

City of Canby

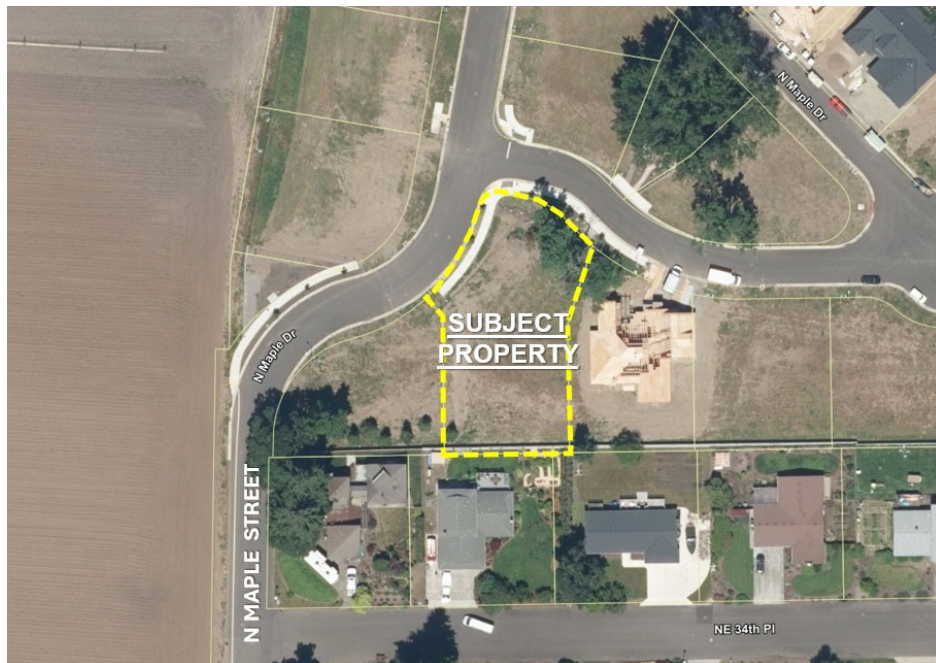
Staff Report File #: PAR 22-02 Seven Acres Estates Remainder Parcel

STAFF REPORT DATE: April 8, 2025
STAFF: Ryan Potter, AICP, Planning Manager
APPROVED BY: Don Hardy, Planning Director

Applicant Request

The project applicant, Canby Development LLC, represented by Danny Sprague, requests Planning Director approval to partition an existing parcel of land into one buildable residential lot and one unbuildable tract featuring delineated wetland. The subject property, located on N Maple Drive in the Seven Acres Estates subdivision, is a vacant remainder parcel leftover when the subdivision was planned and built around it.

Figure 1: Vicinity Map



Director Decision

Based on the submitted application and the facts, findings, and conclusions of this Staff report, the Planning Director **Approves** application PAR 22-02 pursuant to the conditions of approval identified in Section V below.

Property/Owner Information

Address: No Situs
Tax Lots: 31E21DA00101
Property Size: 0.38 acre
Comprehensive Plan: LDR – Low Density Residential
Current Zoning: R-1 – Low Density Residential
Owner: Lori A. Sprague Trust
Applicant: Canby Development LLC
Application Types: Type II Partition (PAR)
City File Number: PAR 22-02

Attachments

- A. Land Use Application
- B. Applicant Narrative
- C. Proposed Partition Plat
- D. Department of State Lands Concurrence Letter
- E. Transportation Analysis Letter

Existing Conditions

The subject property is a 0.38-acre parcel on the north side of Canby located on N Maple Drive. It is surrounded by the Seven Acres Estates subdivision, which includes lots that have been developed with large single-family homes and lots that are still vacant. The lot to the immediate west of the subject property (3502 N Maple Drive) is still vacant; the lot to the east (3508 N Maple Drive) is built with a house. The property and its surroundings are zoned R-1 for Low Density Residential uses.

The subject property is located on a corner where the loop of N Maple Drive connects to itself in a “T” intersection. The property backs up against the existing neighborhood to the south (Country Club Estates) and is noticeably deeper in dimension than the lots around it. While most of the property is vacant, a small portion in the northeast corner is a small, isolated cluster of trees and vegetation that is a state-delineated wetland. The property has frontage improvements, including a sidewalk, on two segments of N Maple Drive. On the western frontage, the sidewalk is separated by a landscaping strip; on the eastern frontage, the sidewalk is curb-adjacent.

Background

The subject property and its surrounding vicinity were vacant prior to 2017. In that year, the project applicant proposed to subdivide the area into a 22-unit subdivision know as Seven Acres Estates. The subdivision was approved by the Planning Commission in October 2017. The land use approval was appealed to City Council, who denied the appeal and reapproved the project in January 2018. The Council’s decision was appealed by the same appellants to the Oregon Land Use Board of Appeals (LUBA), who affirmed the City’s decision in February 2019. Construction of the subdivision began in 2020.

The aforementioned subdivision did not propose a house on the subject property as it was at one time thought needed for stormwater retention and wetland preservation. Accordingly, the subdivision plat excluded the subject property. Despite being excluded from the subdivision plat, frontage improvements were constructed on the subject property to create continuity of curbs and sidewalks in the neighborhood.

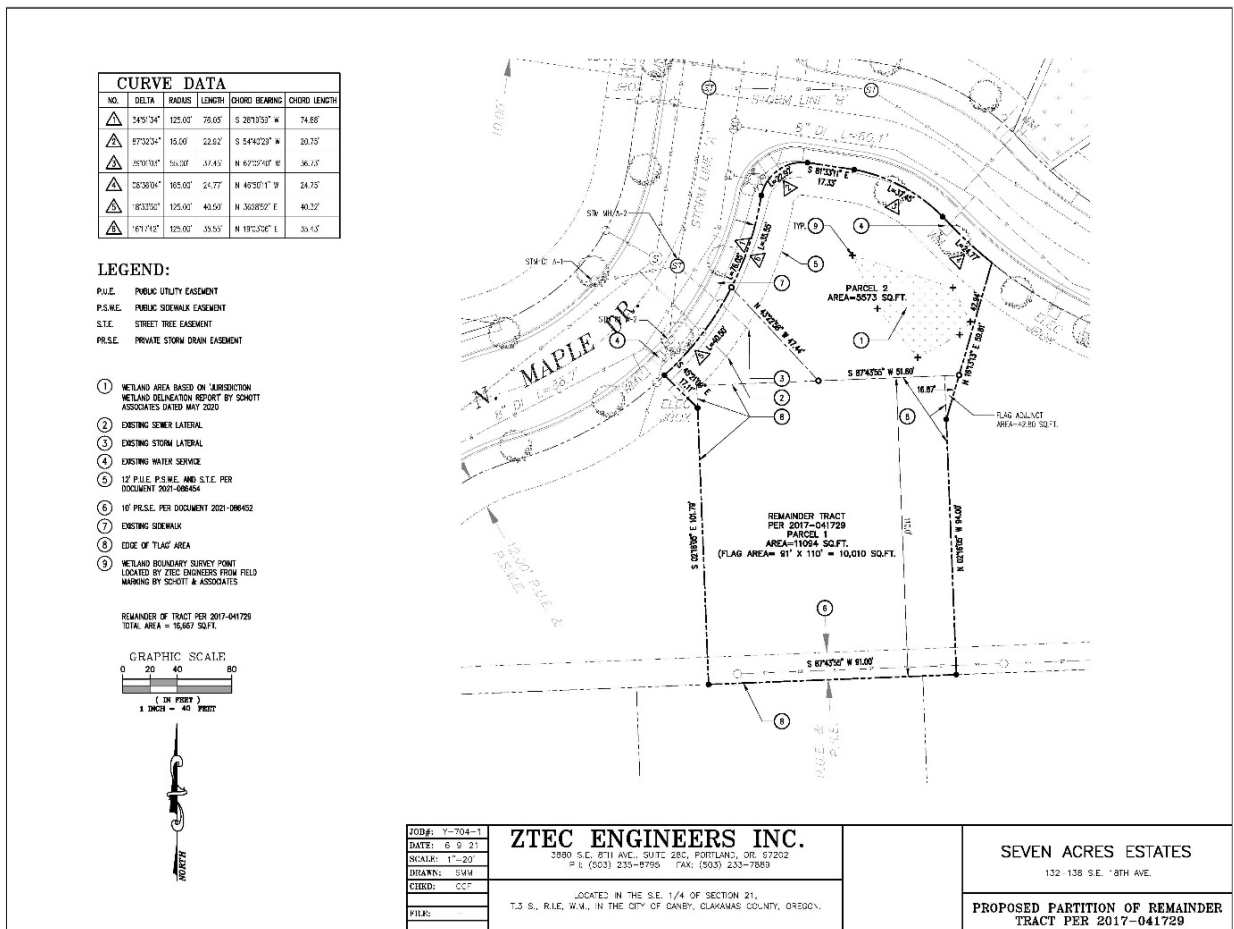
During engineering of the subdivision, it was determined that the site wasn't needed for stormwater retention. Furthermore, a 2020 determination by the Oregon Department of State Lands (DSL; see Attachment D to this Staff Report) found that only a small portion of the subject property needs to be preserved as a wetland.

Project Description

The project applicant requests approval to partition the 0.38-acre subject property into a 10,000-square foot buildable lot and the remaining acreage into an undevelopable tract that would be owned and maintained by the existing Homeowner's Association (HOA) in Seven Acres Estates. A partition in this manner would allow the project applicant to utilize the subject property for development of residential uses while setting aside the wetland area for preservation.

Because the subject property was excluded from the unit count and subdivision plat for the Seven Acres subdivision, the applicant and City Staff both assert that the property retains the capacity to be developed consistently with the underlying zoning separately from the surrounding subdivision. Therefore, the proposed partition is its own land use action and no changes to the Seven Acres Estates land use approvals are proposed or required.

Figure 2: Proposed Partition



Analysis and Findings

I. Applicable Criteria

Applicable criteria used in evaluating this application are listed in the following sections of the City of Canby's Land Development and Planning Ordinance:

- 16.08 General Provisions
- 16.16 R-1 Low Density Residential zone
- 16.60 Partitions

Additional guidance for this type of application is also found in the following sections:

- 16.88 General Standards and Procedures
- 16.89 Application and Review Procedures

II. Facts and Findings

The following analysis evaluates the proposed project's conformance with applicable approval criteria and other municipal code sections, as listed above in Section I. Sections of the Canby Municipal Code (CMC) are analyzed in the order that they appear in the code.

Section 16.08.070: *Illegally Created Lots*

This section of the CMC establishes that in no case shall a lot created in violation of State statute or City ordinance be considered as a lot of record for development purposes, until such violation has been legally remedied.

Finding: The subject property is a remnant tract of a legal lot subdivided in 2017 as Seven Acres Estates (SUB 17-05). While the land use approvals for this subdivision did not designate it as a buildable lot and excluded it from its related subdivision plat, the proposed partition is intended to remedy this fact and establish a portion of the subject property as a buildable residential lot. The applicant is required to record the partition at Clackamas County consistent with the findings of this Staff Report.

For this reason, Planning Staff finds this request is consistent with applicable provisions of the CMC.

Section 16.08.150: *Traffic Impact Study*

This section of the CMC outlines requirements for studying the transportation impacts of a proposed project. The section outlines how a traffic study is scoped and what the study must include.

Finding: The City's transportation consultant, DKS Associates, performed a preliminary review of the potential transportation impacts of the proposed partition. The resulting transportation analysis letter (see Attachment E to this Staff Report) found that the proposed single residential lot would generate approximately one vehicle trip in both the AM and PM peak hours, and nine daily trips overall. The letter further concluded, that based on this trip generation and the anticipated distribution of trips, no off-site traffic impact analysis was warranted and peak hour operations at affected intersections would not be degraded.

For the above reasons, Planning Staff finds this request is consistent with applicable provisions of the CMC.

Section 16.08.160: Safety and Functionality Standards

The City will not issue any development permits unless the proposed development complies with the City's basic transportation safety and functionality standards, the purpose of which is to ensure that development does not occur in areas where the surrounding public facilities are inadequate. At the time of development permit application submittal, the applicant shall demonstrate that the property has or will have the following:

- A. Adequate street drainage;
- B. Provides safe access and clear vision at intersections;
- C. Public utilities are available and adequate to serve the project;
- D. Access onto a public street with the minimum paved widths as stated in Subsection E below.
- E. Adequate frontage improvements as follows:
 - a. For local streets and neighborhood connectors, a minimum paved width of 16 feet along the site's frontage.
 - b. For collector and arterial streets, a minimum paved width of 20 feet along the site's frontage.
 - c. For all streets, a minimum horizontal right-of-way clearance of 20 feet along the site's frontage.
- F. Compliance with mobility standards identified in the Transportation System Plan (TSP). If a mobility deficiency already exists, the development shall not create further deficiencies. (Ord 1340, 2011)

Finding: The partition application has been routed to City of Canby Public Works, who confirmed that public utilities are available to serve the subject property. Furthermore, street improvements (including curbs and sidewalks) were installed on the property's frontage as part of the surrounding Seven Acres Estates subdivision. Only minor improvements would be needed to existing frontage improvements to accommodate a future home on the buildable lot, which would require a new curb cut for a driveway.

For the above reasons, Planning Staff finds this request, as conditioned, is consistent with applicable provisions of the CMC to the extent feasible.

Chapter 16.16: R-1 Low Density Residential Zone

Lists of allowable uses and development standards for those uses are generally found in the respective chapters for each zone. The project site is zoned R-1, Low Density Residential.

Finding: The proposed uses for the subject property (a single-family dwelling and wetland/open space) are allowed uses in the R-1 Zone. No conditional use permit is needed for the subject property once partitioned.

The proposed buildable lot is 11,094 square feet, which is larger than the allowed range of 7,000-10,000 square feet. However, when the "flagpole" portion of the proposed lot (which will presumably be used for a driveway and not part of the future home's building footprint) is subtracted, the buildable lot is 10,010 square feet in area. This is generally consistent with the intent of the code. Staff note that, once the wetland area is

segregated onto its own tract, there is not room on the subject property for two buildable lots. Therefore, one marginally oversized lot is deemed a reasonable use of the land.

Although lots in the R-1 Zone are required to have a minimum frontage of 60 feet and the buildable lot would have a frontage of 40 feet, the buildable lot is oriented like a flag lot. Flag lots are regularly included in residential subdivisions and were included in the surrounding Seven Acres Estates subdivision. The 40-foot-wide “flagpole” proposed for the buildable lot is sufficiently wide to provide access including a standard residential driveway.

Additional development standards identified in Chapter 16.16 would be applied to future development of the proposed buildable lot, including yard setbacks and building heights. The proposed buildable lot is sufficiently large to easily accommodate consistency with these development standards.

Finding: For the above reasons, Planning Staff finds this request is consistent with applicable provisions of the CMC to the extent feasible.

Chapter 16.60: Partitions

This chapter of the CMC governs partitions of land. The proposed partition is consistent with the definition of “partition” found in Section 16.04.470 of the Canby Land Development and Planning Ordinance, as it would divide the subject property into “two or three parcels.” Section 16.60.030, *Partitions*, of the CMC states that an application for a partition shall be evaluated upon the following standards and criteria (see A–E).

A. Conformance with the text and applicable maps of the comprehensive plan.

Finding: The adopted City of Canby Comprehensive Plan designates the subject property and adjacent parcels for Low Density Residential (LDR) uses. The proposed partition does not involve rezoning or re-designation of the property.

Furthermore, both the resulting buildable lot and the unbuildable tract are proposed for land uses that are compatible with the LDR designation (low density residential use and vacant/open space, respectively). Therefore, the proposed partition conforms with the Comprehensive Plan’s policies related to grouping compatible uses (Land Use Policy #1) and being consistent with the adopted land use map (Land Use Policy #5).

For the above reasons, Planning Staff finds the applicant’s request is consistent with this criterion.

B. Conformance with all other applicable requirements of the Land Development and Planning Ordinance.

Finding: Conformance with other applicable requirements of the CMC, including requirements found in Sections 16.08, 16.10, 16.16, and 16.60, and 16.89, is analyzed above and below within this Staff Report.

Besides the minor remnant wetland area, the property is otherwise set up like a standard residential lot, with dimensions, street frontage, and access to utilities typical of a buildable residential lot that is intended for single-family home. These attributes contribute to the property being directly compatible with the development standards and related requirements identified in the CMC.

Although lots in the R-1 Zone are required to have a minimum frontage of 60 feet and the buildable lot would have a frontage of 40 feet, the buildable lot is oriented like a flag lot. Flag lots are regularly included in residential subdivisions and were included in the surrounding Seven Acres Estates subdivision. The 40-foot-wide “flagpole” proposed for the buildable lot is sufficiently wide to provide access including a standard residential driveway.

As indicated in the respective sections of this report, Planning Staff finds the applicant’s request, as conditioned, is consistent with this criterion.

C. The overall design and arrangement of parcels shall be functional and shall adequately provide building sites, utility easements, and access facilities deemed necessary for the development of the subject property without unduly hindering the use or development of adjacent properties.

Finding: As discussed above, the proposed partition would result in a buildable parcel that would largely function as another lot in the subdivision that surrounds it. Like the similarly sized residential lots on either side of it (3502 and 3508 N Maple Drive), the buildable parcel would face N Maple Drive as it loops through Seven Acres Estates. Like those lots, its driveway would load onto N Maple Drive and its southern boundary backs up against residential lots in the Country Club Estates neighborhood. While the subject property is deeper than the adjacent lots, the proposed wetland tract would take up part of the area along the street, pushing the buildable envelope for a future house to be in line with the buildable envelopes of the adjacent lots. For all these reasons, the proposed partition creates a functional building site that is consistent with the surrounding neighborhood.

Access to public utilities and the public right-of-way is available to serve the proposed buildable lot via N Maple Drive. The proposed partition plan shows a 12-foot public utility easement (PUE) along the street identical to (and a continuation of) the 12-foot PUE that extends along the frontage of all lots in Seven Acres Estates.¹ Similarly, a 10-foot-wide stormwater easement was recorded in 2021 (Document No. 2021-086452) that applies to both the subject property and the adjacent lots. The buildable lot would be able to connect to public utilities in the aforementioned PUE without impacting the use or development of the adjacent lots.

For the above reasons, Planning Staff finds the applicant’s request is consistent with this criterion.

D. No partitioning shall be allowed where the sole means of access is by private road, unless it is found that adequate assurance has been provided for year-round maintenance sufficient to allow for unhindered use by emergency vehicles, and unless it is found that the construction of a street to City standards is not necessary to insure safe and efficient access to the parcels.

Finding: The subject property is accessible by N Maple Drive, a public street. Both the proposed buildable lot and the proposed remainder wetland tract would have

¹ Even though the subject property was excluded from the subdivision plat for Seven Acres Estates (Plat Book 4651, Book 153, Page 002), easements on the plat map were shown spanning across the subject property as if it were part of the subdivision. This resulted in installation of utilities consistently along N Maple Drive, treating the subject property as if it could be a future buildable lot.

frontage directly on that roadway. Therefore, no joint access agreement would be necessary, and no additional street construction is required.

For the above reasons, Planning Staff finds the applicant's request, as conditioned, is consistent with this criterion.

E. It must be demonstrated that all required public facilities and services are available or will become available through the development, to adequately meet the needs of the proposed land division.

Finding: Public facilities and services, including electrical, water, and sewer service, were extended into the area to serve the surrounding Seven Acres Estates. The subject property benefits from this prior work and requires no further extension of public facilities.

The project applicant shall work with Canby Utility and the Canby Public Works Department in order to provide the appropriate connections to all required utilities. A condition of approval memorializing this requirement is identified in Section V to this Staff Report.

For the above reasons, Planning Staff finds the applicant's request, as conditioned, is consistent with this criterion.

III. Public and Agency Comments

Notice of this application and the opportunity to provide comment was forwarded to property owners and residents within a 100-foot radius, consistent with state requirements for "limited land use" decisions. No comments were received by Planning Staff.

IV. Conclusion

Staff have reviewed the applicant's narrative and submitted application materials and finds that the submitted application conforms to the applicable review criteria and standards, subject to the conditions of approval noted in Section V of this Staff Report. Therefore, the Planning Director **approves** partition application PAR 22-02 as conditioned.

V. Conditions of Approval

Public and Utility Improvements:

1. The applicant shall work with Canby Utility and the Canby Public Works Department to confirm the appropriate connections to all required utilities, where necessary.
2. The applicant shall work with Canby Public Works to determine how a future driveway curb cut serving the buildable lot shall be constructed, including where and how existing sidewalks and curbs must be modified.
3. The applicant shall coordinate with Canby Fire to ensure that future development of the buildable lot complies with adopted fire codes.

Partition Plat:

4. The applicant shall apply for final plat approval at the City and pay any applicable City fees to gain approval of the final partition plat. Prior to the recordation of the final plat at Clackamas County, it must be approved by the City and all other

applicable agencies. The City will distribute the final plat to applicable agencies for comment prior to signing off on the final plat if deemed necessary.

5. The final plat shall conform to the necessary information requirements of CMC 16.68.030, 16.68.040(B), and 16.68.050. The City Engineer or County Surveyor shall verify that these standards are met prior to the recordation of the plat.
6. The applicant shall work with Canby Utility and Canby Public Works Department to identify final utility easement placement, if different than for currently recorded easements, prior to final map recordation.
7. Clackamas County Surveying reviews pending partition plat documents for Oregon Statutes and County requirements. A final plat prepared in substantial conformance with the approved tentative plat must be submitted to the City for approval within one year of approval of the tentative plat or formally request an extension of up to 6-months with a finding of good cause.
8. The project applicant shall record the final plat at Clackamas County within six months of the date of the signature of the Planning Director.
9. The applicant shall assure that the City is provided with a copy of the final plat in a timely manner after it is recorded at Clackamas County, including any supplemental documents if applicable, recorded in conjunction with the final plat.
10. The County Surveyor shall verify that the survey accuracy and monumentation requirements set forth in Oregon Revised Statutes and CMC 16.64.070(M) are met prior to the recordation of the final plat.

Delineated Wetland:

11. The applicant shall convey to the Seven Acres Estates homeowner's association (HOA) any and all documents pertaining to the delineated wetland and its preservation. This communication shall establish that the responsibility to maintain the wetland's integrity is solely the responsibility of the HOA.

Building Permits:

12. The homebuilder shall apply for City permits (including submission of Site Plan, Erosion Control, and Driveway applications), and Clackamas County Building permits for any future home and satisfy the residential design standards of CMC 16.21. Canby Planning shall determine compliance with this condition.
13. Clackamas County Building Codes division will provide structural, electrical, plumbing, and mechanical plan review and inspection services for all new home construction. The applicable County building permits are required prior to the construction of a new single-family residence.
14. Per the Canby Public Works Design Standards, minimum residential driveway widths at the inside edge of the sidewalk shall be 12-feet and the maximum width shall be 24 feet, with an allowed exception of 28 feet for a home with 3 or more garages. Canby Planning shall determine compliance with this condition.