



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

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Date: June 10, 2022

To: Interested Person

From: Kate Green, Land Use Services
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NOTICE OF A TYPE II 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 21-059815 RP AD

GENERAL INFORMATION

Applicant: Eric Rystadt, Main Street Development Inc.
5331 SW Macadam Avenue, Suite 258
Portland OR 97239

Owner: Main Street Development Inc.
3546 SW Hillside Drive
Portland OR 97221

Contact Person: Mark Dane, Mark Dane Planning
12725 SW Glenhaven Street
Portland OR 97225
markdaneplanning@gmail.com / 503-332-7167

Site Address: 3546 SW HILLSIDE DRIVE

Legal Description: BLOCK 4 LOT 5&6, TUALATIN VIEW PK; BLOCK 4 LOT 7, TUALATIN VIEW PK

Tax Account No.: R845500710, R845500730

State ID No.: 1S1E08BD 00300, 1S1E08BD 00400

Quarter Section: 3325

Neighborhood: Bridlemile, contact at board@bridlemilepdx.org, Southwest Hills Residential League, contact at contact@swhrl.org.

Business District: None

District Coalition: Neighbors West/Northwest, contact Darlene Urban Garrett at darlene@nwnw.org & Office of Community & Civic Life, contact Leah Fisher at leah.fisher@portlandoregon.gov

Plan District: None

Other Designations: Landslide Hazard; Stream: *Lowell Creek*; Environmental Resource Site 124, *Fanno Creek and Tributaries Conservation Plan*; Wildlands Fire Hazard

Zoning: Residential 10,000 (R10)
Environmental Conservation (c)
Environmental Protection (p)

Case Type: Replat (RP) and Adjustment (AD)
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal: The applicant proposes a **Replat** to reconfigure 3 existing platted lots into 2 parcels, as shown on the attached survey. An existing house and detached garage are proposed to be retained on Parcel 2.

With the proposed lot configuration, the setback between the south side of existing house and the proposed lot line will be 7.6 feet (initially noted as 6 feet), instead of the required 10 feet. The applicant requests an **Adjustment** to allow for this reduction to the building setback standard (33.110.220).

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

- **Replat: 33.675.300 Approval Criteria**
- **Adjustment: 33.805.040 Approval Criteria**

FACTS

Site and Vicinity: The site is approximately 14,304 square feet in area and slopes down moderately to steeply from SW Hillside Drive to an open stream channel (*Lowell Creek*) at the east side of the property. The north west area of the site is developed with a house and detached garage, and the balance of the site is wooded with a mix of native and non-native tree and shrub species.

The surrounding area is also generally moderately to steeply sloped and wooded. Given the steep wooded terrain and nearby streams, many of the streets are narrow and winding. Most of the nearby development consists of similarly sized lots in the R10 and R5 zones, many of which are developed with one and two-story houses. Other uses nearby include a religious institution and a gas station approximately 400 feet to the north, and Council Crest Park approximately 1,000 feet to the east.

Zoning: The site has the following designations:

Residential 10,000 (R10) is a single-dwelling zone, which is intended to preserve land for housing and to provide housing opportunities for individual households.

Environmental Protection (p) overlay zone provides the highest level of protection to the most important resources and functional values.

Environmental Conservation (c) overlay zone conserves important resources and functional values in areas where the resources and functional values can be protected while allowing environmentally sensitive urban development.

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 **February 8, 2022**. Three written responses have been received from notified property owners.

One response (Exhibit F1) notes general support for the application.

Another response (Exhibit F2) opposes the replat and adjustment. The writers note the replat is not allowed by Section 33.675.050 of the City Code, which reads: *...A replat cannot result in the ...creation of a buildable lot from an unbuildable lot remnant or lot of record.* The writers are correct the noted code section does outline instances when a replat is not allowed. However, in this case, the properties under review are “lots”, which are distinguished from “lot remnants” and “lots of record” in the Zoning Code 33.910, Definitions. As such, that noted exclusion that applies to lot remnants and lots of record does not apply to this proposal.

The writers also disagree with the applicant’s position that reconfiguring the property into 2 lots, each around 7,000 square feet in size, will better protect the environmental resource area. The writers express concern that the larger lot size will allow for a larger building. It is correct that the allowed floor area and building coverage are contingent upon the lot size; and a larger lot would allow for a larger building. However, it is also correct that establishing a lot that has more area outside of the environmental zones will, in fact, reduce the amount of disturbance allowed within the environmental resource area, per the environmental standards 33.430.140.A and D. These standards require all area outside of the resource area to be deducted from the maximum allowed disturbance area limit. These standards also work in concert with other standards to locate development away from the resource area and on-site stream.

The writers also note the adjustment would impact fire protection and access for fire-fighting. BDS staff rely upon the expertise of the Fire Bureau and Life Safety review groups to identify any fire protection and access concerns. In this case, neither review group noted any such concerns.

The writers also raise concern about the adjustment impacting light and air, and detracting from the livability and appearance of the area. BDS staff find the requested reduction in the side setback will not significantly impact these features, since the setback will be comparable to those of similar structures on many of the nearby lots.

The third response (Exhibit F3) was received after the close of the comment period.

ZONING CODE APPROVAL CRITERIA

REPLAT

33.675.300 Approval Criteria

A replat will be approved if the review body finds that the applicant has shown that all of the approval criteria have been met:

A. Lots. The replatted lots must meet the standards of Chapters 33.605 through 33.615, with the following exceptions:

1. Lot dimension standards.
 - a. Lots and adjusted lots that do not meet the minimum lot area required for new lots are exempt from the minimum lot area requirement if they do not move further out of conformance with the minimum lot area required for new lots, and they meet the following:
 - (1) No portion of the lot or adjusted lot is in an environmental protection, environmental conservation, or river environmental overlay zone;
 - (2) No portion of the lot or adjusted lot is in the special flood hazard area; and
 - (3) The lot or adjusted lot has an average slope of less than 25 percent;
 - b. Maximum lot area. If any of the lots within the replat site are larger than the maximum lot area allowed, the same number of lots in the replat site are exempt from maximum lot area requirements;

- c. Minimum lot width. Lots and adjusted lots that do not meet the minimum lot width required for new lots are exempt from the minimum lot width requirement if they do not move further out of conformance with the minimum lot width required for new lots, and they meet the following:
 - (1) No portion of the lot or adjusted lot is in an environmental protection, environmental conservation, or river environmental overlay zone;
 - (2) No portion of the lot or adjusted lot is in the special flood hazard area; and
 - (3) The lot or adjusted lot has an average slope of less than 25 percent;
- 2. Regular lot lines. As far as is practical, all lot lines must be straight and the side lot lines of a lot or parcel must be at right angles to the street on which it fronts, or be radial to the curve of a curved street.
- 3. Maximum density. If the replat brings the replat site closer to conformance with maximum density requirements, the replat does not have to meet maximum density requirements;
- 4. Lots without street frontage. If the replat consolidates lots that do not have street frontage with lots that have street frontage, the replat does not have to meet minimum density and maximum lot area requirements;
- 5. Through lots. If any of the existing lots within the replat site are through lots with at least one front lot line abutting an arterial street, then the consolidated or reconfigured lots may be through lots;
- 6. Split zoning. If any of the existing lots within the replat site are in more than one base zone, then the consolidated or reconfigured lot may be in more than one base zone.

Findings: The subject property is in the R10, so the replatted lots must meet the standards in Chapter 33.610 or one of the noted exceptions, above.

The proposed replatted lots meet the lot dimension standards of the R10 zone as shown in the following table (this information is found in Table 610-2 of the Zoning Code):

	R10 Zone Requirement	Parcel 1	Parcel 2
Minimum Lot Area (square feet)	6,000	7,301	7,003
Maximum Lot Area (square feet)	17,000		
Minimum Lot Width* (feet)	50	50	99
Minimum Front Lot Line (feet)	30	50	99
Minimum Lot Depth (feet)	60	95	95

* Width is measured at the minimum front building setback line

The 14,304 square foot site has both environmental zoning and a landslide hazard designation, so the minimum required density is zero. The maximum allowed density is one. The proposal is for 2 parcels, which is allowable per Exception 3, since the site will move closer to the maximum allowed density, with only 2 platted lots instead of the current 3 platted lots.

The property line between the two proposed parcels is not a single straight line. However, a portion of the line is at a right angle to the street lot line. Behind the existing house, the line then jogs at a right angles to be parallel or perpendicular to the front and rear property lines. This lot line configuration provides for lots that are otherwise consistent with the purpose of the lot dimension standards (33.610.200), so Exception 2 is satisfied.

Based on the foregoing, this criterion is met.

B. Development standards. If existing development is in conformance with the development standards of this Title, the development must remain in conformance after the replat. If existing development is not in conformance with a development standard of this title, the replat will not cause the development to move further out of conformance with the standard unless an adjustment is approved.

Findings: The existing house and detached garage are proposed to remain on Parcel 2. With the exception of the south side setback, discussed below, the replat will not cause the existing development to move out of conformance with the applicable development standards.

The house is proposed to be located 7.6 feet and the eave is proposed to be 6.5 feet from the proposed share lot line, instead of the required 10 feet for the building wall and 8 feet for the eaves. Therefore, to meet this criterion, the applicant must modify the existing house to provide a minimum 10-foot setback from the new shared lot line, or obtain an Adjustment to the setback standard. In this case, the applicant has requested an Adjustment, as discussed in the findings below. Provided the Adjustment request is approved, this criterion will be met.

C. Conditions of land division approvals. The replat must meet one of the following:

1. All conditions of previous land division approvals continue to be met or remain in effect; or
2. The conditions of approval no longer apply to the site, or to development on the site, if the lots are reconfigured.

Findings: There are no previous land division approvals for this site, therefore this criterion does not apply.

D. Conditions of other land use approvals. Conditions of other land use approvals continue to apply, and must be met.

Findings: There are no previous land use approvals for this site, therefore this criterion does not apply.

E. Services. The replat does not eliminate the availability of services to the lots, and the reconfigured lots are not out of conformance with service bureau requirements for water, sanitary sewage disposal, and stormwater management.

Findings: The service agencies reviewed the proposal and provided the following:

Water Service: The Water Bureau reviewed the proposal for impacts on water service and determined services are and will remain available for the proposed parcels (Exhibit E.3).

Sanitary and Storm Services: The Bureau of Environmental Services (BES) determined that sufficient information has been provided to demonstrate that the replat does not eliminate the availability of storm or sanitary services to the lots and that the reconfigured lots are not out of conformance with BES requirements for this project (Exhibit E1 and E1a).

Additionally, Site Development reviewed the proposal for impacts related to on-site sewage disposal (septic systems) and noted no issues (Exhibit E.5).

Based on these factors, this criterion is met.

ADJUSTMENTS

33.805.040 Approval Criteria

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified.

Findings: The applicant requests an Adjustment to reduce the required side building setback from 10 feet to 7.6 feet for the building wall and 6.5 feet for the eave, relative to the proposed lot line. To meet this criterion, the proposal must be consistent with the following:

33.110.220 Setbacks

A. Purpose. The setback regulations for buildings and garage entrances serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire-fighting;*
- *They reflect the general building scale and placement of residences in the city's single-dwelling neighborhoods;*
- *They foster a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

The Fire Bureau and Life Safety reviewers noted no concerns about the setback reduction impacting fire protection or access for fire-fighting. In addition, several of the nearby homes in the R10 zone have side setbacks that appear to be less than 10 feet, based on city maps and aerial photos; and the R5 properties to the west of the site are allowed 5-foot side setbacks outright. Given this, the requested building placement is comparable to the existing building setbacks on other nearby lots, and will allow for the scale and architectural design of the existing house to be maintained in its current form, which fits the topography of the site. The required outdoor area will be maintained on the site. Based on these factors, a 7.6 foot setback will provide a reasonable separation from the neighboring lot to the south and is not expected to result in any considerable reduction in light, air, or privacy. As such, the proposed setback will equally meet the purpose of the setback provisions. Accordingly, this criterion is met.

- B.** If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area.

Findings: The site is in the R10 residential zone. Several neighbors have written in noting concerns that the project will diminish the appearance and livability of the residential area, in part by allowing a separate lot to be established and developed. Certainly, any future development will alter the appearance of the residential area; however, provided the development is allowed by right or is approved through a subsequent land use review, such development would not be considered to detract from the livability or appearance of the residential area.

In this case, the requested Adjustment is for the side setback for the existing house only, and not for any future development. And, as discussed in the Neighborhood Review section previously, BDS staff find the requested reduction in the side setback will have a negligible effect on the appearance or livability of the surrounding area, since it will allow for the retention of an established residence, which was built in 1921, and is similar in scale and style to several of the nearby homes. Additionally, the requested setback reduction is along a lot line that is internal to the subject site, so it is not expected to impact other surrounding properties. Based on these factors, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone.

Findings: Only one adjustment is requested, so this criterion does not apply.

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

Findings: There are no city-designated scenic or historic resources on the site, so this criterion does not apply.

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

Findings: Retaining the existing house in its current form within 7.6 feet, instead of 10 feet, from the shared lot line is not expected to result in impacts that warrant mitigation. As such, this criterion is met.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.

Findings: The existing house is located outside of the environmental protection and environmental conservation zones on the site, so the reduction in the side setback is not expected to create detrimental impacts to the environmental resources. Accordingly, 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 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.

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 replat proposal.

Bureau	Code Authority and Topic
Development Services/503-823-7300 www.portlandonline.com/bds	Title 24 – Building Code, Flood Hazard, Clearing and Grading Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way OAR 340-071 and OAR 340-073 – Onsite Wastewater Treatment Systems
Environmental Services/503-823-7740 www.portlandonline.com/bes	Title 17 – Sewer Improvements Stormwater Management Manual
Fire Bureau/503-823-3700 www.portlandonline.com/fire	Title 31 – Fire Regulations City of Portland Fire Code
Transportation/503-823-5185 www.portlandonline.com/transportation	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 www.portlandonline.com/parks	Title 11 –Trees
Water Bureau/503-823-7404 www.portlandonline.com/water	Title 21 – Water availability

As authorized in Section 33.800.070 of the Zoning Code, conditions of approval related to these technical standards may be included in the Administrative Decision on this proposal.

CONCLUSIONS

The applicant proposes to replat historic lots, *Tualatin View Park, Block 4, Lots 5, 6 and 7*, into 2 parcels, and to retain an existing house within 7.6 feet of the proposed south lot line for Parcel 2.

Some neighbors' raised concerns that the replat is not allowable for the subject properties and that additional development on the properties would create impacts to the environmental resources or livability of the residential area. As noted in the *Neighborhood Comment* section, above, the request for the replat is allowed, since the subject site is made up of platted lots. And, while any future construction will inevitably change the appearance of the property, this proposal

is focused on the reconfiguration of the existing platted lots and the location of the existing house relative to the proposed lot line. Any future development must meet the scale and placement of the development allowable by the zoning code provisions, which are *intended to implement Portland's Comprehensive Plan and related land use plans in a manner which protects the health, safety, and general welfare of the citizens of Portland* (Section 33.10.010). As such, development that meets the zoning provisions is considered in alignment with the goal of protecting the health and safety of the community.

As discussed in the finding above, the requested replat to reconfigure the properties into 2 parcels has been found to meet the requirements in Section 33.675.300; and the requested reduction in the side (south) setback for the existing house has been found to meet the criteria in Section 33.805.040; and no City Bureaus raised objection to the proposal.

Based on the findings in this report, the proposal satisfies the relevant code provisions. Accordingly, this proposal is approved.

ADMINISTRATIVE DECISION

Approval of a Replat to create 2 parcels of historic *Tualatin View Park, Block 4, Lots 5, 6 and 7*, as illustrated by Exhibit C1.

Approval of an Adjustment to reduce the side (south) setback for the existing house to 7.6 feet for the building wall and to 6.5 feet for the eaves, as illustrated by Exhibit C2.

Decision rendered by:  on June 8, 2022

By authority of the Director of the Bureau of Development Services

Decision mailed June 10, 2022

Staff Planner: Kate Green

About this Decision. This land use decision is **not a permit** for development. **THE SIGNED PARTITION PLAT MUST BE RECORDED WITH MULTNOMAH COUNTY DEED RECORDS WITHIN 90 DAYS OF THE DATE OF THE FINAL CITY DECISION OR THIS DECISION WILL BECOME NULL AND VOID.** Permits may be required prior to any work. Contact Permitting Services at 503-823-7357 for information about permits.

PROCEDURAL INFORMATION

The application for this land use review was submitted on June 22, 2021, and was determined to be complete on December 20, 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 June 22, 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 150 days (Exhibits A6 and A7). Unless further extended by the applicant, **the 120 days will expire on: September 16, 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.

Recording the decision and the partition plat. *Unless appealed,* the following apply:

- The Bureau of Development Services will record the decision with the Multnomah County Recorder after appeal period ends.
- The applicant must record the signed plat with the County Deed Records within 90 days of the final city decision or the approval will be null and void.

Appealing this decision. This decision may be appealed to the Hearings Officer, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on June 24, 2022. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIX decisions on property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in the file, please contact the planner listed on the front of this decision. The planner can provide some information over the phone. Please note that only digital copies of material in the file are available for viewing. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [Title 33 Zoning Code | Portland.gov](#).

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

EXHIBITS (NOT ATTACHED UNLESS INDICATED)

- A. Applicant's Statement
 1. Initial Submittal
 2. Revised Submittal-Partition Plat 2/23/2022
 3. Revised Submittal 3/1/2022
 - a. Response to completeness review
 - b. Existing Conditions Map
 - c. Plat Boundary Conflict
 1. Supporting documents
 4. Revised Submittal 3/10/2022
 - a. Existing Conditions Map with downspout locations
 - b. Downspout photos

5. Revised Submittal 5/5/2022
 - a. Adjustment Narrative
 - b. House photos
6. Timeline extension 1
7. Timeline extension 2
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Approved Plat (attached)
 2. Supplemental Plan (attached)
 3. Building Elevations-Existing House (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 - a. Addendum
 2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of BDS
 6. Life Safety
- F. Correspondence:
 1. Daniel Martell, February 12, 2022, re: supportive of the proposal
 2. Lisa and Tim Bazemore, February 28, 2022, re: concerns about validity of replat application and objections to adjustment request
 3. Max Andreae, March 22, 2022, *comments received after close of comment period*
- G. Other:
 1. Original LU Application
 2. Letter to applicant re: incomplete application

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).