



TO: Development Review Commission

FROM: Leslie Hamilton, AICP, Senior Planner
Planning and Building Services Department

SUBJECT: Appeal of LU 17-0016

DATE: July 28, 2017

ACTION

Hold a public hearing and issue a tentative decision on LU 17-0016.

APPLICANT'S REQUEST

The applicant is requesting approval of a two-parcel minor partition creating one flag lot, and the removal of 13 trees to construct the public improvements.

REQUEST FOR HEARING / APPEAL OF STAFF DECISION

On June 26, 2017, staff approved the applicant's request as described above. On July 10, 2017, appellant David Anderson filed a request for public hearing (Exhibit A1)¹. The written request for a hearing filed by the appellant did not state the reason(s) for the appeal; however, the appellant submitted comments on the application during the comment period that raised issues regarding tree removal, width of the right-of-way, and improvements to Amber Place (Exhibit G201). Additional comments in opposition were submitted by Chuck and Jeanne LeMieux (Exhibit G200).

STAFF DECISION / FINDINGS AND CONDITIONS OF APPROVAL

The June 26, 2017 Staff Report (Exhibit D1) identifies all criteria applicable to the development proposal, responds to the issues raised by the appellant, states the basis for the approval, and contains the staff decision and conditions of approval (also see below).

¹ The applicant requested the City Manager (staff) reject the appeal pursuant to LOC 50.07.003.7.b.iii on two grounds: no signature of the appealing party, and no payment of appeal fee. LOC 50.07.003.7.b(3) and (4). The request for hearing lists four names of persons as requesting the hearing: David and Sylvia Anderson, and Chuck and Jeanne LeMieux; the listed names are in the same handwriting. The request was filed by David Anderson, and he paid the filing fee. Staff denied the applicant's request to reject the appeal, finding that there was at least one appellant – David Anderson - that had signed the request for hearing, and finding that the filing fee had been paid. Staff also advised the applicant that it could raise the issue of whether the appeal was properly filed at the DRC public hearing.

PUBLIC HEARING

The Commission shall hold a public hearing per LOC 50.07.003.7.a and 4. Any person may testify at the public hearing. Following the close of the public hearing and upon Commission request, staff will make a recommendation based upon the record (including evidence presented at the public hearing) whether LU 17-0016 complies with all applicable criteria or can be made to comply through the imposition of conditions. The Commission shall then make a tentative decision [LOC 50.07.003.4.g].

STAFF DECISION AND CONDITIONS OF APPROVAL

Approval of LU 17-0016, with conditions, as described below:

A. Prior to Approval of the Final Partition Plat, the Applicant/Owner Shall:

1. Apply for and obtain a demolition permit for the existing structure on Parcel 1. The applicant shall note that this may require an asbestos report from a licensed agency to the satisfaction of the Building Official and that a 14-day notice of demolition is required to be posted on the site and mailed to abutting properties pursuant to LOC 45.12.100. The demolition permit shall be accompanied by proper applications for tree protection and erosion control permits, if necessary.
2. Submit a final plat to City staff for review and signature of approval within one year of the dated of this decision. **The deadline to submit the final plat to City staff is August 7, 2018.** The final plat must be dimensioned as depicted in Exhibit E5, and reference this land use application – City of Lake Oswego Planning and Building Services, Case File LU 17-0016. Upon written application, prior to expiration of the one-year period, the City Manager shall, in writing, grant a one-year extension. Additional extensions may be requested in writing and must be submitted to the City Manager for review of the project for conformance with current law, development standards and compatibility with development that may have occurred in the surrounding area. The extension may be granted or denied and, if granted, may be conditioned to require modification to bring the project into compliance with current law and compatibility with surrounding development.
3. The final plat shall include the following information:
 - a. Illustrate the projected extension of the Access Lane to the western lot line of Parcel 2, to the satisfaction of staff.
4. Submit engineered construction drawings for the public improvements for review and approval by the City Engineer. Drawings shall conform to the City’s most current design standards and the drafting specifications. All final engineering design drawings and as-built plans submitted for the creation of public facilities (street, wastewater, water and surface water) shall be vertically controlled by the City Datum (NGVD’29) and horizontally controlled by the Oregon State Plane coordinate system (NAD 83/91). [Note: receiving construction plan approval is not a pre-requisite for recording the final plat.]

The plans shall include the following:

- a. Design to dedicate sufficient right-of-way along the entire site frontage of Amber Place in order to transition from an overall 50-foot wide right-of-way at the north boundary line to

40 feet of overall right-of-way width at the southern boundary of this site. A public utility easement shall be provided along the back of the right-of-way to the satisfaction of the franchise utility companies.

- b. Design to widen the pavement along the entire site frontage and provide a concrete curb and gutter in order to provide 28 feet of pavement street section (face-of-curb to face-of-curb) and also extend the full street improvements (including the concrete sidewalk along the east side of the street) from the terminating point conditioned under LU 15-0070 to the north boundary of this site. The sidewalk shall connect to the existing street at the north boundary line to the satisfaction of the City Engineer.
 - c. Design to transition and connect the new street section along the site frontage to the existing pavement section north of the site as generally shown on the Amber Place Plan and Profile drawing (Exhibit E9). Through-traffic along Amber Place between Knaus Road and Country Commons shall be allowed without the installation of a street barricade at the north boundary of the site.
 - d. Along the south boundary of the site along Amber Place, design to transition the 28-foot wide street width along the site frontage to the narrower 24-foot pavement section constructed per LU 15-0070.
 - e. Design of public sanitary sewer and public storm main extensions in Amber Place from the terminating manholes constructed under LU 15-0070 to the north boundary line of the site, as general shown on the preliminary utility plan.
 - f. Design of the individual private sanitary and water services. The new individual sanitary laterals for both parcels shall be 6-inch diameter within the right-of-way with a -inch” clean-out positioned at the right-of-way line. The new laterals shall be tapped into the mainline and will not be allowed to be connected directly to a manhole.
 - g. Design of a new street light at the intersection of Amber Place/Knaus Road, to the satisfaction of the City Engineer.
 - h. Design to provide adequate sight distance for the new driveway approach onto Amber Place.
5. The plat shall include (but not be limited to) the following:
- a. Private access and utility easement across Parcel 1 for the benefit of Parcel 2 and Tax Lot 2100.
 - b. Public utility easements as necessary to the satisfaction of the franchise utility companies.
 - c. Private stormwater easement for the benefit of both parcels for any common stormwater facility on the site.
6. Construct the public improvements required by Condition A(4), above, *or* submit a financial guarantee to ensure its construction per LOC 50.07.003.9. The financial guarantee shall be based on 120% of an itemized engineer’s estimate that is in turn based on final construction

plans that are far enough advanced to support the estimates, to the satisfaction of the City Engineer.

7. Record a “Notice of Development Restriction” with the final plat. The development restriction shall be submitted for staff review and approval prior to recording and shall contain the following restrictions listed below for review and approval of City staff. A reduced copy of the site plan showing the utility easement and the Protected Solar Building Line on Parcels 1 and 2 shall be included with the Notice and labeled as “Exhibit A” to be recorded in the County Recorder’s Office. The site plan shall be no larger than 8 ½” x 11” in size and cannot contain any lettering smaller than 10 point font.
 - a. Parcels 1 and 2 are subject to the requirements of LOC 50.06.007.1.d.ii [Protected Solar Building Line].
 - b. The new dwelling on Parcel 2 shall have the front of the house oriented toward the projected access lane.
 - c. The maximum height of the dwelling on Parcel 2 shall be 24.6 feet (regardless if, at the time of building permit review, the footprint meets the definition of “Sloped Footprint” per LOC 50.10.003), measured from the ground to the ridgeline of the roof as defined by LOC 50.10.003, “Height of Building.”
 - d. The front, side and rear yard setbacks for primary structures on Parcel 2 shall be as follows:

Setbacks for Parcel 2		
	Numerical Requirements	Additional Requirements
Front Structure	10 feet	Measured from the access lane or projected access lane.
Garage or carport	20 feet	
Side (east)	10 feet	
Side (west)	25 feet	
Rear (north)	10 feet	

- e. The City of Lake Oswego Fire Department has determined that the fire apparatus means of approach to Parcel 2 may not meet the local City standards adopted in accordance with the applicable Fire Code and state building code requirements. An approved fire turn-around must be provided, or an alternative method of fire suppression, such as residential fire sprinklers, is required for new structures on Parcel 2.
- f. There shall be a 6-foot tall fence along the rear and side property lines of Parcel 2.
- g. There shall be a 6-foot wide landscape buffer along the rear (north) property line of Parcel 2.
- h. Maintenance of the 5-foot wide landscape buffers along both sides of the shared access lane is the ongoing obligation of the owners of Parcels 1 and 2.

8. Submit a preliminary title report or lot book report showing the status of title and any liens and encumbrances.
9. Submit a final landscape plan that shows the following, to the satisfaction of staff:
 - a. Two street trees along the Amber Place frontage, at the proper spacing for the species.
 - b. The location, design and height of the 6-foot tall sight-obscuring fence along the side and rear property lines of Parcel 2.
 - c. The 6-foot wide landscape buffer along the rear (north) property line of Parcel 2, illustrating the size and species of all landscaping material, including existing landscaping that is proposed to remain and be used to show compliance with LOC 50.07.007.2.f.iii.
 - d. The size, species and spacing of all landscape material in the 5-foot wide landscape buffers on the north and south side of the Access Lane, in compliance with LOC 50.07.007.2.f.i.

B. Within 90 Days of the Recordation of the Final Partition Plat, the Applicant/Owner Shall:

1. Submit a final title report, or lot book report from a title company demonstrating that the plat was validly recorded and that the private easements as required in Condition A(5) above, are valid and subsisting, and that the parcels are either free and clear of liens or encumbrances, or that the holders of the liens and encumbrances consent to the lot line adjustment and, to the applicable created parcel's encumbrance holder, consent to creation and recordation of the easement.

C. Prior to the Issuance of any Grading or Building Permits to Construct Any Dwelling, the Applicant/Owner Shall:

1. Demonstrate compliance with Conditions A(1)-A(9), above.
2. Complete all public improvements as required by Condition A(4) above, submit certified "as-built" drawings, and receive a certificate of completion and acceptance by the City.
3. Record the final plat prior to issuance of individual building permits.
4. Submit a final drainage report, prepared by a registered engineer, to the satisfaction of the City Engineer. The final design report must include the following:
 - a. A Geotechnical Engineering Report, or addendum to the infiltration test report to document soil conditions, potential hazards, site preparation and construction recommendations, and a statement regarding limitations to the use of infiltration given proximity to a mapped slide area.
 - b. Updated planter sizing calculations conforming to design guidelines outlined in LOSWMM Section 4.6.2. Planter design shall include use of an underdrain and an overflow to manage runoff from design events greater than the water quality design storm.

- c. Control structure calculations to determine the orifice design and detention storage volume that would be required to match the post-developed flow to pre-developed conditions for the 2-year, 5-year, and 10-year, 24-hour storm events for the contributing drainage area (pervious and impervious). If the calculated orifice size is less than 1 inch, which is the City's minimum allowable construction standard, include the calculations reflecting the required orifice size and increase the orifice size to 1.0 inch on the design drawings to meet the City's standards.
 - d. A downstream analysis to demonstrate that the storm line located in Amber Place has capacity to convey the 25-year peak flow from the total contributing area, including the project site.
5. Submit final site plans showing stormwater facility details and cross sections consistent with design assumptions in the final design report. Please note that final stormwater facility design must adhere to geometry and maintenance requirements outlined in LOSWMM Section 4.6.13 for underground detention pipe, including those related to access criteria, and LOSWMM Section 4.6.2 for the planter. The facility design must adhere to setback requirements per LOSWMM Table 3.1.
 6. Per LOC Chapter 52, apply for and obtain an approved erosion prevention and sediment control permit issued through the City of Lake Oswego, and install and maintain all erosion control BMPs as indicated in the permit.
 7. Demonstrate the driveway access onto Amber Place will comply with AASHTO guidelines.
 8. Apply for a tree verification tree removal permit for the 13 trees approved for removal to construct the improvements. The verification permit submittal shall include an 8 1/2" x 11" copy of the tree removal plan and a mitigation plan showing the location, size and species of 13 replacement trees. Replacement trees shall be neither dwarf nor ornamental varieties, and shall be at least 1.5-in. caliper if deciduous or at least six feet tall if evergreens; six of the mitigation trees must be a native species as specified on City's Master Plant List.

D. Prior to the Final Building Inspection on any Parcel or Occupancy of any Dwelling, the Applicant/Owner Shall:

1. Provide certification from the engineer of record that the stormwater facilities were constructed per the design and are functioning properly. Post-construction protection measures shall be left in place until after the final home construction has been completed.
2. Provide proof of recorded operations and maintenance plans (OMPs) for each stormwater facility. The OMP must describe how to properly maintain the facilities, the frequency of maintenance required and the party responsible for maintaining the facilities. For shared facilities, a private easement must be obtained.
3. Provide certification from the engineer of record that adequate sight distance has been provided for the driveway approach onto Amber Place.
4. Complete all public improvements as required by Condition A(5) above, submit certified "as built" drawings, and receive a certificate of completion and acceptance by the City.

5. Provide certification from the engineer of record that the stormwater facility for the site was constructed according to the design and is functioning properly.
6. Submit a letter from a professional engineer that certifies that the access lane is constructed in accordance with LOC 15.06.610, OFC 503.2.3.

Code Requirements:

1. **Tree Protection:** Submit a tree protection permit application as required by LOC 55.08.020 and 55.08.030 for review and approval of staff, including off-site trees that are within the construction zone. This plan shall be attached to the construction documents or printed on the construction site plans, and shall include:
 - a. The location of temporary tree protection fencing, consisting of a minimum 6-foot high cyclone fence secured by steel posts, around the tree protection zone, or as recommended by the project arborist and approved by the City.
 - a. A note stating that no fill or compaction shall occur within the critical root zones of any of the trees, or that if fill or compaction is unavoidable, measures will be taken as recommended by a certified arborist to reduce or mitigate the impact of the fill or compaction. Such measures shall be clearly outlined in the tree protection plan. The note shall also inform contractors that the project arborist shall be on site and oversee all construction activities within the tree protection zone.
 - c. A note that clearly informs all site contractors about the necessity of preventing damage to the trees, including bark and root zone. The applicant and contractor(s) shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction.
 - d. A sign shall be attached to the tree protection fencing, which states that inside the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the City Manager and project arborist.

Note:

1. Development plans review, permit approval, and inspections by the City of Lake Oswego Development Review Section are limited to compliance with the Lake Oswego Community Development Code, and related code provisions. The applicant is advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the development, i.e., Americans with Disabilities Act, Endangered Species Act. City staff may advise the applicant of issues regarding state and federal laws that the City staff member believes would be helpful to the applicant, but any such advice or comment is not a determination or interpretation of federal or state law or regulation.

EXHIBITS

A. NOTICE OF INTENT TO APPEAL

A1 Letter of intent to appeal the staff decision submitted by David Anderson, dated July 10, 2017

B-C. [No current exhibits; reserved for hearing use]

D. STAFF REPORTS

D1 Staff Report, dated June 26, 2017

E. GRAPHICS/PLANS

- E1 Tax Map
- E2 Vicinity Map
- E3 Aerial
- E4 Existing Conditions
- E5 Preliminary Plat
- E6 Setback and Solar Access Plan
- E7 Tree Inventory and Removal Plan
- E8 Grading and Erosion Control Plan
- E9 Utility Plan and Profiles (P600, 700)
- E10 Site plan for Mission Commons subdivision, LU 15-0070
- E11 Early site plan, dated March 30, 2017
- E12 Pre-application notes from Engineering Division, dated June 2, 2016

F. WRITTEN MATERIALS

- F1 Applicants' Narrative, dated February 10, 2017
- F2 Fire Marshal Comments
- F3 Arborist Report by Teragan & Associates, dated May 10, 2017,
- F4 Stormwater Report by Westlake Consultants, dated March 29, 2017,
- F5 Sight Distance Analysis by Westlake Consultants, dated March 29, 2017
- F6 Neighborhood Meeting Documentation
- F7 Staff report for Mission Commons subdivision, LU 15-0070
- F8 Council Annexation Report and Exhibit A1 from AN 16-0006
- F9 Ordinance 2719 and Findings
- F10 Development Review Commission Findings, LU 15-0070
- F11 Council Minutes from July 5, 2016 (partial)

G. LETTERS

Neither for nor Against (G1-99):

None

Support (G100-199):

None

Opposition (G200+):

G200 Letter from Jeanne and Chuck LeMieux, dated May 31, 2017

G201 Letter from David and Sylvia Anderson, dated May 31, 2017

Copies of these exhibits were distributed to the Commission and are available online at the following link: <http://www.ci.oswego.or.us/planning/lu-17-0016-request-approval-minor-partition-creating-2-parcels>

