



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

Carmen Rubio, Commissioner
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Date: February 15, 2023
To: Interested Person
From: Sean Williams, Land Use Services
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NOTICE OF A DECISION ON A MIDDLE HOUSING LAND DIVISION PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has 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 may be able to appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 22-185810 MLDP

GENERAL INFORMATION

Applicant: Sarah Radelet
Strata Land Use Planning
Po Box 90833
Portland, OR 97290
(503) 320-0273 / sarah@stratalanduse.com

Owner: BTS Homes Inc
1419 Broadway St
Vancouver, WA 98663-3431

Party of Interest: Vlad Kovtun
Town Developments, Inc
1419 Broadway Street
Vancouver, WA 98663

Site Address: 8934 & 8936 N Kimball Avenue

Legal Description: BLOCK 7 LOT 17&18, NORTH BANK ADD
Tax Account No.: R610601676
State ID No.: 1N1E07AC 01501
Quarter Section: 2124

Neighborhood: Portsmouth, contact at portsmouthchair@gmail.com
Business District: University Park Business District, contact at <https://www.facebook.com/UPBizDist/>

District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-8877.

Plan District: None
Zoning: Residential 5,000 (R5)
Case Type: Middle Housing Land Division Partition (MLDP) Review

Procedure: Expedited Land Division, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant has requested a Middle Housing Land Division to partition the subject site into 2 parcels. The middle housing development type that is proposed to be divided is a duplex and will result in each unit being located on its own lot. Building permits are currently issued for the proposed development (22-164704-RS/22-164699-RS).

Review of Preliminary Plans for middle housing land divisions are processed through an Expedited Land Division (ELD) procedure (33.671.110).

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 **33.671.130, Middle Housing Land Divisions Approval Standards**.

FACTS

Site and Vicinity: The site is located on the east side of N Kimball Avenue approximately 160 feet north of N Houghton Street. The development site was established via a Lot Confirmation and Property Line Adjustment noted below. The surrounding vicinity is primarily developed with single family homes. The nearest commercial corridor is N Lombard Street approximately 800 feet south of the site.

Zoning: The Residential 5,000 (R5) zone is a single-dwelling zones that is 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 the following prior land use reviews for this site:

- **PR 22-120233 PLA LC:** Approval of a Lot Confirmation and Property Line Adjustment that resulted in the subject site being separated from 8944 N Kimball Avenue.

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 **January 23, 2023**. One written response has been received from a notified property owner in response to the proposal (Exhibit F.1). The primary concerns relate to the proposed development including height, compatibility, and privacy, which are not relevant to the approval criteria of this review. The proposed duplex development has met the development standards of Title 33 as the building permits have been issued. This proposal is to allow this middle housing type to be divided into separate lots and is limited in scope.

ZONING CODE APPROVAL CRITERIA

Review of Middle Housing Land Divisions

33.671.130 Approval Standards

The Preliminary Plan for a middle housing land division will be approved if the review body finds that the applicant has shown that all of the following approval standards have been met. Adjustments are prohibited. The approval standards are:

A. Lots.

1. The number of lots proposed is the same as the number of dwelling units proposed, approved, or legally existing on the middle housing land division site; and
2. There is only one dwelling unit per lot.

Findings: Two lots are proposed to be created, which is the same number of dwelling units that are approved on the middle housing land division site. In addition, there will only be one dwelling unit per lot. Therefore, these standards are met.

B. Buildings, structures and other development.

1. The proposed, approved, or legally existing development meets the standards and regulations of Title 33 applicable to development on the original site prior to the land division. See 33.644, Middle Housing Land Divisions, for development that is eligible for a middle housing land division; and
2. All of the buildings and structures on a resulting lot comply with applicable building code provisions relating to the proposed property lines and, all of the structures and buildings located on the lots comply with the Oregon residential specialty code.

Findings: The proposal includes an approved duplex, which is a development type that is eligible for a middle housing land division, per 33.644.020.A. The duplex is approved under building permits 22-164704-RS and 22-164699-RS and meets the standards and regulations of Title 33 applicable at the time of application submittal on the original site prior to the land division.

Life Safety has indicated that each unit of the duplex complies with the Oregon residential specialty code as they are approved as townhouses. Therefore, these standards are met.

C. Services.

1. Water service. The Water Bureau or District and the Fire Bureau have verified that water facilities that meet established service levels are, or will be, available to serve each dwelling unit separately.

Findings: The applicant proposes to provide individual water service lines to each lot/unit from the main in N Kimball Avenue. The Water Bureau has verified this proposal meets established service levels (Exhibit E.3). This standard is met.

2. Public sanitary sewer service. The Bureau of Environmental Services has verified that sewer facilities that meet established service levels are, or will be, available to serve each dwelling unit separately.

Findings: The applicant proposes to provide individual sanitary sewer service lines to each lot/unit from the main in N Kimball Avenue. The Bureau of Environmental Services has verified this proposal meets established service levels. (Exhibit E.1). This standard is met.

3. Private on-site sanitary sewage disposal. Private on-site sanitary sewage disposal is prohibited as part of a middle housing land division except when the development proposed, approved, or legally existing is a duplex. When private on-site sanitary sewage disposal is proposed, BDS has verified that an onsite wastewater treatment system that meets established service levels is, or will be, available to serve each dwelling unit separately.

Findings: Private on-site sanitary sewage disposal is not allowed as sanitary sewer service is available in N Kimball Avenue. Therefore, this standard is not applicable.

4. Stormwater management. The Bureau of Environmental Services has verified that a stormwater management system and stormwater disposal facilities that meet established service levels are, or will be, available to each dwelling unit.

Findings: The applicant proposes to provide a drywell on each lot to serve the duplex units individually. The Bureau of Environmental Services has verified this proposal meets established service levels (Exhibit E.1). This standard is met.

5. Right-of-way. For public streets, the Bureau of Transportation has preliminarily approved any proposed streets. For private streets, the Bureau of Development Services has preliminarily approved any proposed private streets.

Findings: A public or private street is not proposed. Therefore, this standard is not applicable.

D. Tracts and easements.

1. The preliminary plan includes easements or tracts necessary for each dwelling unit for:
 - a. Locating, accessing, replacing and servicing all services;
 - b. Pedestrian access from each dwelling unit to a street and, in a cottage cluster, to any required common outdoor area;
 - c. Any common use areas or shared building elements;
 - d. Any shared driveways or parking; and
 - e. Any shared common area;
2. The standards of Chapter 33.636, Tracts and Easements, must be met.

Findings: Because a property line will be established along the common wall separating each unit, the applicant must meet the requirements of Life Safety for executing an Easement and Maintenance Agreement for shared or common building elements. The agreement must be reviewed by the Bureau of Development Services, and approved as to form, prior to final plat approval (Exhibit E.7). The agreement must be referenced on and recorded with the plat. With the conditions of approval discussed above, this criterion is met.

DEVELOPMENT STANDARDS

The existing development on the site has been reviewed for compliance with the development standards of Title 33 based on the original site prior to the land division. Development on the Middle Housing Land Division Site is subject to the regulations of 33.253, which are summarized below:

- For the purposes of development, the regulations of Title 33 will apply to the lots resulting from a middle housing land division collectively and not to each lot individually.
- The residential structure type on a site that has been divided through a middle housing land division remains the residential structure type that was proposed with the middle housing land division. The approved duplex on this site will remain a duplex for the purposes of applying zoning code regulations.
- More than one dwelling unit is prohibited on a lot that has been created through a middle housing land division. Accessory dwelling units are prohibited on the lots created through this land division.
- All the primary uses on a middle housing land division site must be residential uses. Accessory home occupations are allowed (see 33.203).

- The further division of the lots created through this middle housing land division is prohibited.

CONCLUSIONS

The applicant proposes a middle housing land division to divide the subject site into 2 parcels. As discussed within this report, the relevant standards have been met, or can be met with conditions. The primary issue identified with this proposal is providing an Easement and Maintenance Agreement for shared or common building elements. With a condition of approval that addresses this requirement the proposal can be approved.

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a Middle Housing Land Division to divide a site with an approved duplex into 2 parcels, as illustrated with Exhibit C.1 – C.3, subject to the following conditions:

A. As-built survey. An as-built survey shall be submitted with the final plat survey for Life Safety review and approval. That plan must show that structures and services are constructed in conformance with the preliminary plan and meet requirements in relation to property lines and any easements or tracts.


B. The final plat must show the following:

1. The final plat survey shall include a note with the following statement: “This plat was approved as a Middle Housing Land Division under ORS 92.031.”
2. A recording block for each of the legal documents, required by Condition C.1 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: “A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records.”

C. The following must occur prior to final plat approval:

1. An Easement and Maintenance Agreement for shared or common building elements shall be executed. The agreement must be reviewed by the Bureau of Development Services, approved as to form, prior to final plat approval. The document must be referenced on and recorded with the plat.

Staff Planner: Sean Williams

Decision rendered by:  **on February 13, 2023**
By authority of the Director of the Bureau of Development Services

Decision mailed: February 15, 2023

About this Decision. This decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold. For information on permitting go to <https://www.portland.gov/bds> or call 503-823-7357.

Procedural Information. The application for this land use review was submitted on September 21, 2022, and was determined to be complete on January 18, 2023.

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 September 21, 2022.

ORS 197.370 states the City must issue a decision to approve or deny this application within 63-days of the application being deemed complete.

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 or final plat applications. Plans and drawings submitted during the permit or final plat review 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.

Appealing this decision. This decision may be appealed by the applicant, owner or any person who submitted written comments. If appealed, a hearing will be held before the Hearings Officer. The appeal application form can be accessed at <https://www.portland.gov/bds/zoning-land-use/documents>. Appeals must be received **by 4:30 PM on March 1, 2023. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov**. If you do not have access to e-mail, please call 503-823-7300 for assistance. **An appeal fee of \$300 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee.

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 would be 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>.

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 the final City decision.

Expiration of this approval and recording the land division. This preliminary plan approval will expire unless a final plat is approved by the City within 3 years of the date of the final decision. The final plat must be approved by the County Surveyor and recorded with the County Recording Office within 90 days of City approval.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Approval Criteria Narrative
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Partition Plat (attached)
 - 2. Existing Conditions Survey
 - 3. Development Plans (Page 1 attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of Bureau of Development Services
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety Section of Bureau of Development Services
- F. Correspondence:
 - 1. Erin Graff (2/4/23)
- G. Other:
 - 1. Application Form
 - 2. Incomplete Letter

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).