

CITY OF GEARHART PLANNING COMMISSION

City Staff Report

From: Carole Connell, AICP - City Planner

Re: Request for a Land Partition approval

June 2, 2022

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City File: #22-04P

Application Purpose: An application for approval of a Minor Land Partition to divide one parcel into three, on a parcel located on a private street easement named Cutler Lane in a Residential R-2 zone.

Public Hearing Date: June 9, 2022

Applicant: Nate Johnson  
Heritage Home Building  
P.O. Box 727  
Warrenton, OR 97146

Property Owner: Same as above

Wetland Determination: None identified on City GIS Wetland 2011 Wetland map

Location: Tax Lot 904 Map 6 10 3CD  
Lot size: 22,648 square feet (.52) acres)

Procedures: Application received: 05-03-22

Completeness: 05-19-22

Notice Mailed: 05-19-22

Notice Published: 05-19-22

120-day deadline: 09-16-22

City Staff Comments:

- Gearhart Fire Chief, no official comments
- Gearhart Building Inspector, no concerns - email 5-31-22
- Gearhart Police Chief, no concerns - email 5-20-22
- Gearhart Public Works, Water is available from either Hwy 101 or Park Lane. Owner responsible for extra costs for installation - email 5-31-22
- Gearhart City Administrator, no concerns at this time - email 6-1-22



Gearhart Zoning Code & Subdivision Ordinance Review Criteria:

- GZO Section 3.2 Medium Density Residential R-2 Zone
- GZO Section 3.14 Tsunami Hazard Overlay Zone
- GZO Article 4 Transportation Improvements & Access Management
- GZO Article 13 Administrative Application, Notice & Hearing Procedure
- Gearhart Subdivision Ordinance

I. Background

- A. Site information: The existing parcel at the end of Cutler Lane is vacant. The partition segregates the parcel into three homesites. Street access from Hwy 101 to the site is by a 25' wide access and utility easement across two parcels owned by EPI Properties LLC including a business on the highway and a dwelling behind the business. The easement was recorded by a partition in 2005 and extends to the railroad bed.

The X-wide gravel road from the highway crosses the parking lot of EPI LLC, curves sharply north across the rear yard, an entry and a driveway of a residence, then forms a S-curve sharply east along the property line to the three proposed parcels. The easement ends at a tall dune up to the railroad bed, rising from 24 feet to 40 feet on Parcel 3.

There are an estimated 25 large mature evergreen trees mostly on Parcel 3. See the applicant's Partition Plan which identifies the trees with a circle for each. Twenty of the existing trees will be removed including four of the five on Parcel 2 and 16 of the 19 trees on Parcel 3. The dune will be graded to match the graded dune at the end of Park Lane.

There is no designated W2 wetland identified on the site due to the railroad bed. However, the steep grade on over half of Parcel 3 may create significant puddling from rain, similar to existing conditions on Park Lane, an estimated 83' to the north.

The applicant must obtain Clatsop County Health approval to install three new septic systems. On 4-12-22 the department indicated a septic system should be installed at least 10-feet from a street.

Water service: There are two proposed options, one from the existing line in the existing road access and utility easement, and another from the tax lot to the north located at 1321 Park Lane by a private legal easement.

Fire access and safety: The nearest hydrant is from 550 -660 feet from the site. Due to the distance the homes must be sprinklered. There is concern about fire access to the rear of a dwelling on Parcel 3.

- B. Agency Coordination: The proposal was referred to city departments and a few concerns were raised. If approved, a final partition plan will be prepared for Planning Commission approval, followed by county recording.

## II. Gearhart Zoning Code (GZO) Provisions

- A. GZO Article 13 Administrative Provisions: The application for a Land Partition is a quasi-judicial decision of the Planning Commission. The applicant has submitted the required forms and materials. The public hearing was advertised at least 20-days before the hearing and notices were mailed to properties within 200 feet of the subject parcel. This report was made available no less than seven days before the hearing. The public hearing will be conducted in accordance with Section 13.050. A party to the decision by the Planning Commission may appeal the decision to the City Council.

- B. GZO Section 3.14 Tsunami Hazard Overlay Zone (THO)

The purpose of this section of the code is to increase community resilience from a Cascadia Subduction Zone tsunami by establishing standards, requirements, incentives, and other measures applied in the review and authorization of land use and development activities impacted by the XXL magnitude source tsunami event, which covers all of Gearhart.

FINDINGS: The proposed new parcels result in three new single-family dwellings on .52 acre, far less than the maximum of 10 dwellings per acre restriction of the overlay zone. The proposal for single-family dwellings does not conflict with the THO overlay zone.

- C. Oregon Fire Code (OFC): The land division is required to meet the Oregon Fire Code. The 25' wide road should be signed for "No Parking" across the three parcels including the hammerhead turnaround. Revise the final plat to denote the turnaround depth as 70' N/S. Identify drainage issues and solutions at the base of the modified dune.

## III. FINDINGS FOR APPLICABLE ZONE AND SUBDIVISION STANDARDS

- A. GZO Section 3.2 Low Density Residential R-2 Zone

Plan & Zone designations: The site is zoned Medium Density Residential R2. The minimum lot size is 7,500 square feet (SF). The R2 Zone setbacks are 15 feet from the front and rear lines and 5 feet/9 feet from the side lines. Maximum building height is 30 feet. Maximum lot coverage by buildings is 35%.



FINDINGS: Parcel 1 is 7,648 SF; Parcel 2 is 7,500 SF and Parcel 3 is 7,500. The partition configures each lot with a building envelope so that each parcel complies with the R2 zone lot size, setback requirements and maximum coverage.

B. GZO Section 3.1380 Development Standards in the Freshwater Wetlands FW Zone:

1. Development, construction, or alteration within the FW Zone or within 25 feet of the FW zone boundary requires approval of a development permit from the City. The application for development permit shall include a site plan drawn to a measurable scale and a narrative describing the proposed site work. A wetland determination or delineation by a qualified professional wetland scientist shall be required by the City if the wetland boundary cannot be determined.

FINDINGS: The Local Wetland Inventory (LWI) on the city GIS illustrates no wetlands (W2) on the site

C. GZO Article 4 Transportation Improvements and Access Requirements

1. Section 4.040 General Requirements.

- a. Purpose. The standards of this chapter implement the transportation policies of the City of Gearhart Transportation System Plan and Subdivision Ordinance.
- b. Applicability. The following types of development are required to construct transportation improvements in accordance with the standards and procedures of this chapter.
  - (1) New single-family dwelling or duplex, if the development fronts a street segment that is planned for a sidewalk or trail in the Transportation System Plan.
  - (2) New multi-family dwelling.
  - (3) New commercial development.
  - (4) Major expansion of a commercial development defined by an increase in the gross floor area of the use by at least 25 percent.
  - (5) All developments in the Residential Commercial Planned Development (RCPD) zone, and subdivisions or partitions are required to construct improvements in accordance with the Gearhart Subdivision Ordinance.
- c. Street, Shared-use Path, and Evacuation Route Design Standards. All transportation improvements, whether required as a condition of development or provided voluntarily, shall conform to the standards adopted within the City of Gearhart Transportation System Plan.
- d. Public Improvement Requirement. No building permit may be issued until all required street improvements are in place and approved by the City Manager or designee, or otherwise bonded, in conformance with the provisions of this Code. Improvements required as a condition of development approval, when not voluntarily provided by the applicant, shall be roughly proportional to the impact of the development on public facilities. Findings in the development approval

shall indicate how the required improvements directly relate to and are roughly proportional with the impact of development.

FINDINGS: The City finds this section is not applicable because the proposal is to partition the land for three new single-family dwellings on a parcel that is accessed by a 25-foot-wide private access and utility easement, not a public right-of-way. In accordance with the city TSP, Cutler Lane is not a city street segment planned for a sidewalk or trail. A trail is planned on the RR Ave. ROW to the east. On the east side of the subject parcel there is a 30-wide privately owned parcel that adjoins the RR Ave. ROW.

2. New Streets. All new streets shall conform to the standards and requirements of the Gearhart Subdivision Ordinance.

FINDINGS: The City finds a new street is not proposed. The City will not be able to maintain the private street.

3. Improvements to Existing Streets.

a. Applicability. Except as provided by subsection 4, below, existing substandard streets within or abutting a proposed development shall be improved in accordance with the standards of this chapter as a condition of development approval. The City Manager or designee may waive or modify this requirement where the applicant demonstrates that the condition of existing streets to serve the development meet city standards and are in satisfactory condition to handle projected traffic loads.

- (1) Single-Family Dwellings and Duplexes. All single-family dwellings and duplexes that front an existing street segment that is planned for a sidewalk improvement may include but are not limited to sidewalks, trails, curbs, gutters, and planter strips.
- (2) Multi-Family Dwellings and Commercial Development. All multi-family dwelling and commercial development shall construct a minimum of half-street improvements to all existing streets adjacent to, within, or necessary to serve the development in accordance with the standards of the Gearhart Transportation System Plan. Where a development has frontage on both sides of an existing street, full street improvements shall be required.

FINDINGS: Cutler Lane is a private graveled street with no maintenance agreement between the property owners. The City finds the above standard does not require the applicant to make an improvement on an existing private access easement and is not planned for a city street improvement or a sidewalk.

4. Waivers and Deferrals.

The City Manager or designee may waive or allow deferral of standard street improvements, including sidewalk, roadway, bicycle lane, undergrounding of utilities, and landscaping, as applicable, where one or more of the following conditions in (A) through (D) is met. Deferrals of sidewalk improvements are not permitted when there is

an existing curb along the frontage of the site, or the site is abutting an existing curb or sidewalk. Where the City Manager or designee agrees to defer a street improvement, it shall do so only where the property owner agrees not to remonstrate against the formation of a local improvement district in the future.

- a. The standard improvements conflict with an adopted capital improvement plan.
- b. The standard improvements would create a safety hazard.
- c. The improvement is not likely to be extended during the planning horizon of the adopted TSP due to topography or committed development on adjacent property, and the improvement under consideration does not by itself significantly improve transportation operations or safety.
- d. The improvement can be accomplished as a part of a future, larger project on the subject site.

FINDINGS: The City finds public street improvements to the existing Cutler Lane to meet city street standards is not required and must be waived.

#### 5. Fee-in-Lieu Option.

In lieu of the transportation improvement requirements identified in Section 4.040, the City Manager or designee may elect to accept from the applicant monies to be placed in a fund dedicated to the future public construction of the improvements.

- The amount of monies deposited with the city shall be at least 100 percent of the estimated cost of the required street improvements and may include more than 100 percent of the cost as required for inflation. Cost estimates shall be based on a preliminary design of the reconstructed street provided by the applicant's engineer and shall be approved by the city engineer or designee.

b. If the City Manager or designee elects to accept these monies in lieu of the street improvements, the applicant shall also record against all lots or parcels a "construction deferral agreement and waiver of rights to remonstrance for street and storm drainage improvements" approved by the city attorney. The agreement should be worded such that the subject properties are responsible for paying the full cost of required street improvements along their unimproved street frontages. The agreement shall also state that the city has the right to collect money owed for the actual construction costs, if actual costs exceed the amount deposited, and that the city will reimburse the property owner(s) if the actual costs are less than anticipated.

FINDINGS: The City finds a fee-in-lieu of or a Waiver of Remonstrance requiring a half street improvement for the remaining 143 feet of Cutler Lane, private road access easement, is not practical or reasonable.

#### Gearhart Subdivision Ordinance November 2017

- D. Subdivision Ordinance Sections 23 – 36 Land Partitioning: Describes technical partition plat requirements, review procedures and final plat filing requirements.

FINDINGS: The City finds that the relevant data has been provided on the tentative plat and final platting requirements are a condition of approval for this request.

E. Subdivision Ordinance Sections 37-46 General Regulation and Design Standards

A land division either by a subdivision, creation of a street, or a partitioning, shall conform to any development plans, shall take into consideration any preliminary plans made in anticipation thereof, and shall conform to the design standards established by this ordinance.

FINDINGS: The City finds the Gearhart TSP does not identify an improvement plan for Cutler Lane. The TSP identifies a ped bike shared use path on the railroad bed on the adjoining Tax Lot s 3705 and 3712 at about the 40' elevation.

Section 38 - Streets: A land partition shall conform to the relevant city street design standards.

- 1) Existing Streets: Whenever existing streets adjacent to or within a tract are of inadequate width, additional right-of-way shall be provided at the time of a land division.

FINDINGS: The City finds the partition is not subject to public right-of-way road improvements and will not be maintained by the City.

- 2) Shared-use paths

The Planning Commission, in approving a land use application with conditions shall require a developer to provide non-motorized access where a public shared-use path is needed to connect to the RR Ave path ROW for bicyclists, pedestrians and emergency evacuation. The path shall be not less than 10 feet wide and shall contain a minimum eight-foot-wide paved surface or other all-weather surface approved by the Planning Commission. Shared-use paths shall be contained within a public right-of-way or public access easement, as required by the City.

FINDINGS: The City finds the TSP Figure 7 Planned TSP Investments does not identify the planned RR Ave. non-motorized shared use path improvement on the subject parcel.

- 3) Pedestrian Access and Circulation

In addition to the access and connectivity standards required by subsection (9) Cul-de-sac and (10) Shared-use Paths, any individual site in the subdivision or partition shall



meet the pedestrian access and circulation standards of Section 4.080 Transportation Improvements of the Gearhart Zoning Ordinance.

FINDINGS: The City finds this section of the Subdivision Ordinance also implements the pedestrian access and connectivity policies of the TSP at the time of a proposed partition to provide for safe, reasonably direct bike/ped/evacuation access to the planned RR Ave./Tressel Dr. public path.

Staff recommends the proposed Parcel 3 include a 5'-wide trail access easement for Cutler Lane property owners to access the future recreation and evacuation path.

G. Section 39 - Recreation and Utility Easements:

FINDINGS: The City finds the planned TSP RR Av. Tressel Dr pedestrian trail is planned on the adjoining parcel to the east. When improved, access to that trail would provide a safe recreational benefit to the Cutler Lane residents who could use the trail as an evacuation route and as an alternative to the highway that will eventually connect to other cross streets.

- F. Section 40 - Building Sites: Each lot shall be appropriate for the location, environmental features and for the type of development proposed. Each lot shall abut a street for a width of at least 25 feet. Through lots shall be avoided. Lot lines shall run at right angles to the street.

Land which the Commission finds unsuitable for partitioning for reasons including flooding, improper drainage, wetlands, or other concerns shall be set aside for a use which does not pose a danger or a negative impact.

FINDINGS: The City finds the proposed parcels are appropriately sized and shaped to satisfy the basic street access and the R-2 minimum lot size, shape and setback standards.

However, the City finds impacts by the required site alteration, tree removal and grading necessary to accommodate a flat building site for a dwelling on Parcel 3 may create drainage and dune destabilization issues. Other properties in the area that abut the dune experience significant drainage puddling at the base of the dune.

- H. Section 43 – Water Courses: The land divider shall dedicate a right-of-way for storm drainage purposes, conforming to the lines of any natural water course or

channel, stream or creek that traverses the partition, or find an alternative method to dispose of storm water.

FINDINGS: The applicant indicates on the Tentative Plan notes that stormwater runoff is to be directed southerly as it currently flows.

I. Section 46 – Wetlands and Areas Subject to Inundation: The Planning Commission may prohibit the partition of any portion of property which lies within the floodplain or wetlands of any stream or drainage course. These areas shall be preserved from damage or destruction resulting from clearing, grading, or dumping of materials.

FINDINGS: The City finds that the official 2011 Gearhart Local Wetland Inventory LWI map illustrates no wetlands are designated on the site.

J. Subdivision Ordinance Sections 47 – 50 Improvements

The following four subsections apply to land division improvement standards, approval and construction requirements.

Section 47 Improvement Standards and Approval

- 1) Improvements shall not be commenced until plans have been approved by the city. Some plans may be required prior to approval by the Planning Commission.
- 2) Improvement work shall not be commenced until the City has been notified.
- 3) All required improvements shall be constructed under the inspection and to the satisfaction of the City.
- 4) All underground utilities shall be constructed prior to surfacing of the streets.
- 5) A map showing all public improvements as built shall be filed with the Building Official upon completion of the improvements.

FINDINGS: The applicant indicates on the Tentative Partition plan there are two possible water sources to the three parcels. Option 1 is a waterline from Park Lane to the north through an easement on the Alisha Smith Parcel 1321 Park Lane that adjoins the existing road easement. Option 2 is a water line from Hwy 101 in the existing road and utility easement. Utility installations, access and culvert improvements are required to be constructed and approved by the Building Inspector per City specifications of Section 47 (1 – 5) above.

Section 48 Improvement Requirements:

- 1) Public streets shall be improved.
- 2) Structures necessary for drainage, access and public safety shall be installed.

- 3) Storm water facilities or ground water recharge facilities shall be installed per city specifications. There is a “Stop” sign at highway101.
- 4) Water mains and fire hydrants shall be installed per city specifications.
- 5) Underground utilities shall be installed.
- 6) Street lighting per city specifications shall be installed.
- 7) Street signs shall be installed per city specifications.
- 8) If necessary, a drainage easement shall be installed for the safety of the adjoining property.
- 9) Damage to public streets related to the development shall be restored to existing conditions before the damage.

FINDINGS: There are no public streets to be improved. Drainage of storm water will be directed to the south, although it has not been determined how that may affect the private property to the south. Water lines and underground utilities are to be installed per code. There is a “Stop” sign at Highway101. City streetlights are not installed on a private road easement. The City finds the above private utilities shall be installed prior to or in conjunction with any building permits in accordance with city public works and building official approvals.

Section 49 – Monuments: Surveyed monuments shall be set according to ORS 92.060 and city specifications outlined in Section 49 - Monuments

FINDINGS: The monumentation requirement should be a condition of final plat approval.

Section 50 – Survey Requirements: The surveyed plat shall be set according to ORS 92 and city specifications outlined in Section 50 – Survey Requirements.

FINDINGS: The above requirement should be a condition of approval.

#### IV. CONCLUSION

Based on the findings in this report, subject to additional information provided at the public hearing, Staff recommends approval of the Heritage Home Building proposal for a Tentative Land Partition subject to the following conditions of approval, as may be modified by the Commission:

1. Within one year of this tentative approval the Final Partition Plat shall be submitted to the City for Planning Commission approval. If necessary, the applicant may request a one-year extension of the approval
2. The Gearhart Fire Chief found “No Parking “signs shall be installed on the road easement and turnaround. The final partition plat drawing shall be modified to indicate that the depth of the hammerhead is at least 70’. Fire access and safety: The nearest hydrant is from 550 -660 feet from the site. Due to the distance the homes must be sprinklered.
3. The applicant indicates that the east end of the parcel will need to be leveled and graded to accommodate a dwelling and a septic drainfield on Parcel 3. The City finds this needs to be engineered in advance to assure there will be adequate fire access on the east side of the dwelling on Parcel 3 and that there will be no dune sloughing or destabilization, as determined by the City Building Official before final plat submittal.
4. All septic systems shall be installed at least 10-feet from a street.
5. Water is available from either Hwy 101 or Park Lane. The owner responsible for extra costs for installation.
6. The final plat shall illustrate a 5’-wide trail access easement on the north property line of Parcel 3 for Cutler Lane property owners to access the future recreation and evacuation path to be located on the railroad bed.
7. Utility improvements: No building permit may be issued until all required improvements are in place and approved by the City Manager or designee, or otherwise bonded, in conformance with the provisions of the Subdivision Ordinance.
  - a) Improvements shall not be commenced until plans have been approved by the city. Some plans may be required prior to approval by the Planning Commission.
  - b) Improvement work shall not be commenced until the City has been notified.
  - c) All required improvements shall be constructed under the inspection and to the satisfaction of the City.
  - d) All underground utilities shall be constructed prior to surfacing of the streets.
  - e) A map showing all public improvements as built shall be filed with the Building Official upon completion of the improvements.
  - f) Damage to public streets related to the development shall be restored to existing conditions before the damage.



8. Surveyed monuments shall be set according to ORS 92.060 and city specifications outlined in Section 49 – Monuments. The surveyed plat of the partition shall be set according to ORS 92.060 and city specifications outlined in Section 50 – Survey Requirements.
9. As applicable, the following Subdivision Ordinance Section 48 standards shall be met:
  - a. Structures necessary for drainage at the base of the dune, access and public safety shall be installed.
  - b. Storm water facilities or ground water recharge facilities shall be installed per city specifications.
  - c. Water mains and fire hydrants shall be installed per city specifications.
  - d. Underground utilities shall be installed.
  - e. Street lighting per city specifications shall be installed.
  - f. “No Parking” and any other street signs shall be installed per city specifications.
  - g. If necessary, a drainage easement shall be installed for the safety of an adjoining property.
  - h. Damage to Cutler Lane related to the development should be restored to existing conditions before the damage, which should be denoted on the building permit.

## V. DECISION OPTIONS

The Planning Commission has the following motion options:

1. Based on the Findings in the staff report, I move we approve the proposed Cutler Lane Tentative Partition Plat (File # 22-04P) subject to the conditions of approval as presented and/or as modified by the Planning Commission; or
2. I move that we continue the public hearing for the Tentative Partition Plat to the next regular meeting; or,
3. Based on the testimony received and revised findings as directed by the Commission, I move that we deny the Tentative Partition Plat.