

**IN THE CITY COUNCIL OF THE  
CITY OF  
PORTLAND OREGON**

**IN THE MATTER OF AN APPLICATION  
BY MIKE COYLE FOR A ZONE  
CHANGE IN CONFORMANCE WITH  
THE COMPREHENSIVE PLAN AND 3-  
PARCEL LAND DIVISION AT 3936 SE  
REEDWAY ST**

**LU 13-237078 ZC LDP**

---

**FINDINGS AND CONCLUSIONS**

---

**ADOPTED BY THE CITY COUNCIL ON  
OCTOBER 15, 2014**

**(APPROVAL of a ZONE CHANGE and DENIAL of a LAND DIVISION)**

IN THE CITY COUNCIL OF THE  
CITY OF  
PORTLAND, OREGON

IN THE MATTER OF AN APPLICATION  
BY MIKE COYLE FOR A ZONE CHANGE  
IN CONFORMANCE WITH THE  
COMPREHENSIVE PLAN AND 3-  
PARCEL LAND DIVISION AT 3936 SE  
REEDWAY ST

LU 13-237078 ZC LDP

---

FINDINGS AND CONCLUSIONS

---

The findings and conclusions of the City Council in this matter are set forth below.

**I. GENERAL INFORMATION**

**File No.:** LU 13-237078 ZC LDP (HO 4140005)

**Applicant:** Mike Coyle/ Faster Permits  
14334 NW Eagleridge Lane/ Portland, OR 97229

**Developer:** Vic Remmers/ Everett Custom Homes  
735 SW 158<sup>th</sup>, Suite 180/ Beaverton, OR 97008

**Owner:** Greg Perrin/ Columbia Redevelopment LLC  
3936 SE Reedway Street/ Portland, OR 97202

**Appellant:** Terry Griffiths/ Woodstock Neighborhood Association  
4128 SE Reedway St/ Portland, OR 97206

**Hearings Officer:** Kenneth D. Helm

**Bureau of Development Services (BDS) Staff Representative:** Rachel Whiteside

**Site Address:** 3936 SE Reedway Street

**Legal Description:** BLOCK 70 LOT 1, WOODSTOCK

**Tax Account No.:** R928904210

**State ID No.:** 1S1E13DA 06600

**Quarter Section:** 3634

**Neighborhood:** Woodstock

**Business District:** Woodstock Community Business Association

**District Neighborhood Coalition:** Southeast Uplift**Plan District:** None**Zoning:** R5 (R2.5) – Single-Dwelling Residential 5,000 with a Comprehensive Plan Designation of Single-Dwelling Residential 2,500**Land Use Review:** Type III, ZC LDP, Zoning Map Amendment and Land Division (Partition)**II. INTRODUCTION AND PROCEDURAL HISTORY**

**Original Proposal:** The applicant proposes to partition the subject property into three parcels of approximately 4,548 (Parcel 1), 2,406 (Parcel 2), and 3,009 (Parcel 3) square feet in size in conjunction with a Zoning Map Amendment in conformance with the Comprehensive Plan from Residential 5,000 (R5) to Residential 2,500 (R2.5). Proposed Parcels 2 and 3 are below the minimum lot width of 36 feet and must meet the narrow lot criteria as part of the land division request. The existing home is to remain on Parcel 1, while the garage and pool will be removed to make way for proposed Parcels 2 and 3. No replacement parking is proposed for Parcel 1.

Sanitary sewer service is proposed for the new parcels from SE Reedway Street, with a 10-foot wide private sanitary sewer easement across Parcel 1 for the benefit of Parcel 3. Water service for each lot is proposed in their respective frontages. Stormwater disposal for Parcels 2 and 3 is proposed via individual drywells. There are no trees onsite, but six existing street trees are proposed to remain.

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create 3 units of land (3 parcels and 0 tracts). Therefore this land division is considered a partition.

This partition is generally reviewed through a Type Ix land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; and (3) none of the lots, utilities, or services is proposed within a Potential Landslide Hazard or Flood Hazard Area (see 33.660.110). However, because a Type III Zoning Map Amendment is required for the zone change in conformance with the Comprehensive Plan, the entire case is processed through the Type III procedure.

**Relevant Approval Criteria:**

- **33.855.050, Approval Criteria for Base Zone Changes**
- **Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones**

**Procedural History:** The application was deemed complete on March 20, 2014. A Staff Recommendation of Approval with Conditions was published on May 16, 2014. The Land Use Hearings Officer held a public hearing on May 28, 2014 at 9:00am. The record was held open until 4:30 p.m. on June 4, 2014 for new argument/evidence from any party and until 4:30 p.m. on June 11, 2014 for applicant's rebuttal. The Hearings Officer closed the record at that time. The Hearings Officer issued a Decision of Approved with Conditions on June 26, 2014. The Woodstock Neighborhood Association submitted an Appeal of the Hearings Officer Decision on July 11, 2014. The City Council held a public hearing on September 3, 2014 at 3:00pm. The Council heard testimony by the applicant’s representative, appellant, and interested parties, but deferred deliberation until additional Council members could be present. The hearing was continued to September 10, 2014 at 9:30am and then again to October 1, 2014 at 1:15pm, where City Council deliberated and tentatively voted to uphold the appeal of the Woodstock Neighborhood Association

in part. On October 15, 2014, the City Council took a final vote to deny the partition application and approve the Zoning Map Amendment and adopted final findings and conclusions.

### III. ANALYSIS

**Site and Vicinity:** The site is developed with a detached single-family home, garage, and in-ground pool. The site is primarily flat, except for a retaining wall along the north property line that increases in height as SE Reedway Street slopes down to SE Cesar E Chavez Boulevard to the west. The existing site development is of a size and vintage similar to much of the surrounding homes. The majority of development in the neighborhood is detached single-family homes on lots 5,000 square feet or larger. The vast majority of lots in the immediate vicinity of the site have lot widths of 50 to 100 feet. Two to three blocks south, near and along SE Woodstock Boulevard, the zoned density increases to R2 and R2.5. However, despite the zoning, the existing development pattern immediately north and south of Woodstock Boulevard consists largely of 5,000 and 10,000 square foot lots with 50 to 100 foot lot widths. Commercial development along SE Woodstock is primarily small storefront commercial. The Reed College campus begins two blocks west at SE 38<sup>th</sup> Avenue.

#### Infrastructure:

- **Streets** – The site has approximately 100 feet of frontage on SE Reedway Street and 100 feet of frontage on SE 40<sup>th</sup> Avenue. There is one driveway entering the site that serves the existing house from SE 40<sup>th</sup> Avenue. At this location, both streets are classified as a Local Service Street for all modes in the Transportation System Plan (TSP). TriMet provides transit service approximately 100 feet west of the site at SE Cesar E. Chavez Boulevard via Bus #75 and approximately 600 feet south of the site at Woodstock Boulevard via Bus #19.

At this location, according to City records, SE Reedway and SE 40<sup>th</sup> Avenue are improved with roadways that are 28 feet wide within 60-foot wide rights-of-ways. The pedestrian corridors are similarly improved with a 7-foot wide planter, 6-foot wide sidewalk, and 3 feet of reserve right-of-way (7-6-3 configuration).

- **Water Service** – There is an existing 8-inch CI water main in SE Reedway Street and a 1-inch main in SE 40<sup>th</sup> Avenue. The existing house is served by a 1-inch metered service from the main in SE Reedway Street.
- **Sanitary Service** - There is an existing 8-inch public combination sewer line in SE Reedway Street.
- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property.

**Zoning:** The R5 and R2.5 designations are two of the City's single-dwelling zones which are intended to preserve land for housing and to promote housing opportunities for individual households. Both zones implement the comprehensive plan policies and designations for single-dwelling housing.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**Agency Review:** Several Bureaus responded to the proposal and relevant comments are addressed under the applicable approval criteria. Planning Exhibits "E" contain the complete responses.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on May 5, 2014. One written response was received from the Neighborhood Association in response to the proposal. The letter from the Woodstock Neighborhood Association (Exhibit F.1) raised the following concerns (*the BDS Staff response from the Staff Recommendation follows in Italics*):

- The proposed narrow lots are not consistent with existing lots in the area and should be subject to a Planned Development Review.

*Findings regarding consistency with the surrounding area are found later in this report on pages 9-11 under the Narrow Lot Criteria. A Planned Development (PD) is a viable alternative for a proposal to seek modification of site-related development standards, including lot dimensions, however the City cannot force the applicant into a PD review. Additionally, the approval criteria come back to the same purpose statement already addressed in this review.*

- The Zone Change request must be reviewed for compliance with Comprehensive Plan Policy 12.6, which it fails to meet.

*The requested Zoning Map Amendment is to the corresponding zone on the Comprehensive Plan Map. Therefore, a Comprehensive Plan Map Amendment is NOT required. The approval criteria applicable to a Zoning Map Amendment in conformance with the Comprehensive Plan Map are listed below and do not include a requirement to address individual Comprehensive Plan policies.*

#### **IV. ZONING CODE APPROVAL CRITERIA AND FINDINGS**

##### **APPROVAL CRITERIA FOR ZONING MAP AMENDMENTS**

##### **33.855.050 Approval Criteria for Base Zone Changes**

##### **A. Compliance with the Comprehensive Plan Map. The zone change is to a corresponding zone of the Comprehensive Plan Map.**

- 1. When the Comprehensive Plan Map designation has more than one corresponding zone, it must be shown that the proposed zone is the most appropriate, taking into consideration the purposes of each zone and the zoning pattern of surrounding land.**

**Findings:** The Comprehensive Plan designation is R2.5. This designation has only one corresponding zone, R2.5. Therefore, this criterion does not apply.

- 2. Where R zoned lands have a C, E, or I designation with a Buffer overlay, the zone change will only be approved if it is for the expansion of a use from abutting nonresidential land. Zone changes for new uses that are not expansions are prohibited.**

**Findings:** This site does not have a C, E, or I designation or a Buffer overlay. Therefore, this criterion does not apply.

- 3. When the zone change request is from a higher-density residential zone to a lower-density residential zone, or from the CM zone to the CS zone, then the approval criterion in 33.810.050 A.2 must be met.**

**Findings:** The requested zone change is not from a higher density residential zone to a lower density residential zone or from the CM zone to the CS zone. Therefore, this criterion does not apply.

##### **B. Adequate public services.**

- 1. Adequacy of services applies only to the specific zone change site.**
- 2. Adequacy of services is determined based on performance standards established by the service bureaus. The burden of proof is on the applicant to provide the necessary analysis. Factors to consider include the projected service demands of the site, the**

**ability of the existing and proposed public services to accommodate those demand numbers, and the characteristics of the site and development proposal, if any.**

**Findings:** BDS Staff provided findings summarizing of bureau responses:

- a. Public services for water supply, and capacity, and police and fire protection are capable of supporting the uses allowed by the zone or will be capable by the time development is complete.**

**Findings:** The Water Bureau has indicated (in Exhibit E.3) that service is available to the site from the 8-inch CI water main in SE Reedway Street. The estimated static water pressure range for this location is 60 psi to 75 psi at the existing service elevation of 237-feet. The 1-inch water line in SE 40<sup>th</sup> Avenue is at capacity and will need to be upsized in order to provide water to proposed Parcel 3. The Water Bureau indicated that the applicant will need to pay for their share of an upsized water main prior to final plat approval. However, because the land division is not approved, as discussed in the findings later in this report, a condition of approval is no longer appropriate. City Title 21.12.010 will apply at the time a new development proposal is made.

The Police Bureau does not anticipate any impact in services as a result of the proposed zone change and therefore has no concerns (Exhibit E.8).

Fire Bureau requirements are generated from the 2007 Oregon Fire Code. The Fire Bureau has reviewed the applicant's complete proposal and has requested conditions of approval related to the specific development proposal (Exhibit E.4). As noted, the specific development proposal is not approved, therefore conditions tied to plat approval are no longer necessary. Appendix B and C of the Portland Fire Code will apply at the time a new development proposal is made.

- b. Proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services. Performance standards must be applied to the specific site design. Limitations on development level, mitigation measures or discharge restrictions may be necessary in order to assure these services are adequate.**

**Findings:** The Bureau of Environmental Services (BES) has indicated that sanitary service is available to the site from the 8-inch public combination sewer main in SE Reedway Street (Exhibit E.1). Conditions of approval relating to a private sanitary sewer easement and the existing sanitary lateral serving the house to remain are no longer necessary as the proposed land division is not approved.

BES has also granted conceptual approval of the applicant's proposed method of stormwater management, consisting of individual infiltration facilities, based on submittal of a Simplified Approach stormwater report (Exhibit A.5) that demonstrates infiltration rates that exceed the City's minimum requirements. Again, because the requested land division is not approve, the proposed conditions of approval for a supplemental land division plan and accompanying narrative at the time of final plat review are no longer necessary.

- c. Public services for transportation system facilities are capable of supporting the uses allowed by the zone or will be capable by the time development is complete. Transportation capacity must be capable of supporting the uses allowed by the zone by the time development is complete, and in the planning period defined by the Oregon Transportation Rule, which is 20 years from the date the Transportation System Plan was adopted. Limitations on development level or**

**mitigation measures may be necessary in order to assure transportation services are adequate.**

**Findings:** The Development Review Section of the Portland Bureau of Transportation (PBOT) has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, and for potential impacts upon transportation services (Exhibit E.2). The applicant has submitted a Transportation Impact Analysis that includes an analysis of the Transportation Planning Rule (Exhibit A.8) to address this approval criterion. PBOT's Analysis is quoted, in part, as follows:

*(. . .) At this location, SE Reedway and SE 40<sup>th</sup> Avenue are classified as Local Service streets for all transportation modes in the City's Transportation System Plan (TSP). In terms of identified functions, the TSP states the following relative to the various classifications of both streets, that;*

*Local Streets are designed to complement planned land uses and reduce dependence on arterials for local circulation; they are multimodal, but are not intended for trucks (other than local deliveries) in residential areas.*

*The proposed use, which is a continuation of the current use (single-family residential) on the subject site, will not conflict with the above referenced objectives for the surrounding street classifications.*

*(. . .) From a traffic operations standpoint, considering the fact that the site and an area around the site have been designated via the City's Comprehensive Plan Map to allow twice the density in the area, increases in traffic volumes on the local street system has been acknowledged and is anticipated. The approximate additional 20 daily trips (including the additional 2 peak hour trips) that potentially may result from a development proposal on the site assuming the rezone request is approved, is an insignificant number of trips that does not warrant any improvements to nearby intersections. In fact, the insignificant number of new vehicles trips associated with 2 new houses on the subject site are less than the daily variations that would be expected at any intersection in the vicinity. The applicant's TIS confirms that the impacts to the area intersections most likely to be effected by the additional project-related trip generation will be negligible. The SE Cesar E Chavez Blvd intersections with SE Reedway and SE Woodstock and the intersection at SE 40th Ave/ SE Reedway are currently operating at acceptable levels (related to the City's performance measures) and will continue to operate at acceptable levels with the vehicle trips generated by the increased density factored into the analysis.*

**Transportation Planning Rule (TPR) 660-012-0060**

*The Transportation Planning Rule generally requires a local government to determine whether certain regulatory amendments will "significantly affect an existing or planned transportation facility." (. . .) The amended TPR includes an exception to this general requirement for a Zoning Map Amendment where the proposed new zoning is consistent with: (1) the comprehensive plan map designation for the site; and (2) the local Transportation System Plan. If both conditions are satisfied, the local government may find that the amendment "does not affect an existing or planned transportation facility." (OAR 660-012-0060(9)). In this case, the proposed R2.5 zoning is consistent with Comprehensive Plan Map designation for the site and the local Transportation System Plan.*

More detailed analysis of street systems is also addressed below on pages 12 and 13 under Criterion K, Transportation Impacts.

The Water Bureau, Police Bureau, Fire Bureau, Bureau of Environmental Services and Portland Bureau of Transportation stated that adequate services are available for the anticipated level of use(s) that would be allowed to occur and had no conditions or additional requirements for approval of the requested Zoning Map Amendment. BDS Staff found, and City Council agrees, that based on the following findings this criterion is met.

**3. Services to a site that is requesting rezoning to IR Institutional Residential, will be considered adequate if the development proposed is mitigated through an approved impact mitigation plan or conditional use master plan for the institution.**

**Findings:** The request does not include rezoning the site to the IR zone, so this criterion does not apply.

**C. When the requested zone is IR, Institutional Residential.**

**Findings:** The request does not include rezoning the site to the IR zone, so this criterion does not apply.

**D. Location. The site must be within the City's boundary of incorporation.**

**Findings:** The site is within the incorporated boundaries of the City of Portland. Therefore, this criterion is met.

**APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES**

**33.660.120 The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.**

BDS Staff found that due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. No party to the public hearing before the Hearings Officer or City Council raised any additional criteria that might be applicable to this application. The following table summarizes the criteria that are not applicable. Applicable criteria are addressed below the table.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
B	33.630 – Tree Preservation	No significant trees or trees in excess of 6 inches in diameter are located fully on the site or outside of the environmental zone on the site.
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site outside of environmental zones.

<b>Criterion</b>	<b>Code Chapter/Section and Topic</b>	<b>Findings: Not applicable because:</b>
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required.
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	There are no pedestrian connections proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.

**Applicable Approval Criteria are:**

**A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.**

**Findings:** Chapter 33.611 contains the density and lot dimension requirements applicable in the R2.5 zone. The maximum density in the R2.5 zone is one unit per 2,500 square feet and minimum is 80 percent of one unit per 5,000 square feet. Based on a site area of 10,000 square feet, the site has a minimum required density of 1 unit and a maximum density of 4 units. The applicant is proposing 3 single-family parcels. City Council agrees that the density standards are therefore met.

BDS Staff provided the following table to explain the required minimum lot sizes for the R2.5 zone and the minimum lot widths proposed by the applicant:

	<b>Min. Lot Area (square feet)</b>	<b>Max. Lot Area (square feet)</b>	<b>Min. Lot Width* (feet)</b>	<b>Min. Depth (feet)</b>	<b>Min. Front Lot Line (feet)</b>
<b>R2.5 Zone</b>	1,600	NA	36	40	30
Parcel 1	4,548		66.97	67.91	66.97
Parcel 2	2,464		33	74.66	33
Parcel 3	3,009		31.75	99.97	31.75

\* Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.

Narrow Lots

The applicant proposes that Parcels 2 and 3 be narrower than the minimum width for the R2.5 zone, as shown in the table above. Although several neighbors argued before the Hearings Officer that the 36 foot lot width identified above absolutely cannot be varied, PCC 33.611.200(C) allows an applicant to request lot widths that vary from the clear and objective lot width standard in PCC 33.611.200(C)(1). As an alternative to the 36 foot lot width, an applicant may seek narrower lot widths by demonstrating compliance with the alternative criterion in PCC 33.611.200.(C)(2)(a-f):

***(a) On balance, lots are consistent with the purpose of the lot dimension regulations***

The purpose of Lot dimension regulations are as follows:

- (1) Each lot has enough room for a reasonably-sized attached or detached house;
- (2) Lots are of a size and shape that development on each lot can meet the development standards of the R2.5 zone;
- (3) Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;
- (4) Each lot has room for at least a small, private outdoor area;
- (5) Lots are wide enough to allow development to orient toward the street;
- (6) Each lot has access for utilities and services;
- (7) Lots are not landlocked;
- (8) Lots don't narrow to an unworkable width close to the street; and
- (9) Lots are compatible with existing lots while also considering the purpose of this chapter.

BDS Staff found that the applicant demonstrated that the proposed Parcels 2 and 3 are consistent with purpose statements Nos. 1-8 for the following reasons:

- The applicant has provided an example of a building footprint that meets all applicable setback requirements and is oriented towards the street. Therefore they have demonstrated that the proposed lot(s) can accommodate a reasonably sized house and garage or parking pad while meeting the development standards of the zoning code, including the outdoor area requirements.
- Parcel 1 is larger than Parcels 2 and 3, but not so much that it could be further divided to exceed the maximum allowed density of the site in the future.
- The applicant has provided a preliminary utility plan that demonstrates that each lot has access for utilities and services.
- The proposed lots are not landlocked nor do they narrow to an unbuildable width close to the street.

The Hearings Officer found the record did not contain sufficient credible or relevant argument to contradict the BDS Staff findings as to these purpose statements. City Council agrees with the above findings.

Most of the testimony in opposition to the proposed lot widths in the partition application pertained to Purpose statement No. 9 which provides: "Lots are compatible with existing lots while considering the purpose of this chapter."

"Compatible" is not defined in PCC 33.920. In such cases a term must be given its dictionary meaning. The Hearings Officer used Webster's Third New International Dictionary to define "compatible" as "capable of existing together without discord or disharmony." City Council accepts this definition of "compatible," and agrees with the Woodstock Neighborhood Association that compatibility with "existing lots" requires the Council to consider the context of lots on the blocks surrounding and in the vicinity of the site when evaluating whether a proposal will result in discord or disharmony with existing lots.

The Woodstock Neighborhood Association and several neighboring property owners testified that purpose statement No. 9 was not met because lots less than 36 feet in width are not consistent with and create disharmony in the surrounding development pattern. The City Council agrees. Comments submitted by the Neighborhood Association (Exhibit F.1), as well as the Zoning Map (Exhibit B), document the development pattern in blocks surrounding and in the vicinity of the site. Specifically, there is only one developed lot within 10 blocks that is less than 40 feet in width. This includes lots in other zones that allow for smaller lot dimensions by right. Allowing lots narrower than the R2.5 standard of 36 feet in the context of a consistent lot pattern of 50 and 100 foot wide lots would create discord and disharmony with existing lots, and as pointed out by the neighborhood, could set the stage for additional lots narrower than the objective zoning code standard.

Purpose statement No. 9 requires that compatibility of the proposal also be considered in light of the purpose statement of the chapter (Section 33.611.010) which states:

This chapter contains the density and lot dimension requirements for approval of a Preliminary Plan for a land division in the R2.5 zone. These requirements ensure that lots are consistent with the desired character of the zone while allowing lots to vary in size and shape provided the planned intensity of the zone is respected. This chapter works in conjunction with other chapters of this Title to ensure that land divisions create lots that can support appropriate structures in accordance with the planned intensity of the R2.5 zone.

Consideration of this purpose statement does not alter the Council's analysis. As described in the previous section, City Council has approved a Zoning Map Amendment to R2.5. The regulations in Chapter 33.611 allow lots to vary in size and shape, provided the planned intensity of the zone is respected and lots are consistent with the desired character of the zone. "Desired character" is defined in PCC 33.910.030 as:

The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.

PCC 33.110.010 contains the purpose statement for all single-dwelling residential zones. There is no separate character description for the various single-dwelling densities. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed.

City Council's determination that lot widths less than the objective R2.5 standard are incompatible with the existing lot patterns in the vicinity of this particular site does not preclude the applicant from proposing lots that meet the objective dimensional standards, vary in size and shape, respect the planning intensity of the zone and are consistent with the desired character of the zone, as summarized above.

City Council acknowledges that the underlying Comprehensive Plan Designation is R2.5 and the area is intended to transition to a higher density. However, in the context of this case and the well-established surrounding development pattern, for the planned density to be compatible with existing lots, this must be accomplished by meeting the minimum 36-foot wide lot dimension. The Council finds this will provide the certainty to property owners, developers, and neighbors that is intended in the zoning code.

The applicant provided evidence that the other purposes of the regulation (Nos. 1-8) could be satisfied. In this case, City Council finds the narrow lots to be so incompatible with existing lots in the surrounding blocks and site vicinity that it requires the Council to give purpose statement No. 9 significantly greater weight than the other purpose statements. Therefore, the City Council finds the proposed narrow lots are not, on balance, consistent with the purposes of the lot dimension regulations.

The applicant argued that the City Council could not apply PCC 33.611.200(C)(2)(a) to the application because the purpose sections of the lot dimension standards are subjective rather than clear and objective. The Council rejects the applicant's argument. The Council is not convinced, based on the evidence in the record, that this application is subject to the statutory requirement for clear and objective standards. Even if it is, the code sets forth a clear and objective 36 foot standard for lot width in the R 2.5 zone. The applicant could have chosen to configure the proposed parcels to comply with the objective lot width standard set forth in PCC 33.611.200.C.1. The applicant instead chose to seek an exception to that standard through the alternative criterion set forth in PCC 33.611.200.C.2. The Land Use Board of Appeals has previously determined that the clear and objective standard requirement does not apply to a request for a variance. As a result, PCC 33.611.200(C)(2)(a) is a valid and applicable standard.

PCC 33.611.200(C)(2) requires compliance with several other criteria (b-f) which BDS Staff and the Hearings Officer discussed. Although the City Council denies the partition application on the grounds described above, it addresses the remaining applicable criteria for the proposal:

***(b) The minimum width for lots that will be developed with detached houses may not be reduced below 25 feet***

The lots will be developed with detached houses and the proposed parcels are at least 25 feet wide. This regulation is met.

***(c) If the lot abuts an alley, then vehicle access is allowed only from the alley***

The site does not have access from an alley, so this standard does not apply.

***(d) Lots must be configured so that development on the site will be able to meet the garage limitation standard of Subsection 33.110.253.E at the time of development***

***(e) If parking is not required, alley access and garage limitation requirements do not have to be met if a covenant is provided.***

Subsection 33.110.253.E.3.b does not allow an attached garage where the street-facing façade of a unit is less than 22 feet long. Parcel 2 is wide enough to allow a street-facing façade in excess of 22 feet long that will be able to accommodate a garage that will occupy no more than 50% of the length of the street facing façade. The garage limitation standards of Subsection 33.110.253.E can be met for Parcel 2.

Parcel 3 is not wide enough to accommodate an attached garage on a street-facing façade. However, Parcel 3 is wide enough to accommodate a driveway and parking pad. As noted under the Facts section of this report on page 2, future parcels are exempt from minimum parking requirements due to their location within 500 feet of a transit street with 20-minute service. Because the site qualifies to not have parking, a covenant that prohibits future development of the property with an attached garage on the street-facing façade is required. The covenant may indicate that other forms of on-site parking (i.e. a driveway and parking pad) that is in conformance with applicable zoning regulations may be allowed. With a condition for a covenant, this requirement is met.

The City Council also notes that the revised TIS submitted by the applicant on June 4, 2014 provides ample evidence to find that the proposal will not have significant adverse impacts, if any, on the current availability of on-street parking in the vicinity. Exhibit H.17.

***(f) 60 percent landscaping requirement for attached houses***

The applicant has indicated that the lots will be developed with detached houses; therefore, this requirement does not apply.

The applicant has failed to demonstrate that the lot dimension standards are met. Specifically, City Council finds that the proposal fails to meet one element of the alternative criterion for lots that are proposed to be narrower than standard width. Therefore, this criterion is not met and the partition cannot be approved.

Although the City Council denies the partition application because it does not satisfy all approval criteria in PCC 33.611.200 (C)(2), the Council addresses the remaining land division approval criteria for the purpose of offering guidance for any future land division application for the site.

**G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.**

**Findings:** City Council agrees with the following BDS Staff findings.

***Clearing and Grading***

The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

In this case, the site is not located within the Potential Landslide Hazard Area. No significant clearing or grading will be required on the site to make the new lots developable. In addition, there are no trees required to be preserved in the areas where new development on the site is anticipated. This criterion is met.

***Land Suitability***

The site is currently in residential use, and there is no record of any other use in the past. The applicant has proposed to remove the existing detached garage and pool in order to redevelop the site. In order to ensure that the new lots are suitable for development, a permit must be obtained and finalized for demolition of the pool and accessory structures on the site prior to final plat approval. With this condition, the new lots could be considered suitable for residential development that satisfies all relevant zoning code criteria.

**H. Tracts and easements. The standards of Chapter 33.636, Tracts and Easements must be met;**

**Findings:** No tracts are proposed or required for this land division, so criterion A does not apply.

A Private Sanitary Sewer Easement is required across the relevant portions of Parcel 1, for a sanitary sewer lateral connection that will serve Parcel 3.

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 criterion 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, 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 could be met.

**I. Solar access. If single-dwelling detached development is proposed for the site, the approval criteria of Chapter 33.639, Solar Access, must be met.**

**Findings:** BDS Staff made the following findings:

*"Parcels 1 and 2 are on the south side of an east-west oriented street. Parcel 1 will be on the corner, and will be wider than the other lot(s). Parcel 3 is the only lot on a north-south street. This criterion is, therefore, met."*

Several opponents asserted that the future homes on the proposed narrow parcels would block solar access either to their homes or the existing dwelling on the subject property. At the hearing, BDS Staff took the position that the solar access standards are prescriptive and that the possibility that future structures may shade adjacent properties does not violate those standards.

City Council was sympathetic to opponents concerns about solar access, but also found the BDS implementation of the current code language to be accurate. This criterion could be met.

**K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,**

**Findings:** The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. The Development Review Section of the Portland Bureau of Transportation has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, and for potential impacts upon transportation services and provided the following findings:

Level of service

*Per Portland Policy Document TRN-10.27 - Traffic Capacity Analysis for Land Use Review Cases: For traffic impact studies required in the course of land use review or development, the following standards apply:*

- 1. For signalized intersections, adequate level of service is LOS D, based on a weighted average of vehicle delay for the intersection.*
- 2. For stop-controlled intersections, adequate level of service is LOS E, based on individual vehicle movement.*

*The industry standard is to measure street capacity and level-of-service (LOS) only at intersections during the critical time period, such as AM or PM peak hour. Although capacity is a part of the LOS, the City of Portland's performance standards are defined only by LOS, which is defined by average vehicle delay. The City does not have performance standards for any of the other evaluation factors*

*Using the evaluation factors listed in this code section, the applicant should provide a narrative and all necessary plans and documentation to demonstrate that the transportation system is capable of safely supporting the proposed development in addition to the existing uses in the area. The applicant has submitted a Traffic Impact Study (TIS) to adequately determine the impacts of the proposed project on the area's transportation system.*

*The capacity analysis pertinent to this particular evaluation factor has already been noted above in relation to the similar Zone Change approval criteria. As noted in the previous section of this response, the area's intersections most likely to be impacted by the proposed partition request currently operate at acceptable levels of service and will continue to do so with the additional 20*

*daily vehicle trips (including 2 additional peak hour trips) that will distribute across the area's transportation system.*

#### Vehicle access and loading

*Current vehicle access and loading is via the site's SE 40th Ave frontage to the existing house's garage (this driveway will be closed off and there will no longer be any on-site parking for the existing home that will be retained on Parcel 1). Vehicles will access the subject property via SE Reedway St and SE 40th Ave. The subject property is located within a well-connected street grid allowing multiple options for access and circulation in the site vicinity. On-street parking is available on both sides of SE Reedway St and both sides of SE 40th Ave. It is anticipated that loading will occur using the individual driveways provided for Parcels 2 and 3 as well as the adjacent on-street parking. The existing and proposed facilities are adequate to serve the needs of the proposed development in addition to the existing uses in the site vicinity.*

#### On-street Parking Impacts

*To identify current on-street parking supply and demand in the area around the subject site during the typical high demand periods for residential parking, the applicant's traffic consultant conducted observations during the evening peak hours and late evening/early morning hours*

*Under evening peak hour conditions there was 1 vehicle parked on the west side and 1 vehicle parked on the east side of SE 40th Ave between SE Reedway St and SE Ramona St (the subject block face). Fifteen on-street spaces remained available on this street segment. There were 2 parked vehicles along the south side and no vehicles parked along the north side of SE Reedway St between SE César E. Chávez Blvd and SE 40th Ave (the subject block face). Sixteen on-street spaces remained available along this street segment.*

*During the early morning hours there was 1 vehicle parked on the west side and 2 vehicles parked on the east side of SE 40th Ave between SE Reedway St and SE Ramona St. Fourteen on-street spaces remained available on this street segment. There were 3 parked vehicles along the south side and no vehicles parked along the north side of SE Reedway St between SE César E. Chávez Blvd and SE 40th Ave. Fifteen on-street spaces remained available along this street segment. On-street parking demands on the other streets in the site vicinity were similarly low.*

*Based on data from the manual PARKING GENERATION, Fourth Edition, published by the Institute of Transportation Engineers, the proposed increase of 2 single-family dwellings is projected to result in demand for 4 additional parking spaces during the period of peak parking demand.*

*The proposed development will add one new driveway to serve Proposed Parcel 2 from SE Reedway and the existing driveway to serve Proposed Parcel 3 from SE 40th Ave. As mentioned previously, the on-site parking space for Proposed Parcel 1 will be eliminated, including the closure of the existing curb cut. Construction of the new driveways is projected to result in the loss of one parking space along the site SE Reedway frontage.*

*Assuming that no off-street parking is utilized by the two new lots, it is projected that the peak parking demand could increase by 4 spaces and that the on-street parking supply will reduce by 1 space. Upon completion of the proposed development it is projected that there will remain a surplus of 24 on-street parking spaces on the street segments on which the subject property is located. Adequate on-street parking is available in the site vicinity to serve the proposed development in addition to the existing uses in the site vicinity.*

#### Transit service

*The area is served by Tri-Met bus route #75 (Cesar Chavez/Lombard) along SE Cesar E Chavez Blvd, one block west of the subject site. Tri-Met bus route #19 (Woodstock/Glisan) provides local service along SE Woodstock Blvd, 3 blocks south of the site.*

*Impacts on the immediate and adjacent neighborhoods*

*Traffic volumes on area roadways and at area intersections are not expected to change significantly upon approval of the proposed lot split. The additional site trips during the peak hours will have no noticeable impacts to immediate and adjacent neighborhoods. No significant operational or safety problems were identified. There is a sufficient on-street parking supply to accommodate the existing and proposed developments. It is PBOT's determination that the proposed partition request will not result in adverse impacts on the immediate and adjacent neighborhoods.*

*Safety for all modes*

*Traffic volumes on SE Reedway St and SE 40th Ave within the immediate site vicinity are very low, and travel speeds are limited by the 25 mph statutory residential speed limits. Bicycles can safely share the roadway with motorized vehicle traffic on these streets. Dedicated bike lanes are also available along both sides of SE 41st Ave and SE Woodstock Blvd in the site vicinity.*

*Continuous pedestrian facilities are in place on both sides of many of the streets in the site vicinity. Marked crosswalks are also in place at the nearby signalized intersections of SE César E. Chávez Blvd/SE Steele St and at SE César E. Chávez Blvd/SE Woodstock Blvd.*

*The existing pedestrian and bicycle facilities in the site vicinity are adequate to safely serve the needs of the proposed development in addition to the existing uses in the site vicinity. Based on the detailed analysis, the existing streets and infrastructure in the site vicinity are sufficient to provide safe access for all travel modes.*

Based on the evidence in the record, City Council finds that this criterion could be met.

**L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.**

**Findings:** Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. BDS Staff found, and City Council agrees, that the criteria and standards could be met as shown in the following table:

**33.651 Water Service standard** – See Exhibit E.3 for detailed bureau comments.

The Water Bureau has indicated that service is available to Parcels 1 and 2 from SE Reedway, as noted on page 3 of this report. There is existing water service in SE 40<sup>th</sup> Avenue, however the one-inch line is at capacity. The applicant must make arrangements to upsize the water main in SE 40<sup>th</sup> Avenue to ensure service is available to Parcel 3. In order to meet the standards of 33.651 and the technical requirements of Title 21, appropriate plans and assurances must be provided to the Water Bureau prior to final plat approval.

**33.652 Sanitary Sewer Disposal Service standards** – See Exhibit E.1 for detailed comments.

The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 3 of this report. There is no sanitary sewer located in SE 40<sup>th</sup> Avenue to serve Parcel 3, however a BES assessment of the site and vicinity determined that a public sewer extension is not required. A private sanitary sewer easement to allow a sanitary connection to the public combined sewer in SE Reedway Street will be permitted by BES for this specific project. The applicant has shown a private sanitary lateral for Parcel 3 running along the eastern boundary of Parcel 1 within a 10-foot wide private sanitary sewer easement, which is acceptable to BES. The sanitary sewer service standards of 33.652 have been verified.

If a new sewer connection is established for the house and the existing line is capped for use by future Parcel 3, all plumbing permits must be obtained and receive final inspection approval prior to Final Plat approval.

**33.653.020 & .030 Stormwater Management criteria and standards – See Exhibits E.1**

No stormwater tract is proposed or required. Therefore, criterion A is not applicable.

The applicant has proposed the following stormwater management methods

- **Parcels 2 and 3:** Stormwater from these lots will be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. Each of these lots has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. BES has indicated conceptual approval of the drywells for the purposes of land use review, but requests a stormwater narrative describing the stormwater management plan for proposed roof and non-roof impervious areas on Parcels 2 and 3 at the time of final plat review.
- **Parcel 1 (the lot with the existing house):** The existing house has downspouts that drain into underground pipes. BES has noted that there are no City records indicating where the pipes are directed. Prior to final plat approval, the applicant must document the location of the stormwater disposal for the existing house, to the satisfaction of BES. If the stormwater disposal system for the existing house will not be fully located on the parcel it serves after the land division, then the applicant must modify the stormwater system for the existing house to the specifications of BES and obtain finalized plumbing permits for the modifications prior to final plat approval.

**33.654.110.B.1 Through streets and pedestrian connections**

Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. The spacing goals for public through streets or pedestrian connections are met on the subject block and along other blocks in this area. PBOT has indicated they have no concerns relative to connectivity or locations of rights-of-way associates with the proposed land division partition. This criterion could be met.

**33.654.120.B & C Width & elements of the right-of-way – See Exhibit E.2 for bureau comment**

In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. Portland Transportation has not identified or been made aware of any factors related to this proposal that lead to a conclusion other than that two additional dwellings can be safely served by this existing street without having any significant impact on the level of service provided. This criterion could be met.

**33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)**

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-ways can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion could be 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.

## V. CONCLUSIONS

City Council found the narrow lots proposed as part of the land division request are too inconsistent with the existing development pattern to be considered compatible with the existing lots in the blocks surrounding and in the vicinity of the site. Because the objective lot dimension standards for the R2.5 zone are not met and Council finds the alternative narrow lot criteria are not satisfied, the proposed land division cannot be approved.

While the Woodstock Neighborhood Association requested that the entire application be denied, their appeal statement only addressed land division related criteria. Testimony at the Council hearing was also directed toward the land division criteria rather than the Zoning Map Amendment criteria. The Water Bureau, Police Bureau, Fire Bureau, Bureau of Environmental Services and Portland Bureau of Transportation stated that adequate services are or can be made available for the anticipated level of use(s) that would be allowed to occur. No conditions or additional requirements for approval of the requested Zoning Map Amendment are necessary to satisfy the applicable approval criteria.

Therefore, Council concludes that the land division proposal should be denied but the Zoning Map Amendment should be approved.

## VI. DECISION

**It is the decision of Council to partially uphold the appeal of the Woodstock Neighborhood Association resulting in:**

**Denial** of a Preliminary Plan for a 3-parcel partition; and

**Approval** of a Zoning Map Amendment in conformance with the Comprehensive Plan from R5 to R2.5; and

## VII. APPEAL INFORMATION

### **Appeals to the Land Use Board of Appeals (LUBA)**

This is the City's final decision on this matter. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date of the decision, 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 or this land use review. You may call LUBA at 1 (503) 373-1265 for further information on filing an appeal.

## **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Original Narrative
  - 2. Arborist Report
  - 3. Response to Incomplete Letter, dated March 12, 2014
  - 4. Revised Narrative
  - 5. Simplified Approach Stormwater Forms
  - 6. Transportation Analysis, dated January 3, 2014
  - 7. Hearing Reschedule and 120-day Extension
  - 8. Transportation Analysis, dated May 8, 2014
- B. Zoning Map (**attached**)
  - 1. Existing Zoning
  - 2. Proposed Zoning

- C. Plans and Drawings
  - 1. Vicinity Plan
  - 2. Existing Conditions Site Plan
  - 3. Preliminary Land Division Plan
  - 4. Preliminary Site and Utility Plan
  - 5. Preliminary Grading Plan
  - 6. Stamped Survey
- D. Notification information
  - 1. Request for response
  - 2. Posting letter sent to applicant
  - 3. a. Notice to be posted for May 12, 2014 hearing date  
b. Notice to be posted for revised May 28, 2014 hearing date
  - 4. Applicant's statement certifying posting
  - 5. Mailing list
  - 6. 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 Bureau of Development Services
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Review Section of BDS
  - 8. Portland Police Bureau
- F. Letters
  - 1. Woodstock Neighborhood Association, April 21, 2014, letter in opposition
- G. Other
  - 1. Original LUR Application
  - 2. Neighborhood Contact Documentation
  - 3. Pre-Application Conference
  - 4. Incomplete Letter, sent January 2, 2014
- H. Received in the Hearings Office
  - 1. Request to reschedule - Whiteside, Rachel
  - 2. Hearing Notice - Whiteside, Rachel
  - 3. 5/22/14 - Spence, Merrilee
  - 4. Staff Report - Whiteside, Rachel
  - 5. 5/21/14 Memo with photos - Szigethy, Les
  - 6. 5/27/14 letter - Robinson, Michael
  - 7. PowerPoint presentation printout - Whiteside, Rachel
  - 8. Photos - Szigethy, Les
  - 9. Map - Griffiths, Terry
  - 10. 5/28/14 letter - Luening, Rebecca
    - a. Photo - Luening, Rebecca
  - 11. Written testimony - Griffiths, Terry
  - 12. E-mails - Griffiths, Terry
  - 13. Record Closing Information - Hearings Office
  - 14. Letter from Jeffery Krater - Whiteside, Rachel
  - 15. Fax from Les Szigethy - Whiteside, Rachel
  - 16. Fax from Rob and Corrine Lyons - Whiteside, Rachel
  - 17. 6/4/14 Letter - Ard, Michael
  - 18. Letter - Strickler, Douglas
  - 19. Final argument - Robinson, Michael
  - 20. Fax Cover - Robinson, Michael
    - a. 6/10/14 Letter - Robinson, Michael
- I. Appeal

1. Appeal Form
- 1a. Appeal Letter
2. Appealed Decision
3. NOA Mailing list
4. Notice of Appeal
5. Extension of the 120-Day Review Period, received July 21, 2014
6. Commissioner Assistant Briefing Memo
7. Testimony List from Agenda Item 939, September 3, 2014 at 3:00pm
8. Written testimony from Terry Giffiths
9. Written testimony from Len Norwitz
10. Written testimony from Rebecca Luening
11. Written testimony from Gregory W Stark
12. Written testimony from Teresa Purpura
13. Extension of the 120-Day Review Period, received September 8, 2014