



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

Carmen Rubio, Commissioner
Rebecca Esau, Director
Phone: (503) 823-7310
TTY: (503) 823-6868
www.portland.gov/bds

Date: June 12, 2023
To: Interested Person
From: Leah Dawkins, Land Use Services
503-865-6734 / Leah.Dawkins@portlandoregon.gov

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 23-006727 MLDP

GENERAL INFORMATION

Owner/Applicant: Vic Remmers, Everett Custom Homes Inc
3330 NW Yeon Ave #100 | Portland, OR 97210-1531

Representative: Danelle Isenhardt, Emerio Design
6445 SW Fallbrook Pl #100 | Beaverton OR 97008
danelle@emeriodesign.com | 503-880-4979

Site Address: 4627 NE 19TH AVE

Legal Description: BLOCK 50 LOT 12, VERNON
Tax Account No.: R860710510
State ID No.: 1N1E23AC 19500
Quarter Section: 2532

Neighborhood: Sabin Community Assoc., contact Kathleen McConnell at Kathleen.mcconnell@gmail.com

Business District: Soul District Business Association, contact at Info@nnebaportland.org
District Coalition: Northeast Coalition of Neighborhoods, contact at info@necoalition.org

Plan District: None
Zoning: Residential 5,000 (R5), Aircraft Landing Overlay (h)

Case Type: MLDP
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 three parcels. The middle housing development type that is proposed to be divided is a triplex currently approved to issue (building permits 22-158633/40/47 RS) and will result in each

unit being located on its own lot. The site previously contained a single dwelling structure that has been removed.

Pedestrian access and separate water and sanitary sewer service lines will be provided to Parcels 2 and 3 via private easements. A shared drywell is proposed in an easement on Parcel 1.

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.

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 subject site is 5,000 square feet in size and is located on the west side of NE 19th Avenue, just north of NE Going Street. The site is flat and was previously developed with a single-dwelling residential structure and garage that has been removed. There is a 35-inch Giant sequoia tree that is proposed to be protected through the building permit review 22-158633 RS.

The development surrounding the subject site consists primarily of R5-zoned lots developed with detached single-dwelling structures. 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 **May 9, 2023**. One written response was received from a notified property owners in response to the proposal. A summary of the comments is provided with a staff response in *italics*:

- The respondent submitted concerns about the remains of a tree stump and other landscaping that was partially removed during the demolition of the home previously on the site. The primary concern was the potential impact of the new construction on the stability of neighboring fence and retaining wall along the rear property line of the site.

Staff Response: *The building permit review for the triplex structure indicates that the rear area of the site will be used for open space and for the planting of new trees. Staff directed the respondent to contact the applicant with concerns about the shared property line. The applicant has been working with the respondent to ensure their property is not impacted by the proposed 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: Three parcels 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 a proposed triplex, which is a development type that is eligible for a middle housing land division, per 33.644.020.A. The triplex was approved under building permit(s) 22-158633, 22-158640, and 22-158647 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 triplex complies with the Oregon residential specialty code as they are approved 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/unit from the main in NE 19th Street. The service lines for Parcels 2 and 3 will be located in a private easement. The Water Bureau has verified this proposal meets established service levels, provided the easement is shown on the final plat (Exhibit E.3).

This standard is met with the condition described above.

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 parcel from the main in NE 19th Avenue. The service lines for Parcels 2 and 3 will be located in a private easement. 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.

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 proposed for this site, 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 Parcel 1 to serve Parcels 1-3. 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 additional easements are proposed and required:

Private easements for the following services:

- Stormwater management – an easement is required on Parcel 1 for a drywell that will provide stormwater disposal for Parcels 1-3.
- Sanitary Sewer – an easement is required across Parcels 1 and 2 that will provide sanitary sewer disposal for Parcels 2 and 3.
- Water - an easement is required across Parcels 1 and 2 that will provide water access for Parcels 2 and 3.

A Private Pedestrian Access Easement is required over the relevant portions of Parcels 1 and 2 that will provide pedestrian access for Parcels 2 and 3.

The required easements noted above be shown on the plat as one or more “private service and access easements”.

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

“A Declaration of Maintenance Agreement for Private Service and Access Easements 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 approved triplex on this site will remain a triplex 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 3 parcels. As discussed within this report, the relevant standards have been met, or can be met with conditions. The primary issues identified with this proposal is providing an Easement and Maintenance Agreement for shared or common building elements and providing easements for

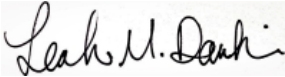
access and services. With conditions of approval that address these requirements the proposal can be approved.

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a Middle Housing Land Division to divide a site with an approved triplex into 3 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 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 service and access easement, providing pedestrian access, sanitary sewer service, stormwater service, and water service, for the benefits of Parcels 2 and 3, shall be shown and labeled over the relevant portions of Parcels 1 and 2.
 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: “A [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 shall be executed. The agreement must be reviewed by 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.
 2. A Maintenance Agreement shall be executed for the Private Service and Access 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 June 7, 2023**
By authority of the Director of the Bureau of Development Services

Decision mailed: June 12, 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 24, 2023, and was determined to be complete on May 3, 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 24, 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 June 26, 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>.

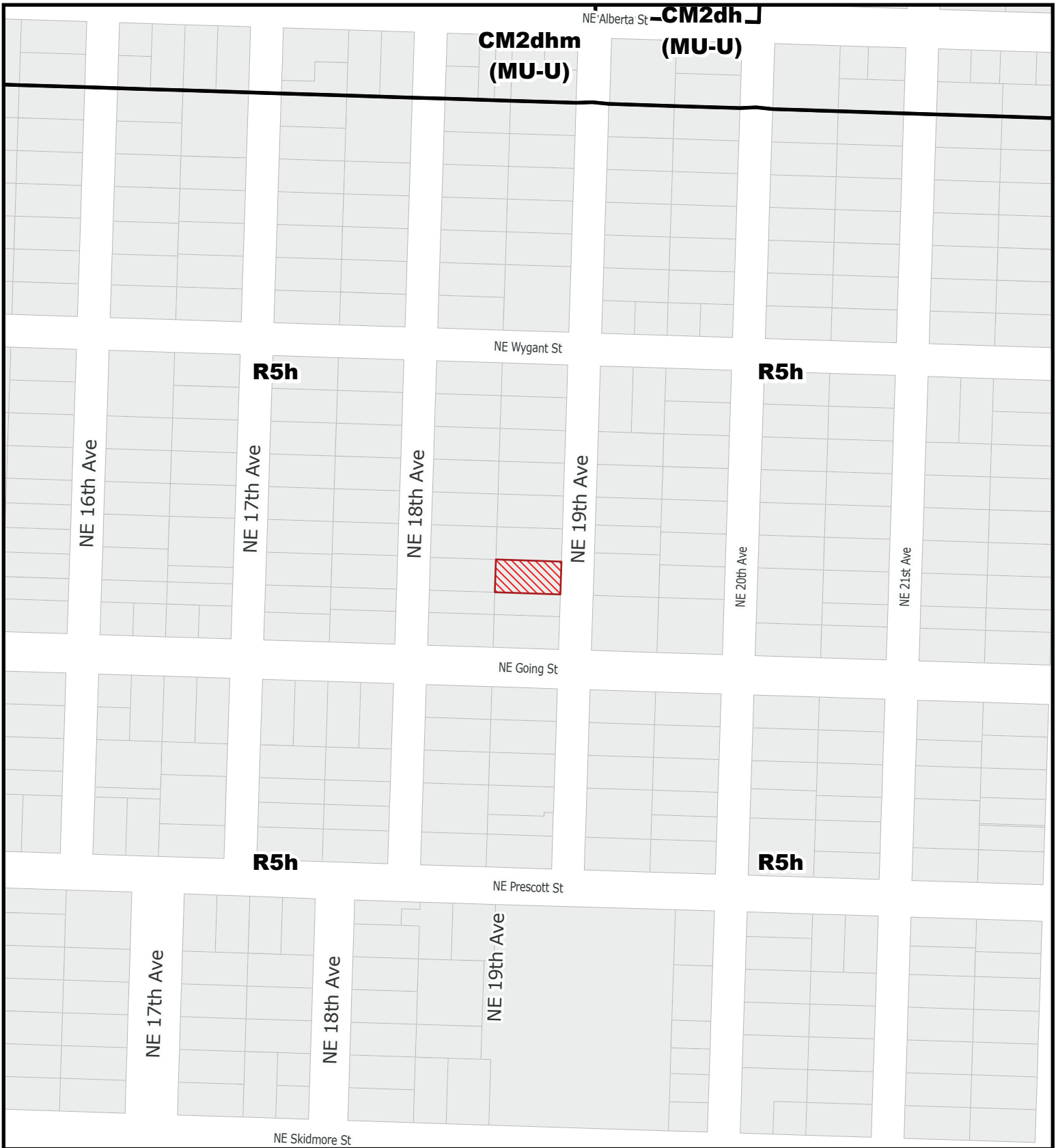
Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is the final City decision.

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
 - 2. Approved Plan Set
 - 3. Vicinity Map
 - 4. Preliminary Title Report
 - 5. Warranty Deed
 - 6. Preliminary Maintenance Agreement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Reduced Site Plan (attached)
 - 2. Approved Building Permit Site Plan
 - 3. Preliminary Plat Map
 - 4. Existing Conditions Survey
- 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. Brian Struve, 5/12/23
- 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).

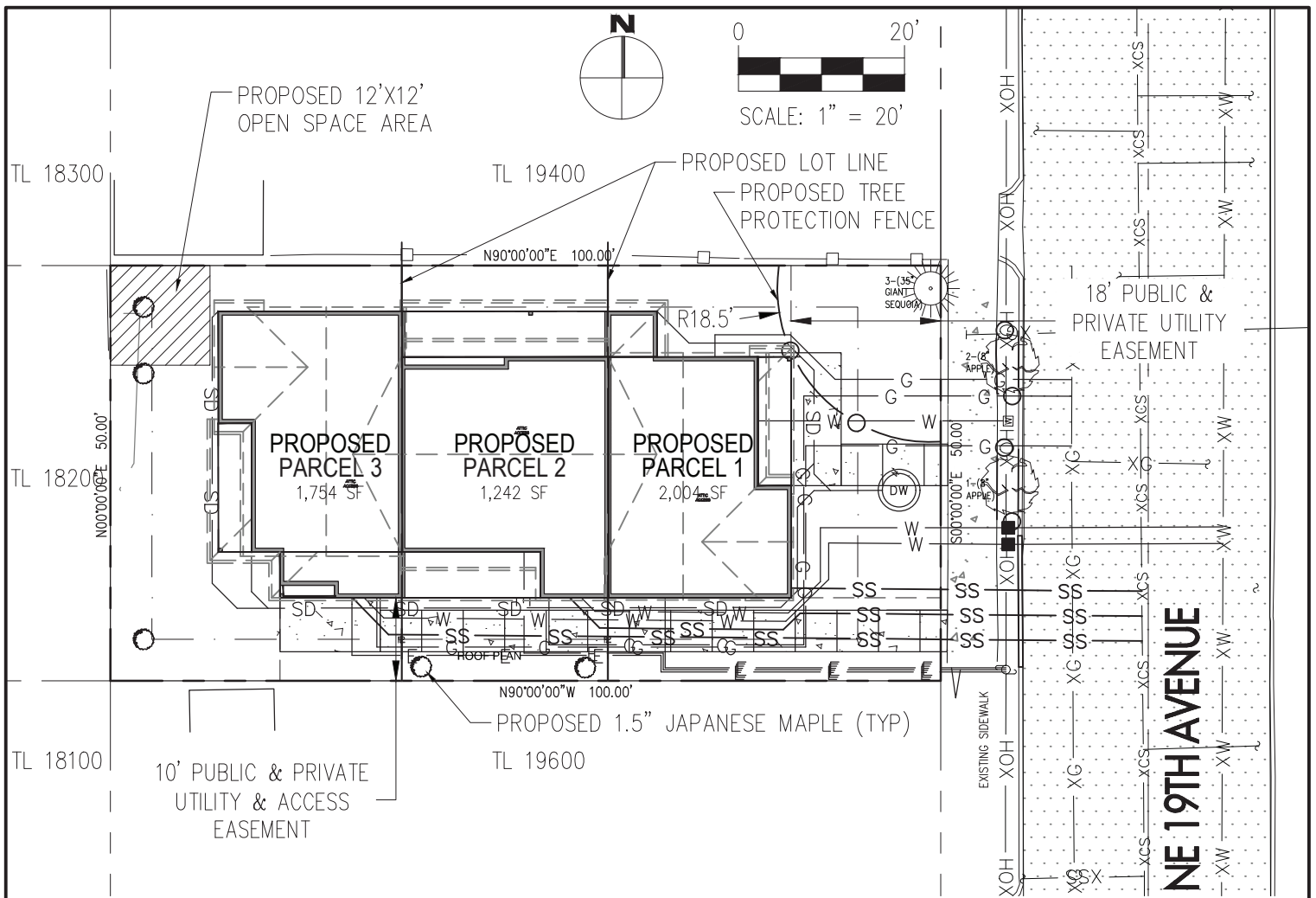


For Zoning Code in Effect Post October 1, 2022

ZONING

 Site

File No. LU 23 - 006727 MLDP
 1/4 Section 2532
 Scale 1 inch = 200 feet
 State ID 1N1E23AC 19500
 Exhibit B Jan 24, 2023



LEGEND

EXISTING		PROPOSED	
— — — — —	ROW/PROPERTY LINE	- - - - -	SETBACK LINE
— — — — —	CENTERLINE	- - - - -	EASEMENT LINE
— XOH — XOH —	OVERHEAD LINE	— E — E —	POWER LINE
— XG — XG —	GAS LINE	— G — G —	GAS LINE
— XCS — XCS —	COMBINED SEWER	— SD — SD —	STORM SEWER
— XW — XW —	WATER LINE	— SS — SS —	SANITARY SEWER
— □ — □ —	FENCE LINE	— W — W —	WATER LINE
⊠	WATER METER	○ — ○ —	TREE PROTECTION FENCE
⊡	UTILITY POLE	■	WATER METER
		⊠	DRYWELL

PROJECT NO. 0124-425
 ORIG. DATE: 5/3/2023
 DRAWN BY: KMH
 SHEET No. 1 of 1

SITE EXHIBIT
NE 19TH AVENUE
 EVERETT CUSTOM HOMES
 PORTLAND, OREGON

EMERIO
 ENGINEERING • SURVEYING • DESIGN
 6445 SW FALLBROOK PLACE, SUITE 100
 BEAVERTON, OREGON 97008
 TEL: (503) 746-8812
 FAX: (503) 639-9592
 www.emeriodesign.com