



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

1900 SW 4<sup>th</sup> Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: [www.portlandoregon.gov/auditor/hearings](http://www.portlandoregon.gov/auditor/hearings)



## DECISION OF THE HEARINGS OFFICER ON APPEAL OF ADMINISTRATIVE DECISION

### I. GENERAL INFORMATION

**File No.:** LU 10-106452 LDP AD (HO 4100027)

**Applicant:** Blair Agee  
21401 NE Shore Drive  
Fairview, OR 97024-6789

**Appellant/Applicant's  
Representative:** Lisa Barker  
LMB Permit Services  
307 NW 16th Avenue  
Battleground, WA 98604

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Staff Representative:** Kate Green

**Site Address:** 15650 SE Stark Street

**Legal Description:** LOT 1 EXC PT IN STS, BRINTON TRACT

**Tax Account No.:** R103900020

**State ID No.:** 1S2E01AB 00100

**Quarter Section:** 3146

**Neighborhood:** Centennial

**Business District:** Gateway Area Business Association

**District Neighborhood Coalition:** East Portland Neighborhood Office

**Zoning:** Multi-Dwelling Residential 2,000 (R2), Alternative Design Density (a)

**Land Use Review:** Type IIX, Land Division-Partition (LDP) Adjustment (AD)

**BDS Administrative Decision:** Approval with conditions

**Public Hearing:** The hearing was opened at 9:00 a.m. on November 17, 2010, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 10:04 a.m. The record was held open until 4:30 p.m. on November 24, 2010 for new written evidence, and until 4:30 p.m. on December 1, 2010 for final rebuttal. The record was closed at that time.

**Testified at the Hearing:**

Kate Green, BDS Staff Representative

Lisa Barker, 307 NW 16th Ave., Battle Ground, WA 98604

Blair Agee, 21401 NE Shore Dr., Fairview, OR 97024

Bob Haley, PBOT, 1900 SW 4<sup>th</sup> Ave., Suite 5000, Portland, OR 97201

George Helm, BDS Civil Engineer, 1900 SW 4<sup>th</sup> Ave., Suite 5000, Portland, OR 97201

**Proposal:** The Applicant proposed a Land Division-Partition to divide a corner property into two parcels ("Subject Site"). The Subject Site was recently developed with two residential structures. One of the new structures will be situated on each of the proposed parcels. Parcel 1 is proposed to be 4,385 square feet in area and Parcel 2 is proposed to be 4,508 square feet in area. Essentially, the Applicant proposed to divide the existing multi-dwelling development into two duplex developments.

In addition, the Applicant requests Adjustments to two development standards as follows:

- **Maximum Building Setback (33.120.220.C.1.b):** Buildings along a transit street, in this case SE Stark Street, are required to be oriented toward the street, and at least 50 percent of the ground level façade must be within 20 feet of the transit street. The Applicant requested an Adjustment to allow the structure on Parcel 2 to be set back approximately 24 feet from the transit street lot-line.
- **Parking and Loading/Front Yard Restrictions (33.266.120.C.a):** This standard requires that no more than 40 percent of the land area between the front lot-line and the front building line be paved or used for vehicle areas. The Applicant requested an Adjustment to allow the existing driveway, which is approximately 43 percent of the front yard for proposed Parcel 2, to be used for vehicle parking and maneuvering.

This partition proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) 10 or fewer lots are proposed; and (3) a concurrent review (Adjustment Review) is required (see 33.660.110).

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 proposed to create two units of land (parcels). Therefore, this land division is considered a partition.

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

- 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones
- 33.805.040 A-F, Approval Criteria for Adjustments

**SUMMARY OF APPEAL:**

Applicant appeals an Administrative Decision (Exhibit H-3); hereafter the Applicant and Appellant shall collectively be referred to as "Applicant/Appellant." Ms. Lisa Barker, Applicant/Appellant's representative, submitted an appeal (Exhibit H-2) of a Bureau of Development Services NOTICE OF A TYPE IIx DECISION (Exhibit H-3). Applicant/Appellant, in Exhibit H-2, stated that the City erred as follows:

"Property owner in disagreement with following Condition of Approval #1 approved through Adjustment criteria 33.266.120.C.a prohibiting parking outside garages & including provision in all rental or sales agreements as part of mitigation for the Adjustment."

At the November 17, 2010 public hearing, Applicant/Appellant refined its appeal issues. The Hearings Officer summarizes Applicant/Appellant issue refinement as:

1. use of the hammerheads provided adjacent to the driveway for each duplex unit is adequate to provide forward vehicle movement to enter and exit the driveway (it is not necessary that a vehicle use the driveway and/or hammerhead in front of the adjacent duplex unit); and
2. including a condition requiring no vehicle parking in the driveway is not supported by the Portland Zoning Code ("PCC"); and
3. including a condition requiring notice to tenants and subsequent purchasers that there is no parking in the driveway is not supported by the PCC.
4. issuance of building permits to Applicant/Appellant by the City of Portland for the construction of two units, without including a no parking on the driveway restriction, precludes including a condition restricting parking on the driveways in this land division application.

**HEARINGS OFFICER'S OVERVIEW OF APPEAL ISSUES AND RELEVANT APPROVAL CRITERIA:**

BDS staff submitted, during the open-record period, a November 23, 2010 MEMO to the Hearings Officer. (Exhibit H-12). BDS staff, in Exhibit H-12, outlined important PCC sections, including PCC 33.800.050, PCC 33.800.060 and PCC 33.800.070. The Hearings Officer summarizes these sections as follows:

PCC 33.800.050 states that a land use proposal, submitted under PCC, shall be approved if the proposal complies with all relevant approval criteria. PCC 33.800.050 further requires approval of a proposal if the proposal meets all relevant approval criteria if conditions of approval are imposed.

PCC 33.800.060 states that the applicant has the burden of proof to show that all relevant approval criteria are met.

PCC 33.800.070 permits the City to impose conditions of approval if such conditions ensure that the proposal will conform to applicable approval criteria.

On-site parking issues were raised in the BDS staff decision (Exhibit H-3) in findings for approval criteria for PCC 33.641.020 & .030 (Transportation Impacts), and PCC 33.805.040 A. & B. (Adjustments). PCC 33.641.020 is an approval criteria for creating a land division and, in summary, requires that the transportation system must be capable of safely supporting the proposed development; including vehicle access and parking, and safety issues related to transportation. PCC 33.641.030 states, in summary, that a land division applicant may meet PCC 33.641.020 requirements by including mitigation measures such as creating an access management plan. PCC 33.805.040 contains the approval criteria for the approval of an adjustment, and PCC 33.805.040 A. requires a proposed adjustment to equally or better meet the regulation(s) to be modified. PCC 33.805.040 B. prohibits approving a requested adjustment(s) if granting the requested adjustment would significantly detract from the livability of the residential area where the proposal is located.

The BDS staff findings for PCC 33.641.020 note that access to proposed Parcel 2 is from SE Stark Street; a Major City Traffic Street, Transit Access Street, City Bikeway and Walkway, Major Truck and Regional Corridor. (Exhibits H-3 and Exhibit E-2). The BDS staff findings for PCC 33.641.020 also notes that Portland Bureau of Transportation ("PBOT") required access to Parcel 2 to be designed "so that vehicles can enter and exit the site in a forward manner", and that there is "maneuvering room to provide head in head out access." (Exhibits H-3 and E-2).

Applicant/Appellant did not contest the City's requirement of vehicles entering and exiting Parcel 2 parking areas in a forward manner.

BDS staff findings for PCC 33.805.040 A. note that the driveway areas for the units on Parcel 2 create "a greater potential for conflicts between vehicles traveling to and from the site and pedestrian[s] using SE Stark Street. (Exhibit H-3). BDS staff, in the findings for PCC 33.805.040 A. concluded that:

"if vehicles park in front of either garage, or within any portion of the proposed vehicle area, there will not be sufficient space to allow autos to maneuver and exit in a forward motion. As such, a condition must be imposed that parking on Parcel 2 is prohibited outside the garages. Additionally, to ensure this parking limitation is clear to residents and future property owners, this provision must be included in all rental agreements and property transfer documents for Parcel 2." (Exhibit H-3).

Applicant/Appellant appeal issues arise from the quoted BDS staff findings above and are summarized in the Summary of the Appeal section above.

The Hearings Officer notes that conditions of approval may only be imposed, as part of the approval of a discretionary review, to ensure that applicable approval criteria are met. The Hearings Officer shall focus, in this appeal decision, upon approval criteria PCC 33.641.020 and PCC 33.805.040 A.

and B., in determining if the Adjustment Approval Condition A. and Preliminary Plan approval Condition C.1. are legally defensible.

## II. ANALYSIS

**Site and Vicinity:** The Subject Site is a flat rectangular lot located at the southwest corner of SE Stark Street and SE 157<sup>th</sup> Avenue. It is approximately 9,800 square feet in size, and is in the process of being developed with two-story residential units.

The Subject Site has approximately 140 feet of frontage on SE Stark Street and approximately 70 feet of frontage on SE 157<sup>th</sup> Avenue. Southeast Stark Street is classified a Major City Traffic Street, Transit Access Street, City Bikeway and Walkway, Major Truck and Regional Corridor; SE 157<sup>th</sup> Avenue is local service, all modes. The frontages do not include developed sidewalks at this time. Parking is currently allowed on both sides of both streets for all referenced streets. TriMet provides transit service directly on SE Stark Street via bus line 20.

The Subject Site is situated within a band of multi-dwelling residential zoned (R1 and R2) lands along both sides of SE Stark Street, flagged by two commercially zoned (CS) nodes at SE 148<sup>th</sup> Avenue to the west, and at SE 162<sup>nd</sup> Avenue to the east. To the south and west of this multi-dwelling corridor, the zoning changes to single-dwelling residential (R5 and R7). Much of the development in this area consists of single-dwelling homes, and does not reflect the type or scale of development anticipated by the current zoning designations.

**Zoning:** The Subject Site is located in the Multi-Dwelling Residential 2,000 (R2) zone with an Alternative Design Density (a) overlay.

The R2 zone is a low-density multi-dwelling zone. The major types of new development in the R2 zoning area will be duplexes, townhouses, row houses and garden apartments. Generally, R2 zoning will be applied near Major City Traffic Streets, Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.

The a-overlay allows increased density for development that meets additional design compatibility requirements. In this case, the Applicant/Appellant has not elected to apply the a-overlay provisions.

**Land Use History:** City records show one prior land use case for this site:

- LU 09-134098 AD: Adjustment Review to allow vehicle area between the building and transit street (SE Stark). Approved with conditions.

*Hearings Officer's Note: In the R2 zone, the standards for multi-dwelling development differ from those for single-dwelling or duplex development. At the time the prior Adjustment Review (see Exhibit H-13 for Adjustment Review decision) was requested, the proposal was subject to the standards for multi-dwelling development. Now, with the proposal to create two parcels and, in*

*effect, change the project to duplex development, the multi-dwelling standards for parking will not apply.*

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on August 6, 2010.

**1. Agency Review:** Several Bureaus and agencies responded to this proposal. (Exhibits E). Bureau comments are addressed under findings for the appropriate criteria for review of the proposal.

**2. Neighborhood Review:** No written responses from interested parties, excepting the Applicant/Appellant appeal (Exhibits H-1 and H-2) were received prior to the public appeal hearing.

## **ZONING CODE APPROVAL CRITERIA**

**This proposal includes a request for a Land Division and an Adjustment. The Land Division approval criteria are addressed in Section 1, and the Adjustment approval criteria are addressed in Section 2, below.**

### **SECTION 1 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.**

The relevant criteria are found in Section 33.660.120 [A-L], **Approval Criteria for Land Divisions in Open Space and Residential Zones**. Due to the specific location of the Subject Site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

<b>Criterion</b>	<b>Code Chapter</b>	<b>Topic</b>	<b>Applicability Findings</b>
<b>A</b>	<b>33.612</b>	<b>Lots</b>	<b>Applicable - See findings below</b>
<b>B</b>	<b>33.630</b>	<b>Trees</b>	Not applicable - No significant trees or trees in excess of 6 inches in diameter located fully on the site/outside of the environmental zone on the site.
<b>C</b>	<b>33.631</b>	<b>Flood Hazard Area</b>	Not applicable - The site is not within the flood hazard area.
<b>D</b>	<b>33.632</b>	<b>Potential Landslide Hazard Area</b>	Not applicable - The site is not within the potential landslide hazard area.
<b>E</b>	<b>33.633</b>	<b>Phased Land Division or Staged Final Plat</b>	Not applicable - A phased land division or staged final plat has not been proposed.

Criterion	Code Chapter	Topic	Applicability Findings
F	33.634	Recreation Area	Not applicable - This is not required when the minimum density for the site is less than 40 units.
G	33.635.100	Clearing and Grading	Applicable - See findings below.
G	33.635.200	Land Suitability	Applicable - See findings below.
H	33.636	Tracts and Easements	Not applicable - No tracts or easements have been proposed or will be required.
I	33.639	Solar Access	Not applicable - The proposed development is for something other than single-dwelling detached homes.
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site outside of environmental zones.
K	33.641	Transportation Impacts	Applicable - See findings below
L	33.651 - 33.654	Services and Utilities	Applicable - See findings below

**Applicable Approval Criteria are:**

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

**Findings:** Applicant/Appellant did not contest the validity of this approval criterion (33.612 – Lots) The Hearings Officer adopts the following which are the findings from the BDS staff decision. (Exhibit H-3)

PCC Chapter 33.612 contains the lot dimension requirements applicable in the multi-dwelling zones. These density and lot dimension requirements ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

Density Standards: Density standards match housing density with the availability of services and with the carrying capacity of the land in order to promote efficient use of land, and maximize the benefits to the public from investment in infrastructure and services. These standards promote development opportunities for housing and promote urban densities in less developed areas. Maximum densities ensure that the number of lots created does not exceed the intensity planned for the area, given the base zone, overlay zone, and Plan District regulations. Minimum densities ensure that enough dwelling units can be developed to accommodate the projected need for housing.

When single-dwelling or duplex development is proposed for some or all of the site, the applicant must show how the proposed lots can meet minimum density and not exceed the maximum density stated in Table 120-3.

The total site area shown on the Applicant/Appellant survey is 8,893 square feet, and Parcels 1 and 2 are proposed for duplex development. Therefore, the density requirements for this site are calculated as follows:

Minimum = 4 units

$8,893 \text{ square feet (site area)} \div 1 \text{ unit}/2,500 \text{ square feet (minimum density from Table 120-3)} = 3.55$   
(which rounds up to a minimum of 4 units, per PCC 33.930.020.A).

Maximum = 4 units

$8,893 \text{ square feet (site area)} \div 1 \text{ unit}/2,000 \text{ square feet (maximum density from Table 120-3)} = 4.44$   
(which rounds down to a maximum of 4 units, per PCC 33.930.020.B).

Since the Applicant/Appellant is proposing two parcels for duplex development, a total of four units will be provided, and the density standards will be met.

**Lot Dimensions:** The lot dimension requirements ensure that: (1) each lot has enough room for development that meets all the requirements of the Zoning Code; (2) lots are an appropriate size and shape so that development on each lot can be oriented toward the street as much as possible; (3) the multi-dwelling zones can be developed to full potential; and (4) housing goals for the City are met.

The dimensions of the proposed lots as compared to the required lot dimension requirements are shown in the following table (this information is found in PCC Chapter 33.612 of the Zoning Code):

	<b>R2 Zone Requirement</b>	<b>Proposed Parcel 1</b>	<b>Proposed Parcel 2</b>
<b>Lots for Duplexes</b>			
Minimum Lot Area (square feet)	2,000	4,385	4,508
Minimum Lot Width* (feet)	33	64	69
Minimum Lot Depth (feet)	50	68	64
Minimum Front Lot Line (feet)	30	64	69

\*Width is measured from the midpoints of the side lot lines.

Based on the findings above, this criterion is met.

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

*The approval criteria of Chapter 33.635 are found in two groups – clearing and grading, and land suitability.*

**33.635.100 – Clearing and Grading**

- A. Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion;**
- B. Clearing and grading should be sufficient for construction of development shown on the Preliminary Clearing and Grading Plan;**
- C. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Preliminary Clearing and Grading Plan;**
- D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete; and**
- E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable.**

**Findings:** Applicant/Appellant did not contest the validity of these approval criteria (PCC 33.635.100 – Clearing and Grading and Land Suitability) The Hearings Officer adopts the following which are the findings from the BDS staff decision. (Exhibit H-3).

The regulations of PCC 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 Subject Site is primarily flat, and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the Subject Site to make the new lots developable. This criterion is met.

**33.635.200 – Land Suitability**

**Where geologic conditions or historic uses of the site indicate a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements in order to make the lots suitable for their intended uses and the provision of services and utilities.**

The Subject Site is currently in residential use, and there is no record of any other use in the past. As indicated above, the Subject Site is relatively flat and contains no known geological hazards. The final approval for a Site Development Permit (09-131361 SD) for site improvements, including paving, stormwater disposal, utilities, landscaping, and other improvements associated with the new residential units was recently completed. However, since the property is proposed to change from multi-dwelling development to duplex development and a new lot line is proposed between the new buildings, some additional information is needed to confirm the utilities and buildings are set back sufficiently from the proposed lot-line. With a provision that a Supplemental Plan and as-built utility locations are provided, this will ensure the lots are suitable for their intended uses, and this criterion will be met.

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

*The relevant approval criteria of Chapter 33.641 are found in the two paragraphs below.*

**33.641.020. The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include street capacity and level-of-service; vehicle access and loading; on-street parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.**

**33.641.030. The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets or bicycle, pedestrian, or transit facilities on or off the site or other capital improvement projects such as traffic calming devices.**

**Findings:** The Hearings Officer finds that Applicant/Appellant did not contest the BDS staff findings as set forth in the Administrative Decision (Exhibit H-3) excepting those finding specifically related to parking restrictions on the driveway. The Hearings Officer adopts the BDS staff decision findings related to PCC 33.641.020 and PCC 641.030 excepting as the BDS staff findings specifically relating to parking restrictions at the Subject Site (Exhibit H-3).

The regulations of PCC Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for, if necessary. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required).

In reviewing this land division, the Portland Bureau of Transportation (PBOT) relied upon 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.

As noted in the Site and Vicinity section above, the Subject Site has frontage on both SE Stark Street and SE 157<sup>th</sup> Avenue. PBOT, in Exhibit E-2, noted that SE Stark Street and SE 157<sup>th</sup> Avenue lacks sidewalks, and dedications to provide adequate right-of-way width were required and completed as part of the building permit approvals for the recently constructed residences. PBOT determined that curb and sidewalk improvements must be made in order to ensure safe pedestrian travel. Therefore, construction of a 6-foot wide sidewalk separated from the curb by a 4-foot wide planting strip will be a required condition on both frontages prior to final plat approval. PBOT noted, in Exhibit E-2, that the proposed access to Parcel 1 must be located a minimum of 25' from the property corner at the intersection.

PBOT also noted that driveway access to SE Stark Street must be designed so vehicles can enter and exit the site in a forward manner. Applicant/Appellant did not contest the forward motion PBOT recommendation during this application process; and, the forward motion PBOT recommendation was a condition in an earlier Adjustment review process. (See Exhibit H-13 for a copy of the Adjustment Review Administrative Decision). PBOT concluded that a 10-foot wide driveway would be permitted if maneuvering room to provide head in and head out access is provided. (Exhibit E-2).

BDS staff, in Exhibit H-3, stated "see additional discussion of maneuvering for onsite parking in the Adjustment section of this report." BDS, in its Adjustment section discussion (Exhibit H-3, page 10) stated the following with respect to vehicle movement on the driveways and hammerheads located on Parcel 2:

"The applicant has provided a plan, Exhibit C-2, to show how vehicles are able to maneuver to accomplish this within the proposed vehicle area. The plan shows that vehicles backing out of the garage of either unit on Parcel 2 will need to cross the vehicle area in front of the adjoining unit to maneuver and exit in a forward motion. The applicant notes that 'No Parking' signs have been installed at the foot of the 'hammerheads' to ensure this area remains open for maneuvering. However, if vehicles park in front of either garage, or within any portion of the proposed vehicle area, there will not be sufficient space to allow autos to maneuver and exit in a forward motion. As such, a condition must be imposed that parking on Parcel 2 is prohibited outside the garages. Additionally to ensure this parking limitation is clear to residents and future property owners, this provision must be included in all rental agreements and property transfer documents for Parcel 2."

Applicant/Appellant disagrees that it is necessary that vehicles use the "area in front of the adjoining unit to maneuver and exit in a forward motion." Applicant/Appellant, therefore, believes that the BDS proposed no parking on the driveway restriction is unnecessary. Applicant/Appellant desires that Condition of Approval A. in the BDS Administrative Decision be deleted.

The Hearings Officer, at this point, must identify which part or parts (if any) of these approval criteria (PCC 33.641.020 & PCC 33.641.030) are relevant to the BDS imposition of recommended Condition of Approval A; prohibiting parking in the driveway area. PCC 33.641.020 states that the transportation system must be capable of safely supporting the proposed development and includes specific evaluation factors. Included in the evaluation factors are vehicle access and safety for all modes. The Hearings Officer finds no dispute between the City (PBOT staff and BDS staff) and the Applicant/Appellant regarding the need for vehicles to pull into and out of the driveway at Parcel 2 in a forward direction. The Hearings Officer finds that the underlying reason for the vehicle forward motion requirement is safety; safety for pedestrians on the sidewalk and safety for the vehicles on SE Stark Street, and those accessing Parcel 2. The Hearings Officer finds that PCC 33.641.030 permits the City, through the City Engineer (PBOT) to require an applicant to provide mitigation measures to assure that access is safe. The Hearings Officer finds mitigation measures can include vehicular access requirements and/or limitations. The Hearings Officer finds the PCC does authorize the imposition of conditions of approval related to accessing a site if such conditions are reasonably related to assuring safety for all modes of transportation (including, pedestrian and vehicular).

The Hearings Officer finds that the requirement for forward movement of vehicles entering and exiting Parcel 2 driveway area is based on concerns for safety of pedestrians and vehicles (those entering/exiting Parcel 2 and those traveling on SE Stark Street). The Hearings Officer takes notice that Applicant/Appellant, through testimony of Ms. Barker, believes that vehicles are able to navigate into and out of Parcel 2 using only the respective units own driveway and hammerhead. Ms. Barker testified that the construction of the duplex on Parcel 2 was approved showing planter boxes being located between the driveways to each unit. (Exhibit H-15d, dated June 2009). The inference that may reasonably be drawn, from Ms. Barker's testimony, is that the duplex construction was approved by the City with obstructions between the two driveways, and the planter box obstructions would preclude a vehicle on one unit's driveway using the other unit's driveway. The Hearings Officer finds no reason to dispute the validity of the inference that may be drawn from Ms. Barker's testimony and Exhibit H-15d. The Hearings Officer finds that if planter boxes had been installed, consistent with Exhibit H-15d, the movement of vehicles between the driveways for each unit on Parcel 2 would be problematic. However, the landscape planter boxes, as shown in Exhibit H-15d were not installed/constructed and for the purposes of this decision the inference drawn by Ms. Barker's testimony is not relevant.

The Hearings Officer takes notice of Applicant/Appellant submission of Exhibit C-2 which is dated September, 2010. (See also Exhibit H-11). Exhibit C-2 appears to show Applicant/Appellant proposed vehicle maneuvering area; the area necessary to ensure vehicles can enter and exit Parcel 2 in a forward motion. The Hearings Officer interprets Exhibit C-2 as showing a vehicle accessing the west duplex unit utilizing the "hammerhead" east of the east unit's driveway. Attached to Exhibit C-2 is a copy of document identified as "Design Controls and Criteria" (upper right corner of the documents) and page "21" (lower right hand corner of document). The Hearings Officer interprets this attached document to Exhibit C-2 to be supportive of the turning movements on Exhibit C-2.

Exhibit H-9, a copy of the BDS staff planner's public hearing PowerPoint presentation, includes a photo taken of the parking area for the Parcel 2 duplex. (Exhibit H-9 slide 8). In the foreground of the photo can be seen the hammerhead for the west duplex unit. Viewing Exhibit H-9, slide 8, one can see the driveway for the west unit and further still a pickup truck parked, facing towards SE Stark Street, on the driveway for the east duplex unit. The photo, in the opinion of the Hearings Officer, demonstrates that the pickup truck effectively blocks access to the "hammerhead" for the east duplex unit.

George Helm, a BDS Site Development representative, testified at the public hearing that a standard passenger vehicle is 7 feet-wide and 19 feet-long (measurements consistent with the attachment to Exhibit C-2). Mr. Helm testified that parking a vehicle in the driveway would seriously restrict the opportunity for a vehicle using the adjacent duplex unit to enter and exit in a forward motion.

Based upon Applicant/Appellant submission of Exhibit C-2 (with attachments), BDS staff's submission of Exhibit H-9 (slide 8) and the testimony of Mr. Helm, the Hearings Officer finds that to assure vehicles enter and exit Parcel 2 in a forward motion parking on the Parcel 2 driveway, parking must be restricted on the driveway. Restricting driveway parking on Parcel 2 assures safety

for all modes, as required by PCC 33.641.020. The Hearings Officer finds that restricting parking on the driveway and "hammerhead" areas is a mitigation measure allowed under PCC 33.641.030.

BDS staff, in Exhibit H-3, also imposed a condition of approval requiring that the Parcel 2 driveway parking restriction be included in all rental agreements and property transfer documents. In an open-record submission (Exhibit H-12), BDS staff stated the following:

"In an email correspondence, dated October 5, 2010 (Exhibit G-5), the applicant raised notification to renters as a possible means to ensure vehicles would not be parked in the maneuvering area needed to allow sufficient space for vehicles to enter and exit the site in a forward motion. BDS staff applied this 'tenant notification' as a requirement, and extended the notification to subsequent property owners. From a practical standpoint, this appears to be a reasonable solution to this issue. This condition is necessary to ensure the proposal conforms to the noted approval criteria. Additionally, this condition will help to ensure the requirement (for forward ingress and egress) can be enforced by the BDS Code Compliance staff, in the event a driver blocks the vehicle maneuvering area and prohibits the neighbor from having full access to the vehicle area needed to enter or exit the site in a forward direction."

The Hearings Officer notes that under PCC 33.800.070 the City may attach one or more conditions of approval, in discretionary reviews, so long as the condition(s) ensure(s) that the proposal will conform to the applicable approval criteria for the review, or to ensure the enforcement of other City regulations. The Hearings Officer finds that driveway parking restrictions and notification requirements provide a reasonable and clear assurance that Applicant/Appellant proposal will operate safely for pedestrians and vehicles. The Hearings Officer finds that the BDS staff conditions relating to parking and access to Parcel 2 (Adjustment Condition A.) Further, the Hearings Officer finds that Adjustment Condition A. should be a condition for the Approval of the Preliminary Plan for a two lot partition.

PBOT notes no significant impacts on the level-of-service are expected, since no additional traffic will be generated from the four recently constructed units. Additionally, with the conditions described above, safety for all modes should be addressed. As such, with a condition relating to parking, as discussed above, these approval criterion will 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:** Applicant/Appellant did not challenge any of the BDS findings in Exhibit H-3 related to this approval criterion. Therefore, the Hearings Officer adopts the BDS findings from Exhibit H-3 as quoted below:

"Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights-of-way. As shown by the findings below, the Services and Utilities criteria can be met.

Water: The water standards of PCC 33.651 have been verified. The Subject Site is within the Rockwood Public Utility District service area, and the existing service locations are acceptable to the District. See Exhibit E-3 for more details.

Sanitary Sewer: The sanitary sewer standards of PCC 33.652 have been verified. There is an existing 8-inch PVC public sanitary-only sewer located in SE Stark Street that can serve the sanitary disposal needs of this project (refer to BES As-built #5117). Residential building permits (#09-131353-RS, #09-131358-RS, #09-131359-RS and #09-131360-RS) for four units (two on each lot) are currently under inspection with one individual sanitary connection proposed for each lot. Connection permits for Parcel 1 and Parcel 2 must be finalized via the permit review process. See Exhibit E-1 for more details.

Stormwater Management: The technical standards of PCC Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of PCC 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the Applicant's stormwater proposal."

### **33.653.020 Stormwater Management Approval Criteria**

- A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and**
- B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.**

**Findings:** Applicant/Appellant did not challenge any of the BDS findings in Exhibit H-3 related to this approval criterion. Therefore, the Hearings Officer adopts the BDS findings from Exhibit H-3 as quoted below:

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

The City of Portland requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the City's Stormwater Management Manual. In order to meet this approval criterion, land division proposals must demonstrate an approved method of cleaning (water quality treatment), detention (delayed release), and an approved disposal point.

The Bureau of Environmental Services (BES) evaluated the proposed stormwater management facilities and responded as follows (Exhibit E-1):

Parcel 1 and 2: Residential building permits (#09-131353-RS, #09-131358-RS, #09-131359-RS and #09-131360-RS) for the four units (two on each lot) are currently under inspection with one individual drywell proposed for each lot. Prior to Final Plat approval, the as-built location of all utilities, including drywells, must be shown on the plat in order for BES to ensure proper separation from new property lines is maintained.

Public Right-of-Way: PBOT will require construction of a 6-foot wide sidewalk separated from the curb by a 4-foot planting strip on both frontages prior to final plat approval. Where a curb

and paved street already exist, the sidewalk must be constructed so that it will slope towards the planter strip, allowing the stormwater runoff from the sidewalk to be deposited in a vegetated area, which meets the requirements of the Stormwater Management Manual. The stormwater management facilities will be evaluated during the public works review.

With the conditions of approval described above, the stormwater management criteria are met.”

### **Right of Way Approval Criteria**

Applicant/Appellant did not challenge any of the BDS findings in Exhibit H-3 related to this approval criterion. Therefore, the Hearings Officer adopts the BDS findings from Exhibit H-3 as quoted below (including the Table shown below):

“Chapter 33.654 contains standards and approval criteria for rights-of-way. Due to the location of the Subject Site, and the type of street that is proposed, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.”

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
<b>33.654.110.B.1</b>	<b>Through streets and pedestrian connections</b>	<b>Applicable - See findings below</b>
33.654.110.B.2	Dead end streets	Not applicable - No dead end streets are proposed.
33.654.110.B.3	Pedestrian connections in the I zones	Not applicable - The site is not located within an I zone.
33.654.110.B.4	Alleys in all zones	Not applicable – No alleys are proposed or required.
<b>33.654.120.C.1</b>	<b>Width of the street right-of-way</b>	<b>Applicable - See findings below.</b>
33.654.120.C.3. c	Turnarounds	Not applicable – No turnarounds are proposed or required.
33.654.120.D	Common Greens	Not applicable – No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	Not applicable – There are no pedestrian connections proposed or required.
33.654.120.F	Alleys	Not applicable – No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable – No shared courts are proposed or required.
<b>33.654.130.A</b>	<b>Utilities</b>	<b>Applicable - See findings below.</b>
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable – There are no existing public dead-end street or pedestrian connections adjacent to the site.

Code Section	Topic	Applicability Findings
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Not applicable – No street extensions are required to serve abutting sites that are further dividable.
33.654.130.D	Partial rights-of-way	Not applicable – No partial public streets are proposed or required.
33.654.130.E	Ownership of Alleys	Not applicable- No alleys are proposed or required.

**Applicable Approval Criteria are:**

**33.654.110.B.1 Approval criterion for through streets and pedestrian connections in OS, R, C, and E Zones.** In OS, R, C, and E zones, through streets and pedestrian connections are required where appropriate and practicable, taking the following into consideration:

- a. Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;
- b. Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;
- c. Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;
- d. Master street plans for the area identified in Goal 11B of the Comprehensive Plan;
- e. Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.

**Findings:** Applicant/Appellant did not challenge any of the BDS findings in Exhibit H-3 related to this approval criterion. Therefore, the Hearings Officer adopts the BDS findings from Exhibit H-3 as quoted below:

”The nearest cross streets are approximately 600 feet away, which exceeds the optimum spacing requirement of 200-530 feet, so new east-west and north-south through streets are warranted in the vicinity of the Subject Site. However, PBOT has not identified the need for an additional through street at the subject site; and, given the relatively small size of the site, and its location at the corner of SE Stark Street and SE 157<sup>th</sup> Avenue, a through street will not be required at the Subject Site.

The Subject Site is within the area for the Far Southeast Portland Master Street Plan, which indicates *the lack of sidewalks results in a street system that is not particularly pedestrian friendly* (Pages 11-31). Therefore, with a requirement that new sidewalks must be provided, prior to final plat, this will help to provide more multimodal access, and will ensure the project is consistent with the master street plan. The new sidewalks will provide straight-line connections along each frontage and will be along the most direct route practicable. With the noted conditions, this criterion will be met.”

**33.654.120.C.1 Approval criterion for width of the right-of-way. The width of the local street right-of-way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features.**

**Findings:** Applicant/Appellant did not challenge any of the BDS findings in Exhibit H-3 related to this approval criterion. Therefore, the Hearings Officer adopts the BDS findings from Exhibit H-3 as quoted below:

“As noted above and in the response from PBOT, additional dedication along SE Stark and SE 157<sup>th</sup> was provided as part of the building permits for the recently constructed dwellings on the Subject Site, so the right-of-way is now sufficient to accommodate the required frontage improvements to serve the expected users. Therefore, with the conditions outlined above, this criterion will be met.”

#### **Utility Location, Extension of Streets, Partial Rights of Way**

##### **33.654.130 Additional Approval Criteria for Rights-of-Way**

**A. Utilities. Utilities must be located within rights-of-way or utility easements that are adjacent to rights-of-way to the maximum extent practicable. Utility easements up to 15 feet in width may be required adjacent to rights-of-way.**

**Findings:** Applicant/Appellant did not challenge any of the BDS findings in Exhibit H-3 related to this approval criterion. Therefore, the Hearings Officer adopts the BDS findings from Exhibit H-3 as quoted below:

“Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. Any easements that may be needed for private utilities that cannot be accommodated within the right-of-way 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. In any event, this criterion is met.”

## **SECTION 2 APPROVAL CRITERIA FOR ADJUSTMENTS**

### **33.805.040 Approval Criteria**

The adjustment request will be approved if the review body finds that the applicant has shown that approval criteria A. through F., below, have been met.

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified;  
and

**Findings:** In order to meet this criterion, the proposal must be consistent with the purpose of the noted regulations, which are as follows:

Maximum Building Setback (33.120.220.C.1.b):

**33.120.220 Setbacks**

*A. Purpose. The building setback regulations serve several purposes:*

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of multi-dwelling development in the city's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity;*
- *Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

Parking and Loading/Front Yard Restrictions (33.266.120.C.a):

**33.266.120 Development Standards for Houses and Duplexes**

*A. Purpose. The size and placement of vehicle parking areas are regulated in order to enhance the appearance of neighborhoods.*

Prior to requesting the pending land division Applicant/Appellant obtained approval of building permits to construct two new buildings with two residential units in each building on the Subject Site; the Applicant/Appellant also obtained approval of an Adjustment to the parking standards for multi-dwelling development. Due to differences in the regulations that apply to multi-dwelling and duplex structures in the R2 zone, the current request to divide the Subject Site is subject to the regulations that apply to duplex units on individual lots rather than those required for multi-dwelling units.

The requested Adjustments are for the structure and vehicle area on Parcel 2 that front onto SE Stark. Southeast Stark Street is designated as a Transit Access Street and City Walkway and City Bikeway. As noted in the purpose statements, along a transit street, these regulations are intended to

create an environment that is inviting to pedestrians and transit users, in addition to enhancing the appearance of the area.

Applicant/Appellant asserted, prior to the issuance of the BDS staff decision (Exhibit H-3) that the requested Adjustments will result in only minor variations to the required standards with no appreciable detriment or negative impact to the surrounding area. However, BDS staff found, in Exhibit H-3, that locating the building farther from the transit street and placing a larger vehicle maneuvering area between the building and the transit street does not create an environment that is inviting to pedestrians and transit users; nor does it enhance the appearance of the surrounding neighborhood, since pedestrians will be required to navigate a more expansive vehicle area along the Subject Site frontage, and there is greater potential for conflicts between vehicles traveling to and from the Subject Site and pedestrians using SE Stark Street.

BDS staff found, in Exhibit H-3, that PBOT mandated that the proposal must show that vehicles can exit the site in a forward motion. Applicant/Appellant does not contest the PBOT recommended forward motion for ingress and egress. BDS staff, in Exhibit H-3, indicated that by prohibiting vehicles on Parcel 2 from backing onto SE Stark Street the impacts and conflicts with pedestrians using the sidewalk would be moderated. BDS staff, in Exhibit H-3, also indicated that requiring vehicles on Parcel 2 to depart the Subject Site in a forward motion would moderate the proposed development's impacts upon SE Stark Street.

BDS concluded, in Exhibit H-3, that to temper the expansive vehicle maneuvering area pavers have been installed within in the turnaround ("hammerhead") areas that flank the driveways and between and down the center of each driveway. BDS concluded that the pavers visually reduce the expanse of paving and contribute to a more pleasing front yard. To ensure this design attribute continues over time, a condition is needed which requires a minimum of two different and distinct materials, such as concrete and bricks or pavers, must be used for any paving between the building and the street lot-line; and no more than 75 percent of the paving may be any one material.

The Hearings Officer finds that the "purpose" statement most applicable to this case is found in PCC 33.120.220 A. where it states "setback requirements along transit streets create an environment that is inviting to pedestrians and transit users", and also PCC 33.266.120 A. which states "the size and placement of vehicle parking areas are regulated in order to enhance the appearance of the neighborhoods." Viewing the facts in a light most favorable to BDS staff the Hearings Officer could possibly find that restricting parking on the driveway of Parcel creates an environment that is "inviting" to pedestrians. The Hearings Officer finds this BDS staff argument, while certainly not overwhelmingly persuasive is in fact plausible. The Hearings Officer finds that without conditions restricting the parking on the driveway of Parcel 2 and requiring tenants and subsequent owners to be notified, will result in the purposes set forth above to be equally met.

With the application of these conditions, the proposal can equally meet the purpose of the noted regulations, and this criterion will be met.

- B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in a C, E, or I zone, the proposal will be consistent with the desired character of the area; and

**Findings:** To meet this criterion, the requested Adjustments must not detract from the livability or appearance of the residential area. The residential area is defined as the area shown on the zoning map, Exhibit B, and described on page 2 of this decision.

BDS staff, in Exhibit H-12, supplemented comments made in Exhibit H-3. In relevant part, BDS staff, in Exhibit H-12, stated the following:

“...applicant has requested Adjustments (along with a Land Division-Partition) to increase the maximum front building setback (33.120.220.C) and to allow additional paving between the building and street (33.266.120.C.3.a). The applicant indicates these Adjustments are requested in order to provide the needed vehicle maneuvering area to accommodate forward ingress and egress to the site. The applicant now objects to a condition that prohibits parking within this vehicle maneuvering area between the building and SE Stark Street, and the requirement to notify renters and subsequent purchasers of this provision. However, the applicant’s submittal shows the entire proposed vehicle maneuvering area is necessary to ensure vehicles can enter and exit the site in a forward motion (Exhibit C-2). In their testimony during the appeal hearing, George Helm, BDS-Site Development, and Robert Haley, Portland Transportation, also confirmed that that the entire maneuvering area is needed to accomplish the required forward ingress and egress.

The requirement for forward ingress and egress is based on the Land Division regulations (33.660.120.K) that address transportation impacts (33.641.020 and 33.641.030), as outlined in the Administrative Decision (pages 5-6) and in the Portland Transportation response (Exhibit E-2).

Additionally, to meet the Adjustment approval criterion, 33.805.040.B, the proposal must not significantly detract from the livability or appearance of the residential area. As noted in the Administrative Decision (pages 9-11), BDS staff found that requiring vehicles to enter and exit the site in a forward motion would help to ameliorate conflicts with those using the pedestrian environment and minimize detrimental impacts to the livability of the area by allowing greater visibility for drivers, and thereby improving safety for all modes of travelers.”

BDS noted, in Exhibit H-3, that requiring the use of a variety of paving material, between the building and the street lot-line, would help to enhance the appearance of the area.

The Hearings Officer finds that the term “livability”, as referenced in this approval criterion, does include safety of pedestrians who access the sidewalk in front of Parcel 2. The Hearings Officer finds that livability would include factors such as safety, transportation issues, noise and activity issues.

The Hearings Officer finds that Applicant/Appellant request for adjustments (increase maximum front building setback & allow additional paving between the building and street) result in a driveway that is larger in area that contemplated by PCC 33.120.220 C. and PCC 33.266.120 C.3.a. The Hearings Officer finds that to assure the additional driveway area on Parcel 2 operates safely the driveway must be used to allow vehicles sufficient room to maneuver, so that vehicles move in a forward direction when entering and exiting the Parcel 2 driveway. The Hearings Officer finds that for vehicles to enter and exit in a forward motion on Parcel 2 it is necessary to restrict parking on the driveway itself. The Hearings Officer finds that it is reasonable to impose a notification obligation on the owner of Parcel 2 where renters and subsequent purchasers are formally notified of the Parcel 2 driveway parking restriction. The Hearings Officer further relies upon the findings of PCC 33.641.020, PCC 33.641.030 as support for imposition of a condition requiring no parking on the Parcel 2 driveway (outside garages), and requiring the owner of Parcel 2, to include in rental agreements and property transfer documents reference to no parking on Parcel 2 driveway.

The Hearings Officer finds that with the driveway parking and notice condition referenced above this approval criterion may be satisfied.

- C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

**Findings:** Two Adjustments are requested. In order to meet this criterion, the proposal must continue to be consistent with the overall purpose of the R2 zone, a medium-density, multi-dwelling zone. The multi-dwelling zones are intended to preserve land for urban housing. The proposed lots meet the lot area and dimensional standards required for duplex development in the R2 zone, so the proposal will allow for a project that remains consistent with the overall purpose of the R2 zone. As such, this criterion is met.

- D. City-designated scenic resources and historic resources are preserved; and

**Findings:** There are no City-designated scenic or historic resources present on the site. Therefore, this criterion is not applicable.

- E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

**Findings:** As noted previously, with measures to limit detrimental impacts to the pedestrian environment by requiring forward entering and exiting on SE Stark Street, prohibiting parking outside the garages, and specifying a mix of paving materials, the visual and livability impacts to the residential neighborhood will be mitigated. As such, this criterion will be met.

- F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** The site is not within an Environmental zone; therefore, this criterion is not applicable.

## DEVELOPMENT STANDARDS

**General Information about Development Standards and Approval Criteria.** The Zoning Code contains two types of regulations: development standards and approval criteria.

**Approval criteria**, such as those listed earlier in this report, are administered through a land use review process. Approval criteria are regulations where the decision-maker must exercise discretion to determine if the regulation is met. Public notice is provided and public comments received that address the approval criteria are addressed in the decision.

**Development standards:** Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting processes, which are not considered to be discretionary reviews. Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

**Existing development that will remain after the land division.** The recently constructed residential development on the site will remain, with one building on Parcel 1 and the other building on Parcel 2. The division of the property may not cause the existing development to move out of conformance or further out of conformance to any development standard applicable in the R2 zone. Per PCC 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the Zoning Code, and if the regulation may be adjusted, the land division request must include a request for an Adjustment (please see section on Other Technical Standards for Building Code standards).

In this case, there are several Zoning Code standards that relate to existing development on the site:

**Minimum Building Setbacks** – The existing residential structures must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot-lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing structures are shown to be five to six feet from the new property line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot-lines.

Also, as noted in Section 2 of this decision, Adjustments have been requested to the following R2 development standards for duplexes: Maximum Building Setback (PCC 33.120.220.C.1.b), and Parking and Loading/Front Yard Restrictions (PCC 33.266.120.C.a). These Adjustments have been reviewed concurrently with the land division request as required by PCC 33.730.015.

With the conditions noted above, this land division proposal will meet the requirements of PCC 33.700.015.

## OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been made based on other City titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new Land Use Review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

Bureau	Code Authority	Topic	Contact Information
Water Works	Title 21	Water availability	503-823-7404 <a href="http://www.water.ci.portland.or.us/">http://www.water.ci.portland.or.us/</a>
Environmental Services	Title 17; 2008 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 <a href="http://www.bes.ci.portland.or.us/">http://www.bes.ci.portland.or.us/</a>
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 <a href="http://www.fire.ci.portland.or.us/">http://www.fire.ci.portland.or.us/</a>
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 <a href="http://www.trans.ci.portland.or.us/">http://www.trans.ci.portland.or.us/</a>
Development Services	Titles 24 -27, Admin. Rules for Private Rights-of-Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 <a href="http://www.bds.ci.portland.or.us.">http://www.bds.ci.portland.or.us.</a>

As authorized in PCC Section 33.800.070 of the Zoning Code, conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

## III. CONCLUSIONS

BDS approved Applicant/Appellant land partition application, with conditions. One of the conditions states "Parking on Parcel 2 is prohibited outside the garages, and vehicles must enter and exit the site in a forward manner; this provision must be included in all rental agreements and all rental agreements and all property sales or transfers for Parcel 2." Applicant/Appellant objects to the inclusion of this condition in the approval of the land partition application.

The City, through Exhibits E-2, H-3, H-12 and the testimony of BDS staff Green, PBOT staff Haley and BDS Site Development Staff Helm, indicated that vehicles entering and exiting the driveway on Parcel 2 must do so in a forward motion. Applicant/Appellant, through Exhibits C-2, H-13 and the testimony of Ms. Barker and Mr. Agee, did not object to the forward entry and exit requirement. The City, through Exhibits C-2, E-2, H-3, H-9 (slide 8), H-12 and the testimony of Ms. Green, Mr. Haley and Mr. Helm, argued that in order to safely enter and exit Parcel 2 in a forward motion parking must be restricted on the Parcel 2 driveway (outside of the garages). Applicant/Appellant, through the testimony of Ms. Barker and Mr. Agee, argued that parking need not be restricted on

the Parcel 2 driveway (outside of the garages) to facilitate forward entry and exit of vehicles. Further, Applicant/Appellant argued, through the testimony of Ms. Barker and Mr. Agee, that there is no Portland City Code support for a condition requiring notice to be given to tenants and subsequent purchasers of Parcel 2 that parking on the Parcel 2 driveway is prohibited.

The Hearings Officer reviewed Applicant/Appellant evidence and arguments in the findings for PCC 33.641.020, PCC 33.641.030 and PCC 33.805.040. The Hearings Officer found, based primarily upon Exhibits C-2 and H-9 (slide 8) that safe forward motion ingress and egress from Parcel 2 requires that no parking be allowed (outside the garages) on the driveway. The Hearings Officer found that the imposition of a condition, such as "no parking on the Parcel 2 driveway (outside the garages)" is supportable under the Portland City Code through PCC 33.800.050, PCC 33.800.070, PCC 33.641.030 and PCC 33.660.120 K. The Hearings Officer found the imposition of a notice requirement (placing notice of the parking restriction in rental and sale agreements) is a plausible method of assuring compliance with the "no parking on Parcel 2 driveway (outside garages)" restriction and is supportable under PCC 33.800.050, PCC 33.800.070 and PCC 33.660.120 K.

The Hearings Officer found that the condition relating to the Parcel 2 parking restriction and notice requirement is necessary to find compliance with approval criteria PCC 33.641.020, PCC 33.641.030 and PCC 33.804.040.

#### **IV. DECISION**

The Appellant did not prevail in this appeal.

**Approval** of an Adjustment to increase the maximum front building setback (33.120.220.C.1.b) on Parcel 2 to 24 feet; subject to the Approval of Adjustment Condition A.

**Approval** of an Adjustment to increase the percentage of paving for the vehicle area (33.266.120.C.a) on Parcel 2 to 43 percent; subject to the following conditions:

- A. Parking on Parcel 2 is prohibited outside the garages, and vehicles must enter and exit the site in a forward manner; this provision must be included in all rental agreements and all property sales or transfers for Parcel 2.
- B. A minimum of two different and distinct materials, such as concrete and bricks, must be used for any paving between the building and the street lot-line on Parcel 2; and no more than 75 percent of the paving may be any one material.

**Approval** of a Preliminary Plan for a two lot partition, that will result in two lots for duplexes as illustrated with Exhibit C-1, subject to the following conditions:

- A. **Supplemental Plan.** Three copies of an additional Supplemental Plan shall be submitted with the final plat survey for Bureau of Development Services Land Use Review, Bureau of Environmental Services, and Bureau of Transportation review and approval. That plan must portray

how the conditions of approval listed below are met. In addition, the Supplemental Plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The as-built location of all utilities, including drywells;
- Any other information specifically noted in the conditions listed below.

**B. The following must occur prior to Final Plat approval:**

**Streets**

1. The Applicant shall meet the requirements of the City Engineer for right-of-way improvements along the frontages of SE Stark Street and SE 157<sup>th</sup> Avenue. The Applicant must obtain an approved Right-of-Way permit from the Bureau of Transportation Engineering and Development Review to install the required sidewalk and planter strip.

**C. The following conditions are applicable to site preparation and the development of individual lots:**

1. Driveway access to SE Stark Street must be designed so vehicles can enter and exit the site in a forward manner. Driveway access to SE 157<sup>th</sup> Avenue must be located a minimum of 25 feet from the property corner at the intersection.

  
Gregory J. Frank, Hearings Officer

December 13, 2010  
Date

<b>Application Determined Complete:</b>	July 26, 2010
<b>Report to Hearings Officer:</b>	November 5, 2010
<b>Decision Mailed:</b>	December 14, 2010
<b>Last Date to Appeal:</b>	January 4, 2011

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Conditions of Approval.** This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related

permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "Applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing's Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

**Recording the land division.** If approved, the final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

**Recording concurrent approvals.** The preliminary land division includes concurrent Adjustment reviews. If approved, these other concurrent approvals must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with approved concurrent land use reviews. The applicant, builder, or their representative may record the final decisions on approved concurrent land use decisions as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County

Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034. For further information on your recording documents, please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

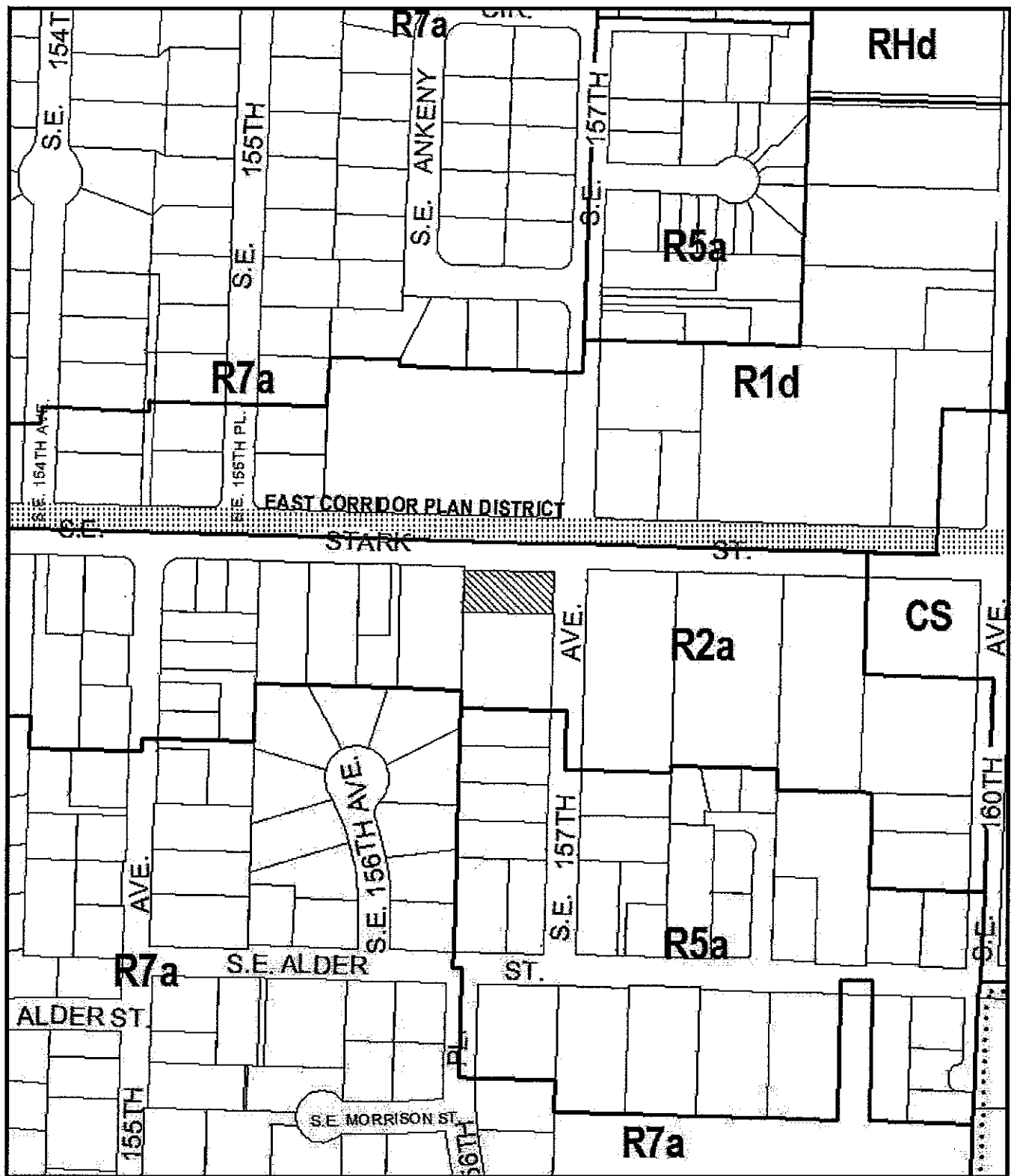
**Expiration of concurrent approvals.** If approved, the concurrent Adjustments will expire if:

- The final plat is not approved and recorded within the time specified above, or
- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

**EXHIBITS**  
**NOT ATTACHED UNLESS INDICATED**

- A. Applicant's Statement
  - 1. Front Building Elevation-Parcel 1
  - 2. Revised Narrative
  - 3. Review Timeline Extensions-total extensions 17 days
- B. Zoning Map (**attached**)
- C. Plans/Drawings
  - 1. Preliminary Plan (**reduced copy attached**-full size in file)
  - 2. Maneuvering/Paving Plan (**reduced copy attached**-full size in file)
  - 3. Landscape/Erosion Control Plan-reference only
- D. Notification information
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Rockwood PUD
  - 5. Site Development-BDS
- F. Correspondence: (none received)
- G. Other
  - 1. Original LU Application
  - 2. Revised LU Application
  - 3. Site History Research
  - 4. Letter to applicant re: incomplete application
  - 5. Emails to/from Applicant
  - 6. Site Photos
- H. Received in the Hearings Office
  - 1. Hearing Notice - Green, Kate
  - 2. Type IIx Decision Appeal Form - Green, Kate
  - 3. Staff Decision - Green, Kate
  - 4. Decision Notice for LU 09-134098 AD (pages 4-7 w/ exhibits) - Barker, Lisa
  - 5. Letter from Blair Agee - Barker, Lisa
  - 6. Letter - Agee, Blair
  - 7. Photo - Agee, Blair
  - 8. Photo and e-mail - Agee, Blair
  - 9. PowerPoint presentation printout - Green, Kate
  - 10. E-mails - Green, Kate
  - 11. Exhibit C-2, Reduced Copy - Green, Kate
  - 12. 11/23/10 Memo - Green, Kate
  - 13. Recording Sheet and Decision LU 09-134098 AD - Barker, Lisa
  - 14. 7/14/09 Memo, Robert Haley to Suzanne Savin, LU 09-134098 - Barker, Lisa
  - 15. Folder printout 09-131353 RS w/attachments - Barker, Lisa

- 15a. Zoning Plan Examination Checksheet 09-131353 RS - Barker, Lisa
- 15b. Folder printout 09-131361 SD - Barker, Lisa
- 15c. Transportation Development Checksheet 09-131361 SD - Barker, Lisa
- 15d. Landscape & Erosion Control Plans - Barker, Lisa
- 16. 9/10/10 E-mails - Barker, Lisa
- 17. E-mails - Barker, Lisa
- 18. Letter - Barker, Lisa



**ZONING**



NORTH

File No. LU 10-106452 LDP AD  
 1/4 Section 3146  
 Scale 1 inch = 200 feet  
 State Id 1S2E01AB 100  
 Exhibit B (June 9, 2010)

# SITE PLAN

FOR PARTITION OF LOT 1, "BRINTON TRACT",  
SITUATED IN THE NORTHEAST 1/4 OF SECTION 1, T.1S., R.2E., W.M.,  
IN THE CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
DATE: DECEMBER 28, 2009



STARK STREET - ROAD NO. 924  
(WIDTH VARIES)

EASEMENT FOR RIGHT OF WAY PURPOSES PER DEED  
RECORDED AS DOCUMENT NO. 2009-116990,  
MULTNOMAH COUNTY DEED RECORDS

D.I. WATERLINE MARKED

40.00'

15.50'

15.50'

15.50'

15.50'

15.50'

15.50'

139.80'

137.95'

139.80'

137.95'

139.80'

137.95'

139.80'

CASE NO.

EXHIBIT

*C.1*  
*reduced copy*

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## SYMBOLS

- E = ELECTRIC METER
- G = GAS METER
- V = GAS VALVE
- W = WATER METER
- W = WATER VALVE
- W = SANITARY CLEANOUT
- = MANHOLE
- = DRY WELL
- = FIRE HYDRANT
- = WATER LINE
- = SANITARY SEWER
- = GAS LINE
- = RIGHT OF WAY CENTERLINE

## NOTES:

- ZONE IS R2a.
- THERE ARE NO TREES ON-SITE.
- UTILITIES ARE DRAWN FROM MAPPING PROVIDED BY CITY.
- DIMENSIONS AND AREAS MAY VARY SLIGHTLY UPON FINAL BOUNDARY RESOLUTION
- LOCAL DATUM IS ASSUMED. ELEVATION CHANGE IS LESS THAN 1.5'.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
JAMES E. FERGUSON  
J.E. FERGUSON  
2-4-3  
NORMAL DATE 12/31/11

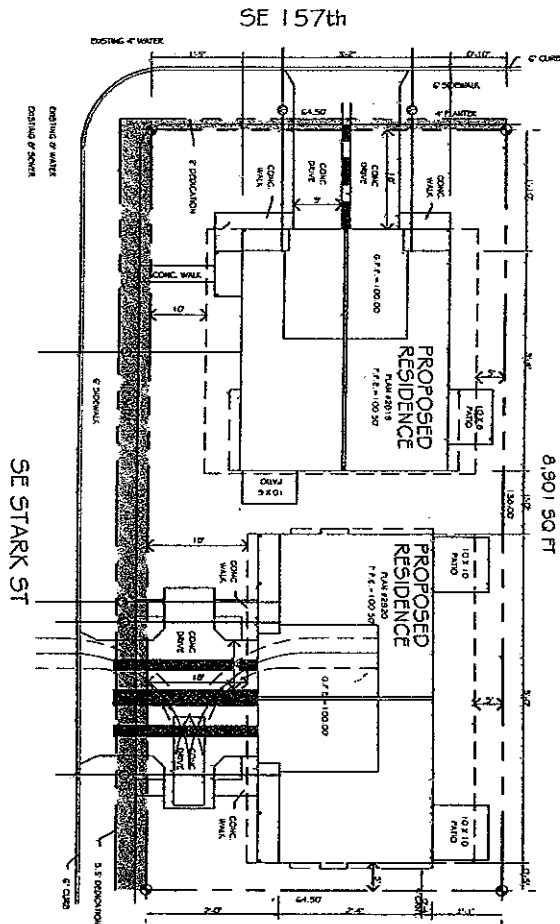
Ferguson Land Surveying, Inc.  
646 S.E. 106TH AVENUE, PORTLAND, OR 97216  
Phone (503) 408-0501 Fax (503) 408-0802

CLIENT: BLAIR AGEE

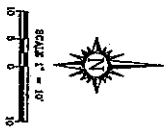
SHEET NO. 1 OF 1

JOB NO. 08-186 SW

REVISED: 01/05/10 JS



- LEGEND**
- EXISTING OCCUPANCY
  - EXISTING POWER POLE
  - EXISTING WATER MAIN
  - EXISTING WATER VALVE
  - EXISTING LANDSCAPING WATER
  - EXISTING SANITARY MAIN
  - EXISTING STORM MAIN
  - EXISTING DRIVEWAY
  - EXISTING SANITARY SEWER LINE
  - EXISTING STORM SEWER LINE
  - EXISTING FENCE
  - PROPOSED CONCRETE
  - EXISTING CONCRETE
  - PROPOSED BUILDING LINE
  - PROPOSED WATER LINE
  - PROPOSED SANITARY LINE
  - PROPOSED DRIVEWAY
  - PROPOSED STORM LINE
  - PROPOSED BUILDING SETBACK LINE
  - EXISTING BUILDING LINE



SP01

# SITE PLAN

SE 157TH & STARK  
4 UNIT DEVELOPMENT  
PORTLAND, OREGON

CASE NO. 10.106452 LDP  
EXHIBIT C.2 reduced copy