

STAFF REPORT
CITY OF LAKE OSWEGO

PLANNING DIVISION

APPLICANT/OWNER:

Dixie Powers

FILE NO.:

LU 13-0041

TAX LOT REFERENCE:

Tax Lot 7100 of Tax Map 2 1E 03DA

STAFF:

Leslie Hamilton

LOCATION:

631 3rd Street

DATE OF REPORT:

October 9, 2013

COMP. PLAN DESCRIPTION:

R-2

120-DAY DECISION DATE:

January 10, 2014

ZONING DESIGNATION:

R-2

NEIGHBORHOOD ASSOCIATION:

First Addition – Forest Hills

I. APPLICANT'S REQUEST

The applicant is requesting approval of a two-parcel minor land partition.

II. PRELIMINARY DECISION

Approval of LU 13-0041 with conditions. The complete listing of conditions is provided on pages 7-9 of this report.

III. APPLICABLE REGULATIONS

A. City of Lake Oswego Community Development Code [LOC Chapter 50]:

LOC 50.04.001.3	R-2 Zone Standards
LOC 50.06.002	Parking
LOC 50.06.003.1	Access/Access Lanes (Flag Lots)
LOC 50.06.003.2	On-Site Circulation – Driveways and Fire Access
LOC 50.06.004.2	Fences
LOC 50.06.006.1	Weak Foundation Soils
LOC 50.06.006.3	Drainage

LOC 50.06.008	Utilities
LOC 50.07.003.1	Application for Development, Burden of Proof
LOC 50.07.003.5	Conditions of Approval
LOC 50.07.003.7	Appeal of Minor Development Decision
LOC 50.07.003.14	Review Criteria for Minor Developments

B. City of Lake Oswego Streets and Sidewalks [LOC Chapter 42]:

LOC 42.08.400-42.08.470	Streets and Sidewalks
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C. City of Lake Oswego Tree Code [LOC Chapter 55]:

LOC 55.08.010-55.08.040	Tree Protection
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IV. FINDINGS

A. Background/Existing Conditions:

1. The property is approximately 6,000 square feet, and is located on 3rd Street, which is classified as a local street (Exhibit E1).
2. The site is zoned R-2 and is developed with a single family dwelling. Abutting properties in all directions are also zoned R-2; these properties are developed with single-family dwellings, duplexes and multi-family dwellings (Exhibit E2).

V. REVIEW AND APPROVAL PROCEDURES

A. Neighborhood Meeting

The applicant held a neighborhood meeting on July 23, 2013. The minutes of the meeting and the notification materials are included in this report as Exhibit F2.

B. Public Notice to Surrounding Area

The City has provided adequate public notice and opportunity to comment on this application pursuant to LOC 50.07.003. No letters were received during the comment period.

C. Burden of Proof

Per LOC 50.07.003.1.b, the applicant for a development permit shall bear the burden of proof that the application complies with all applicable review criteria or can be made to comply with applicable criteria by imposition of conditions of approval. The applicant has provided sufficient evidence to enable staff to evaluate the proposal. These documents are listed as exhibits at the end this report.

VI. MINOR DEVELOPMENT – 2 PARCEL MINOR PARTITION

A. Classification of Application

LOC 50.07.003.14.a.ii(8) describes partitions as minor development.

B. Criteria for Review of Application

Per LOC 50.07.003.14.d, for any minor development application to be approved, it shall first be established that the proposal complies with:

1. The requirements of the zone in which it is located;

R-2 Dimensional Standards [LOC 50.04.001.3]

The site is zoned R-2 and is developed with a single family dwelling, which will be demolished. The applicant proposes to divide the property into two parcels. Construction of future structures on each parcel will be subject to the site development requirements that are in effect at the time of building permit application or at the time of construction if no building permit is required. There are no minimum dimensional standards (lot area, lot width or lot depth) in the R-2 zone. Each parcel is proposed to be 3,000 square feet in area.

The dwelling design and garage appearance and location standards of LOC 50.06.001.2 and 50.06.001.4 are applicable to future structures on each parcel. Compliance with these standards will be reviewed at the time of building permit application.

2. The Development Standards applicable to minor developments;

Off Street Parking, Loading and Bicycle Access [LOC 50.06.002]

This standard requires that a single-family dwelling, zero-lot line dwelling or duplex provide one off-street parking space. Compliance with this standard will be assured during the building permit review process.

Access/Access Lanes (Flag Lots) [LOC 50.06.003.1]

This standard requires that every lot abut a street for at least 25 feet. As shown on the Tax Map (Exhibit E1), the existing lot, which was platted in 1888, had a frontage of 50 feet. However, modern measuring techniques indicate that the lot width (49.99 feet) is actually short of the platted dimension by less than 0.01%; similarly, lot depth (120.03 feet) is actually longer than the platted dimension of 120 feet (Exhibit E3). The difference of 0.01 feet in lot width is considered *de minimus* and rounded to 50 feet, and Parcel 2 is considered as meeting the minimum street frontage standard of 25 feet. This standard is met.

On-Site Circulation – Driveways and Fire Access [LOC 50.06.003.2]

This standard contains the geometric design standards for proposed driveways that serve as fire department access roads, and other design features such as slope and width of driveway approaches. The maximum grade and cross slope for a driveway is 15% and 5%, respectively. The new lots could take access from 3rd Street or from the alley. If access is taken from 3rd Street, driveway approaches onto 3rd Street shall be designed to meet City standards, and also comply with the American Association of State Highway and Transportation Officials (AASHTO) standards for sight distance. No development is proposed with this partition request. Compliance with these standards will be assured at the time of building permit application. This standard can be met.

Drainage Standard for Minor Development [LOC 50.06.006.3]

This standard requires that drainage improvements be provided to ensure that the proposed development will not adversely affect surrounding properties. The determination of whether or not the application complies with the requirements of this standard is under the review authority of the City Manager or City Engineer. The Engineering staff has made the following findings and conditions of approval:

- All surface runoff created from the impervious surfaces shall be managed on-site. This project shall be developed to maximize the amount of storm water runoff which is percolated into the soil and to minimize direct overland runoff into streets, drainage systems, and/or adjoining property. Storm water runoff from roofs and other impervious surfaces should be diverted into swales, terraces and/or water percolation devices on the lots when possible.
- The applicant has provided a drainage study dated August 12, 2013, prepared by a registered engineer, and is proposing to construct a drywell on each parcel in order to manage runoff from the roof area of the new homes. The driveway runoff for each parcel is proposed to be managed by constructing a filter strip adjacent to the driveway. Engineering finds the proposed concept acceptable, and compliance with this standard will be assured at the time of building permit issuance. As conditioned, this standard is met.

Utility Standard [LOC 50.06.008]

The Engineering staff has reviewed the application and finds that utilities are available or can be made available as follows:

Sanitary Sewer: There is an existing 8" public sanitary sewer line located in the alley. A new mainline tap will be required for each parcel. Each private sewer lateral shall have a cleanout installed at the right-of-way line.

Water and Hydrants: There is an existing 8" City water main located in 3rd Street, and existing fire hydrants located at the southeast quadrants of the intersections of 3rd Street and C Avenue and 3rd Street and D Avenue. The existing dwelling on the property is already connected to the City water main, and this service can be used if it is good condition. An individual private water service shall be provided to the new parcel. Water flow for fire protection is adequate (Exhibit F3).

Sidewalks: There are no sidewalks along 3rd Street between C Avenue and D Avenue. See comments below under LOC Chapter 42.

Streets: 3rd Street is a narrow two-lane local street within a 60' right-of-way. The property is bound to the east by an alley. See comments below under LOC Chapter 42.

Storm Drains and Approved Points of Disposal: Runoff from new roof areas and driveways will be required to be managed on-site. Please see comments under Drainage regarding storm water management requirements.

Street Lights: Street lights are required only at street intersections along local streets. There are existing street light at the intersections of 3rd Street and C Avenue and 3rd Street and D Avenue; therefore, no street lights will be required for this development.

Other Utilities: It is the applicant's responsibility to ascertain the availability of electric, gas, telecommunications and cable TV. All new utilities shall be installed underground.

3. Any additional statutory, regulatory or Lake Oswego Code provisions which may be applicable to the specific minor development application;

City of Lake Oswego Streets and Sidewalks Ordinance [LOC Chapter 42]

This Chapter authorizes the City Engineer to make specific street and sidewalk improvement recommendations after taking a variety of policy and site specific factors in to consideration. The City Engineer's conditions of approval are included to find the application will comply with this Chapter.

The Engineering staff has reviewed the development proposal and field conditions in the context of the City's codes, improvements policies, and TSP. Factors considered in making frontage improvements include, but are not limited to, topography, soil characteristics, vegetation, consistency with the Comprehensive Plan [particularly Goal 12 and the City's TSP], drainage management, traffic safety (pedestrian and vehicular), parking needs, lighting and aesthetics.

The proposed two-parcel partition can be expected to contribute 10 additional vehicle trips to the street system per parcel per average weekday. Additional pedestrian and bicycle trips can be expected as well. The cumulative effect of new trips (all modes) imposes an additional burden and concomitant concerns for preserving street capacity and public safety, particularly for bicycles and pedestrians.

The City has a government interest in assuring that new development does not contribute to the degradation of adequate, safe, and efficient public transportation facilities. New development should mitigate the negative impacts (increased noise, and the degradation of aesthetics, safety, system capacity, and bicycle and pedestrian mobility) resulting from new development. The City has adopted a broad array of policies, regulation, and fees that have been designed to offset the adverse impacts of development on the natural and built environment. In this regard, the City road improvement requirements and standards reflect the governmental interest in preserving the functionality and safety of the public infrastructure.

The implementation of the City's plans, policies, and regulations will offset to some degree the negative impacts of development on the public infrastructure. LOC 50.07.003.5 allows the reviewing authority to impose conditions of approval on a development permit when the condition is reasonably related to alleviation of a need for public services or facilities created or contributed to by the proposed development. In addition, the US Supreme Court has ruled (*Dolan v. City of Tigard*) that, in order to require exactions, the local government must apply a test of "rough proportionality" between the impacts of the proposed development and the need for the exaction.

A sidewalk would normally be required along the site frontage; however, sidewalks are generally located along the west side of the street in the First Addition Neighborhood. In this case, it would be appropriate to locate a future sidewalk on the west side of 3rd Street to align with the existing sidewalk on either side of the block north of D Avenue and south of C Avenue. Since the site is located on the east side of the street, it is not necessary to construct a sidewalk at this time provided that, as a condition of approval, a waiver of

remonstrance is executed for participation of a future sidewalk or pathway Local Improvement District (LID).

The existing paved street width along the site frontage is substandard for a local street. This chapter requires that the pavement width be 20 feet for a local street. Because the existing pavement section along the east side of the street consists of an asphalt trench path from the public waterline, the applicant will not be allowed to just simply add pavement width to the edge of the existing pavement. Instead, the applicant will be required to provide 10 feet of new pavement from the center of the right-of-way, and provide proper pavement tapers on both sides of the site. A minimum 3-foot wide gravel shoulder will be required along the edge of the new pavement. The rock base shall meet City standards.

As conditions of approval of the proposed development, the City will require the following exaction(s):

- Provide 10 feet of new pavement from the center of the right-of-way, and provide proper pavement tapers on both sides of the site. A minimum 3-foot wide gravel shoulder will be required along the edge of the new pavement.
- Sign a waiver of remonstrance for participation of a future sidewalk or pathway Local Improvement District (LID).

The City finds that exacting the roadway improvements are therefore directly related to the increased traffic, bike and pedestrian trips that will be created by this development, and that requiring the roadway improvements along the site frontage is roughly proportional to the adverse impacts created by the development because:

- The new parcel will generate 10 additional vehicle trips per day using 3rd Street and the adjacent street system.
- The additional site-generated traffic creates an increased point of conflict between pedestrian and bicycles using the adjacent street intersections. By constructing the 10 feet of pavement width and 3-foot wide gravel shoulder along the street frontage, the public safety will be maintained.
- Similar exactions for street improvements along frontages have been required for similar developments in the area, with the result being that such exactions have mitigated the increased traffic (vehicle, pedestrian, and bicycle) by preserving the functionality and public safety features of the public street system.

In light of the above facts and Code requirements, the Engineering staff finds that the development of this site will place sufficient additional demand on this street to justify the construction of the street frontage improvements at this time, and that the street improvements are roughly proportional to the degree of impact imposed by the new development, as described above, and is consistent with the improvements of similarly-sized development, as required by the U.S. Supreme Court in the case of *Dolan v. the City of Tigard*.

City of Lake Oswego Tree Code [LOC Chapter 55]

Tree Removal

No trees are requested for removal with the partition request. Tree removal for the development on each parcel will be reviewed with the Building Permit.

Tree Protection

The Code requires tree protection measures when a tree protection zone or drip line of a tree is within the construction zone, whether on or off-site [LOC 55.08.030(1)]. The protective fencing shall be placed at the tree protection zone, which is the zone required to protect the critical root area necessary for the continued health of the trees. The applicant should propose the tree protection zone for each tree, for review and approval by City staff, on site. As required by LOC 55.08.030(7), no construction, excavation, root pruning or other activity shall occur within the tree protection zone unless directed by an arborist present on site and approved by the City.

A note should be placed on the construction documents that informs the site contractors about the necessity of preventing damage to these trees, including bark and root zone, and that no materials should be stored or compaction occur within the root zones of the adjacent trees [LOC 55.08.030]. The contractor shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction. As a condition of approval, as required by LOC 55.08.02 and 55.08.030, a tree protection plan shall be submitted with the building permit plans for staff review and approval. Tree protection measures must be installed prior to issuance of any grading or building permits. Tree protection fencing consists of 6-foot high chain link fencing supported by 6-foot high metal posts, placed a maximum of ten feet apart.

4. **Any applicable condition of approval imposed pursuant to an approved ODPS or prior development permit affecting the subject property.**

There are no outstanding conditions of approval that affect the subject property.

VII. CONCLUSION

Based upon the materials submitted by the applicant and findings presented in this report, staff concludes that LU 13-0041 complies with all applicable criteria and standards or can be made to comply through the imposition of conditions.

VIII. ACTION TAKEN

Approval of LU 13-0041, subject to the following conditions:

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

1. Apply for and obtain a demolition permit for the existing structure(s) on site. The applicant shall note that this may require an asbestos report from a licensed agency to the satisfaction of the Building Official. The demolition permit shall be accompanied by proper applications for tree protection and erosion control permits, if needed.

2. Obtain approval of the final inspection for the demolition permit required in Condition A(1), above.
3. 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 October 9, 2014.** The final plat must be dimensioned as depicted in Exhibit E3, and reference this land use application – City of Lake Oswego Planning and Building Services, Case File LU 13-0041. 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.
4. All plats and public easements submitted to the City of Lake Oswego shall have accompanying vector based electronic drawings or maps consistent with the prevailing technologies in the Civil Engineering and/or Surveying fields (e.g., current or near current versions of AutoCAD). The electronic drawings shall conform to the mapping requirements for plats adopted in ORS Chapter 92.
5. The final plat shall include the following revisions:
 - a. The footprint of the existing house shall be removed.
6. Sign and record a waiver of remonstrance for a Local Improvement District (LID) for participation in any future construction of sidewalks along 3rd Street.
7. Submit engineered construction drawings for the public street frontage improvements for review and approval by the City Engineer. Drawings shall conform to the City's designs standards and the drafting specifications found in the City's booklet "CAD Standards and Design Requirements," May 2006 edition. [Note: receiving construction plan approval is not a pre-requisite for recording the final plat.] The plans shall include the following:
 - a. 10-foot of new pavement from the center of the right-of-way, with proper pavement tapers on both sides of the site, to the satisfaction of the City Engineer. A minimum 3-foot wide gravel shoulder will be required along the edge of the new pavement.
8. Construct the improvements required by Condition A(7), 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 of public improvements 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.
9. Pay the final plat review fee of \$370.
10. Submit a preliminary title report or lot book report showing the status of title and any liens and encumbrances.

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 and public easements 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 creation and recordation of the easements.

C. Prior to the Issuance of any Grading or Building Permits to Construct Any Structures on Parcels 1-2, the Applicant/Owner Shall:

1. Complete all public improvements as required by Condition A(7) above, submit certified "as-built" drawings, and receive a certificate of completion and acceptance by the City.
2. Submit a storm water disposal plan for each parcel. Subsurface disposal systems (i.e., drywells or storm chamber systems) shall be designed by a registered professional engineer. All infiltration systems shall meet minimum setbacks of five feet from property lines and 10 feet from building foundations. Driveway runoff shall not be directed to a subsurface infiltration disposal system without Department of Environmental Quality (DEQ) approval. Any emergency overflow shall be conveyed to an approved point of disposal.

Installation of a rain garden on the individual parcels is an acceptable alternative method for storm water disposal. Rain gardens shall meet minimum setbacks of five feet from property lines and 10 feet from building foundations. Rain gardens shall have a positively graded overflow or conveyance pipe leading to an approved point of disposal.

3. Apply for an erosion control permit and install the erosion control fencing as required by LOC 45. These measures shall remain in place throughout construction period.
4. For each parcel, apply for and obtain the appropriate tree removal permit, if necessary, and submit mitigation plans.

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.
 - b. 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)

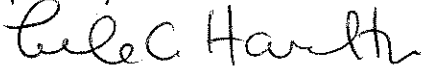
shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction.

- 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.

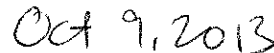
Note:

1. The applicant is advised to take part in a post-Land Use Approval meeting. City staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting, please contact the staff coordinator at (503) 635-0290.
2. The land use approval for this project does not imply approval of a particular design, product, material, size, method of work, or layout of public infrastructure except where a condition of approval has been devised to control a particular design element or material.
3. Development plans review, permit approval, and inspections by the City of Lake Oswego Planning and Building Services Department are limited to compliance with the Lake Oswego Community Development Code, and related code provisions. The applicants are 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. Staff may advise the applicants of issues regarding state and federal laws that staff member believes would be helpful to the applicants, but any such advice or comment is not a determination or interpretation of federal or state law or regulation.

Prepared by:



Leslie Hamilton, AICP
Senior Planner

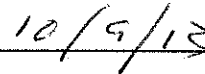


Date

Reviewed by:



Evan Boone
Deputy City Attorney

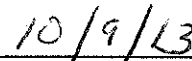


Date

Approved by:



Debra Andreades, AICP
Acting Assistant Planning Director



Date

EXHIBITS

A-D [No current exhibits; reserved for hearing use]

E. GRAPHICS/PLANS

- E1 Tax Map
- E2 Vicinity Map
- E3 Preliminary Plat

F. WRITTEN MATERIALS

- F1 Applicant's Narrative, dated August 14, 2013
- F2 Neighborhood Meeting Documentation
- F3 Fire Marshal Comments
- F4 Drainage Report, dated August 12, 2013

G. LETTERS

Neither for nor Against (G1-99):

None

Support (G100-199):

None

Opposition (G200+):

None

Date of Application Submittal: August 16, 2013

Date Application Determined to be Complete: September 12, 2013

State Mandated 120-Day Rule: January 10, 2014