionally, the applicant previously changed the proposal to shift the proposed flagpole from the east side of the property to the west in order to preserve the two large Douglas Firs located on the east side of the existing house. Staff finds that this was a mitigating change to the proposal in that it kept the two trees which currently provide screening between the existing house on Parcel 1 and the house on the neighboring property to the east.

Staff finds that, with the condition of approval that a 6-foot high, wooden, sight-obscuring fence and two large trees are installed along the eastern portion of Parcel 2, the modification can will be consistent with the purpose of the screening and setback standards for flag lots in the R5 zone.

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 primarily flat and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. As described in the section above, the applicant received a modification to site-related development standards that allow the future to development to better meet tree preservation requirements and the applicant's arborist provided recommendations for how future construction activities can minimize the impacts to the trees to be preserved. 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/or required for this land division:

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

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 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 Reciprocal 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 supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts,

impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced and measures to mitigate impacts may be necessary.

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):

Street Capacity and Levels of Service

The proposal will result in an increase of 1 single-family residence. This residence can be expected to generate 10 daily vehicle trips with 1 trip occurring in each of the AM and PM Peak Hours. This small increase in peak hour vehicle trips will not have significant impact on intersection levels of service or street capacity. No mitigation is needed.

Connectivity

The site is 100-ft east north/west SE 50th Ave. Connectivity standards are not applicable.

Vehicle Access/Loading

The new lots will have driveways to provide access to parking and loading.

On-Street Parking Impacts

The new lots will have at least one on-site parking space. The impact to the on-street parking supply should be minimal.

Availability of Transit

Tri Met Bus Line #10 is available to serve the site at Steele/50th and #17 at Holgate/49th.

Neighborhood Impacts

The site is being developed with net increase of 1 new single-family residence in compliance with the existing R5 zoning. In addition, standard frontage improvements including reconstructed sidewalks will reduce the potential for conflicts between pedestrians and vehicles.

Safety for All Modes

Reconstructed sidewalks along the site frontage will provide adequate pedestrian facilities. North/south cyclists can use close by neighborhood greenways such as SE 52nd. East/west cyclists can use SE Woodstock.

PBOT further notes that access to both lots must allow forward ingress and egress:

On-site parking for the flag lot must be designed to allow forward ingress and egress. On-site parking for both lots must be designed to allow forward ingress and egress. The applicant has not provided a supplemental site plan that documents this requirement. This supplemental site plan shall be a condition of final plat approval.

PBOT has reviewed and concurs with the information supplied and available evidence. With mitigation that includes reconstruction of the pedestrian corridor (discussed in the next section of this report) and design of the parking areas to allow forward ingress and egress, the transportation system is 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. 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 available to the site, as noted on page 2 of this report. 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:

Public Street Improvements: As a condition of this land use approval, the Bureau of Transportation requires the applicant to improve the frontage of the site to City standards (discussed later in this report). The sidewalk must be reconstructed, but the curb and planter strip already exist. The sidewalk will be reconstructed so that it will slope towards the planter strip, allowing the stormwater runoff from the sidewalk to be deposited in a vegetated area, which meets the requirements of the Stormwater Management Manual.

Parcel 2: Stormwater from this lot will be directed to an individual drywell that will treat the water and slowly infiltrate it into the ground. This lot 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.

Parcel 1 (the lot with the existing house): The existing house has downspouts that drain onto the ground. The applicant has indicated that the downspouts will be directed to splashblocks. BES raised no concerns with the existing stormwater system.

33.654.110.B.1 Through streets and pedestrian connections

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.

The block on which the subject property is located does not meet the noted spacing requirements; however, the site is located approximately 100 feet from the corner of SE Steele Street and SE 50th Avenue and, therefore, this would not be an appropriate location for a through street or pedestrian connection.

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.

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

SE Steele Street is improved with a paved roadway, curbs, planter strips, and sidewalks. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In this case Portland Transportation has determined that sidewalk improvements must be made in order to meet City standards to ensure that safe pedestrian travel is possible to and from the proposed development. To accommodate these improvements an additional 2 feet of right-of-way must be dedicated along the frontage of the site. With those improvements, one additional dwelling can be adequately served by this existing street without having any significant impact on the level of service provided.

This criterion is met, with the condition that sidewalk improvements are made, and the

required right-of-way dedication is shown on the Final Plat.

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 rights-of-way can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

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:

- 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. As noted under criterion B – Trees, above, the applicant was granted a modification to the setback and landscaping requirements along the eastern property line of the flag lot.

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 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. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 5 feet and 23 feet from the new property lines. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental plan showing the surveyed location of the existing building relative to the adjacent new lot lines.
- Accessory Structures – Structures are not allowed to remain on a proposed lot line. Therefore, in order for the proposed new lots to be approved, the accessory structure (garage) that straddles the line between proposed Parcels 1 and 2 must be removed prior to final plat. Demolition permits are required. The applicant must provide documentation prior to final plat approval that all required demolition permits have received final inspection. To ensure that this standard is met, a condition of approval is necessary.
- Required Off-Street Parking - A paved parking pad and 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 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 on SE Steele Street via Bus Line 10. Bus Line 10 provides peak-hour service meeting this requirement. As a result, no

replacement parking is required for Parcel 1; however, the applicant has proposed installing a replacement parking pad on 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 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, 2016 Portland Fire Code
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 Fire Bureau responded with requirements in Exhibit E.4. Several of those requirements address fire access to the flag lot (Parcel 2), including turning radius, surfacing, access width and no parking signs. The applicant since responded that they would install sprinklers in the new home on Parcel 2, which allows fire access to be provided from the SE Steele Street under the exception that allows fire access to be within 250 feet (vs. 150 feet) with fire sprinklers. This will require that the applicant record an Acknowledgement of Special Land Use Conditions describing the sprinkler requirement with the final plat and to install sprinklers at the time of development. Additional Fire Bureau requirements that continue to apply include addressing and aerial fire access. These requirements are based on the technical standards of Title 31 and the 2016 Portland Fire Code.
- The applicant must meet the requirements of Urban Forestry for street tree planting in the proposed planter strip adjacent to Parcel 1 prior to final plat approval. This requirement is based on the standards of Title 11.

CONCLUSIONS

The applicant has proposed a two-parcel partition, as shown on the attached preliminary plan (Exhibit C.3). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are:

- Modification to flag lot setback and landscaping requirements

- Demolition of the existing garage
- Septic system decommissioning
- Shared driveway access with a reciprocal access easement
- Tree preservation and protection
- Right-of-way dedication and improvements
- Forward ingress and egress for both parcels
- Street tree planting adjacent to Parcel 1
- Fire Code requirements

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

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a two-parcel partition, that will result in one standard lot and one flag lot, and

Approval of a Modification to the flag lot setback and landscaping standards of 33.110.240.F along the east property line of Parcel 2, allowing a 5-foot building setback and privacy screening as described in Condition D.2.

As illustrated with Exhibits C.2-C.4, subject to the following conditions:

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

- The surveyed location of any buildings or accessory structures on the site at the time of the final plat application;
- The surveyed location of any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- Documentation that on-site parking is designed to allow forward ingress and egress for both parcels to the satisfaction of PBOT;
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. The applicant shall meet the street dedication requirements of the City Engineer for SE Steele Street. The required right-of-way dedication must be shown on the final plat.
2. A Reciprocal Access Easement shall be shown and labeled on the final plat, over the existing driveway straddling the common property line between Parcels 1 and 2, as shown on Exhibit C.3. The easement shall allow shared use of this area for all of the purposes that a driveway would be typically used for.
3. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.5 – C.7 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: “A Declaration of Maintenance Agreement for a Reciprocal Access Easement has been recorded as document no. _____, Multnomah County Deed Records.”

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

Streets

1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the site’s street frontage. The applicant must obtain an approved Right-Of-Way permit from the Portland Bureau of Transportation to install the required

sidewalk corridor. The improvements along the frontage of Parcel 1, where the existing house will be retained, must be constructed prior to final plat approval. The improvements along the frontage of the undeveloped parcel may be constructed with development on that parcel as per the City Engineer's discretion.

2. The applicant must meet the requirements of Urban Forestry to plant street tree(s) in the planter strip on SE Steele Street adjacent to Parcel 1. The applicant must contact Urban Forestry at 503-823-TREE (8733) prior to selecting trees to discuss the species of trees that are permitted and to obtain the planting permit.

Existing Development

3. The applicant must obtain a finalized demolition permit for removing the garage on Parcel 2. Prior to removal of these structures, tree protection must be installed in accordance with the approved Tree Preservation Plan, per Condition D.1.
4. 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.

Required Legal Documents

5. A Maintenance Agreement shall be executed for the Reciprocal 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.
6. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Parcel 2 to contain internal fire suppression sprinklers. The acknowledgement shall be referenced on and recorded with the final plat.
7. 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.

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.3) and the applicant's arborist report (Exhibit A.6). Specifically, trees numbered 1 (30" Douglas fir), 9 (46" red oak), and 18 (30" Douglas fir) are required to be preserved, with the root protection zones indicated on Exhibit C.3. 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 as shown on the Tree Preservation Plan and the Arborist report or is under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones beyond the allowances shown on the approved Tree Preservation Plan 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 their supervision.
2. At the time of development on Parcel 2 (flag lot), a 6-foot high sight-obscuring wood fence must be installed along the eastern property line. In addition, two large canopy trees must be planted, one in the northeast corner and one in the southeast corner of the lot.

The fence and tree planting are required in lieu of the flag lot landscaping (33.110.240.F) along the east property line.

3. Vehicle access to Parcels 1 and 2 must be within the reciprocal access easement over the flag pole of Parcel 2 and a portion of Parcel 1. A driveway is not otherwise allowed along the frontage of Parcel 1.
4. The applicant must meet Fire Bureau requirements to install residential sprinklers in the new dwelling unit on Parcel 2.
5. 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: Stephanie Beckman



Decision rendered by: _____ **on March 12, 2019**

By authority of the Director of the Bureau of Development Services

Decision mailed March 15, 2019

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 November 1, 2018 and was determined to be complete on December 12, 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 November 1, 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: April 11, 2019.**

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

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

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans and labeled as such.

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

This decision, and any conditions associated with it, is final. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. Contact LUBA at 775 Summer St NE Suite 330, Salem, OR 97301-1283 or phone 1-503-373-1265 for further information. **Last date to appeal: April 5, 2019.**

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

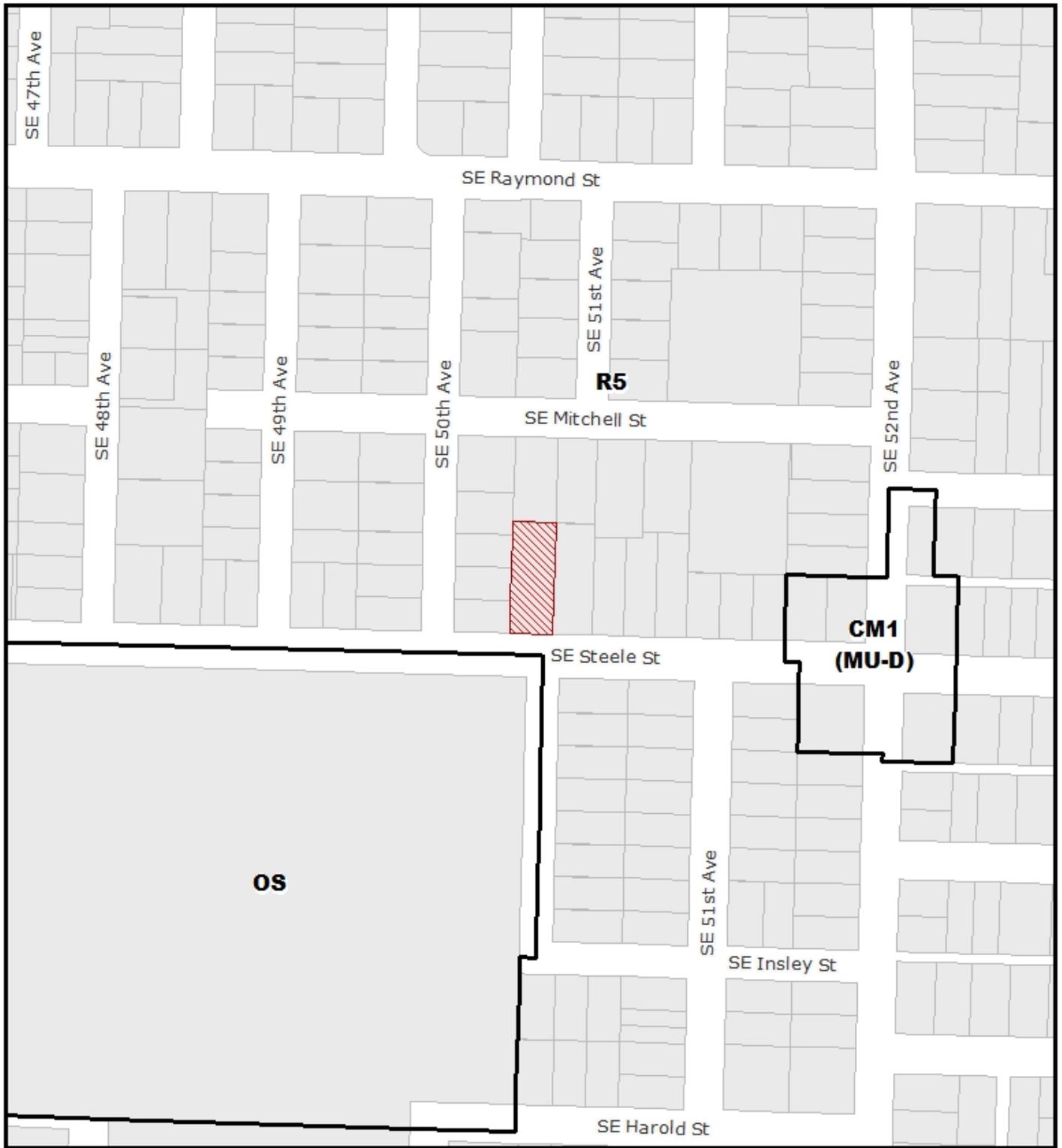
Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City’s final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City’s approval of the preliminary plan.**

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant Submittal
 - 1. Applicant Narrative (a) and original site plans (b)
 - 2. Arborist Report
 - 3. Stormwater SIM Form
 - 4. Fire Hydrant Flow Information
 - 5. Applicant letter (a) and Revised Narrative (b)
 - 6. Arborist Addendum
 - 7. Tree Preservation Modification Proposal
 - 8. Applicant email regarding fire sprinklers
 - 9. Deed information from applicant
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 0. Cover sheet
 - 1. Existing Conditions Plan
 - 2. Preliminary Plan
 - 3. Preliminary Site/Utility Plan, with Tree Preservation, full size and reduced (attached)
 - 4. Grading and Erosion Control Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety Section of BDS
- F. Correspondence:
 - 1. Mark Morton, 1/16/19, Concerns from the neighbor to the east regarding the proposed modifications to the flag lot setback and screening standards
 - 2. Jerald M. Powell, 1/12/18, the above neighbor's representative expanding on the concerns regarding the proposed modifications
- G. Other:
 - 1. Original LU Application
 - 2. Expedited Land Division Acknowledgement Form
 - 3. Incomplete Letter and RFC Responses

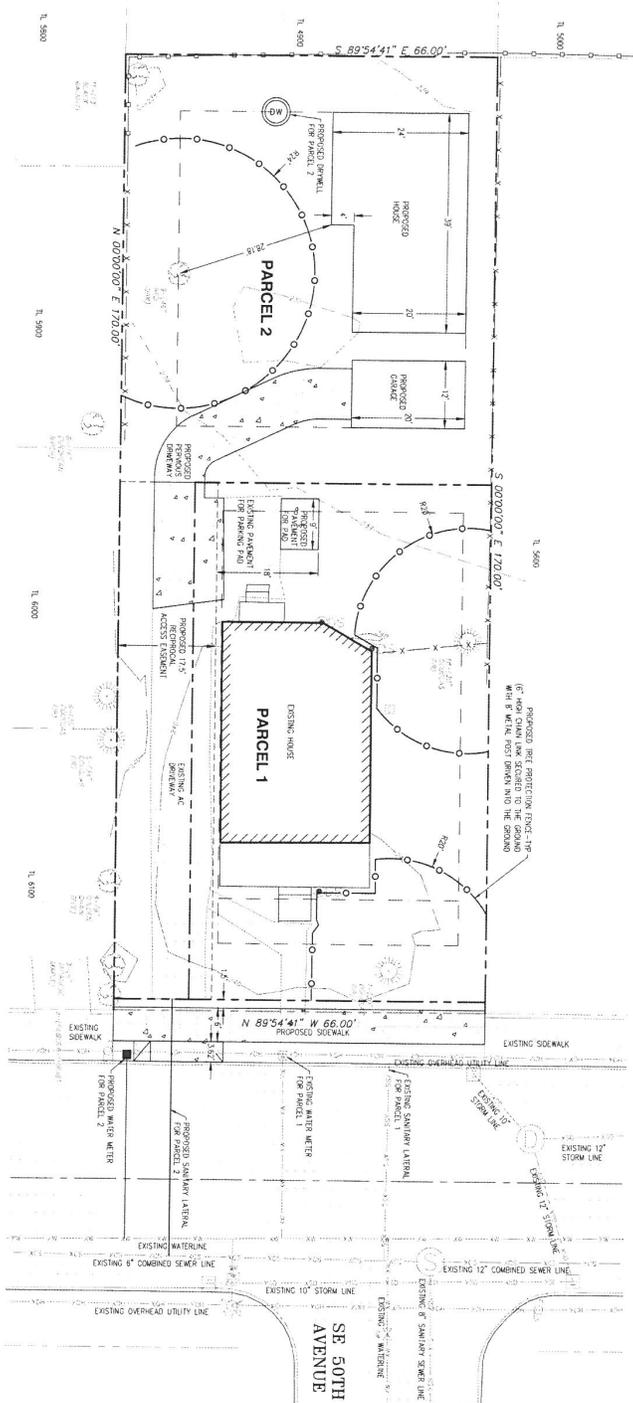
The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING 
NORTH

 Site

File No.	LU 18-261114 LDP
1/4 Section	3535
Scale	1 inch = 200 feet
State ID	1S2E18BD 5700
Exhibit	B Nov 05, 2018



SE 50TH AVENUE

RECEIVED
DEC 12 2018

- LEGEND**
- PROPERTY LINE
 - ADJACENT/ABUTTING LOT LINE
 - CENTER LINE ROW
 - SET BACK LINE
 - EXISTING 1" CONDUIT LINE
 - EXISTING 5" CONDUIT LINE
 - EXISTING FIRE
 - EXISTING DOWNSPILT
 - EXISTING STORM SEWER MANHOLE
 - EXISTING STORM SEWER MANHOLE
 - EXISTING STORM SEWER MANHOLE
 - EXISTING WATER METER
 - EXISTING WATER METER
 - EXISTING UTILITY PILE
 - EXISTING ELECTRIC WATER
 - EXISTING FIRE HYDRANT
 - EXISTING SANITARY SEWER LINE
 - EXISTING STORM SEWER LINE
 - EXISTING COMMUNICATION LINE
 - EXISTING WATER LINE
 - EXISTING GAS LINE
 - EXISTING OVERHEAD UTILITY LINE
 - EXISTING FENCE
 - EXISTING SANITARY LATERAL
 - PROPOSED WATER METER

CASE NO. **LU 18-210/114 LOP**
EXHIBIT **C.3**

5019 SE STEELE STREET
2-LOT PARTITION
TAX MAP T1S R2E 18BD
TAX LOT 5700
PORTLAND, OREGON

EMERIO
Design
6445 SW FALLBROOK PLACE, SUITE 100
BEAVERTON, OREGON 97008
TEL: (503) 748-9912
FAX: (503) 639-9592
www.emeriodesign.com

NO.	DATE	DESCRIPTION

PRELIMINARY
SITE/UTILITY PLAN

SHEET
4
5