



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

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Date: August 4, 2022
To: Interested Person
From: Leah Dawkins, Land Use Services
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NOTICE OF A TYPE Ix DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 22-133560 RP

GENERAL INFORMATION

Applicant: Barrett Brooks
5112 SE 45th Avenue, Unit A
Portland, OR 97206
Phone# 770-402-0815 or e-mail barrettallenbrooks@gmail.com

Owners: Barrett Brooks and Nicole Brooks
5112 SE 45th Avenue, Unit A
Portland, OR 97206

Barrett Brooks and Nicole Brooks
4537 SE Mitchell Street
Portland, OR 97206

Surveyor: Toby Bolden, Centerline Concepts Inc
19376 Molalla Ave Suite 120
Oregon City, OR 97045

Site Address: 4537 SE Mitchell Street and 5112 SE 45th Avenue

Legal Description: BLOCK 1, EAST 55' OF LOTS 5&6, LEXINGTON HTS and BLOCK 1, WEST 71.98' OF LOT 5, LEXINGTON HTS

Tax Account No.: R494100090, R494100106

Property ID No.: R206627 and R697735

State ID No.: 1S2E18BC 01400 and 1S2E18 BC 1501

Quarter Section: 3535

Neighborhood: Woodstock, contact Thatch Moyle or Les Szigethy at luc@woodstockpdx.org

Business District: Woodstock contact at 4207 SE Woodstock Blvd PMB 130, Portland OR 97206

District Coalition: Southeast Uplift, contact Matchu Williams at matchu@seuplift.org

Plan District: None

Other Designations: None

Zoning: R5 -SINGLE-FAMILY RESIDENTIAL (5,000)

Case Type: RP- Replat

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

Proposal: The applicant is proposing to replat these two properties, which are under separate tax account numbers, so as the property with the address 5112 SE 45th Avenue will have a larger rear yard. The property with the address of 4537 SE Mitchell Street is a legal unit of land that consists of a combination of lot remnants (East 55-ft. of Lot 5 and East 55-ft. of Lot 6, Block 1 of Lexington Heights). A replat land use review is required to consolidate the lot remnants and to reconfigure these individual properties as proposed. Parcel 1 will be 5,753 square feet in area and Parcel 2 will be 3,344 square feet in area. Each parcel will retain on-site parking and an existing residence.

Relevant Approval Criteria:

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

- **Section 33.675.300, Replat Approval Criteria**

Facts

Site and Vicinity: Both properties are interior lots, one on the east side of SE 45th Avenue and the other on the north side of SE Mitchell Street. A 2-1/2-story contemporary style single-family residence exists at 5112 SE 45th Avenue and a single-story house exists at 4537 SE Mitchell Street. Each property has a driveway which provides vehicle access to the on-site parking space. The sidewalk infrastructure on this block is incomplete and intermittent.

Within the vicinity properties are developed with single-family residences, with a majority of them being single-story houses. Approximately ½ a mile southeast of the site is the nearest park, Woodstock Park. The closest school is Woodstock Elementary at 5601 SE 50th Avenue. R5 zoning is to the north, south, west of the site and then the zoning changes to R2.5 east of SE 46th Avenue.

Infrastructure:

The Service Bureaus have provided the following information regarding the existing infrastructure:

- **Streets:** The site abuts the following streets:

SE Mitchell Street: At this location SE Mitchell is classified as a Local Service Street for all modes of transportation per the City's Transportation System Plan. SE Mitchell Street is improved with a 28-ft. paved roadway within a 60-ft. right-of-way with curb and sidewalk. The sidewalk corridor has a configuration of 0.5-ft. curb, 7.5-ft. furnishing zone, 6-ft. sidewalk, and 2-ft. frontage zone.

SE 45th Avenue: At this location SE 45th Avenue is classified as Local service Street for all modes of transportation per the City's Transportation System Plan. SE 45th Avenue is mapped as being improved with a 28-ft. paved roadway within a 60-ft. right-of-way with curb, but no sidewalk. City GIS shows a 16-ft. right-of-way between the face of curb and property line.

No public improvements are required as a condition of the replat. The following is provided in relation to future development of the lots:

Standard Improvements: The standard sidewalk corridor for an R5 zoned lot on a local service street outside of a Pedestrian District is a total of 11-feet consisting of a 0.5-ft curb, 4-ft furnishing zone, 6-ft sidewalk, and 0.5-ft frontage zone.

Required Improvements:

SE Mitchell St. The existing conditions along the site frontage exceed the standard improvement requirement. **No right-of-way improvements or property dedication will be required for this frontage.**

SE 45th Ave. If a 6-foot wide sidewalk exists in this frontage, no further improvements are required. If a 6-ft wide sidewalk does not exist, then installation of a sidewalk will be required. There is 5-feet of excess right-of-way based on GIS. This excess should be allocated to the furnishing zone. The resulting configuration will be a 0.5-ft curb, 9-ft furnishing zone, 6-ft sidewalk, 0.5-ft frontage zone.

- **Water Service:** A 8-inch main is in SE 45th Avenue and a 8-inch water main in SE Mitchell Street. Each house is currently served by an existing metered domestic water service that enters the property within their own frontage.
- **Sanitary Service:** A public 10-inch VSP combined sewer is located within SE 45th Avenue (BES as-built #0035). Parcel 1 is connected to the combined sewer via a lateral located approximately 113-ft. from the maintenance hole at the intersection of SE 45th Avenue and SE Mitchell Street. Parcel 2 is connected to the combined sewer in SE 45th Avenue via a lateral that runs through a private sanitary sewer easement.
- **Stormwater Disposal:** There is no public storm-only sewers available to these properties.

Zoning: The R5 -Residential 5,000 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Newly created lots must have a maximum density of 1 lot per 5,000 square feet of site area. This zone implements the comprehensive plan.

Land Use History: City records indicate there are no prior land use reviews for this site. There was a prior lot confirmation 19-111716 PR for the west 71.98 ft. of Lot 5, Block 1 of Lexington Heights, which created the lot the house with the address 5112 SE 45th Avenue resides on today.

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 **May 16, 2022**. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

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 R5 zone, so the replatted lot(s) must meet the standards in Chapter 33.610 or one of the noted exceptions, above.

The proposed replatted lot(s), identified as Parcel 1 and Parcel 2, meet the lot dimension standards of the R5 zone as shown in the following table (this information is found in 33.610.200 of the Zoning Code):

R5 Zone (Table 610-2)	Minimum Lot Area (square feet)	Maximum lot area (square feet)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)	Minimum Front Lot Line (feet)
Detached Houses	3,000	8,500	36	50	30
Parcel 1 with	5,753		50	126.9	82.66

Existing house				
Parcel 2 with existing house	3,344	55	50.7	55

The proposed reconfigured lots for this replat as shown on the site plan (Exhibit C.1) continues to have relatively regular lot lines and density remains the same. Parcel 1 will have a jogged lot line in order to provide adequate setback to the existing garage on Parcel 2. All lot line segments are straight and there is only one jog. Parcel 1 has street frontage along SE 45th Avenue and Parcel 2 has street frontage along SE Mitchell Street.

As noted herein, the proposed replatted lot(s) meet the standards of Chapter 33.610. None of the exceptions are applicable. Therefore, 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 applicant provided a narrative(Exhibit A.1) addressing this criterion and supplemental existing conditions survey with proposed replat (Exhibit C.2). An existing house will continue to be retained on each parcel after the replat. The proposed replat will create a smaller lot for the existing house with the address, 4537 SE Mitchell Street and create a larger lot for the existing house with the address of 5112 SE 45th Avenue. A smaller lot area and lot depth impacts Title 33 development standards, such as building coverage, setbacks outdoor area and floor area. The applicant provided a sketch of a floor plan (A.16) for the existing house on Parcel 2 and also provided supplemental survey (Exhibit C.2) with the existing development being retained on its new lot configuration to demonstrate Title 33 development will continue to be met for existing development on its new lot. The replat will not cause the existing development on their reconfigured lots, Parcel 1 and Parcel 2 to move out of conformance with Title 33 development standards. This criterion is 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 land division approvals for either of these properties. 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 land use associated to these properties. 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 applicant provided a narrative addressing this approval criteria (Exhibit A.1), supplemental survey with site utility information (Exhibit C.2), copy of recorded private sanitary sewer easement (Exhibit A.6-A.7) and pictures regarding existing stormwater management (Exhibit A.13 & A.14).

Water Service:

The Water Bureau has reviewed this proposal for impacts on water service (Exhibit E.3). The Water Bureau comments are summarized below:

- **Parcel 1** - The existing house may continue to use the existing water service in SE 45th Avenue.
- **Parcel 2**- The existing house may continue to use the existing water service in SE Mitchell Street.

The Portland Water Bureau has no issues with this Replat proposal. Water service availability is not eliminated and site remains in conformance with Title 21 Water Bureau requirements.

On-site Sanitary System:

The Site Development Section/Sanitarian of BDS reviewed this replat proposal and notes the following:

- Review of historical plumbing records indicates neither house was ever serviced by an on-site septic system.

Site Development Section has no objections to this replat.

Sanitary & Stormwater Management Services:

The Bureau of Environmental Services (BES) has reviewed the proposal for impacts on sanitary sewer and stormwater management services (see Exhibit E.1 for specific details) and BES comments are summarized below:

- **Sanitary:** According to City records and the submitted survey the existing structure on proposed Parcel 1 is currently connected to the combined sewer via a lateral located approximately 113-ft. from the maintenance hole at the intersection of SE 45th Avenue and SE Mitchell Street and the existing structure on proposed Parcel 2 is connected to the combined sewer via a lateral that runs through a private sewer easement located between 5112 & 5120 SE 45th Avenue. This location does not appear to conflict with the replatted property lines. Therefore, the property does not move out of conformance with BES requirements for sanitary service.

Currently, the lots have access to the sewer in SE 45th Avenue. The proposed replatted lot configuration does not change the availability of sanitary services to the lots.

BES staff finds the applicant proposed sanitary service (Exhibit C.2) acceptable for the purpose of reviewing the preliminary replat application against the sanitary sewer disposal approval criterion.

- **Private On-site Stormwater Management:**

Parcel 1: According to the submitted survey (Exhibit C.2), the existing structure on proposed Parcel 1 discharges stormwater to a drywell located on the property it serves. This location does not appear to conflict with the replatted property lines; therefore, the property does not move out of conformance with BES stormwater management requirements.

Parcel 2: According to the submitted survey (Exhibit C.2), the existing structures on Parcel 2 discharge stormwater to downspouts with splashblocks. These locations do not appear to conflict with the replatted property lines. Therefore, the property does not move out of conformance with BES stormwater management requirements.

The parcels do not have access to a storm sewer. The proposed replatted lot configuration does not change the availability of storm service to the lots.

BES staff finds the applicant's proposed stormwater management plan acceptable for the purposed of reviewing the replat application against the stormwater management criterion.

BES does not object to approval of the Replat application. Future development on the site will be subject to BES standards and requirements during the permit review process

Other Service Bureaus:

The other relevant service bureaus have responded with no objections or no concerns with this replat proposal (See Service Bureau comments under Exhibit E).

The Services Bureau requirements will not move out of conformance and services will not be eliminated for these replatted Parcels. 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 plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way OAR 340-071-185 -Department of Environmental Quality -On-site wastewater treatment system
Environmental Services/503-823-7740 www.portlandonline.com/bes	Title 17 – Sewer Improvements 2020 Stormwater Management Manual
Fire Bureau/503-823-3700 www.portlandonline.com/fire	Title 31 and 2016 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 existing lots are being reconfigured into different lot sizes per this replat proposal. The replatted lots, Parcel 1 and Parcel 2 meet the lot dimension standards of the R5 zone. The existing development will continue to remain on the site. The supplemental survey submitted shows each house on its new lot will not go further out of conformance with Title 33 development standards.

Services (water and sanitary) to existing development on each parcel is not eliminated by this replat and services do not go out of conformance with service bureau requirements. No City Bureaus raised objection to the proposal.

As discussed above, the requested replat has been reviewed and shown to be able to meet all the requirements as laid out in Section 33.675.300.

ADMINISTRATIVE DECISION

Approval of a replat to create two parcels, Parcel 1 and Parcel 2, by reconfiguring East 55-ft. of Lots 5 and 6 Block 1 of Lexington Heights and the West 71.98-ft. of Lot 5, Block 1 of Lexington Heights as illustrated by Exhibit C.1, signed and dated August 4, 2022.

Decision rendered by: Leah M. Dawkins on August 4, 2022
By authority of the Director of the Bureau of Development Services

Decision mailed (within 5 days of dec.) August 4, 2022

Staff Planner: Leah Dawkins

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 THIS DECISION BY NOVEMBER 02, 2022), OR THIS DECISION WILL BECOME NULL AND VOID.**

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 19, 2022, and was determined to be complete on May 11, 2022.

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 19, 2022.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless extended by the applicant, **the 120 days will expire on: September 8, 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.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee is required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Narrative by applicant
 - 2. Historical Title Reports
 - 3. Vesting Deed
 - 4. Tax Map
 - 5. Subdivision Map
 - 6. Recorded Sewer Easement Document -Recording # 2016-023989
 - 7. Recorded Sewer Easement Document- Recording # 2016-012191
 - 8. Recorded Sewer Easement Document- Recording # 2015-158356
 - 9. Current Title Report for a Partition
 - 10. Copy of Recorded SDC Waiver document for ADU
 - 11. Deed with recording # 2020-005704
 - 12. Deed with recording # 2021-123644
 - 13. Pictures of downspouts/stormwater system
 - 14. Additional information pictures regarding stormwater
 - 15. Replat final plat survey
 - 16. Floor Plan of house on SE Mitchell
 - 17. Supplemental Existing Conditions Survey with proposed replat
 - 18. Applicant e-mail dated 05.11.22 in response to incomplete letter
 - 19. Revised Supplemental Existing Conditions Survey with proposed replat submitted 05.11.22
 - 20. Existing Conditions Survey submitted 05.11.22
 - 21. Revised Land Use Application with all owner information and signatures
 - 22. Revised Replat Survey submitted 05.11.22
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Replat Final Plat Survey (attached)
 - 2. Existing Conditions Survey with proposed replat survey
- 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
- F. Correspondence: None
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter
 - 3. Revised Land Use Application form submitted by applicant
 - 4. Outstanding Issues memo dated 06.16.22
 - 5. Outstanding Issues memo date 06.17.22

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).