



Hearings Office

City of Portland

1900 SW 4th Avenue, Room 3100, Portland, OR 97201

www.portlandoregon.gov/hearings

email: HearingsOfficeClerks@portlandoregon.gov

phone: 503.823.7307

fax: 503.823.4347



DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File Number: LU 19-168681 LDS (Hearings Office 4200007)

Applicant: Casey Colton, Stone Creek Building Development Inc.
502 7th Street #204 Oregon City OR 97045

Applicant's Representative: Danelle Isenhart, Isenhart Consulting, LLC
PO Box 2364 Beaverton, OR 97075

Property Owners: John and Kalin Beirwagen
11127 SE 121st Court Happy Valley, OR 97086

Hearings Officer: Kathryn Beaumont

Bureau of Development Services (BDS) Staff Representative: Diane Hale

Site Address: 619 SW LOBELIA ST

Legal Description: BLOCK 2 LOT 2 E 30' OF LOT 3, KILPATRICK COLLINS TRACT

Tax Account No.: R450500150

State ID No.: 1S1E28AA 08100

Quarter Section: 3928

Neighborhood: Collins View

Business District: None

District Coalition: Southwest Neighborhoods Inc.

Plan District: None

Other Designations: Regulatory Landslide Hazard

Zoning: R2.5 – Single family residential, 2,500

Land Use Review: Type III, Land Division Subdivision

BDS Staff Recommendation to Hearings Officer: Approval

Public Hearing: The hearing was opened at 9:03 a.m. on May 13, 2020 via Zoom Video Meeting in Portland, Oregon, and was closed at 10:14 a.m. The record was closed.

Testified at the Hearing:

Diane Hale
Michael Pina
Emma Kohlsmith
Danelle Isenhardt
Gary Darling
Adrienne Mullock
Dr. Pilar Hernandez-Wolfe

II. ANALYSIS

A. Proposal, Site, and Existing Infrastructure. The BDS Staff Report and Recommendation (BDS Report) (Exhibit H.2) describes the proposed land division, the site, and existing infrastructure as follows:

"The applicant is proposing to subdivide this 12,063 square foot site into 4 narrow lots for attached single-dwelling homes. Lots 1 to 4 will be 27.5 feet wide and 3,016 square feet each. New narrow lots can be approved if they meet the regulations in 33.611.200.C.2. The existing development will be removed. Frontage improvements (sidewalk, curb and planter strip) will be constructed along SW Lobelia Street. All homes will have off-street parking.

"Stormwater from the lots and new homes will be directed to on-site sand filters, then routed off site to a proposed extension of the public storm sewer line in SW Lobelia Street. Many of the trees on the site are exempt from the tree preservation regulations because they are dead or a nuisance species. The applicant has proposed to preserve 2 of the 4 regulated trees on the site, a 7" western red cedar located on Lot 1 and a 30" bigleaf maple located on Lot 4.

"* * * * *

"Site and Vicinity: The site is a 12,063 square foot interior lot developed with a house constructed in 1928 and a detached shed. The area surrounding the site is generally zoned for and developed with single-family housing. The intersection of SW Terwilliger Blvd and SW Taylors Ferry Road, ~500 feet to the northeast of the site, contains primarily commercial development. The Beth Israel, Grand Army of the Republic, Greenwood Hills and Riverwood cemeteries are to the east of the site.

"Infrastructure:

- Streets –

The site has approximately 110 feet of frontage on SW Lobelia Street. There is one driveway entering the site that serves the existing house. At this location, SW Lobelia Street is classified as a Local Service Street for all modes in the Transportation System Plan (TSP), and has 16-ft of paving within a 50-ft right-of-way (ROW) with no curbs or pedestrian corridors. The subject site is served by three Tri-met bus lines - *39-Lewis & Clark* on SW Terwilliger east of the site; and *43-Capitol Hwy and 65-Marquam Hill/Barbur Blvd* run north of the site along SW Taylors Ferry Rd. - all of which are within half mile from the site.

- **Water Service** – There is an existing 8-inch water main in SW Lobelia Street. The existing house is served by a 5/8-inch metered service from this main.
- **Sanitary Service** - There is an existing 8-inch CSP public sanitary-only sewer line in SW Lobelia Street.

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

B. Relevant Approval Criteria. The BDS Report identifies and addresses the relevant approval criteria for land divisions in residential zones found in PCC 33.660.120.A - L. In that report, BDS makes thorough, persuasive, and affirmative findings that explain how the Applicant's proposal satisfies all of the relevant approval criteria and recommends conditions of approval. In testimony presented at the public hearing, the Applicant accepted those findings and expressed agreement with the BDS Report, including the recommended conditions of approval. The Hearings Officer has reviewed the findings in the BDS Report, and agrees with them.

Opponents raised several issues in written and oral testimony submitted at the public hearing. Three of the issues (density, parking and traffic, and stormwater and erosion control) pertain to the approval criteria in PCC 33.660.120. One issue (noise) does not. I have reviewed the findings in the BDS Report that address density, parking and traffic, and stormwater and erosion control, and agree with them. To avoid confusion and provide clarity, I highlight the relevant findings in the BDS Report and supplement them with the findings below.

1. Noise. Several neighbors voiced objections to the increased noise they contend construction of the proposed rowhouses and new residents of these new homes will generate. (Exhibits H.3, H.4, H.6; Hernandez-Wolfe testimony) In response, BDS staff pointed out that noise is not listed in PCC 33.660.120 as a relevant approval criterion for residential land divisions. Staff testified that the City's Noise Control Office handles noise complaints and suggested that neighbors could address their concerns about any noise impacts from this project to that office for review and potential enforcement. I agree with BDS staff that noise is

not relevant to this land division review and any future noise complaints can be directed to the City's Noise Control Office.

2. Density (PCC 33.660.120.A). The Applicant proposes to replace the existing home on the site with four rowhouses, each on its own lot. Neighbors argued this represents an inappropriate density increase that will overwhelm SW Lobelia Street and surrounding natural areas the neighborhood helps to protect. (Exhibits H.3, H.4, H.6; Hernandez-Wolfe testimony) In its PowerPoint presentation at the hearing and the BDS Report (Exhibits H.8, H-2), staff explains that dividing the site into four lots does not exceed the maximum density of 4 residential units the zoning code permits on this R2.5-zoned site. At pages 4-5 of the BDS Report, staff also explains how the Applicant's proposal satisfies the purpose of the lot dimension standards even though the four lots do not meet the minimum lot width or front lot line requirements in PCC 33.660.120.A.

I understand that the four new rowhouses will replace an existing home on the site and represents a potentially unwelcome change for some nearby neighbors. As BDS staff finds, however, the Applicant's proposal is consistent with the permitted density for this site. I agree with BDS staff and find the neighbors' objections offer no basis to deny this proposal.

3. Parking and Traffic (PCC 33.660.120.K). Neighbors raised a variety of concerns regarding on-street parking, existing traffic conditions, and the nearby intersection of SW Lobelia Street and Terwilliger Blvd. Some asserted the proposed rowhouse development will create additional demands for on-street parking because the new residents are unlikely to use the two on-site parking areas (garage and driveway) to be provided on each lot. They contend on-street parking is already insufficient for existing residents and guests--an insufficiency one resident said is exacerbated by Lewis & Clark College students who park on the street and walk to the college. (Exhibits H.3, H.4, H.6; Hernandez-Wolfe testimony) Additionally, there are currently no sidewalks on SW Lobelia Street, which they contend makes it difficult for pedestrians to walk there. (Hernandez-Wolfe and Mullock testimony) They also argue the Lobelia Street/Terwilliger Blvd. intersection is dangerous and it is difficult to make turns from one street to the other when traffic is heavy. Lobelia Street slopes uphill to Terwilliger Blvd. and, in their view, there is little room for cars to park at the top of Lobelia Street where it meets Terwilliger.

Both the Portland Bureau of Transportation (PBOT) and BDS staff analyzed the Applicant's proposal and, as explained at p. 10 - 13 of the BDS Report and in PBOT's Response (Exhibit H.2 and E.2), concluded it satisfies all relevant standards and approval criteria for transportation impacts, parking, and pedestrian safety. In brief, the Applicant will provide two off-street parking areas for each rowhouse: a driveway and garage. Driveways will be shared (one driveway per two rowhouse units) to minimize the amount of street area consumed by access to the site and maximize the remaining amount of on-street parking area. The Applicant will satisfy PBOT's street improvement requirements, including installing a sidewalk

along the project's frontage to provide a safe place for pedestrians on a part of SW Lobelia Street. (Ex. A.1, A.5, A.6) Finally, in PBOT's view, the surrounding transportation system can safely absorb the low volume of vehicle trips this proposal will add.

After reviewing and considering the opponents' arguments and anecdotal evidence, I find PBOT's analysis to be more persuasive. As the city's traffic experts, PBOT staff evaluated the transportation impacts of the proposed new development and applied the trip generation estimates from the Institute of Transportation Engineers (ITE) Trip Generation Manual, 10th Edition. Based on this analysis, PBOT staff concluded: "The net addition of three single-family residences added to the transportation system resulting from the development will not adversely impact the operations of area intersections, as the proposed development adds few trips to the transportation network compared to existing volumes and is consistent with the zoning of the property." Additionally, PBOT explained that the Applicant's construction of half-street improvements (paving, curb, sidewalk, and planter area) in SW Lobelia Street means the "three additional dwellings can be safely served by this existing street without having any significant impact on the level of service provided." (Exhibit E.2)

I appreciate the neighbors' observations about traffic levels on SW Terwilliger Blvd. and at the SW Lobelia Street/SW Terwilliger Blvd intersection. As BDS staff explained at the hearing, however, these traffic levels are preexisting conditions and are not a basis for denying the Applicant's proposal. In light of PBOT's expert evaluation that the additional vehicle trips and transportation infrastructure improvements attributed to this development satisfy all transportation approval criteria, I find PBOT's testimony more persuasive than neighbors' anecdotal evidence. I agree with the BDS Report's findings that this proposal satisfies the PCC 33.660.120.K approval criterion.

4. Stormwater and Erosion Control (PCC 33.660.120.G and L). Several neighbors expressed concerns about erosion and the lack of storm sewer facilities in SW Lobelia Street. That street slopes downhill from SW Terwilliger Blvd. As a result, stormwater runoff also flows downhill and floods neighbors at the bottom of the hill, several blocks below the Applicant's site. In these neighbors' views, the proposed development will add to these problems. (Ex. H.5; Mullock and Hernandez-Wolfe testimony)

There is ample evidence in the record, however, that the proposed development will add stormwater facilities that will address and reduce, not increase, this storm water runoff concern. As explained in the BDS Report and the Applicant's stormwater management report, the Applicant will extend a stormwater main from SW 7th Street to SW Lobelia Street, which will allow for runoff from the Applicant's site and above the site to be captured. (Ex. A.4, A.10; Ex. H.2, p. 9, 12-13) This will reduce the amount of stormwater flowing down SW Lobelia Street. Additionally, the Applicant will install on-site sand filters to control and slow the release of stormwater to the new stormwater main extension and minimize erosion from the site both during and after construction. According to the City's Bureau of Environmental

Services (BES), these improvements satisfy all relevant BES standards and requirements for storm water control as long as BES-recommended conditions of approval are implemented. (Ex. E.1) Both BDS staff and the Applicant's civil engineer also testified the Applicant's proposed erosion control and stormwater disposal measures have received conceptual approval. BDS and BES staff will review the Applicant's plans again in greater detail at the building permit stage to ensure runoff from the new development is mitigated and captured.

I have considered the neighbors' concerns and, based on the overwhelming evidence in the record, agree with the BDS Report's conclusions at p. 8-9 and 11-12 that the Applicant's proposal satisfies all relevant approval criteria related to erosion and storm water control.

III. CONCLUSIONS

I conclude that the affirmative findings in the BDS Report, as supplemented with the findings above, show the Applicant's application for a 4-lot land division satisfies all relevant approval criteria. I adopt and incorporate as my own the affirmative findings in the BDS Report, dated May 1, 2020, and attached to this decision, as supplemented with the findings above.

IV. DECISION

Approval of a Preliminary Plan for a 4-lot subdivision, that will result in 4 narrow lots for attached houses, as illustrated with Exhibit C.1, subject to the following conditions:

A. The final plat must show the following:

1. A variable-width Reciprocal Access Easement shall be shown and labeled on the final plat, centered on the common property line between Lot 1 and Lot 2. The easement shall allow shared use of this area for all of the purposes that a driveway would be typically used for.
2. A variable-width Reciprocal Access Easement shall be shown and labeled on the final plat, centered on the common property line between Lot 3 and Lot 4. 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 Conditions B.7, B.8 and B.9 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records."

B. 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 shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation and the Bureau of Environmental Services for required street frontage improvements.
2. The Public Works Permit plans required by Condition B.1 must show a design that provides adequate room for the Douglas-fir to the southwest of the site (tree #1) and show one tree being planted per each lot. Alternatively, the applicant must demonstrate that the tree cannot be retained while also meeting other City requirements, in which case mitigation subject to Urban Forestry review and approval will be required, per Title 11.

Utilities

3. The applicant shall meet the requirements of the Bureau of Environmental Services (BES) for extending a public storm sewer main in SW Lobelia Street. The public storm sewer extension requires a Public Works Permit, which must be initiated and at a stage acceptable to BES prior to final plat approval. As part of the Public Works Permit, the applicant must provide engineered designs, and performance guarantees for the sewer extension to BES prior to final plat approval.

Existing Development

4. A finalized permit must be obtained for demolition of the existing residence on the site and capping the existing sanitary sewer connection. Note that Title 24 requires a 35-day demolition delay period for most residential structures. The site plan for the demolition permit must show all trees to be preserved and root protection zones per Condition C.1 below.
5. The applicant must obtain a finalized demolition permit for removing the accessory structure on the site. If the structure is less than 200 sq feet in area, a demolition permit is not required; the applicant must submit before and after photos of the location of the shed to verify removal. Prior to removal of these structures, tree protection must be installed in accordance with Condition C.1 below.
6. 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. The site plan must show all trees to be preserved and root protection zones consistent with Condition C.1 below.

Required Legal Documents

7. A Maintenance Agreement shall be executed for each Reciprocal Access Easement described in Conditions A.2 and A.3 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.
8. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Lots 1, 2, 3 and 4 to contain internal fire suppression sprinklers. The acknowledgement shall be referenced on and recorded with the final plat.
9. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Lots 1 and 4 for on-site trees #5 and 10 as outlined in Condition C.1. A copy of the approved Tree Preservation Plan (Exhibit C.3) and the arborist report (Exhibit A.8) must be included as an exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

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

1. Development on Lots 1, 2, 3 and 4 shall be in conformance with the Tree Preservation Plans (Exhibits C.3 and C.4) and the applicant's arborist report (Exhibit A.). Tree protection for demolition and septic decommissioning activities must be in conformance with Exhibit C.4. Tree protection during subsequent development must be in conformance with Exhibit C.3. Tree protection fencing 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 if it meets the Tree Protection Specifications of 11.60.030. The additional recommendations listed in the arborist report are also required (also see findings under Section B. Trees above for details).

On-site trees #5 and 10 are required to be preserved long-term.

Modifications or removal of the on-site protection requirements for street tree #1 is subject to Urban Forestry review.

The protection requirements for off-site trees 6, 6.1, 16 and 17 apply during demolition of the existing structures and development of new homes on lots 1, 2 and 3.

2. Lots 1, 2, 3 and 4 must be developed with attached dwelling units.

3. The applicant will be required to install residential sprinklers in the new houses on Lots 1, 2, 3 and 4 to the satisfaction of the Fire Bureau.

Kathryn S. Beaumont

Kathryn Beaumont, Hearings Officer

Date: May 28, 2020

Application Determined Complete: September 3, 2019

Report to Hearings Officer: May 1, 2020

Decision Mailed: May 28, 2020

Last Date to Appeal: June 11, 2020 4:30 p.m.

Effective Date (if no appeal): June 12, 2020

Conditions of Approval. 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.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201. 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 \$2,100 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings

Officer, City Council will hold an evidentiary hearing, one in which new evidence can be submitted to them. Upon submission of their application, the applicant for this land use review chose to waive the 120-day time frame in which the City must render a decision. This additional time allows for any appeal of this proposal to be held as an evidentiary hearing.

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chairperson or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

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

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Original Submission
 - 2. Applicant's response, September 3, 2019
 - 3. Applicant's response, February 25, 2020
 - 4. Applicant's response, April 10, 2020
 - 5. Applicant's response, April 17, 2020
 - 6. Applicant's response, April 30, 2020
 - 7. Neighborhood contact materials
 - 8. Arborist report
 - 9. Geologic Hazard Site Review (Landslide hazard study)
 - 10. Stormwater management report and infiltration calculations
- B. Zoning Map
- C. Plans & Drawings:
 - 1. Site Plan & Tentative Plat
 - 2. Existing Conditions Survey
 - 3. Tree Preservation Plan
 - 4. Demolition Permit Tree Preservation Plan
 - 5. Grading Plan
 - 6. Site Utility Plan
 - 7. Existing Conditions and Demo Plan
- D. Notification information:
 - 1. Request for response
 - 2. Posting letter sent to applicant
 - 3. Notice to be posted
 - 4. Applicant's statement certifying posting
 - 5. Mailing list
 - 6. 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 Bureau of Development Services
 - 6. Life Safety Review Section of Bureau of Development Services
 - 7. Bureau of Parks, Forestry Division
- F. Letters: None
- G. Other:
 - 1. Original LUR Application

2. Expedited Land Division Form
 3. Incomplete Letter
 4. 120-day Waiver Form
- H. Received in the Hearings Office
1. Request to Reschedule Hale, Diane
 2. Staff Report Hale, Diane (attached)
 3. Letter – comments Mullock, Adrienne
 4. Letter – comments Hernandez-Wolfe, Pilar
 5. Letter – comments Wagner, Jeanette
 6. Letter – comments Clendening, Drew
 7. Letter – comments Estes, Jim
 8. Planner PowerPoint Presentation Hale, Diane