



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

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**Date:** January 18, 2021  
**To:** Interested Person  
**From:** Clare Fuchs, 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 <https://www.portlandoregon.gov/bds/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 21-040119 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Carlos Callava, 3J Consulting, Inc.  
9600 SW Nimbus Ave #100 Beaverton, OR 97008  
503-946-9365 ext 246 [carlos.callava@3j-consulting.com](mailto:carlos.callava@3j-consulting.com)

**Owner:** Merrill Watts, Shauna Watts, Shauna Watts Tr  
538 SE 62nd Ave Portland, OR 97215-1917  
503-819-8885 [MerrillWatts6@gmail.com](mailto:MerrillWatts6@gmail.com)

**Site Address:** 538 SE 62ND AVE

**Legal Description:** N 97' OF LOT 20, BELMONT PL  
**Tax Account No.:** R067600460  
**State ID No.:** 1S2E06AA 00400  
**Quarter Section:** 3136 & 3137

**Neighborhood:** Mt. Tabor, contact Stephanie Stewart at [contact.MTNA@gmail.com](mailto:contact.MTNA@gmail.com)  
**Business District:** None  
**District Coalition:** Southeast Uplift, contact Nanci Champlin at [nanci@seuplift.org](mailto:nanci@seuplift.org)

**Zoning:** Residential 5,000 (R5)

**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 divide this 12,088 square foot lot that currently contains a single detached dwelling into 2 lots. Parcel 1 is proposed to be 7,601 square feet and contain the existing house to remain. Parcel 2 is proposed to be 4,487 square feet and it will be available for residential development. The applicant proposes to preserve three trees on

Parcel 2, one with a truncated root protection zone, for Tree #2, shown by the fence on Parcel 2. This fence will also protect all the trees on Parcel 1.

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 2 units of land (2 lots). 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:** The neighborhood is predominantly single dwelling homes. This neighborhood and the one to the north are zoned R5, while the neighborhood due east is zoned R7. There is a corridor of multi-dwelling and commercial zones along SE 60<sup>th</sup> Avenue. Mount Tabor Middle School is located approximately 752 feet to the northwest. Mount Tabor Park is located approximately 900 feet to the southeast. Laurelhurst Park is located just over a mile away to the northwest.

### Infrastructure:

- **Streets** – At this location, SE 62<sup>nd</sup> Avenue is improved with a 28-ft paved roadway within a 50-foot right-of-way. The sidewalk corridor consists of a 0.5-foot curb, 3.5-foot furnishing zone, 6-foot sidewalk, and 1-foot frontage zone. There are young street trees in the furnishing area otherwise known as the planter strip along the frontage of the site.

This site has approximately 97 feet of frontage on SE 62<sup>nd</sup> Avenue. There is one driveway entering the site that serves the existing house on the site. At this location, SE 62<sup>nd</sup> Avenue is classified as a Local Service Street for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 620 feet south from the site at SE Belmont Street via Bus 15.

- **Water Service** – There is an existing 6-inch water main in SE 62<sup>nd</sup> Avenue. The existing house is served by a 5/8-inch metered service from this main.
- **Fire Hydrants** Fire hydrant data was not provided, it has been listed as a condition of approval prior to final plat. Only fire sprinkler fire flow data was provided.
- **Sanitary Service** - There is an existing 8-inch VSP sewer line in SE 62<sup>nd</sup> Avenue just south of the site’s southern boundary. A sewer extension has been built to serve the site.
- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property. There are no public right-of-way improvements that will trigger BES public stormwater drainage improvements.

**Zoning:** Residential 5,000 (R5) The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing and provide options for infill housing that is compatible with the scale of the single-dwelling neighborhood.

**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 **September 17, 2021**. Three written responses have been received from notified property owners in response to the proposal. Below are responses to the topics that were covered in the written comments.

Traffic Capacity: The Bureau of Transportation (PBOT) has not identified any level of service concerns with this segment in the Transportation System Plan (TSP) or other planning documents. It is believed this segment functions well for travel via all modes and has capacity to absorb the anticipated vehicle trips from one additional residential lot.

Traffic Safety: 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 62<sup>nd</sup> Avenue between E. Burnside Street and SE Belmont Avenue. With that said, multiple injury accidents have happened on area collectors. While far from ideal, crashes on area collectors do not rise to the level of safety concern to limit development on a local service street in compliance with the base zone.

Driveway Location: Due to public comment, the applicant moved the driveway north as far as possible to facilitate more vision clearance and protect the off-site tree approximately 35 feet south of proposed Parcel 2.

On-street Parking: On-site parking is proposed for the new parcel, though on-site parking is no longer required for household living uses in single dwelling zones per Zoning Code section [33.266.110.B](#). City Council made a clear statement regarding vehicle parking by passing zoning regulations which do not require off-street parking for any household living use in any single dwelling zoned property. This policy de-emphasized accommodations for vehicles and establishes a position of tolerance for on-street parking impacts that result from infill development. Zoning which encourages infill development and increases in density is expected to create added impacts to on street parking. In this case, the applicants have stated that on-site parking will be provided and have relocated the driveway in response to public comment.

Off-site Tree Preservation: Due to public comment, the applicant moved the proposed driveway north as far as possible to help provide the most protection for the Northern Red Oak in question, an off-site tree, approximately 35 feet south of proposed parcel 2. There is an existing driveway on the neighbor’s property between the aforementioned tree and proposed parcel 2 as well.

Preservation of On-site Tree #2: Due to public comment, the applicant opted to move from a stormwater facility within the root protection zone of Tree Number 2 to a drywell in the front yard of Parcel 2 to better preserve this large tree. Therefore, there will now be no stormwater facility inside the root protection zone for this tree. The performance preservation portion has been reduced greatly for this tree and is now just for house construction.

## **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.

<b>Criterion</b>	<b>Code Chapter/Section and Topic</b>	<b>Findings: Not applicable because:</b>
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.
H	33.636 - Tracts and Easements	No tracts or easements have been proposed or will be required.
I	33.639 - Solar Access	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, Seeps and Wetlands	No streams, springs, seeps or wetlands are evident on the site
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required.
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	No pedestrian connections are 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 12,088 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.

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 1.

The site has a maximum density of 2 units of land and a minimum required density of 1 unit of land. The applicant is proposing 2 single dwelling lots. The density standards are therefore met.

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

	<b>Min. Lot Area (square feet)</b>	<b>Max. Lot Area (square feet)</b>	<b>Min. Lot Width* (feet)</b>	<b>Min. Depth (feet)</b>	<b>Min. Front Lot Line (feet)</b>
<b>R5 Zone</b>	3,000	8,500	36	50	30
Parcel 1	7,601		61.1	124.6	61.1
Parcel 2	4,487		36	124.6	36

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

**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.

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.

In order to identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C1, C2) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A20) 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, 10 trees, which provide a total of 134 inches of tree diameter, are subject to the preservation requirements of this chapter.

The trees proposed for preservation are in good condition (one is in fair 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 100 percent of the trees that are 20 or more inches and 116 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 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 C1, C2) and the Arborist Report (Exhibit A20).

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

At the time of development, the individual parcel 2 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: 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 lot developable. 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.

**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):

The applicant provided a response to each evaluation factor. Staff generally concurs with the applicant's findings.

The subject site is on a paved local service street with curbs and sidewalks. The existing sidewalks meet the requirements of TRN 1.22, "Infill Development on Streets with an Existing Sidewalk Corridor" to be considered the standard for the block face. The existing roadway and sidewalk networks are complete in this area. Connectivity meets City standards.

The area is served by multiple bus lines within a 2-block walk of the site. Tri-Met frequent service bus Route 15 operates on SE Belmont Street with a stop approximately 620 feet south of subject site at the intersection with SE 62<sup>n</sup> Avenue. Tri-Met service bus Route 71 operates on SE 60<sup>th</sup> Avenue, with a stop approximately a 750-foot walk from the site on SE 60<sup>th</sup> Avenue at SE Stark Street. Sidewalks in the area are complete making it simpler for people who walk and roll to access the transit system.

The interconnected network of paved streets makes cycling an attractive transportation mode in this area. In addition to the paved local service streets, multiple bicycle routes are designated in the area including two Neighborhood Greenways on SE 53<sup>rd</sup> Avenue for north/south travel and SE Taylor Street for westerly travel. For east bound travel, SE Yamhill Street is a designated shared roadway with a lower speed/lower volumes but not full Neighborhood Greenway treatment. Neighborhood Greenways are low-traffic and low-speed streets where PBOT gives priority to people walking, bicycling, and rolling.

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 62<sup>nd</sup> Avenue between E Burnside Street and SE Belmont Avenue. With that said, multiple injury accidents have happened on area collectors. While far from ideal, crashes on area collectors do not rise to the level of safety concern to limit development on a local service street in compliance with the base zone.

The site is well served by transit and is mapped as being exempt from vehicle parking per 33.266.110.B.1. While parking is not required, the preliminary plan does show a single width driveway being proposed for the new lot.

To staff's knowledge, PBOT has not identified any level of service concerns with this segment in the TSP or other planning documents. It is believed this segment functions well for travel via all modes and has capacity to absorb the anticipated vehicle trips from one additional residential lot.

Any sidewalk panels which are damaged or destroyed during construction will be required to be replaced. If on-site parking is proposed at the time of building permit, the construction of a new curb cut will require a Minor Improvement Permit associated with the building permit for the new dwelling.

PBOT has reviewed and generally concurs with the information supplied and available evidence. No mitigation is necessary for the transportation system to be capable of supporting the proposed development in addition to the existing uses in the area. These criteria are met.

**L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.**

**Findings:** Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

**33.651 Water Service standard – See Exhibit E3**

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

The Fire Bureau has reviewed the fire flow and determined the nearest fire hydrant has adequate capacity.

The water service standards of 33.651 have been verified.

**33.652 Sanitary Sewer Disposal Service standards – See Exhibit E1**

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

BES reviewed the proposed improvement and utility plan, and the response is summarized below:

As a result of the proposed land division, the existing sewer connection that serves the house on Parcel 1 will cross over Parcel 2 to reach the sewer main in SE 62<sup>nd</sup> Avenue. The applicant must cap the existing sewer connection and establish a new service for the house located entirely on Parcel 1. All required plumbing permits must receive final inspection approval prior to Final Plat approval. With this condition, the sanitary sewer service standards of 33.652 have been verified. This criterion is met.

**33.653.020 & .030 Stormwater Management criteria and standards – See Exhibits E1 & E5**

BES reviewed the applicant's proposed improvement and utility plan, storm report, and Simplified Approach Form against the stormwater management approval criteria and standards, and determined that a stormwater management system can be designed that will provide adequate capacity and disposal for the expected amount of stormwater, as summarized below:

No stormwater tract is proposed or required.

The applicant has proposed the following stormwater management methods:

- **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):** BES has noted that the existing house's stormwater is connected to the combined system in SE 62<sup>nd</sup> Avenue via a lateral that currently crosses the proposed property line. Prior to final plat approval, the applicant must demonstrate that the sewer lateral serving the property is located within Parcel 1's frontage and document the location of the stormwater disposal system serving the existing structures on Parcel 1. The applicant must modify the stormwater system for the existing house as necessary to comply with Stormwater Management Manual prior to final plat approval. Any required plumbing permits must have final inspection approval.

BES determined the proposal is acceptable for reviewing the land division against the stormwater management approval criteria and standards. With the noted conditions, this criterion is met.

**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 meets the noted spacing requirements for through streets. Due to existing development and lot patterns in this area as well as the subject site being approximately 148 feet from the corner, a pedestrian connection is neither warranted or feasible at this location.

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 E2  
33.644.120.H Street Trees – See Exhibit E6**

The width of the local street right-of way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features.

For public streets, PBOT reviews the configuration of elements within the street right-of-way for consistency with city standards and specifications; and Urban Forestry addresses the retention and installation requirements for street trees.

PBOT has indicated that the existing street is currently improved to City standards as it contains the standard 11-foot corridor, albeit in a different configuration. As such PBOT has indicated that it has accepted this configuration as standard for this block face. PBOT has not identified or been made aware of any factors related to this proposal that lead to a conclusion other than that one additional lot can be safely served by this existing street without having any significant impact on the level of service provided.

Any sidewalk panels which are damaged or destroyed during construction will need to be replaced. It is anticipated this can be accomplished via a Minor Improvement Permit associated with the building permit for any future structures.

Urban Forestry evaluated the provision of street trees and planting areas for the public right-of-way and determined:

The two existing street trees should be retained and one additional street tree is required to be planted along the site's frontage. However, it is acceptable if one or both existing street trees need to be removed, but replanting will be required. Therefore, one tree will need to be replaced along Parcel 1's frontage and one additional tree is required to be planted along Parcel 2's frontage. The required tree in the frontage of Parcel 1 with the existing house has been incorporated as a condition of approval to occur prior to final plat approval. Street trees for Parcel 2 will be addressed at the time of permit.

Based on the foregoing, the width of the right-of-way will be sufficient to accommodate the expected users and with the condition described above, this criterion is met.

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

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

## 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 <a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 <a href="http://www.portlandonline.com/bes">www.portlandonline.com/bes</a>	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 <a href="http://www.portlandonline.com/fire">www.portlandonline.com/fire</a>	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 <a href="http://www.portlandonline.com/transportation">www.portlandonline.com/transportation</a>	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 <a href="http://www.portlandonline.com/parks">www.portlandonline.com/parks</a>	Title 11 –Trees
Water Bureau/503-823-7404 <a href="http://www.portlandonline.com/water">www.portlandonline.com/water</a>	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 provided sprinkler fire flow data, not hydrant fire flow data. The applicant must meet the requirements of the Fire Bureau in regards to ensuring adequate hydrant flow from the nearest fire hydrant or obtaining an approved Fire Bureau appeal to this requirement; fire apparatus access, including aerial access. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

## DEVELOPMENT STANDARDS

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

**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 is one Zoning Code standard 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 14 feet from the new property line. 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.

With the conditions noted above, this land division proposal can meet the requirements of 33.700.015.

## CONCLUSIONS

The applicant has proposed a 2 parcel partition, as shown on the attached preliminary plans (Exhibit C1, C2, and C3). 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, driveway location, on-street parking, and traffic safety and capacity.

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

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 2-parcel partition, that will result in 2 standard R5 parcels with 7 trees that will be preserved as illustrated with Exhibits C1 – C3 and A20, subject to the following conditions:

- A. Supplemental Plan.** An additional supplemental plan shall be submitted with the final plat survey for BDS Land Use Services and BES review and 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;
  - 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 maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C4 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: “An Acknowledgement of Special Land Use Conditions” has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”

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

### Existing Development

1. 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.
2. The applicant shall demonstrate to the satisfaction of the Bureau of Environmental Services that the sewer lateral serving the existing structure on Parcel 1 is located within the Parcel 1 frontage. The existing lateral for the future use of development

on Parcel 2 must be capped and a new service connection established from the existing structure to the public sewer. If modifications to the lateral are necessary the applicant must obtain finalized plumbing permits for this work.

3. The applicant shall meet the requirements of the Bureau of Environmental Services to document the location of the stormwater disposal system for the existing house. The location of any existing or required stormwater systems serving the existing home must be shown on the Supplemental Plan. If, as a result of final plat approval, the stormwater system for the existing home to remain on Parcel 1 will not meet setback requirements of the Stormwater Management Manual, then the applicant must complete a stormwater retrofit and obtain any necessary finalized permits for modifications to the stormwater system so that it results in a system which meets the City's Stormwater Management Manual and other BES requirements. If no permits are necessary for the retrofit work, documentation showing that the retrofit has been completed must be provided through the final plat review.
4. The applicant must meet the requirements of Urban Forestry to replace 1 street tree(s) in the planter strip on SE 62<sup>nd</sup> Avenue 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.
5. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant (not the fire sprinkler flow data that was provided). The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.

#### **Required Legal Documents**

6. 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 (Exhibits C1, C2) and the applicant's arborist report (Exhibit A20). Specifically, trees numbered 1, 2, 3, 18, 21, 22, and 23, are required to be preserved, with the root protection zones indicated on Exhibits C1, C2. Tree protection fencing is required along the root protection zone of the trees 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 if it meets the Tree Protection Specifications of 11.60.030.
2. The applicant must meet the Fire Bureau requirement for 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: Clare L. Fuchs**

**Decision rendered by:** \_\_\_\_\_ **on January 13, 2022**

By authority of the Director of the Bureau of Development Services

**Decision mailed January 18, 2022**

**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 April 23, 2021, and was determined to be complete on September 14, 2021.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on April 23, 2021.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended by 60 days, as stated with Exhibit A2. Unless further extended by the applicant, **the 120 days will expire on: March 13, 2022.**

**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 <https://www.portland.gov/code/33>.

**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. Vesting Deeds and Death Certificate
  - 2. Original Narrative
  - 3. 120 Day Extension
  - 4. Earlier Stormwater Reports
  - 5. Earlier Plan Sets
  - 6. Earlier Arborist Reports and Inventories
  - 7. Submittal Memos
  - 8. Final Narrative
  - 9. Sewer Permit
  - 10. Fire Flow Data
  - 11. Stormwater Report
  - 12. Plan Set Cover Sheet
  - 13. Fire Hydrant Location
  - 14. Street Tree Plan
  - 15. Preliminary Plat
  - 16. Preliminary Grading Plan
  - 17. Existing Conditions Plan
  - 18. Utility Plan
  - 19. 8.5" x 11" Size Plans
  - 20. Arborist Report and Monitoring Contract
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. 8.5" x 11" Site and Tree Preservation Plan (attached)
  - 2. 24" x 36" Site and Tree Preservation Plan
  - 3. Preliminary Plat
- 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. Meredith Bateman and Gareth Mitchel, 10-15-21, opposed to project
  - 2. Dave Baker, 10-17-21, opposed to project
  - 3. Jack Costello and Julie Costello, 9-29-21, opposed to project
- G. Other:
  - 1. Original LU Application and Expedited Form

**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

For Zoning Code in effect  
August 1, 2020 - July 31, 2021



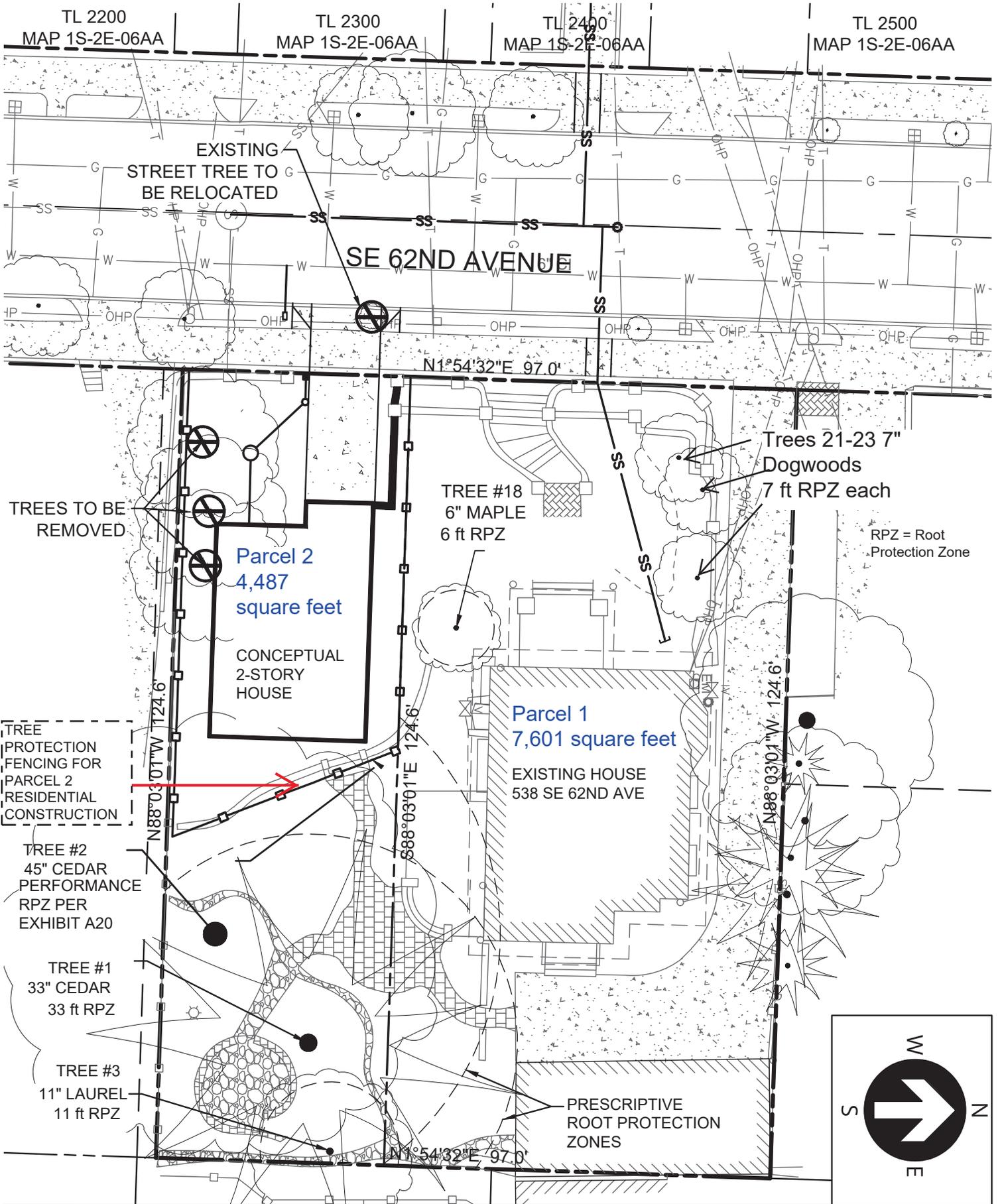
Site



Historic Landmark

File No.	LU 21 - 040119 LDP
1/4 Section	3137,3136
Scale	1 inch = 200 feet
State ID	1S2E06AA 400
Exhibit	B Apr 23, 2021

P:\21662-WATTS RESIDENCE\CAD\EXHIBITS\2021-05-25 SITE PLAN 8.5X11 EXHIBIT\21662-SITE PLAN EXHIBIT.DWG



**3J CONSULTING**  
CIVIL ENGINEERING . WATER RESOURCES . COMMUNITY PLANNING

Site and Tree Preservation Plan

**SCALE:**  
1" = 20'

21-040119-LDP

Exhibit C1