



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

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Date: May 3, 2023
To: Interested Person
From: Leah Dawkins, 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 23-002095 MLDS

GENERAL INFORMATION

Applicant: Aleksey Kaydalin, A.I.Kaydalin Construction, Inc
16447 SE Siri Loop
Damascus OR 97089
503-888-0594/alexkaydalin@gmail.com

Owner: Minh Bui
11223 SE Malden St
Portland, OR 97266

Site Address: 9486 N TRUMBULL AVE

Legal Description: BLOCK 7 SWLY 82' OF NLY 1/2 OF LOT 1, OAK PARK ADD
Tax Account No.: R621102410
State ID No.: 1N1W01DB 10400
Quarter Section: 2022

Neighborhood: St. Johns, contact Patrick Theiss at landuse@stjohnspdx.org
Business District: St. Johns Boosters Business Association, contact at info@stjohnsboosters.org
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 Subdivision (MLDS)
Procedure: Expedited Land Division, an administrative decision with appeal to the Hearings Officer.

Proposal:
The applicant has requested a Middle Housing Land Division to divide the subject site into 4 lots. The middle housing development type that is proposed to be divided is a fourplex

currently under review (building permits 22-192360/66/67/69 RS) and will result in each unit being located on its own lot. Each dwelling unit will be served by separate water and sanitary sewer services. A single drywell for stormwater management serving the entire site will be located on Lot 4 with a shared access easement.

For the purposes of development, the regulations of Title 33 apply to the lots collectively and not to each lot individually, and the residential structure type that is being divided remains the same (33.253.030). Additional Zoning Code regulations that apply to Middle Housing Land Divisions are located in 33.253, 33.644, and 33.671.

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 subject site is 8,949 square feet in size and is located on the southeast side of N Trumbull Avenue, just west of N Pier Park Place. The site is flat and was previously developed with a single residential structure that has been removed. There is one 41-inch Western hemlock tree that is proposed for removal through the building permit review 22-192360 RS.

The development surrounding the subject site consists primarily of R5-zoned lots developed with detached single-dwelling structures. The site is southeast of Pier Park. The surrounding transportation grid is relatively complete and provides good street connectivity to the subject site.

Zoning: The R5 zone 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 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 **April 11, 2023**. Five written responses were received from notified property owners in response to the proposal. A summary of comments is provided below. Staff responses are in *italics*:

- Several comments were received voicing concern about the removal of the 41-inch Western hemlock on the site.
Staff Response: *The tree on this site is subject to the regulations of Title 11-Trees for sites in development situations. Title 11 allows the removal of all trees on development sites if required fees are paid. For trees that over 36-inches in diameter, a 45-day notice is required to be posted on the site and provided to both the neighborhood association and neighborhood coalition. The applicant has posted the removal notice for this tree. Building permits will not be issued until after the tree removal notice period has closed. The Middle Housing Land Division process does not require any additional tree preservation for sites using infill housing options and going through the Middle Housing Land Division process. Tree planting is required with development of the site.*
- Several comments voiced concern about the development of four additional residential units with no off-street parking provided.

Staff Response: *Off-street parking is not required for Household Living uses in single-dwelling zones (33.266110.B.1.a.). The city cannot require off-street parking be provided where none is required by the zoning code.*

- Concerns about the setbacks and height of the proposed development as well as concern about the sizes of individual units.

Staff Response: *The proposed development has been reviewed through the building permit process. The proposed development meets the 5-foot side building setback requirement and the 30-foot height limit for fourplexes in the R5 zone. The zoning code does not regulate the minimum size or floor area for residential structures. Fourplexes are a housing type that is now allowed by the zoning code through the residential infill options (33.110.265). Additional information about building allowances is provided in the findings under Section B. Buildings, structures, and other development.*

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: Four lots are proposed to be created, which is the same number of dwelling units that are proposed 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 a proposed fourplex, which is a development type that is eligible for a middle housing land division, per 33.644.020. The fourplex is proposed under building permit(s) 22-192360/66/67/69 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 fourplex complies with the Oregon residential specialty code as they are proposed as townhouses that meet applicable building code provisions for fire separation in relation to the proposed lot lines. 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 from the main in N Trumbull Street via individual meters within each lot's frontage. 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 from the main in N Trumbull Street. The service lines for each unit will be within the frontage of each lot. 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 prohibited as the proposed development is a fourplex. 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 shared drywell located on Lot 4 to serve Lots 1-4. The drywell will be located in an easement and can be accessed by all of the lots served by the shared facility. The Bureau of Environmental Services has verified this proposal meets established service levels, provided the easement is shown on the final plat (Exhibit E.1).

This standard is met with the condition described above.

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.

The following easement is required:

- A Private Storm Sewer Easement is required across the relevant portion of Lot 4 for a drywell that will provide stormwater disposal for Lots 1-4.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the easement described above and facilities within those areas. This standard can be met with the condition that a maintenance agreement(s) is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement(s) with a recording block for each agreement, substantially similar to the following example:

“A Declaration of Maintenance agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records.”

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

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 proposed fourplex on this site will remain a fourplex 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 four lots. As discussed within this report, the relevant standards have been met, or can be met with conditions. Therefore, this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a Middle Housing Land Division to divide a site with a proposed fourplex development into four lots, as illustrated with Exhibit C.1 and C.2, subject to the following conditions:

A. As-built survey. An as-built survey shall be submitted with the final plat survey for 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 private storm sewer easement, for the benefit of Lots 1-3, shall be shown and labeled over the relevant portions of Lot 4.
3. A recording block for each of the legal documents, required by Conditions C.1 and C.2 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "[Name of Document] 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 (Townhouse Maintenance Agreement) 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.
2. A Maintenance Agreement shall be executed for the Private Stormwater Management Easement described in Condition B.2 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval. The document must be referenced on and recorded with the plat.

Staff Planner: Leah Dawkins

Decision rendered by:  **on April 28, 2023**
By authority of the Director of the Bureau of Development Services

Decision mailed: May 3, 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 January 9, 2023, and was determined to be complete on April 6, 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 January 9, 2023.

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 May 17, 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. Applicant Narrative
 - 2. Building Permit Plan Set
 - 3. Resubmittal Response
 - 4. Operations and Maintenance Form
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Existing Conditions with Proposed Development
- 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. Sandra Parisi, 04/21/23
 - 2. Matt Christenson, 04/24/23
 - 3. Betty Cruson and David White, 04/24/23
 - 4. Ali Fischer, 04/24/23
 - 5. David Vesely, 04/25/23
- G. Other:
 - 1. Application Form and Expedited Land Division 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).