



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

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Date: July 5, 2013
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NOTICE OF A TYPE II_x DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 12-195734 LDP AD

GENERAL INFORMATION

Applicant/Owner: Lee Leighton / Westlake Consultants
15115 SW Sequoia Pkwy, #150 / Tigard, OR 97224

Applicant: Dennis Pahlisch / Pahlisch Homes
63088 NE 18th St, Suite 100 / Bend, OR 97701

Owner: Truda Hansen Lesser Rd., LLC
6310 SW Pamela St
Portland, OR 97219-8114

Site Address: 12461 SW Lesser Road

Legal Description: TL 4400 0.47 ACRES, SECTION 31 1S 1E
Tax Account No.: R991310450
State ID No.: 1S1E31CC 04400
Quarter Section: 4223
Neighborhood: Far Southwest, contact Nick Merrill at 503-200-7984.
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Other Designations: Potential Landslide Hazard Area
Zoning: R10 – Residential 10,000
Case Type: LDP AD – Land Division Partition and Adjustment Reviews
Procedure: Type IIX, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant proposes to divide this property into two parcels, both facing on SW Lesser Road. Parcel 1 will be 10,534 square feet in area and will be 71.8 feet wide by 150.4 feet deep. Parcel 2 will be 9,461 square feet in area, and will be 65 feet wide by 150.4 feet deep. Water will be accessed from the main in SW Lesser Road, and sanitary sewer will be discharged to an existing City sewer line located in an easement at the rear of the property. Of the 18 non-exempt trees that are located fully on the site, 4 will be retained. These four trees represent 43 percent of the viable trees on the site. One right-of-way tree will be removed. Stormwater will be treated on site in the rear yards, but will be discharged to the stormwater line in SW Lesser Road.

The surrounding area is characterized by large hillside lots, primarily developed with generous one and two-story custom homes generally located near the center and/or front of the lot. The neighborhood features attached garages, good-sized yards, and moderate side and rear setbacks from adjacent homes. Dense evergreen hedges and landscape plantings are typically provided along perimeter lot lines in the neighborhood.

The applicant also requests a 3-foot adjustment to the 10-foot side yard setback requirement of the Residential 10 zone for proposed Parcel 1. The existing lot is irregularly shaped, being wider at the front lot line (136.8 feet) and narrower at the rear (125 ft.). However, the easterly lot line produces the greatest irregularity. It extends at an angle from SW Lesser Road in a southerly direction for approximately 96 feet, expanding the lot width to approximately 151 feet. Then it turns westerly at just over a 90 degree angle for a distance of about 25 feet, reducing the lot width to about 126 feet. The house on the adjacent property to the southeast would be about 44 feet from the proposed house on Parcel 1.

For that portion of the proposed house on Parcel 1 that will be impacted by the narrower lot configuration, the applicant proposes to reduce the easterly side lot line from 10 feet to 7 feet. Parcel 1 will have a lot width of 71.8 feet at the front lot line, which will expand to about 85 feet as measured 90 feet back from the front lot line. At this point, where the property narrows, the side yard setback would drop to 7 feet for the proposed new house, affecting about 15 feet of the house's 70-foot length.

The applicant proposes a stormwater system that would discharge to a public storm water line in SW Lesser Road.

Relevant Approval Criteria:

To be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in **Sections 33.660.120 – Approval Criteria for Land Divisions in Open Space and Residential Zones; and in Section 33.805.040.A-F, Adjustment Approval Criteria.**

FACTS

Site and Vicinity: The property is located in the Southwest Hills, less than a quarter mile east of I-5, on a hill with a view of the West Hills. The neighborhood is a mix of older homes and newer developments with lot sizes ranging from 10,000 to 40,000 square feet. The site is less than 1,000 feet from the forests surrounding Portland Community College. A grove of ancient white oak trees, estimated to be between 300 and 400 years old, spans both sides of SW Lesser Road, with nine on the subject site ranging in size from 18 to 52 inches in diameter. The site is fairly level next to SW Lesser Road, where an older, one-story house exists, but slopes steeply downhill to the west of the house site.

The area is characterized irregular block and street patterns and by larger lots varying from 12,000 to over 40,000 square feet with a variety of older and newer homes. Lots with older homes are generally centered on the lots and have ample setbacks around the houses; newer houses generally meet minimum setback requirements.

Infrastructure:

- **Streets** – At this location, SW Lesser Road is classified as a Neighborhood Collector, City Bikeway, City Walkway and a Local Service street for all other modes in the Transportation System Plan (TSP). The site is served by nearby transit service along SW Haines/SW 62nd Ave, north of the site, via Tri-Met route #78, Beaverton/ Lake Oswego. SW Lesser is improved with approximately 20 feet of paving with gravel shoulders within an approximate 44-foot wide right of way, with no curbs or sidewalks.
- **Water Service** – There is an existing 8" DI water main in SW Lesser Road that can serve the proposed lots; currently there is no water service to this location.

- **Sanitary Service** – There are 8-inch PVC public sanitary-only sewers in SW Lesser and along the back property line that can serve the sanitary disposal needs of this project (BES project # 3810). The sewer along the back property line is within a 15-foot wide, City of Portland sewer easement (Ordinance #154379).
- **Stormwater Disposal** – There is a 15-inch concrete storm-only sewer in SW Lesser Road and a 12-inch concrete storm-only sewer in SW 62nd Avenue that terminates at the intersection with SW Southview.

Zoning: The R10 designation is one of the City’s single-dwelling zones and is intended to create, maintain and promote single-dwelling neighborhoods. The development standards of the R10 zone seek to ensure desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed.

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

Agency Review: Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits “E” contain the complete responses.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 26, 2013. Six written responses have been received from notified property owners in response to the proposal. One of the letters was signed by five other property owners in the area. The gist of the letters was concern over the increased stormwater run-off from the site in an area where stormwater is already a concern, and removal of ancient white oak trees in order to develop the site with two new lots. These issues are addressed in the findings for this decision below.

ZONING CODE APPROVAL CRITERIA

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.

Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the criteria that are not applicable. Applicable criteria are addressed below the table.

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. 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:
C	33.631 - Flood Hazard Area	The site is not within the flood 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.
H	33.636 - Tracts and Easements	No tracts or easements have been proposed or will be required.

I	33.639 - Solar Access	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site outside of environmental zones.
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 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. Minimum density in the R10 zone for this site is two units and the maximum density is one unit per 10,000 square feet, or two units. Because the site is within the potential landslide hazard area, the site has a minimum required density of zero units and a maximum density of 2 units. The applicant is proposing 2 single dwelling parcels. Therefore, the density standards are met.

The lot dimensions required and proposed are shown in the following table:

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)	Min. Flag Lot Width (feet)	Min. Flag Lot Depth (feet)
R10 Zone	6,000	17,000	50	60	30	40	40

* 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.

B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.

Findings: The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

The arborist report contains an inventory of trees within the land division site, evaluates the trees' conditions and specifies root protection zones (Exhibit A.4). Eleven trees were exempted because they are unhealthy or are located partially off the property. However, two of the trees, 3017 and 3018, have been further evaluated by the City Forester and were determined to be viable trees. The City Forester also evaluated Tree 3001 and determined that it is no longer a viable tree with many dead limbs. The tree chart reflects the above modification of the arborist report.

The arborist also included a redwood that is adjacent to the site because its root zone extends onto the site, but did not assign a number to it. This tree is not listed in the table below because it is an off-site tree and not subject to the review. Because of the large quantity of exempt trees, only 4 trees on the site are subject to the preservation requirements of this chapter. Exempt trees are ones that are exempt from the Tree Preservation requirements of Title 33.630. Exempt trees must meet one of eight qualifications such as: nuisance or prohibited trees; pose an immediate danger to life and safety; are dead or dying; diseased to the extent that threatens continued viability; within 10 feet of an existing building to remain; where the primary trunk is partially in the right of way or on an adjoining site, not part of the land division, or partially in the Environmental Zone; or trees smaller than 6 inches in diameter.

The inventory identifies the following trees on the site:

Tree #	Species	Diameter (inches)	Exempt? (per 33.630.030)	To be retained?	RPZ (Root Protection Zone)
3001	Oregon white oak	52	Yes	No	
3002	Bigleaf maple	24	Yes	No	Right of way
3003	European white birch	8	Yes	No	
3004	Oregon white oak	41	No	Yes	10'
3004.b	Oregon white oak	18	Yes	No	
3005	Oregon white oak	32	No	Yes	15'
3006	Bigleaf maple	6	Yes	No	
3007	Bigleaf maple	7	Yes	No	
3008	Red Oak	9	No	No	
3009	Oregon white oak	48	No	No	
3010	Oregon white oak	34	No	No	
3011	Oregon white oak	33	No	No	
3012	Oregon white oak	29	No	No	
3013	Oregon white oak	33	No	Yes	22'
3014	Incense cedar	26	No	Yes	11'
3015	Incense cedar	10	Yes	No	
3016	Incense cedar	40	Yes	Yes	Partially on site
3017	Fruit	20	NO	No	
3018	Fruit	8	NO	No	
3019	Fruit	8	Yes	No	

The total non-exempt tree diameter on the site is 313 inches. The applicant proposes to preserve trees 3004, 3005, 3013, and 3014, which comprise 132 inches of diameter, or 42 percent of the total non-exempt tree diameter. Tree 3016 is also to be retained, but because it is located on the property line, and is therefore exempt from the tree preservation requirements, its diameter cannot be included in the number of trees to be preserved on site.

A neighbor submitted an arborist report that appeared to call into question the findings of the Applicant's arborist report. This new report contended that Trees 3001 (52" dbh white oak; and trees 3017 and 3018 (20" and 8" dbh respectively) were all viable and maintainable. As a result of this new information, the City Arborist visited the site and evaluate the three trees. (His

response is found in Exhibit E.6.b.) Basically, the City Arborist found that both fruit trees are viable, even though one has some significant decay. However, he found that Tree 3001, an ancient white oak, is indeed, in serious decline and that removal of dead limbs from the tree would not lessen the rate of decline. He considers the tree to be dying, and therefore exempt. The two fruit trees are slated for removal, along with the white oak. Determining these trees to be viable did not alter the outcome for the number of trees to be preserved. Even with these two trees removed from the list of Exempt trees, the applicant's plan will still preserve 42 percent of the non-exempt trees, which is well above the 35 percent required.

This proposal complies with Option 1 of the tree preservation standards, which requires at least 35 percent of the total non-exempt tree diameter on the site to be preserved. The total non-exempt tree diameter on the site is 313 inches, excluding the 137 inches of exempt trees. Of this 313 inches, only 35 percent must be preserved. With only four trees, the applicant's tree preservation plan will preserve 132 tree diameter inches, or 42 percent of the non-exempt trees on the site. The trees to be preserved and the required root protection zones are shown on the applicant's Tree Preservation Plan/Proposed Development Plan (Exhibit C.6).

To ensure that future owners of the lots are aware of these tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Requirements at the time of final plat.

Therefore, subject to the condition that development on Parcels 1 and 2 be carried out in conformance with the Tree Preservation Plan/Preliminary Land Division Plan (Exhibit C.#) and the applicant's arborist report (Exhibit A.*), and that an Acknowledgement of Tree Preservation Requirements is recorded with the final plat, this criterion is met,.

D. Potential Landslide Hazard Area. If any portion of the site is in a Potential Landslide Hazard Area, the approval criteria of Chapter 33.632, Sites in Potential Landslide Hazard Areas, must be met.

Findings: The entire site is located within the Potential Landslide Hazard Area. The approval criteria state that the lots, buildings, services, and utilities must be located on the safest part of the site so that the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site is reasonably limited.

In order to evaluate the proposal against this criteria, the applicant submitted a geotechnical evaluation of the site and proposed partition, prepared by a Certified Engineering Geologist and a Geotechnical Engineer and a Landslide Hazard Study (Exhibits A.5 and A.6). These reports were evaluated by the Site Development Division of the Bureau of Development Services, the City agency that makes determinations regarding soil stability.

The applicant's geotechnical evaluation indicates that the risk of potential landslide hazard at the site is relatively low, given the soil composition, thickness, gradient, and other risk factors. The proposed land division will result in lots, buildings, services, and utilities that will not significantly increase the risk of landslide potential on the site or other properties in the vicinity of the site according to this report. In addition, the geotechnical evaluation has concurred that the applicant's proposed method of stormwater disposal at the site will not have a significant detrimental impact on the slope stability on or around the site. This conclusion was reached because stormwater will not be disposed of on the site itself; rather, it will be discharged into the public storm sewer in SW Lesser Road after undergoing treatment through on-site pollution reduction and flow controls in vegetated flow-through planters.

Site Development has concurred with the findings of the applicant's geotechnical report, but noted that further geotechnical evaluation might be required for specific building plans at the time of construction plan review if on-site infiltration were planned. Site Development recommended off-site disposal of stormwater, which is the applicant's proposed option. 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.**

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 located in the Potential Landslide Hazard area. Therefore, the clearing and grading associated with preparation of the lots must occur in a way that will limit erosion concerns and assure that the preserved trees on the site will not be disturbed.

The applicant submitted a grading plan as well as the Geotechnical Report and Landslide Hazard Study that describes how clearing and grading should occur on the site to minimize erosion risks. The plan indicates that grading will occur in the upper half of the site, and will not include mass grading of the site that would alter all existing contours. The applicant also provided an arborist report (Exhibit A-4) and Tree Preservation Plan (Exhibit C-6) that designates areas on the site where grading must not occur in order to protect the roots of the trees on the site that will be preserved. It is anticipated that the grading will primarily involve excavating for the foundations of the new houses and trenching for the utilities, but will not include mass grading of the site to alter the existing contours.

The proposed grading plan indicates a moderate amount of change to the existing contours and drainage patterns in order to construct the two houses. However, the site contains very large trees that will not only be cut down, but whose trunks and roots will have to be removed in order to construct houses over the top of them. The existing grading plan does not show any grading in the tree removal areas. Site Development may require an updated grading plan at the time of building permit application that includes the tree trunk removal areas and identifies how these excavated areas will be treated.

Prior to initiating any of the grading, clearing or grubbing activities on the site, including demolition of the house, the applicant must install both tree protection fencing and erosion control devices. The limits of disturbance must be clearly delineated on the applicant's construction management plan. This will help manage erosion and sedimentation concerns, assure that the necessary tree protection measures are in place before any grading activity begins and limit potential disturbance to adjacent properties. The limits of disturbance will also allow for the existing house and accessory structures on the site to be demolished and any debris associated with these buildings to be removed. Tree protection fencing must be 6-foot, chain link and installed to the requirements listed in the Arborist Report.

The grading plan shows tree protection fencing around trees to be preserved. However, the plan shows extremely small root protection zones for these large trees. The City of Portland's root protection zone requirement is one foot of protection for each inch of tree diameter. A note on the plans, with an arrow pointing to "protection fencing," states: "Should be feasible to install protection fencing at dripline—this will provide adequate protection. Prune dead branches for safety." This note on a construction plan is not adequate for tree protection purposes. "Should be" does not guarantee protection, which is the point of root protection zones and placing fences around them. Therefore a Supplemental Plan must be submitted at the time of Final Plat review which depicts the surveyed drip lines and any other root protection zones of trees to be preserved. This plan must show the conceptual building footprints with driveways, utilities, and stormwater facilities and underground utility lines in relation to the root protection zones.

In addition, the Arborist Report states that any work required to be done within the root protection zone must be coordinated with the project arborist. These root protection zones will already be much smaller than is typically required. Therefore, a condition of approval is required that any work that may be required within the root protection zones will be done with handheld equipment under the direct, on-site supervision of the project arborist.

As shown above, additional information is required. This information must be submitted with the final plat application, as noted above, and prior to any clearing, grading, or grubbing activity at the site.

- With conditions of approval for a supplemental plan to be submitted at the time of final plat that shows the surveyed "drip line" and other root protection zones, the conceptual building footprints with driveways, utilities, stormwater facilities and underground utility lines and any other requested information; and an updated construction management plan that details the actions necessary to grade the areas of stump removal at the time of permit review, this criterion can be met.

Land Suitability

The site is currently in residential use, and there is no record of any other use in the past. Although the site is currently connected to the public sanitary sewer, there is an old septic system on the site. The City has no record that this facility was ever decommissioned. Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for decommissioning this facility.

The applicant proposes to remove the existing house and garage and in order to redevelop the site. To ensure that the new lots are suitable for development, a permit must be obtained and finalized for demolition of all structures on the site.

With conditions for requiring final inspection for a decommissioning permit for the existing sanitary sewer on the site prior to final plat, and for a permit to be obtained and finalized for demolition of all structures on the site, the new lots can be considered suitable for new development, and this criterion is met.

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.

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.

Based on the available evidence, PBOT estimates that the one new residence will generate approximately 10 new daily vehicle trips, with the majority of trips occurring during non-peak hours (according to *Institute of Transportation Engineers – Trip Generation Manual*, 9th ed.). In addition, the site is served by nearby transit service along SW Haines/SW 62nd Ave, north of the site (via Tri-Met route #78 [Beaverton/ Lake Oswego]). Parking is not allowed along this segment of SW Lesser Rd since there is no parking lane. With on-site parking spaces being provided on both proposed parcels, the impacts to on-street parking should be negligible.

SW Lesser and SW 60th Ave are identified as On-Street Routes/Pedestrian Off-street Paths/Trails. Identified bike facilities (Portland Bike/Walk Map) are located in the area including Shared Roadways along SW Lesser Rd and SW Haines. SW Lesser Rd is improved with approx 20-foot of paving within an approximate 44-foot wide right of way with no curbs or sidewalks. For sites zoned R10 & located along a City Walkway (classified) street, the City's public right of way standards document requires a 64-foot right of way width which would accommodate a 32-foot wide roadway, to allow parking along both sides, and two 16-foot wide sidewalk corridors (0.5-ft curb, 8-ft stormwater management facility, 6-ft sidewalk & 1.5-ft frontage zone).

Transportation determined that the applicant would be required to construct sidewalk corridors along the site's frontage and that a 10-foot property dedication would be required to accommodate the frontage improvements. Further, the required dedication area could be increased based on the site specific stormwater management design required for the site.

The applicant filed a Public Works Appeal of these requirements, which was subsequently approved subject to a condition that the existing Lesser Road roadway be widened by 4 feet to accommodate a shared pedestrian/bicycle facility and that the widening must be reviewed/permitted through the City's Public Works Permitting process.

Based on the above, a condition of approval of this land use review requires the applicant to widen the existing roadway along the length of the subject site by an additional 4-feet of paving to accommodate a shared pedestrian/bicycle facility. The improved roadway widening must be reviewed/permitted through the City's Public Works Permitting process prior to final plat.

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

Findings: The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are 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 for this site, as noted on page 2 of this report. The water service standards of 33.651 have been verified.
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 2 of this report. The sanitary sewer service standards of 33.652 have been verified. The City also has a 15-foot side sewer easement along the back/westerly property line on this site. This public sanitary sewer line must be shown on the Final Plat.
There is an existing wye located 90 feet from the manhole at the south corner of the property.

It is likely that the existing house was served through this connection. This sewer will need to be capped at time of demolition. However, the wye will be available for service to Parcel 2 at time of development.

A new lateral to serve Parcel 1 must be constructed to the public main at the applicant's or owner's expense at the time of development.

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

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

The applicant has proposed the following stormwater management methods

- **Parcel 1 and 2:** Stormwater from these lots will be directed ultimately to the public storm sewer in SW Lesser Road. First, however, stormwater will be directed to individual vegetated flow-through planters on each lot that will provide pollution reduction and flow control. From the planters, the treated stormwater will be directed to stormwater vaults on each site that have ¾ hp pumps and back-up generators in case of power outages. The treated stormwater will be pumped uphill to the existing public storm sewer in SW Lesser Road at the frontage of the site.

This design was approved through a plumbing code appeal, and therefore, this criterion is met.

However, BES continues to encourage the applicant the applicant to re-evaluate this storm drainage system before the time of building permit, however, and instead use a gravity discharge system to SW 62nd. BES recommends gravity drainage where practicable.

BES also notes that the proposed storm lateral for Parcel 1 appears to conflict with one of the proposed street trees and may need to be constructed on the opposite side of the proposed house.

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 is met.

APPROVAL CRITERIA FOR ADJUSTMENTS

33.805.010 Purpose of Adjustment Reviews

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that criteria A through F, below, have been met.

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

Findings: The applicant requests an Adjustment to the side setback requirement in the R10 zone from 10 to 7 feet for the proposed house in relation to the existing, easterly property line. The purposes of setback standards in single dwelling zones (Section 33.110.220) are as follows:

- **They maintain light, air, separation for fire protection, and access for fire fighting;**
- **They reflect the general building scale and placement of houses 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; 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.**

The proposal, as described above in the proposal description on page 1, is to reduce a portion the side setback by 3 feet from 10 feet along the lower 15 feet of the proposed house. The property slopes downhill, away from SW Lesser Road. The proposed adjustment will affect the easterly property line near the bottom of the site, well away from the street, where the setback requirements will not only be met, but will be exceeded. The house will be set back approximately 40 feet from the front property line and about 25 feet from the side property line for the first 57 feet of its length. For most of this distance, the proposed house will be over 25 feet from the side lot line.

The house on the neighboring 25,913 square-foot lot to the east, which shares this property line, is set back approximately 15 feet from the common property line, and over 40 feet from the point where the 90 degree turn occurs. The requested setback adjustment of 3 feet, therefore, would have fairly negligible impacts on this property. No other lots would be effected, visually or otherwise by the reduced setback. This distance will result in a reasonable physical relationship between the existing house on the neighboring lot and the proposed house on Parcel 1.

Development on adjacent properties to the north and east are located within required side and rear setbacks. Therefore, the general scale and placement of houses in this neighborhood will not be compromised as a result of the adjustment. The proposed adjustment will not result in a change to the front yard of Parcel 1 or compromise parking or access associated with the existing development. Based on the findings above, the proposed side setback adjustment is consistent with the purpose of the setback regulations (33.110.220). *This criterion is 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 an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: As discussed above under findings for criterion A, and for the same reasons as discussed therein, the proposal appears to have insignificant impacts on the livability and appearance of the residential area. From SW Lesser Road, the setbacks will be met, providing far more than the minimum 10-foot setback between the structure and the property lines. The reduced setback will not be noticeable from properties downhill of the site. Therefore, the proposed setback adjustment will not detract from the livability or appearance of existing development as viewed from the public realm. *Therefore, this criterion is met.*

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: Only one adjustment has been requested. *Therefore, this criterion does not apply.*

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

Findings: There is a stand of ancient white oak trees on the site, most of which will be removed by the development of this proposal. However, these trees have not been designated for any historic or scenic protection. Without such protection, these majestic trees are subject to removal for the legal development of the property.

City designated scenic resources are shown on the zoning map by the “s” overlay. Historic resources are designated by a large dot on zoning maps. Therefore, there are no city-designated scenic or historic resources on the site, as indicated by the absence of any Scenic Resource Protection (s) overlay zone and by the absence of any historic resource designation. *Therefore, this criterion does not apply.*

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

Findings: There are no detrimental impacts created by the reduction of the side setback. Therefore, no mitigation is required. *This criterion is 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 in an environmental overlay zone. *Therefore, this criterion does not apply.*

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.

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 http://www.water.ci.portland.or.us/
Environmental Services	Title 17; 2008 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 http://www.bes.ci.portland.or.us/
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 http://www.fire.ci.portland.or.us/
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 http://www.trans.ci.portland.or.us/

Bureau	Code Authority	Topic	Contact Information
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 http://www.bds.ci.portland.or.us

As authorized in 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.

- The applicant must meet the requirements of the Fire Bureau in regards to ensuring adequate hydrant flow from the nearest fire hydrant or recording an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers on Parcel 2. These requirements are based on the technical standards of Title 31 and Oregon Fire Code. See Exhibit E-4.

CONCLUSIONS

The applicant has requested a 2 parcel partition in conjunction with an adjustment review to the side setback requirement in the R10 zone from 10 to 7 feet for the proposed house in relation to the existing easterly property line, as shown on the attached preliminary plan (Exhibit C-1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal is the side setback adjustment.

With conditions of approval that address these requirements, this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to the side setback standard in the R10 zone (33.110.220) from 10 to 7 feet for a proposed house in relation to an existing property line; and

Approval of a Preliminary Plan for a 2-parcel partition that will result in two standard lots, 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 Land Use Review and approval. This 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:
- The arborist-proposed drip lines around trees to be preserved and any other root protection zones of trees to be preserved, the conceptual building footprints with driveways, utilities, stormwater facilities and underground utility lines and any other requested information.
- B. The final plat must show the following:**
1. The existing 15-foot wide City of Portland sanitary sewer easement that runs across the rear of Parcels 1 and 2 must be shown on the final plat.
 2. The existing sewer easement over the western corner of Parcel 2 must be shown on the final plat.

C. 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 site's street frontage. The applicant shall submit an application for a Public Works Permit to widen the existing paving by 4 feet, and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation for required right of way improvements.

Utilities

2. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.

Existing Development

3. A final inspection of a decommissioning permit for the existing sanitary sewer is required.
4. A finalized permit for demolition of the existing residence on the site must be obtained.
5. The existing sanitary sewer connection must be capped. (Note that Title 24 requires a 35-day demolition delay period for most residential structures.)

Required Legal Documents

4. The applicant shall execute an Acknowledgement of Tree Preservation Requirements that notes tree preservation requirements that apply to Parcels 1 and 2. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be recorded with Multnomah County and referenced on the final plat.

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

1. Prior to initiating any grading, clearing or grubbing activities on the site, including demolition of the house, the applicant shall install both tree protection fencing and erosion control devices.
2. Development on Parcels 1 and 2 shall be developed in conformance with the Tree Preservation Plan (Exhibit C.6) and the applicant's arborist report (Exhibit A-4). Specifically, trees numbered 3004 (10' RPZ), 3305 (15' RPZ), 3013 (22' RPZ), 97 (16' RPZ) and 3014 (16' RPZ) are required to be preserved, with the root protection zones indicated on Exhibit C-2. Tree protection fencing is required along the root protection zone of each tree to be preserved.
3. Tree protection fencing must be 6-foot, chain link and installed to the requirements listed in the Arborist Report.
4. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from a certified arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.
5. Any work that may be required within the root protection zones shall be done with handheld equipment under the direct, on-site supervision of the project arborist.
6. A new lateral to serve Parcel 1 must be constructed to the public main at the applicant's or owner's expense at the time of development.

7. The applicant shall install erosion control devices prior to any grading or tree removal on the site. The limits of disturbance shall be clearly delineated on the applicant's construction management plan and shall include the areas of building demolition.
8. If required by the Fire Bureau, the applicant will be required to install residential sprinklers in the new houses, subject to the satisfaction of the Fire Bureau. Please refer to the final plat approval report for details on whether or not this requirement applies.

Staff Planner: Kathy Harnden

Decision rendered by:  **on July 2, 2013**
By authority of the Director of the Bureau of Development Services

Decision mailed July 5, 2013

About this Decision. This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on October 18, 2012, and was determined to be complete on April 16, 2013.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on October 18, 2012.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended for 30 days, as stated with Exhibit G.5. Unless further extended by the applicant, **the 120 days will expire on: September 13, 2013.**

Note: some of the information contained in this report was provided by the applicant. As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit 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. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on July 19, 2013** at 1900 SW Fourth Ave. Appeals may be filed Tuesday through Friday on the first floor in the Development Services Center until 3 p.m. After 3 p.m. and on Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7617 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.ci.portland.or.us.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301 or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording concurrent approvals. The preliminary land division approval also includes concurrent approval of an Adjustment. 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 these concurrent land use reviews. The applicant, builder, or their representative may record the final decisions on these 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.

Expiration of concurrent approvals. The preliminary land division approval also includes concurrent approval of an Adjustment. For purposes of determining the expiration date, there are two kinds of concurrent approvals: 1) concurrent approvals that were necessary in order for the land division to be approved; and 2) other approvals that were voluntarily included with the land division application.

The Adjustment approval was necessary for the land division to be approved. This approval expires 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.

All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Recording the land division. 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.**

EXHIBITS

NOT ATTACHED UNLESS INDICATED

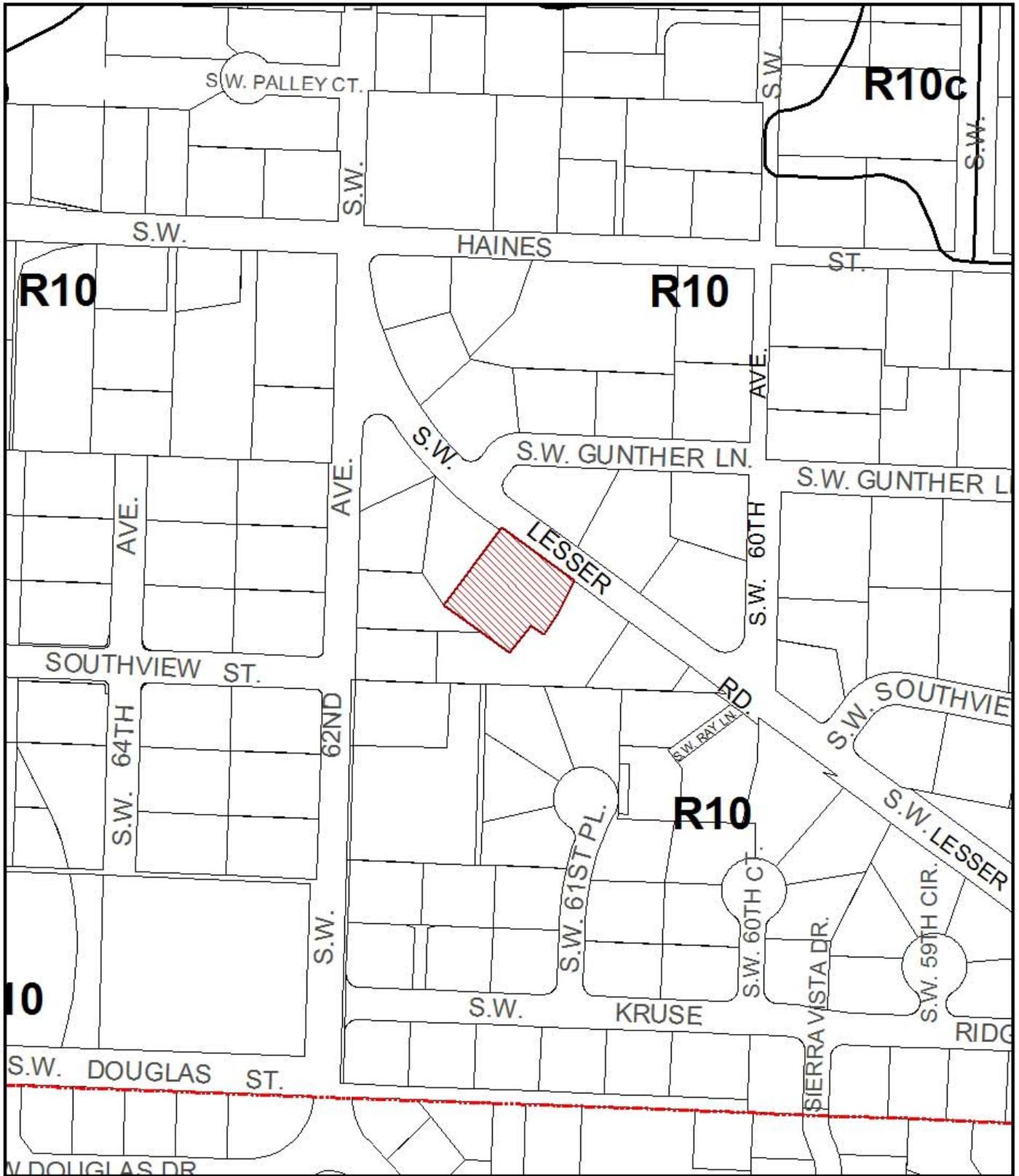
- A. Applicant's Statement
 - 1. Land Division Approval Criteria Narrative and Checklist
 - 2. Adjustment Narrative
 - 3. Application Supplement
 - 4. Alternative Tree Preservation Plan (aka, Arborist Report)
 - 5. Report of Geotechnical Services
 - 6. Landslide Hazard Study and Preliminary Geotechnical Recommendations
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Preliminary Site Plan (attached)
 - 2. Existing Conditions
 - 3. Preliminary Plat
 - 4. Site and Utility Plan
 - 5. Grading Plan
 - 6. Tree Preservation Plan
- 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. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. a. Portland Parks/Urban Forestry
 - b. Urban Forestry email – findings for 3 trees
 - 7. Life/Safety Review, BDS
- F. Correspondence:
 - 1. Steve and Cheryl Mozinski, May 5, 2013 – stormwater/drainage, ancient tree removal, survey accuracy;
 - 2. Chad and Brenda Kromm, May 10, 2013 – stormwater/drainage, ancient tree removal;
 - 3. Ben and Leslie Martinsen, May 8, 2013 – ancient tree removal; minimum lot size requirements;
 - 4. John Dwight and Kyleen Caley, May 17, 2013 – stormwater/drainage; ancient tree removal and habitat disruption
 - 5. Doug and Mary Ziebart – stormwater/drainage; ancient tree removal and habitat destruction (this letter was co-signed by 5 other people from the neighborhood.)
 - 6. Doug Ziebart – Bruno letter to Myles Black; traffic on SW Lesser Road; sight distance from cars exiting the site onto Lesser Road
 - 7. Applicant's Response to Neighborhood Comments

8. Applicant's Response to Neighbors' Arborist E-mail

G. Other:

1. Original LU Application
2. Site History Research – none
3. Bureau Completeness Responses
4. Incomplete Letter
5. Extension of the 120-day clock

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING

 Site



File No. LU 12-195734 LDPAD
 1/4 Section 4223
 Scale 1 inch = 200 feet
 State_Id 1S1E31CC 4400
 Exhibit B (Oct 22, 2012)

