



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

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Date: June 4, 2021
To: Interested Person
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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 19-195066 LDP

GENERAL INFORMATION

Applicant: Karl Robbins, Haaga-Helia University Of Applied Sciences
Ratapihatie 73 | Helsinki | 00520 | Finland
robbins@kolumbus.fi

Owner: Karl Robbins
3224 SE 134th Ave
Portland, OR 97236

Consultant: Robin Scholtezy | UrbanLens Planning
robbin@urbenlensplanning.net | (971) 706-8720

Site Address: 3230 SE 118TH AVE

Legal Description: LOT 1, NEELS TR 2
Tax Account No.: R598900010
State ID No.: 1S2E10AD 10000
Quarter Section: 3342
Neighborhood: Powellhurst-Gilbert, contact at pgnaboard@gmail.com
Business District: Midway, contact info@midwaybusiness.org.
District Coalition: East Portland Community Office, contact at 503-823-4550.
Plan District: Johnson Creek Basin
Zoning: Single-Dwelling Residential 5,000 (R5), Alternative Design Density Overlay (a)

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

Proposal:

The applicant proposes to partition the 14,878 square foot site into two lots. Parcel 1 will be approximately 6,104 square feet in area; the existing dwelling will remain on Parcel 1. Parcel 2 is proposed as an 8,267 square foot flag lot behind the existing house; the flag pole is proposed where the existing gravel driveway is. Parcel 2 will be suitable for household living use(s), as allowed in single-dwelling zones and a conceptual building footprint is shown towards the NE corner of the proposed flag lot.

The proposal includes approximately five feet of street dedication along SE 113th Ave, with a standard 11-foot sidewalk corridor to be developed along the frontage of the site.

The site is home to a notable number of trees, including four trees with diameters of 20-inches or greater. The applicant is proposing to retain three of the 20+ diameter trees and two trees between 6-inches and 12-inches in diameter.

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 units of land (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:

- **Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.**

ANALYSIS

Site and Vicinity: As noted above, the site is a 14,878 square foot lot within the Johnson Creek Plan District. It is generally a flat lot and is heavily wooded with Douglas fir. The site is surrounded in all directions by single-dwelling development on smaller to medium-sized lots. SE Powell Blvd, a major bike, transit, and traffic street, lies about 500 feet to the south and is buffered by multi-dwelling zoning and development and some commercially-zoned areas, spotted with islands of single-dwelling zoning. SE 122nd Ave, another major street for traffic, transit, and bikes, lies about 1000 feet to the east. The intersection of SE Powell Blvd and SE 122nd Ave serves as a commercial center for the neighborhood. West Powellhurst Elementary and West Powellhurst Park are the closest of said amenities, being about 850 feet to the north. There is very poor connectivity in the area. In order to access the school and park, one must travel south to SE Powell Blvd, travel over to SE 117th Ave and then travel up north about 1,300 feet. Kelly Butte is the nearest open space, lying about 2,700 feet away as the crow flies and about 3,900 feet via SE Powell Blvd and SE 108th Ave. There are no notable natural waterways in the vicinity. Johnson Creek is the nearest at a little over 1.5 miles away as the crow flies.

Infrastructure:

- **Streets** - At this location, SE 118th Ave is classified in the Transportation System Plan as Local Service for all modes. The frontage is improved with approximately 28 feet of paved roadway with curbs; there are currently no improvements in the sidewalk corridor in front of the subject site.

- **Water Service** – The existing house on proposed Parcel 1 has a 5/8-inch metered domestic service that it can continue to utilize. There is a 6-inch main in SE 118th Ave that is available for use by future development on Parcel 2.
- **Sanitary Service** - There is a Public 8-inch PVC sanitary-only sewer in 118th Ave (BES as-built #4570) that is utilized by the existing house and can be utilized by future development on Parcel 2.
- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property.

Zoning:

- **Base 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.
- **Overlay Zone** – The ‘a’ Alternative Design Density Overlay Zone is intended to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements.
- **Plan District** - The **Johnson Creek Basin** plan district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services. At certain locations, the density of development is limited by applying special regulations to new land division proposals. In addition, restrictions are placed on all new land uses and activities to reduce stormwater runoff, provide groundwater recharge, reduce erosion, enhance water quality, and retain and enhance native vegetation throughout the plan district. At other locations, development is encouraged and mechanisms are included that provide relief from environmental restrictions.

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

Agency Review: A Notice of Proposal in your Neighborhood was mailed on **November 10, 2020**. Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits “E” contain the complete responses.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **November 10, 2020**. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

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

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.

D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
I	33.639 - Solar Access	Maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 33.639) and 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.
	33.655 - School District Enrollment Capacity	The proposal is for less than 11 lots or is not in the David Douglas School District.

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 14,878 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 3 units and a minimum required density of 2 units. The applicant is proposing 2 single dwelling parcels. The density standards are therefore met.

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

	Min. Lot Area (square)	Max. Lot Area (square)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line	Min. Flag Lot Width	Min. Flag Lot Depth
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	(feet)	(feet)			(feet)	(feet)	(feet)
R5 Zone	3,000	8,500	36	50	30	40	40
Parcel 1	6,104		89.4	68.2	89.4	-	-
Parcel 2	7,445		-	-	-	101.4	73.43

* 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 2 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 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" 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, the flag pole portion of Parcel 2 will provide off street parking access for both the parcels. The shared vehicle access utilizes the location of the existing driveway and minimizes the need for additional curb-cuts along the street and the impervious area resulting from additional paved surfaces for vehicle access. As a condition of approval, a reciprocal access easement will be placed over the entirety of the pole to allow 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.5) that shows the location and size of trees on and adjacent to the site. The applicant provided an arborist report and addendum (Exhibits A.12 & A.17) that include a tree survey with the size, species, and location of each tree and which identifies their condition and suitability for preservation or exempt status, and specifies a root protection zone and tree protection measures for each tree to be preserved.

Based on this information, 6 trees, which provide a total of 149 inches of tree diameter, are subject to the preservation requirements of this chapter.

The trees proposed for preservation are in good condition, include native/non-nuisance species, and 3 of the trees 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 3 of the 4 trees that are 20 or more inches and 103 inches (69%) of the total tree diameter, so the proposal complies with:

Option 2: Preserve at least 75 percent of the trees that are 20 or more inches in diameter and at least 25 percent of the total tree diameter on the site.

The Arborist Report identifies for preservation all of the trees with diameters of 20 inches or more. However, staff and the applicant discussed the significant spatial constraints to development of the site that retaining Tree #20158 creates (Exhibit A.18). Even with a conceptual footprint of 625 square feet in a corner of Parcel 2 that minimizes disturbance on the lot, a robust performance plan was needed to adequately preserve Tree #20158. The maximum building coverage for proposed Parcel 2 is 2,616.75 square feet; retaining the tree reduces the allowed coverage to just under 24% of that. For this reason, preservation of Tree #20158 is determined to not allow for reasonable development considering the intensity of development allowed in the zone and site constraints and is thus the tree is not required to be retained.

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

In order to ensure that future owners of the parcels are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions, at the time of final plat. The acknowledgement must identify that development on Parcels 1 and 2 must be carried out in conformance with the Tree Preservation Plan (Exhibit C.5) and the Arborist Report and addendum (Exhibit A.12 & 17), excepting those elements related to the preservation of Tree #20158.

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

At the time of development, the individual parcels/lots 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: 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.

Additionally, where geologic conditions or historic uses of the site indicate that a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements to make the lots suitable for their intended uses and the provision of services and utilities.

Clearing and Grading: 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 parcels developable. In addition, where trees required to be preserved are near areas where new development on the site is anticipated, the arborist has prescribed protection measures to avoid and address potential conflicts. In addition, the applicant's arborist has also identified 4 trees on the adjacent site to the north that are within 15 feet of potential disturbance area on the proposed parcels. In order to protect the off-site trees from clearing, grading, and other construction impacts, the arborist has recommended specific tree protection measures, which are reflected on the tree preservation plan (Exhibit C.5) and detailed in the arborist report and addendum (Exhibits A.12 & A.17).

This criterion is met.

Land Suitability:

1. 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 and there are no records showing the location of the septic system. 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. In addition, once the location of the septic system is identified, the applicant will be required to obtain an arborist report detailing any additional tree protection measures required to protect the trees being preserved under 33.630. To ensure tree protection and tree preservation measures are observed during the decommissioning, the septic system must be decommissioned under the same permit as the the demolition of the garage. Any amendments to the approved tree preservation plan required to protect trees subject to tree preservation under 33.630 during the septic decommissioning must be in accordance with 11.60.090.

With a condition requiring final inspection for a decommissioning permit and for the associated tree protection measures, the new parcel(s) can be considered suitable for new development.

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 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(s) will be required describing maintenance responsibilities for the easement described above and facilities within the easement area. This criterion can be met with the condition that a maintenance agreement(s) 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 (name of feature) has been recorded as document no. _____, Multnomah County Deed Records.”

With the conditions of approval discussed above, this criterion is met.

K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,

Findings: The transportation system must be capable of 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):

Safety

The site is mid-block on the east side of SE 118th Ave. between SE Powell Blvd and SE Division St. SE 118th Ave. is improved with approximately 28-feet of paved roadway with curbs. Speed bumps exist throughout this segment as a traffic calming measure. Intermittent sidewalks exist along both sides of this segment of SE 118th Ave. There is a mix of curb tight sidewalks, separated sidewalks, and gaps in the sidewalk network, with the subject site being one of the gaps where no sidewalk currently exists. Based on information in the City’s database on Portland Traffic Deaths and Injuries since 2008, there have been no fatal or injury accidents on SE 118th Ave. between SE Powell Blvd. and SE Division St.

Street capacity

The right-of-way has a paved roadway surface which accommodates two-way vehicle travel. Due to the local service classification and low vehicle speeds, the roadway also currently serves as a shared bicycle facility. The street appears to have adequate capacity to absorb the increase in motor vehicle and bicycle trips from the addition of one single family lot. The sidewalk system is unbuilt in the frontage of the subject lot.

Level of service

Level of service is a term used to describe vehicular traffic; it currently has little to no meaning for other modes. At this location, SE 118th Ave. is a local service street for which traffic count data is not available. PBOT has not identified any level of service concerns with this segment of SE 118th Ave. in the TSP or other planning documents. It is believed this segment functions well for vehicular travel and has capacity to absorb the anticipated vehicle trips from one additional residential lot.

Connectivity

The site is an area with moderate connectivity. The east/west block length is 294-feet, which meets City spacing standards. The historic land development pattern in this area resulted the north/south block length being approximately 2,600 feet (0.5-miles) long rather than the recommended length of between 200 feet and 530 feet for through streets. Pedestrian

connections are recommended to be between 200 feet and 330 feet apart. The subject site is mid-block approximately 515 feet north of SE Powell Blvd. This is a location which the spacing standards suggest would be appropriate for a through connection.

The spacing standards have to be evaluated in light of the existing development pattern. The subject site contains a house which is being retained. While a half-street improvement or pedestrian connection could potentially fit to the north or south of the existing house, this would only get the street halfway through the block. The subject site abuts two properties to the east. Both of those properties contain existing houses whose location would preclude a through connection. Additionally, the two lots to the east are too small to further divide under the current R5 zoning. Without the ability for further land divisions to the east, there is little chance a street or pedestrian connection would ever span the full block width and connect to SE 119th Ave. Since there is not potential for the connection to span the block width, no dedication is required for a new east/west connection.

Transit Availability

The subject site has good access to transit but is approximately 20-feet too far from SE Powell Blvd. to be mapped as being exempt from vehicle parking requirements (33.266.110). Tri-Met service route 9 operates on SE Powell Blvd. with headwinds of 15 minutes or less most of the day, every day. Route 9 provides service eastbound on Powell Blvd. to the Gresham Central Transit Center. Westward service is provided the length of Powell Blvd. to OMSI, the South Waterfront, and Downtown. Many transfer opportunities exist along this line. While frequent bus service is also available north of the site on Division St, it is an approximately ½ mile walk to get to Division St. making that option less attractive. While transit is available nearby, the sidewalk system used to access that transit is incomplete.

Availability of pedestrian and bicycle networks.

As noted under the Connectivity evaluation factor, there is good north/south connectivity but poor east/west connectivity in this area. Separated sidewalk facilities do not exist for the majority of the streets in the subject area. Most block faces have a mixture of curb tight sidewalks and sidewalk gaps with an occasional stretch of separated sidewalk. East/west connectivity is limited to area collectors. While SE Division St. has sidewalks in this area, SE Powell Blvd. does not. The frontage of the subject site currently has a curb but not a sidewalk. The addition of a single lot to the neighborhood is anticipated to increase trips via all modes. Adding additional pedestrian trips to an area where pedestrian facilities are not currently built to City standard will have an incremental negative impact.

The area collectors, which experience high volumes of vehicle traffic and high speeds, do have consistent striped bicycle lanes. They are the only option for east/west travel through the area. For north/south travel, lower speed/lower volume local service streets such as SE 118th Ave. accommodate bicycles as well as vehicles. While SE 118th Ave. is not marked with sharrows, it does contain speed bumps to reduce vehicle speeds.

On street parking impacts

On street parking is available on both sides SE 118rd Ave. There appears to be little demand for on-street parking on this segment. Most of the homes along the streets in the immediate area include driveways and garages that accommodate multiple vehicles. The applicant's narrative states both lots will have vehicle access over a shared driveway in the "pole" portion of proposed Parcel 2. This will both minimize on-street parking demand from the development while maximizing the retention of on-street parking within the site's frontage.

Access restrictions

SE 118th Ave. is a paved local service street. The roadway appears to be straight with good sight distance. No access restrictions are warranted.

Neighborhood impacts

The proposed development is anticipated to add a small number of trips from all modes into the neighborhood system. Both lots are proposed to have on-site vehicle parking. Additional

pedestrian trips will have an incremental negative impact, however it is anticipated there will be few other impacts to the neighborhood from the additional lot.

Impacts on pedestrian, bicycle, and transit circulation

There is transit service available on SE Powell Blvd. and SE Division St. A network of paved streets provides bicycle connections from this neighborhood to the larger City, though east/west connectivity is limited to high volume/high speed collectors. The sidewalk network is intermittent. The addition of one residential lot to the neighborhood is not anticipated to have a substantial impact on area circulation. However, adding additional trips to an area where the pedestrian circulation system is not to City standards will have an incremental negative effect.

B. Measures proportional to the impacts of the proposed use are proposed to mitigate on- and off-site transportation impacts. Measures may include transportation improvements to on-site circulation, public street dedication and improvement, private street improvements, intersection improvements, signal or other traffic management improvements, additional transportation and parking demand management actions, street crossing improvements, improvements to the local pedestrian and bicycle networks, and transit improvements.

Findings:

The impact of the development is small enough that asking the property owner to provide off-site improvements to the transportation system would be out of proportion to the development request. Asking the property owner to dedicate land and construct standard separated sidewalks along the frontage of SE 118th Ave. will alleviate a portion of the need for pedestrian system improvements in the area.

This approval criterion can be met with the following conditions of approval:

- 1. Prior to final plat approval, the sidewalk adjacent to proposed Parcel 1 shall be constructed to current City Standard. Current City Standard requires an 11-ft corridor composed of a 0.5-ft curb, 4-ft furnishing zone, 6-ft sidewalk, and 0.5-ft frontage zone.*
- 2. Property dedication along SE 118th Ave. necessary to accommodate standard improvements shall occur as a condition of Plat approval.*
- 3. As a condition of building permit approval, the sidewalk adjacent to Proposed Parcel 2 shall be constructed to City Standard at the time of permit.*

PBOT has reviewed and concurs with the information supplied and available evidence. Standard sidewalk corridor improvements will be required to serve the proposed development (see criterion L. 33.654). With the conditions noted above, 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. 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. The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 3 of this report. The sanitary sewer service standards of 33.652 have been verified.</p>
<p>33.653.020 & .030 Stormwater Management criteria and standards – See Exhibit E.1</p>

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 noted in BES' response:

*PBOT requires construction of improvements to the sidewalk corridor, which triggers stormwater management requirements of the SWMM. However, there is an existing sedimentation manhole and sump system/other system that meets SWMM requirements and has sufficient capacity to manage the triggered impervious area in the right-of-way. **Therefore, no additional stormwater management requirements apply for the required right-of-way improvements [emphasis added].***

- **Parcel 1 (with the existing house):** The existing house has downspouts that drain onto the ground. BES has noted that the downspout at the southeast corner of the house will not meet required setbacks to the proposed new property line after the land division. Therefore, per BES' response, prior to final plat approval, the applicant must retrofit this downspout according to SWMM standards, with all required permits finalized. The applicant must also provide BES with documentation, such as photographs, that the work has been completed.
- **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. In addition, the applicant proposes managing stormwater from the proposed driveway by utilizing a center gravel filter strip. BES notes that Simplified approach form submitted by the applicant is not current and thus doesn't include information about sizing the filter strip. While BES voices no objection to the concept of utilizing the filter strip as a stormwater management method at the site, the reviewer notes that the applicant may be asked to submit a new Simplified approach form at time of building permit; the reviewer notes that the proposed drywell is sized to handle more impervious surface than currently proposed.

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

SE 118th Ave is improved with a paved roadway and curbs, with intermittent sidewalks. There are no sidewalk improvements in frontage of the subject site. In reviewing this land division, PBOT 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, PBOT has determined that sidewalk improvements must be made in order to meet City standards ensure that safe pedestrian travel is possible to and from the proposed development. To accommodate these improvements, additional right-of-way must be dedicated along the frontage of the site. With the improvements, one additional dwelling can be safely served by this existing street without having any significant impact on the level of service provided.

PBOT will require the applicant to reconstruct the pedestrian corridor along the site frontage to City standards with an 11-ft sidewalk corridor composed of a 0.5-ft curb, 4-ft furnishing zone, 6-ft sidewalk, and 0.5-ft frontage zone. This will be required as a condition of final plat approval for Parcel 1 and at the time of development on Parcel 2.

This criterion is met, with the condition that curb and 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 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.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all requirements of Title 11 can be met, and that all development standards of Title 33 can be met or have received an Adjustment or Modification via a land use review, prior to the approval of a building or zoning permit.

Future Development

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

- Flag Lots – The current code and code that will be effective in August 2021 have developments standards that apply specifically to flag lots. The standards in effect at the time that an application for building permit is received will be applied to Parcel 2.

Existing development

The division of the property may not cause existing structures to move out of conformance or further out of conformance with 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.) Otherwise, development that will become non-conforming must be altered to be brought into conformance or must be removed.

In this case, there are several Zoning Code standards that relate to existing development on the site:

- 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 (detached garage) that lies within the future flag pole access and 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 – In this zone, one parking space per dwelling unit is required. The detached garage whose demolition will be required prior to final plat approval provides this required parking for the existing house. 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. A permit must be obtained to construct the new replacement 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 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 6,104 square feet, therefore 2,441.6 square feet of tree canopy is required. Prior to final plat approval, the applicant must meet this requirement by either planting tree(s) on Parcel 1, demonstrating that it is met as a result of tree growth (*both trees to remain on Parcel 1 are within 1 inch dbh of what would bring the Parcel into compliance*), 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 regards to addressing requirements; ensuring adequate hydrant flow from the nearest fire hydrant or obtaining an approved Fire Bureau appeal to this requirement; recording an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers on Parcel 2; fire apparatus access, including aerial access. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- The applicant must meet the requirements of Urban Forestry for street tree planting in the future 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 2-parcel partition, as shown on the attached preliminary plan (Exhibit C.2). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: Tree preservation and protection, stormwater management, and right-of-way improvements.

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

ADMINISTRATIVE DECISION

Approval of a two-parcel partition for one standard size parcel and one flag lot, per the approved site plans, Exhibits C.2 through C.5, subject to the following conditions:

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

- Any buildings or accessory structures on the site at the time of the final plat application, including building footprint and eaves;
- 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. A recording block for each of the legal documents such as the Acknowledgement of Tree Preservation Land Use Conditions, a Maintenance Agreement for the shared driveway, and the acknowledgement of special land use conditions for Fire Bureau requirements, as required by Conditions C.8 and C.9, below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: “An Acknowledgement of Tree Preservation Land Use Conditions has been recorded as document no. _____, Multnomah County Deed Records.”
2. The applicant shall meet the street dedication requirements of the City Engineer for SE 118th Ave. The required right-of-way dedication must be shown on the final plat.
3. 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 of the purposes that a driveway would be typically used for.

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

Streets

4. 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 undeveloped Parcel 2 may be constructed with development of the parcel, as per the City Engineer’s discretion.

Utilities

5. The applicant must meet the requirements of the Fire Bureau for providing an adequate fire access way for Parcel 2, as required in Chapter 5 of the Oregon Fire Code. Alternately, the applicant will be required to install residential sprinklers in the new house on Parcel 2, if applying the exception, and an Acknowledgement of Special Land Use Conditions describing the sprinkler requirement must be referenced on and recorded with the final plat.

Existing Development

6. The applicant must obtain a finalized demolition permit for removing the existing detached garage. Prior to removal of the structure, tree protection must be installed in accordance with the approved Tree Preservation Plan, per Condition D.1.

7. The applicant must provide replacement off-street parking on Parcel 1 that is accessed via the flagpole of proposed Parcel 2 in substantial conformance with the location shown on Exhibit C.3. A Zoning Permit must be obtained and finalized to document the replacement parking prior to final plat approval. The space must be in conformance with the applicable requirements of Portland Zoning Code Chapter 33.266. The permit plans must include the note: *This permit fulfills requirements of Condition C.7 of LU 19-195066 LDP.*
8. 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. To ensure tree protection and tree preservation measures are observed during the decommissioning, the septic system must be decommissioned under the same permit as the demolition of the garage. Any amendments to the approved tree preservation plan required during the septic decommissioning to protect trees subject to tree preservation as identified in the approved tree protection plan, must be in accordance with 11.60.090 and detailed in an updated arborist report.
9. The applicant must meet the requirements of BES for the stormwater systems on the existing house to remain on Parcel 1. Specifically, the gutters and downspouts must direct water to an approved disposal point that meets setback requirements from the new lot lines. If modifications to the system are required by BES, the applicant must obtain finalized plumbing permits for this work prior to final plat approval.
10. The applicant must meet the requirements of Urban Forestry to plant 3 street trees in the improved right-of-way 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.
11. The applicant must meet the tree density standard of 11.50.050 on Parcel 1 with the existing house by either demonstrating with an updated tree inventory conducted by a certified arborist showing that existing trees have grown sufficiently to meet the standard, by 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

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. The approved Tree Survey must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.
13. A Maintenance Agreement shall be executed for the Private Access Easement described in Condition B.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.
14. The applicant must meet the requirements of the Fire Bureau for providing an adequate fire access way for Parcel 2, as required in Chapter 5 of the Oregon Fire Code. Alternately, the applicant will be required to install residential sprinklers in the new house on Parcel 2, if applying the exception, and an Acknowledgement of Special Land Use Conditions describing the sprinkler requirement must be referenced on and recorded with the final plat.
15. If needed to accommodate a Fire Bureau-approved fire access way, the lot dimensions of Parcels 1 and 2 may be altered from the approved preliminary plat (Exhibit C.2) beyond the constraints listed in 33.663.200, provided existing

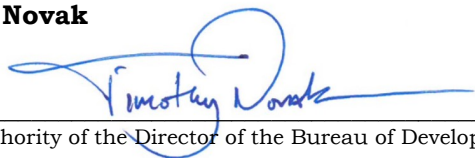
development continues to comply with the development standards of Title 33 after the proposed line is relocated.

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

16. Development on Parcels 1 and 2 shall be in conformance with the Tree Preservation Plan (Exhibit C.5) and the applicant's arborist report and addendum (Exhibits A.12 & A.17), excepting those preservation and protection requirements that apply to Tree #20158, which is not subject to preservation requirements. Any encroachments into the root protection zone of trees required to be preserved shall be in accordance with the Tree Protection Specifications of 11.60.030.

17. If required by the Fire Bureau, the applicant shall be required to install residential sprinklers in the new dwelling unit on Parcel 2. Please refer to the final plat approval report for details on whether or not this requirement applies.

Staff Planner: Timothy Novak

Decision rendered by:  **on June 2, 2021**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 4, 2021

About this Decision. This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on July 18, 2019, and was determined to be complete on December 26, 2019.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore, this application was reviewed against the Zoning Code in effect on July 18, 2019.

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 waived the 120-day review period, as stated with Exhibit G.5.

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.

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’s Statement
 - 1. Narrative, 12/17/2019
 - 2. Existing Conditions Plan, 12/17/2019
 - 3. Response regarding required plans, 06/14/2020
 - 4. Existing Conditions and Preliminary Plan, 06/14/2020
 - 5. Arborist Report, 06/14/2020
 - 6. Narrative, amended, 11/02/2020
 - 7. Existing Conditions Plan 11/02/2020
 - 8. Simplified Stormwater Approach Form, 11/22/2020
 - 9. Existing Conditions and Preliminary Plan, 11/24/2020
 - 10. Proposed Development and Preliminary Plan, 11/24/2020
 - 11. Arborist Report, amended, 12/04/2020
 - 12. Arborist Report, amended, 12/09/2020
 - 13. Response regarding BES & PBOT items, 02/18/2021
 - 14. Plan Set, revised, 02/18/2021
 - 15. Simplified Stormwater Approach Form & Tree Credit Form, 02/18/2021
 - 16. Historic Plumbing Permit, 02/18/2021
 - 17. Arborist Report Addendum, 04/02/2021
 - 18. E-mail regarding removal of Tree #20158 from tree preservation proposal
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Existing Conditions Plan
 - 2. Preliminary Plat Plan
 - 3. Proposed Development Plan
 - 4. Utility Plan (Attached)
 - 5. Tree Preservation Plans (extracted from Exhibits A.12 & A.17)
- 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. Life Safety Review Section of BDS
7. Bureau of Parks, Forestry Division

F. Correspondence: NONE

G. Other:

1. Original LU application and expedited land division form
2. Incomplete Letter, 08/12/2019
3. Letter regarding outstanding materials needed for review, 07/10/2020
4. Request to Extend 120-day review period
5. Waiver of 120-day and 365-day review timelines

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).