

PLANNING COMMISSION STAFF REPORT TYPE III APPLICATION

MEETING DATE:	August 24, 2026
FILE NO:	26-028 MP/VAR/FSH
PROJECT NAME:	Jacoby Road – Two parcel partition
ADDRESS:	19124 SE Jacoby Road
TAX LOT/MAP:	24E24A 02300
ZONING:	Single Family Residential (SFR)/FSH Overlay
OWNER/APPLICANT:	Cory Knight
SIZE OF PROPERTY:	9.64 Acres
STAFF CONTACT:	Patrick Depa, Senior Planner

BACKGROUND

The property is mostly wooded and has one dwelling that was built in 1966 and is approximately 4,500 square feet in size. The dwelling is served by an onsite septic system and private well. The site is subject to the FSH Overlay due to steep slopes and a portion of Tickle Creek that travels through the northeast corner of the property. The FSH mapped area is not affected by the partition of this property.

The applicant has had three previous pre-application conferences, one in 2018, one in 2022, and one in 2026. All three pre-application conferences focused on the future development of a twenty-seven (27) lot subdivision called Jacoby Heights; however, the 2026 pre-application conference mainly discussed the two-parcel partition and the proposed request to postpone the timing of site improvements.

PROPOSAL

The applicant is requesting a land division review for the purpose of partitioning their 9.64-acre site into two parcels. One parcel would result in a 381,998 square feet piece of land or 8.77 acres (Parcel 1). The other parcel would retain the existing house on a 32,857 square feet piece of land or 0.75 acres (Parcel 2). The remaining 0.12 acres would be dedicated to the City for right-of-way in the final plat which includes 10 feet of property abutting Jacoby Road and a 20-foot-wide strip of right-of-way leading from the house to Jacoby Road (See Figure 1 next page).

As required, the applicant has submitted a conceptual “shadow plat” to illustrate how the property could be further subdivided in the future, subject to a separate land use application and full compliance with all applicable development standards in effect at that time. The required infrastructure improvements and dedications were identified during the initial review and in the comprehensive pre-application notes.

Various sections of the development code address the timing of site improvements. Any partition of a parcel initiates a review of the required density of the property based on the zoning district and all

improvements required to be installed concurrently with development. Since there is no development proposed at this time, the applicant is asking to postpone the timing of the required improvements.

Where specific approval for a phasing plan has been granted for a subdivision, improvements may similarly be phased in accordance with that plan, but there is no similar process for a partition. Therefore, the applicant has asked the City to process their request to divide the property into two parcels as a Type III Partition and to request the approval of two "Special Variances" postponing the timing of the required improvements.

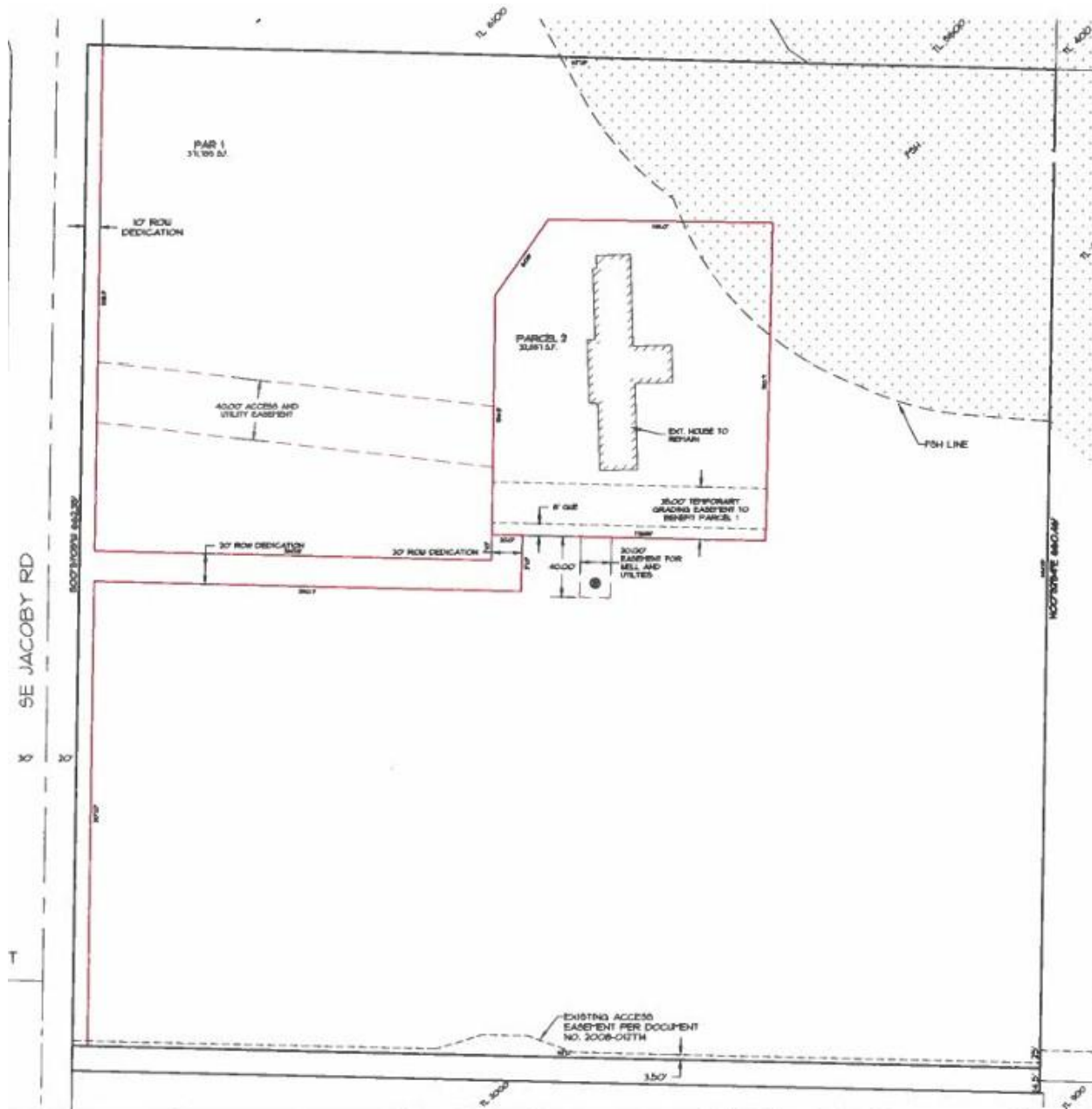


Figure 1

EXHIBITS

Exhibit A: Application

Exhibit B: Narrative

Exhibit C: Proposed Partition/Preliminary Plat Map

Exhibit D: Existing Conditions/FSH Area

Exhibit E: Shadow Plat Map

DEPARTMENT AND AGENCY REVIEW

- **Fire District:** see attached comments from the fire marshal (**Exhibit F**)
- **Public Works:** see attached letter (**Exhibit G**)
- **Parks and Recreation:** see attached letter (**Exhibit H**)
- **SandyNet:** no comments

MORATORIUM

The City is under a moratorium (Resolution 2026-04), restricting the increase in new sanitary sewer connections and increases in sanitary sewer flow, with some exceptions. The City of Sandy (City) has outgrown our decades-old wastewater system and faces enforcement proceedings by the Oregon Department of Environmental Quality (DEQ) and the United States Environmental Protection Agency (EPA). To comply with state and federal regulatory requirements, the City of Sandy is improving our infrastructure prior to allowing new commercial development and subsequent sewer connections.

Due to the moratorium, new sanitary sewer connections cannot be made at this time, and additional flows cannot be allowed at this time. The City of Sandy will likely be receiving more sanitary sewer capacity from EPA/DEQ later in 2026 and has adopted a distribution program for those ERUs.

FINDINGS APPLYING DEVELOPMENT CODE CRITERIA

CHAPTER 17.34 – SINGLE FAMILY RESIDENTIAL (SFR)

Section 17.34.00. Intent.

This district is intended to implement the Low Density Residential Comprehensive Plan designation by providing for low-density residential development in specific areas of the city. The purpose of this district is to primarily allow single-family dwellings and duplexes, as urban services become available. Density shall not be less than three or more than 5.8 units per net acre.

Finding 1. This review shall ensure that the SFR zoning district density requirements are met for the underlying shadow plat, including calculating net site area after removal of right-of-way and dedicated area to determine minimum and maximum density. Density shall not be less than 3 or more than 5.8 units per net acre. The gross subject property minus road right-of-way is approximately 6.95 acres. Based on that acreage, density would need to be between 21 and 40 units. Density calculations should be adjusted if/when

any additional public dedication is needed or if the proposed number of dwelling units' changes. The proposed shadow plat shows 27 lots, plus parcel 2 for a total of 28 lots, which does not exceed the maximum density and is greater than the minimum density requirement based on the current development code (See Figure 2).



Figure 2

Section 17.34.10. Permitted uses.

A. *Primary Uses Permitted Outright:*

1. Single detached dwelling subject to design standards in Chapter 17.90;
2. Single detached manufactured home subject to design standards in Chapter 17.90;
3. Duplex.
4. Single room occupancy with up to six SRO units.

Finding 2. The existing house on Parcel 2 will retain its single detached dwelling classification.

Section 17.34.30. Development Standards.

Type		Standard
<i>A. Minimum Lot Area</i>	Single detached dwelling or duplex	7,500 square ft.
	Other permitted uses	No minimum
<i>B. Minimum Average Lot Width</i>	Single detached dwelling or duplex	60 ft.
<i>C. Minimum Lot Frontage</i>		20 ft.
<i>D. Minimum Average Lot Depth</i>	No minimum	
<i>E. Setbacks (Except Garage/Carport)</i>	Front yard	10 ft. minimum
	Rear yard	20 ft. minimum
	Side yard (interior)	7.5 ft. minimum
	Corner Lot	10 ft. minimum on side abutting the street ¹
<i>F. Setbacks (Garage/Carport)</i>		22 ft. minimum for front vehicle access 15 ft. minimum if entrance is perpendicular to street 5 ft. minimum for alley or rear access
<i>G. Projections into Required Setbacks</i>		See Chapter 17.74
<i>H. Accessory Structures in Required Setbacks</i>		See Chapter 17.74
<i>I. Structure Height</i>		35 ft. maximum
<i>J. Building Site Coverage</i>		No minimum
<i>K. Off-Street Parking</i>		See Chapter 17.98

Finding 3. Parcel 2 will maintain the minimum lot area of 7,500 square feet. The minimum required twenty (20) foot wide lot frontage for the house will be accomplished along the front of the lot with right-of-way dedication that will be part of the partition plat. **Parcel 2 shall maintain all required setbacks for the existing house.** All other development standards for the existing house have been met.

Section 17.34.40. Minimum requirements.

- A. Shall connect to municipal water in accordance with the 2022 Water System Master Plan.
- B. Shall connect to municipal sewer if service is currently within 200 feet of the site, as measured from the nearest property line. Sites more than 200 feet from municipal sewer, shall only be approved to connect to an alternative disposal system provided all of the following are satisfied:
 - 1. A county septic permit is secured and a copy is provided to the City;
 - 2. The property owner executes a waiver of remonstrance to a local improvement district and/or signs a deed restriction agreeing to complete improvements, including but not

limited, to curbs, sidewalks, sanitary sewer, water, storm sewer or other improvements required under Chapter 17.84;

3. The minimum size of the property is one acre or is a pre-existing legal lot, as determined by the City;
4. Site consists of a legal lot(s) created through dividing property in the city, which is less than five acres in size.

Finding 4. The house on Parcel 2 is currently on an existing well and septic system with a drain field. The septic system and drain field will be located on Parcel 2 and the well will be located on Parcel 1 via an easement. The house will remain on septic and the existing well after the partition but will connect to City infrastructure when the future subdivision improvements are completed. Both the well and septic system with the drain field will be decommissioned in accordance with applicable regulations once the existing house is connected to City infrastructure.

C. Shall have frontage or approved access to public streets.

Finding 5. Parcel 2 is proposed to front on to an unimproved right-of-way that will be dedicated on the partition plat. The future right-of-way will connect to Jacoby Road but is proposed to remain unimproved until Parcel 1 is further divided through a subdivision process.

Access to Parcel 2 is proposed to remain in the existing driveway location and is proposed to include a temporary access easement from Jacoby Road across Parcel 1. This easement shall be dissolved when a subdivision is installed, and the parcel is provided with an improved street frontage and direct access at that time.

CHAPTER 17.60 FLOOD AND SLOPE HAZARD OVERLAY

Section 17.60.10. Interpretation and mapping.

The Director has the ultimate responsibility for maintaining the FSH Overlay District on the City of Sandy Zoning Map, determining on-site measuring methods, and otherwise interpreting the provisions of this chapter. Technical terms used in this chapter are defined in Chapter 17.10, Definitions. This chapter does not regulate development on lots or parcels entirely outside the FSH Overlay District.

- A. *FSH Overlay District.* The only areas subject to the restrictions and prohibitions of the FSH overlay district are those indicated on the City of Sandy Zoning Map on file in the Planning Department and areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled, "Flood Insurance Study (FIS) for Clackamas County, Oregon and Incorporated Areas," dated January 18, 2019, with accompanying Flood Insurance Rate Maps (FIRMs). This chapter does not regulate lots or parcels entirely outside the FSH Overlay District.

Finding 6. An area of the northeast corner of the subject property is encumbered by the FSH Overlay District. If the partition is approved, a portion of both parcels will remain in

the FSH Overlay District. However, because there is no development proposed with this application, review under the provisions of this chapter is not required.

Section 17.60.20. Permitted uses and activities.

This chapter lists permitted uses, or uses allowed under prescribed conditions, within the FSH overlay district. Where there are conflicts, this chapter supersedes the use provisions of the underlying district.

B. *Permitted Uses.* Permitted uses within restricted development areas are limited to the following:

1. Open space and trails provided they are constructed consistent with standards in the 2022 Parks and Trails Master Plan.

Finding 7. A future trail is identified in the 2022 Parks and Trails Master Plan as Trail 43 on Map 14. See Chapter 17.86 Parkland and Open Space and Section 17.100.40.D.8 Approval Criteria and Exhibit H for the Parks and Trails Advisory Boards recommendations.

Section 17.60.30. Required setback areas.

Setback areas shall be required to protect water quality and maintain slope stability near stream corridors and locally significant wetlands. Setbacks are measured horizontally from, parallel to, and upland from the protected feature.

A. *Required Setbacks.* The required special setback(s), as illustrated in Figure 1, shall be:

1. Eighty feet from the top of bank of Tickle Creek and other fish-bearing streams (this supersedes the setback in Figure 1).
2. Fifty feet from the top of bank along other perennial streams, except for "No Name Creek" east of Towle Drive, as provided in Subsection 17.60.30.C.2.
3. Twenty-five feet around the edge of any mapped locally significant wetland.
4. Twenty-five feet from the top of any 25 percent slope break where the slope break occurs within the FSH overlay district as mapped by the City.

Finding 8. Constructing a trail directly along the top of bank is highly restricted and requires special permitting. Under the City's Flood and Slope Hazard (FSH) regulations, there is a restricted setback distance of 80 feet required from the top of the creek's bank. Trails outlined in the 2022 Parks and Trails Master Plan are a permitted use within the restricted development area.

While a public multi-use trail already exists (the 1.8-mile Tickle Creek Trail), expanding or building a new trail within this 80-foot buffer requires an FSH development permit and an environmental review to ensure there are no negative impacts to water quality, fish habitat, or bank stability.

Any future plans submitted for the development of Parcel 1 shall provide the wetland delineation area on every civil and engineering plan sheet to determine setbacks from all improvements.

CHAPTER 17.84 IMPROVEMENTS REQUIRED WITH DEVELOPMENT

Section 17.84.00. Intent.

This chapter provides general information regarding improvements required with residential, commercial, and industrial development. It is intended to clarify timing, extent, and standards for improvements required in conjunction with development. In addition to the standards in this chapter, additional standards for specific situations are contained in other chapters.

Section 17.84.20. Timing of improvements.

- A. All improvements required by the standards in this chapter shall be installed concurrently with development, as follows:
 - 1. Where a land division is proposed, each proposed lot shall have required public and franchise utility improvements installed or financially guaranteed in accordance with the provisions of Chapter 17 prior to approval of the final plat.
 - 2. Where a land division is not proposed, the site shall have required public and franchise utility improvements installed or financially guaranteed in accordance with the provisions of Chapter 17 prior to temporary or final occupancy of structures.
- B. Where specific approval for a phasing plan has been granted for a subdivision, improvements may similarly be phased in accordance with that plan.

Finding 9. As stated in Section 17.84.20.B., there is a clause that allows phasing of improvements for a subdivision with separate phases. There is no similar process for a partition.

Section 17.100.310. Required improvements.

The following improvements shall be installed at no expense to the City, , consistent with the standards of Chapter 17.84, Chapter 17.100, 2023 Transportation System Master Plan, City of Sandy Street Tree Standard Planting Detail, 2020 Sandy Transit Master Plan, 2022 Water System Master Plan, Sanitary Sewer Master Plan, and Oregon Standard Details.

- A. Lot, street, and perimeter monumentation.
- B. Mailboxes and concrete slabs for mounting the mailboxes.
- C. Sanitary sewer lines, required pump stations, water distribution lines, and fire hydrants.
- D. Stormwater drainage facilities, including required plantings.
- E. Sidewalks, planter strips or swales or tree wells with decorative grates, ADA ramps, and truncated domes.
- F. Streetlight fixtures and electrical lines for the streetlights.
- G. Street name signs, traffic control devices, and traffic control signs.
- H. Street trees, including required stakes, ties, and mulch.
- I. Streets, including curbs and asphalt.
- J. Transit benches and concrete slabs for mounting benches.
- K. Underground communication lines, including broadband (fiber) for SandyNet and telecommunication lines. Franchise agreements will dictate whether telephone and cable lines are required.
- L. Underground electric and natural gas.

M. Erosion control measures for all areas without improvements or landscaping.

Finding 10. Frontage improvements along Jacoby Road are required with development of the property. The improvements include half-street improvements along Jacoby Road. Frontage improvements for Jacoby Road shall extend to the edge of the property boundaries. Sidewalks along Jacoby Road and all internal streets shall be setback sidewalks that are 6 feet in width. The planter strip is required to include street trees at 30 feet on center. Jacoby Road is a Collector per the Transportation System Plan (TSP); therefore, the standards in Chapter 17.80 and Chapter 17.82 apply.

Finding 11. The applicant included two special variance requests with this partition. Both variances are related to the required improvements associated with and triggered by the partition. The applicant is requesting that the required improvements be deferred which are in conflict with Section 17.84.20 Timing of Improvements and Section 17.100.310 Required Improvements.

The deferral would consist of all the required public improvements, specifically the construction of frontage improvements along Jacoby Road and the utility extensions. The request is reviewed under Section 17.66.80 Type III Special Variances in this staff report.

Finding 12. One item that would not be deferred at the time of partition is the dedication of ten (10) feet of property along the west property line to the City for future right-of-way added to Jacoby Road. Currently Jacoby Road has a fifty (50) foot wide right-of-way but has deficient right-of-way width on the east side of the road. The ten (10) foot dedication of land along the entire west property line of the subject property will guarantee that Jacoby Road aligns with other collector road widths. The dedication would be recorded with the approval of the partition (see Exhibit C).

CHAPTER 17.86 PARKLAND AND OPEN SPACE

Section 17.86.40. Fee in lieu of dedication.

Finding 13. Per Section 17.86.10, Minimum Parkland Dedication Requirements, the project would need to provide 0.57 acres for parks ($28 \times 3 \times .0068 = 0.5712$ rounded to 0.57 acres). If the number of dwelling units is less or more than the proposed 28 dwelling units, the parks fee in lieu would be recalculated based on the updated number of dwelling units. If 28 dwelling units are proposed at time of land use submission then the fee in-lieu will be based on 28 dwelling units, but additional fee in-lieu will be necessary and calculated on a per-lot basis if any lots are constructed or converted to a duplex (i.e., the fee in-lieu for that lot will be doubled).

The calculation for 0.57 acres of parks fee in lieu would lead to a future payment of \$478,778.49 ($27 \times 3 \times .0068 \times \$869,242$). As Section 17.86.10.A. 2. states, the required parkland shall be dedicated as a condition of approval with the tentative plat for a subdivision or partition. This partition will trigger the payment of parks fee in

lieu for the existing house on Parcel 2. **The applicant shall pay \$17,732.54 (1 x 3 x .0068 x \$869,242) in parks fee in lieu prior to the recording of the partition plat.**

Finding 14. The 2050 Sandy Comprehensive Plan addresses the continued need to develop a diverse and accessible park and trail system that is clean, safe, and functional, serving the needs of the residents.

Goal 24: Create a looped network of trails connecting parks, neighborhoods, and natural open spaces that provide opportunities for alternative transportation and recreation throughout the city.

Policy 24.5 Connect natural open spaces through multi-purpose trails identified in the PTMP.

Finding 15. Tickle Creek travels through the northeast corner of the subject property. The 2022 Parks and Trails Master Plan identify Trail 43 on Map 14 to be a future trail corridor along Tickle Creek in the general area of the subject property. The Parks and Trails Advisory Board (PTAB) met on July 8, 2026, to review the Knight partition at 19124 Jacoby Road. At the above-mentioned meeting, the PTAB considered the latest Comprehensive Plan and the 2022 Parks and Trails Master Plan goals consistent with residential development in this area and recommends that the Planning Commission obtain a trail easement dedication approximately 100 feet from the top of bank along Tickle Creek. This easement would in no way replace the applicant's obligation to the park land dedication requirement or the fee in lieu option.

CHAPTER 17.98 PARKING, LOADING, AND ACCESS REQUIREMENTS

Section 17.98.10. General provisions.

N. Location of Required Parking.

1. Off-street vehicle parking required for single family dwellings (both attached and detached) and duplexes shall be provided on the development site of the primary structure. At least two off-street vehicle parking spaces for detached single family homes and duplexes shall be located side-by-side.

Finding 16. Parcel 2 would retain the required off-street parking for the dwelling and continue to use the existing paved driveway access via a new recorded easement to Jacoby Road. The easement would be forty (40) feet wide and would be abandoned when the future subdivision is recorded.

Finding 17. The required 20 feet of frontage to proposed Parcel 2 is proposed via a twenty (20) foot wide dedicated right-of-way that connects Parcel 2 to Jacoby Road. The twenty (20) foot wide dedication will be located where future right-of-way is identified on the applicant's shadow plat. An additional thirty-four (34) feet will need to be dedicated upon future subdivision approval to meet the minimum fifty-four (54) foot wide local street right-of-way requirement.

CHAPTER 17.100. LAND DIVISION

Section 17.100.20. Land division classification—Type I, II or III procedures.

- F. *Type III Land Division (Major Partition or Subdivision)*. A partition or subdivision shall be a Type III procedure if unsatisfactory street conditions exist, the resulting parcels/lots do not comply with the standards of the zoning district, the partition or subdivision does not meet the criteria in this chapter, or the applicant is requesting one or more variances.

Finding 18. The proposed partition is being processed as a Type III- Major Partition because the applicant is proposing multiple variances.

Section 17.100.40. Minor and major partitions and replats.

Approval of a partition or replat is required for a land division of three or fewer parcels in a calendar year. Partitions or replats that do not require creation or extension of a street for access are classified as a Type I, minor partition or replat. Partitions or replats that require creation or extension of a street for access are classified as Type II, major partitions or replats.

- A. *Preapplication Conference*. The applicant for a minor or major partition or replat shall participate in a preapplication conference with City staff to discuss procedures for approval, applicable state and local requirements, objectives and policies of the Sandy Comprehensive Plan, and the availability of services. A preapplication conference is required.

Finding 19. A pre-application conference was conducted on May 21, 2026.

- B. *Application Requirements*. Partition or replat applications shall be made on forms provided by the City and shall be accompanied by:
1. Two copies of the tentative plan for the minor or major partition or replat;
 2. The required fees;
 3. Any data or narrative necessary to explain the application;
 4. List of and two sets of mailing labels for affected property owners (if Type II, III, or IV), pursuant to Sections 17.22.10 and 17.22.20; and,
 5. Electronic copy of all materials.

Finding 20. All application requirements have been met for the purposes of this review.

- C. *Tentative Partition Plan or Replat*. The tentative partition plan or replat shall be a minimum of 11 inches by 17 inches in size and shall include the following information:
1. Scale of drawing, north arrow, and date;
 2. Name and address of the owner of record and of the person who prepared the partition plan or replat;
 3. Zoning, size, and dimensions of the property to be partitioned or replated;
 4. Size, dimensions, and identification of proposed parcels (i.e., Parcel 1, Parcel 2, Parcel 3);
 5. Approximate location of any structures on the property to be partitioned or replated, including setbacks to proposed parcel boundaries;

6. Location, names, and widths of streets, sidewalks, and bikeways within the property to be partitioned or replated and extending 1,000 feet beyond the property boundaries;
7. Location, width, and purpose of existing and proposed easements on the property to be partitioned or replated;
8. Location and size of sanitary sewer, water, and stormwater drainage facilities proposed to serve the property to be partitioned or replated;
9. Natural features, including waterways, drainage areas, significant vegetation, and rock outcroppings, and including features detailed in DSL's Statewide Wetlands Inventory and ODFW's Conservation Opportunity Areas maps;
10. Topography, including identification of land exceeding a 25 percent slope;
11. Tree preservation plan detailing building footprints and critical root zones of trees proposed for retention;
12. A plan for future parcel redivision, if the proposed parcels are large enough to be redivided under the comprehensive plan or zoning designation.

Finding 21. A future tentative partition plat will be required and meet the requirements of this section after the Planning Commission makes a decision on the applicant's proposal.

- D. *Approval Criteria.* The Director or Planning Commission shall review the tentative plan for a minor partition, major partition, or replat based on the classification procedure (Type I, II or III) and the following approval criteria:
1. The proposed partition or replat meets the density requirements, setbacks, and dimensional standards for all lots in the base zoning district or zoning districts if multiple zoning districts exist in the proposed partition or replat.
 2. The proposed partition or replat meets the requirements of the Bornstedt Village Overlay (BVO), if the proposed partition or replat is located in the BVO, or other specific area plan, if the proposed partition or replat is located in another specific plan area, as required in Chapter 17.54.
 3. The proposed partition or replat meets the requirements of hillside development as required in Chapter 17.56.
 4. The proposed partition or replat meets the requirements of the flood and slope hazard overlay district as required in Chapter 17.60.
 5. The proposed partition or replat meets the additional setback standards on collector and arterial streets as required in Chapter 17.80.
 6. The proposed partition or replat meets the building orientation standards on transit streets as required in Chapter 17.82.
 7. The proposed partition or replat meets all improvement standards for sidewalks, pedestrian connections including tracts and easements, bicycle facilities, water facilities, sanitary sewer facilities, stormwater facilities, and all other standards as required in Chapter 17.84.
 8. The proposed partition or replat includes the dedication of land, or a fee in-lieu of land as required in Chapter 17.86 and the 2022 Parks and Trails Master Plan.
 9. The proposed partition or replat will meet the requirements of Chapter 17.90 at the time of building construction.
 10. The proposed partition or replat meets the landscaping requirements of Chapter 17.92.

11. The proposed partition or replat provides on-street parking, off-street parking, driveway spacing, and driveway widths as required in Chapter 17.98.
12. The proposed partition or replat provides tree retention as required in Chapter 17.102.
13. The proposed partition or replat provides a street pattern that meets the dimensional standards for blocks as required in Chapter 17.100 and street cross-sections that meet the width requirements as detailed in Chapter 17.10, Definitions.
14. The proposed street layout includes the siting of all collector and arterial streets substantially as depicted in the 2023 Transportation System Master Plan, Figure 11. "Substantially as depicted" means that the streets' proposed location is within 100 feet of the depicted location in any direction.
15. The proposed street improvements, including sidewalks, planter strips or swales, street trees, street lighting, curbs, asphalt, and vehicular and bicycle lanes and striping, are consistent with Figures 18 through 24 of the 2023 Transportation System Master Plan. The improvements shall be constructed to the standards described in the Oregon Standard Specifications for Construction (OSSC) 2021 (or most recent revision) and the AASHTO Policy on Geometric Design of Highways and Streets (Green Book) 2018 (or most recent revision).
16. The proposed partition or replat is consistent with the design standards set forth in this chapter.
17. The proposed partition or replat creates traffic volumes that do not exceed average daily traffic (ADT) standards for local streets as detailed in Chapter 17.10, Definitions.
18. The proposed subdivision includes utilities that meet the requirements of the 2022 City of Sandy Water System Master Plan and the City of Sandy Wastewater System Facilities Plan.
19. The proposed partition or replat includes the installation of all utilities underground, including electric, natural gas, fiber, telecommunication lines, water, and sanitary sewer, and the required easements for such utilities.

Finding 22. The applicant is requesting a variance to defer all approval criteria as required under Section 17.100.40.D. and Section 17.100.310. for this major partition until future development occurs and additional equivalent residential units (ERUs) are allocated to the subject property, or the sanitary sewer moratorium is terminated. The variances requested are not due to a physical issue or hardship with the land or a dimensional request to code requirements therefore, they shall be reviewed under and be consistent with Section 17.66.80 Type III Special Variances.

E. *Conditions.* The Director or Planning Commission may require dedication of land and easements and may specify such conditions or modifications of the tentative partition plan or replat as necessary to ensure compliance with the applicable standards and criteria.

Finding 23. The Director requests that if the Planning Commission approves the major partition and subsequent variances that the 10-foot right-of-way dedication along the east side of Jacoby Road, the 20-foot right-of-way dedication from Parcel 2 to Jacoby Road, and the PTAB recommendation to obtain a 100-foot easement from the top of bank of Tickle Creek be included on the partition plat.

Finding 24. All remaining subsections of Section 17.100.40 Minor and major partitions and replats are still required and will be reviewed for the purposes of recording the final plat including the following: ***Section 17.100.40. F-K. Approval of Tentative Partition Plan, Tentative Plat Expiration Date, Submission of Final Plat, the Information on Plat, Supplemental Information with Plat, and the Approval Signatures for the Final Partition Plan.***

Finding 25. Prior to signing of the Final Plat, all the following conditions shall be satisfied:

1. Submit a revised partition plat with the following modifications:
 - Provide a signature block on the partition plat for the City of Sandy Development Services Director, as well as the appropriate Clackamas County offices.
 - Add City of Sandy Planning File No. "26-028 MP/VAR/FSH " to the final partition plat submittal.
 - Scale, north arrow, and date.
 - Names and addresses of the owners of record and of the person who prepared the replat.
 - Zoning, size, and dimensions of the property to be replated.
 - Approximate location of any structures on the property to be replated, including setbacks to proposed parcel boundaries.
 - All other requirements found in ORS for "requirements of plat".
2. Submit two paper copies of a Final Plat with the required fee for City review.
3. Submit a digital version of the recorded partition plat as approved by the City and Clackamas County.

Section 17.100.220. Lot Design

- A. The lot dimensions shall comply with the minimum standards of the Development Code as specified in the underlying zoning district, with the exception of a lot created through the middle housing land division process.
- B. The lot or parcel width shall meet the requirements of the Development Code and shall abut a public street other than an alley for a width of at least 20 feet, with the exception of a lot created through the middle housing land division process.
- C. The creation of a lot with street frontage on two parallel sides of the lot is not allowed.
- D. Lots shall not take access from major arterials, minor arterials, or collector streets if access to a local street exists. When driveway access from major or minor arterials is necessary for several adjoining lots, and individual driveway accesses would not meet the minimum access spacing standards in Section 17.98.80, such lots shall be served by a common access drive in order to limit traffic conflicts on such streets.

Finding 26. The applicant is proposing the dedication of right-of-way at 20 feet in width from Jacoby Road to proposed Parcel 2. This will allow the new lot to have street frontage on a public street for at least 20 feet as required by Section 17.100.220.B. The proposed parcel will not have frontage on two parallel streets and will eventually take access to a local street once the future subdivision as identified on the shadow plat is installed.

Section 17.100.330. Options for improvements.

Before the signature of the City Engineer is obtained on the final partition or subdivision plat, the applicant shall install the required improvements, agree to install required improvements, or have gained approval to form an improvement district for installation of the improvements required with the tentative plat approval. These procedures are more fully described as follows:

- A. *Install Improvements.* The applicant may install the required improvements for the partition or subdivision prior to recording the final partition or subdivision plat. If this procedure is to be used, the partition or subdivision plat shall contain all the required certifications except the County Surveyor. The City shall keep the partition or subdivision plat until the improvements have been completed and approved by the City Engineer. Upon City Engineer's approval, the City shall forward the final partition or subdivision plat for certification by the County Surveyor and then to the County Clerk for recording; or
- B. *Agree to Install Improvement.* The applicant may execute and file with the City an agreement specifying the period within which required improvements shall be completed. The agreement shall state that if the work is not completed within the period specified, the City may complete the work and recover the full cost and expense from the applicant. A performance bond equal to 130 percent of the value of the guaranteed improvements shall be required, except when an alternative assurance is allowed under Section 17.100.340. Performance bonds shall be issued by a surety registered to do business in Oregon. The value of the guaranteed improvements may include engineering, construction management, legal, and other related expenses necessary to complete the work. The agreement may provide for the construction of the improvements in increments and for an extension of time under specified conditions; or
- C. *Form Improvement District.* The applicant may have all or part of the public improvements constructed under an improvement district procedure. Under this procedure the applicant shall enter into an agreement with the City proposing establishment of the district for improvements to be constructed, setting forth a schedule for installing improvements, and specifying the extent of the plat to be improved. The City reserves the right under the improvement district procedure to limit the extent of improvements in a partition or subdivision during a construction year and may limit the area of the final partition or subdivision plat to the area to be improved. The performance bond described in Subsection B. above shall be required under the improvement district procedure. The formation of a Local Improvement District (LID) is entirely at the discretion of the City Council.

Finding 27. The applicant cannot move forward with the traditional path of a subdivision since no ERU's are available for new development. The applicant will have the opportunity to

apply for the ERU lottery when it comes available but, it doesn't guarantee they will be selected.

If the applicant's project is selected through the ERU lottery process they will then have the ability to move forward and develop the remaining 8.77 acres of land (Parcel 1) through the standard subdivision process as required under Chapter 17.100 Land Division. If the applicant's project is not selected through the ERU lottery process then the property will not be allowed any further partitions of subdivision under the existing conditions related to the sanitary sewer moratorium. The formation of an improvement district or agreement to install improvements would be unrealistic without a guarantee that the property can obtain additional ERUs.

CHAPTER 17.102 URBAN FORESTRY

Section 17.102.50 Tree retention and protection requirements.

- A. *Tree Retention.* The landowner is responsible for retention and protection of trees required to be retained as specified below:
1. At least three trees, 11 inches DBH or greater, are to be retained for every one acre of contiguous ownership, except in the Bornstedt Village Overlay (BVO) in accordance with Section 17.54.140.

Finding 28. The applicant is not proposing to remove any trees under their proposed partition so a tree retention plan was not required. The applicant has submitted a map of their property labeled "Existing Conditions" that shows the location of the all the existing trees on site (Exhibit D). The applicant is proposing this partition as a preliminary stage to progress towards the larger goal of building a twenty-seven (27) lot subdivision.

Finding 29. The landowner will remain responsible for retention and protection of trees for every acre of contiguous ownership. Even though the resultant Parcel 2 will be smaller than an acre, staff recommends that **all the tree retention and protection standards shall be applied to the pre-partition gross acreage to maintain the intent of the urban forestry chapter.**

CHAPTER 17.66 ADJUSTMENTS AND VARIANCES

Section 17.66.80. Type III special variances.

The Planning Commission may grant a special variance waving a specified provision under the Type III procedure if it finds that the provision is unreasonable and unwarranted due to the specific nature of the proposed development. In submitting an application for a Type III Special Variance, the proposed development explanation shall provide facts and evidence sufficient to enable the Planning Commission to make findings in compliance with the criteria set forth in this section while avoiding conflict with the Comprehensive Plan.

One of the following sets of criteria shall be applied as appropriate.

A. The unique nature of the proposed development is such that:

1. The intent and purpose of the regulations and of the provisions to be waived will not be violated; and
2. Authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted.

B. The variance approved is the minimum variance needed to permit practical compliance with a requirement of another law or regulation.

C. When restoration or replacement of a nonconforming development is necessary due to damage by fire, flood, or other casual or natural disaster, the restoration or replacement will decrease the degree of the previous noncompliance to the greatest extent possible.

Finding 30. The applicant is requesting two special variances in conjunction with their Major Partition application.

Variance No. 1 – Variance to Section 17.84.20. Timing Requirements, Section 17.100.260. Underground Utilities, Section 17.100.270. Sidewalks, Section 17.100.310. Required improvements.

Variance No. 2 – Variance to Section 17.100.40.D. Approval Criteria.

Finding 31. Applying for variances outside the realm of a physical hardship due to something pertaining to the land shall be processed as a Type III special variance. Any variance requested shall include a narrative addressing one of the three above criteria options and evidence and facts that support the criteria. Staff reviewed the variances under Section 17.66.80.A.

Variance No. 1

Finding 32. Variance to Sections 17.84.20. Timing Requirements and Section 17.100.310. Required improvements. No major partition can be approved without meeting the timely installation of the required improvements. The unique nature of this request is that the current sanitary sewer moratorium prevents additional development from occurring and therefore diminishes the need to install infrastructure, such as utilities or roads with the approval of the partition. Since no improvements are being proposed, the sites' use and function will continue as the status quo after the partition.

The current state of affairs in the City of Sandy due to the sanitary sewer moratorium precludes new subdivision applications from being accepted unless the applicant receives the relative number of sanitary hookups (i.e., ERUs) or the moratorium is terminated. The applicant claims that there is currently no pathway to obtain the rights to connect to the City's sanitary sewer system.

Approval of the partition and the special variances deferring the required improvements signifies that physical conditions of the parcels can remain the same and the intent and purpose of the regulations and of the provisions to be waived will not be violated. The existing home and the property will remain in their current state after the partition. Parcel 2, where the house is located, can apply for building permits for general maintenance or improvements that do not expand beyond the setbacks to the new property lines. No further development on the remaining 8.77 acres (Parcel 1) can occur, except tree maintenance that follows Chapter 17.102 Urban Forestry. Criterion for Variance No. 1 can be met.

Variance No. 2

Finding 33. Variance to Section 17.100.40.D. Approval Criteria. If the approval criteria are not applied due to no eminent development of the land, then deferring the required improvements will not be materially detrimental to the public welfare. Granting this partition and deferring improvements until further development takes place would essentially cause less harm to the public or neighbors than if development occurred, as right-of-way and utility construction would not occur until the subdivision is installed.

The intent and purpose of the regulations and of the provisions in the Sandy Municipal Code are meant to be applied in preparation of development and consistent with planned extension of the City's utilities and roads. The required improvements would only be deferred until full development of Parcel 1 is proposed and approved, which would not violate the regulations in the Sandy Municipal Code, but would rather just postpone them to a future date. Parcel 1 will not be allowed to be subdivided any further if these variances are approved without meeting the Single-Family Residential density requirements. All requirements pertaining to Chapter 17.102.50 Tree retention and protection requirements still apply and any request for tree removal must meet all the applicable standards under Chapter 17.102.30 Procedures and application requirements. Criterion for Variance No. 2 can be met.

CONCLUSION

The applicant remains steadfast and committed to the future development of a twenty-seven (27) lot subdivision on this property having completed multiple pre-application conferences and having submitted multiple maps of the property including one with existing conditions and one with a tentative shadow plat layout. The maps reflect the applicant's intent to maintain the integrity of the FSH Overlay and protect the area along a portion of Tickle Creek that travels through the property.

The applicant's commitment to a future subdivision is evident in their preparation of the proposed partition maps that shows conveyance of road right-of-way to the City through the dedication of a ten (10) foot strip of land to Jacoby Road. The City is also requesting that any approval of the partition includes the dedication of a one hundred (100) foot easement along the top of bank of Tickle Creek.



City staff believe that due to the applicants' continued progress towards the larger goal of constructing a twenty-seven (27) lot subdivision, the City could support these variances to defer only the required utility and road improvements that coincide when development of the subdivision occurs. Section 17.66.80(A) is the only criteria that applies to the requested variances, and staff finds that the criterion found in Section 17.66.80(A) has been met.

RECOMMENDATION

For the reasons described above in the findings of fact, staff recommend the Planning Commission **approve** both the Major Partition and the two (2) Special Variance requests as described below and subject to the recommended conditions of approval below.

1. **Variance 1**

Pursuant to Sandy Municipal Code Chapter 17.84 (Public Improvements). All public improvements including frontage improvements required in conjunction with land divisions can be deferred under a variance to Section 17.84.20., Section 17.100.260., Section 17.100.270., and Section 17.100.310. due to the existing sanitary sewer moratorium (Resolution 2026-04) where sanitary sewer service is unavailable at this time.

2. **Variance 2**

Pursuant to Sandy Municipal Code Section 17.100.40.D. Approval Criteria, utility and road right-of-way improvements will be deferred until further development is approved for Parcel 1 except for:

- i. Dedication of ten (10) feet along the entire west property boundary of the subject land for future right-of-way per Section 17.100.40.D.15., which will expand the right-of-way to meet the minimum width of a collector street per the 2023 Transportation System Master Plan.
- ii. Designation of a one hundred (100) foot wide easement in the restricted development area adjacent to Tickle Creek per the PTAB recommendation for a segment of the future T43 trail per the 2022 Parks and Trails Master Plan.
- iii. Dedication of twenty feet (20) of right-of-way width to connect Parcel 2 to Jacoby Road in accordance with the applicant's submission.

RECOMMENDED CONDITIONS OF APPROVAL

A. Prior to signing of the Final Plat all the following conditions shall be satisfied:

1. The applicant shall pay \$17,732.54 (1 x 3 x .0068 x \$869,242) in parks fee in lieu.
2. Submit a revised partition plat with the following modifications:
 - Provide a signature block on the partition plat for the City of Sandy Development Services Director, as well as the appropriate Clackamas County offices.

- Add City of Sandy Planning File No. “26-028 MP/VAR/FSH ” to the final partition plat submittal.
 - Scale, north arrow, and date.
 - Names and addresses of the owners of record and of the person who prepared the replat.
 - Zoning, size, and dimensions of the property to be replated.
 - Approximate location of any structures on the property to be replated, including setbacks to proposed parcel boundaries.
 - All other requirements found in ORS for “requirements of plat”.
3. Submit two paper copies of a Final Plat with the required fee for City review.

B. Within 30 days of Recording of Final Plat:

1. Submit a digital version of the recorded partition plat as approved by the City and Clackamas County.

C. General Conditions of Approval:

1. Special Variance approval shall be void after two (2) years per Section 17.66.190 from the date of the Final Order unless the applicant has submitted plans for building permit review.
2. Approval of this partition may be revoked if conditions of approval are not met. Approval does not grant authority for the unrestricted use of the site. Any use of the site may be prohibited until such time as all required improvements are completed.
3. Future development of Parcel 1 requires approval of a land use application in accordance with applicable regulations, including that Parcel 1 cannot be further subdivided without meeting the density requirements of the underlying zoning district.
4. Parcel 2 shall maintain a minimum lot area of 7,500 square feet; the minimum required twenty (20) foot wide lot frontage on a public right-of-way and maintain all required setbacks for the existing house.
5. The existing house shall remain on septic with a drain field and the existing well after the partition, but shall connect to City utilities in the future when the future subdivision improvements for Parcel 1 are completed. Both the well and septic with the drain field will be decommissioned in accordance with applicable regulations once the connection to the City utilities is complete.

6. Parcel 2 shall front on to an unimproved right-of-way that will be dedicated to the City of Sandy on the partition plat. The right-of-way will connect to Jacoby Road but will remain unimproved until Parcel 1 is further divided. Access to Parcel 2 will remain in its current location and will contain a temporary access easement from Jacoby Road across Parcel 1. This easement shall be terminated at time Parcel 1 is further divided and the parcel is provided with an improved street frontage and direct vehicular access at that time. This dedication shall be displayed on the final plat.
7. The ten (10) foot right-of-way dedication of land along the entire west property line will ensure the width of Jacoby Road is consistent with other collector road widths. The dedication shall be recorded with the final partition/replat (see Exhibit C). This dedication shall be displayed on the final plat.
8. Consistent with the 2022 Parks and Trails Master Plan (PMMP) Trail 43 on Map 14, the applicant shall dedicate a trail easement along the top of bank along Tickle Creek at a width of 100 feet. This easement would in no way replace the applicant's obligation to the future park land dedication requirement or the fee in lieu option.
9. Even though the resultant Parcel 2 will be smaller than an acre all the tree retention and protection standards shall be applied to the pre-partition gross acreage to maintain the intent of the urban forestry chapter.
10. The existing home and the property will remain in their current state after the partition. Parcel 2, where the house is located, can apply for building permits for general maintenance or improvements that do not expand beyond the setbacks to the new property lines.
11. Any future development of the property shall comply with the City's improvement requirements. All future site and frontage improvements will be required to be developed in accordance with City standards.
12. Any future development applications shall include a traffic study in accordance with Section 17.84.50.
13. In accordance with Chapter 17.60 which regulates the City's Flood and Slope Hazard (FSH) Overlay, all plans submitted for the further development of Parcel 1 shall provide the wetland delineation area on every civil and engineering plan sheet to determine setbacks from all improvements.
14. All future public utility installations shall conform to the City's facilities master plans.
15. The applicant shall apply for a tree removal permit prior to any tree removal. All the tree retention and protection standards shall be applied to the pre-partition gross acreage to maintain the intent of the urban forestry chapter.
16. Successors-in-interest of the applicant shall comply with the requirements of this partition approval prior to recording of the partition plat.