

**BEFORE THE LAND USE HEARINGS OFFICER  
OF CLACKAMAS COUNTY, OREGON**

Regarding an Application for a Zone Change)	<b>Case File No.</b>
From Urban Low-Density Residential R-10 )	<b>Z0520-17-ZAP&amp;Z0521-18-M</b>
To Urban Low-Density Residential R-7 )	<b>(Hernandez)</b>

**A. SUMMARY**

1. The owner is Aneyda Aguilar, and the applicant is Joe Hernandez.
2. The subject property is located at 14824 Kellogg Avenue, Milwaukie, OR 97222. The legal description is T2S, R1E, Section 12AB, Tax Lot 3300, W.M. The subject property is approximately .42 acres and is zoned Urban Low Density Residential – R-10.
3. On December 6, 2018 the Hearings Officer conducted a public hearing to receive testimony and evidence about the application.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at the public hearing about this application on December 6, 2018. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, county planner Ben Blessing discussed the staff report and recommended approval of the application.
3. No one testified in favor of the application.
4. No one testified in opposition to the application.
5. At the conclusion of the public hearing, the Hearings Officer closed the record.

### C. FACTS

The subject property is an approximately .42-acre parcel zoned R-10 located at 14824 Southeast Kellogg Avenue, Milwaukie, OR 97222. The property is on the corner of Southeast Kellogg Avenue and Southeast Birch Avenue. The property is undeveloped and flat with a few large trees. The applicant proposes to rezone the property from Urban Low-Density Residential 10,000 square foot minimum – R-10 to Urban Low-Density Residential 7,000 square foot minimum – R-7 and to partition the property into two parcels of 9837 and 9424 square feet. The property is level and no mass grading is proposed for the site. There are no environmental overlays or significant natural resources on the property.

### D. DISCUSSION

The staff report thoroughly analyzes the applicable approval criteria and explains why the approval criteria are satisfied. There was no opposition to the staff report. Therefore, it would be a waste of the County's money and resources to review and repeat all of the unchallenged findings in the staff report. I have reviewed the findings in the staff report, and I agree with those findings. I therefore adopt and incorporate the findings in the staff report in this decision.

The applicant has satisfied all of the applicable approval criteria.

### E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** applications Z0520-18-ZAP and Z0521-18-M, with the following conditions of approval.

### F. CONDITIONS OF APPROVAL

#### I. General and Advisory Conditions:

- A. Approval of the minor subdivision application and conditional use permit are based upon approval of the concurrent zone change request from R-10 to R-7, the Findings herein and as modified by these conditions of approval.
- B. **NOTE: The applicant is advised to take part in a Post Land Use Transition meeting.** County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting

please contact Deana Mulder, in the Engineering Division office at (503) 742-4710 or by e-mail at [deanam@co.clackamas.or.us](mailto:deanam@co.clackamas.or.us).

- C. All conditions of approval shall be financially guaranteed or completed prior to final plat approval, unless otherwise noted herein.
- D. The services of a registered professional land surveyor and a civil engineer will be required to satisfy these conditions of approval.
- E. **Platting:** Pursuant to ORS 92, five (5) paper copies of the draft plat survey of the development shall be submitted to the Engineering Division for internal routing and review.
  - a. An additional copy of the final plat survey and review deposit shall also be submitted separately to the County Surveyor's office for review.
  - b. The draft and final plats shall be prepared by a registered professional land surveyor in a form and with information consistent with the provisions of ORS 92, relevant portions of ORS 209.250, the County ZDO, Chapters 11.01 and 11.02 of the County Code and these conditions of approval.
  - c. Plat submittals will require signed originals of any maintenance agreements, related easements outside the plat, Codes, Covenants and Restrictions to be recorded with the plat, and proof of incorporation of a Homeowner's Association (if applicable). Drafts shall be provided for review at the time of draft plat submittal.
  - d. After the draft plat is approved by the Planning & Zoning Division staff and reviewed by the Survey Department, one (1) mylar copy and four (4) paper copies of the final plat shall be submitted to the County Engineering Division for final review.
  - e. When final approval is given by the Planning and Zoning Division and the final plat is approved by the County Surveyor, the plat must then be filed and recorded with the County Clerk. All property taxes shall be paid in full for the current year in order for the plat to be recorded.
- F. **Approval Period:** Pursuant to subsection 1106.05(A) of the ZDO, this preliminary partition approval is valid for **four years** from the date of this final written decision. **Failure to record the final plat with the County Clerk within four years of the date of this decision will void this approval unless a time extension is approved (see following).**
- G. **Time Extensions:** Prior to expiration of this approval, the applicant may request a single two-year extension of the preliminary approval subject to the criteria set forth in Section 1305 of the ZDO.

- H. None of the individual lots shall be sold, transferred or assigned until the final plat has been approved by the County Surveyor and recorded with the County Clerk.
- I. No Building or Manufactured Home Placement permits will be issued until the final plat is recorded and sanitary sewer and storm water management facilities are approved, installed and operational.
- J. **Easements:** All existing, required and proposed easements shall be shown and properly documented upon the final plat pursuant to ORS 92. Easements shall be provided along property lines as deemed necessary by the County DTD, Engineering Div., the OLSD, the OLWD, other special districts, and utility companies. Easements for special purposes shall be of a width deemed appropriate by the responsible agency. Any required easements shall be shown upon the final plat of the subdivision. The need for, and location of, such easements shall be determined during the street and street frontage, sanitary sewer and storm sewer plans review processes.
- K. **Future Construction:** Future construction on the individual parcels shall be consistent with the relevant requirements of the Oregon Plumbing Specialty Code, Oregon Residential Specialty Code, Oregon Structural Specialty Code and/or Oregon Manufactured Home Standard requirements, as administered by the DTD, Building Codes Division. Foundations and drainage improvements shall be designed to ensure structural stability and proper roof, foundation and footing/crawl space drainage in consideration of the soils and topographical characteristics of the site.
- L. **Utilities:** Electricity, gas, and communications services shall be installed consistent with the requirements of the district or company serving the development. Except where otherwise prohibited by the utility district or company, any new or relocated utility improvements shall be installed underground and in accordance with the requirements of the service providers.
- M. **Prior to final plat approval,** the applicant shall submit certification in writing from the OLWS that the plans for extension of the public water system needed to serve the development have been reviewed and approved by that agency.
- N. **Grading:** All grading, filling, and excavation done in connection with any development shall be in accordance with the County Excavation and Grading Ordinance administered by the County DTD, Building Codes Division.
1. All lots shall be graded to provide for gravity flow from homes for sanitary and storm water disposal.
  2. Any proposed fill in individual lots that is more than one (1) foot in depth and where foundations and footings will not be bedded on native soil shall be placed as engineered fill (Grading Permit required) to support the new homes to be built on such lots.

3. All grading and fill work shall be completed, inspected and approved **prior to final plat approval**,

- O. **Fire District:** **prior to final Partition Plat approval**, the applicant shall submit written verification or stamped approved access plans from the CFD#1 Fire Marshal verifying that the Fire District's standards, including emergency services access, turnarounds and turnouts, fire flows, grades, horizontal and vertical clearances, etc. are, or will be, acceptable to the district. Copies of the approval shall be submitted to the County Engineering Division in conjunction with plans review and permitting for the proposed Partition. (contact: Clackamas County Fire District No. ; Matt Amos, 503-742-2660, matt.amos@clackamasfire.com)
- P. **Street Lighting:** Streetlights are a requirement for the Partition and shall be installed pursuant to the standards of the CCSD #5. The developer shall make arrangements for the installation and maintenance of streetlights with the CCSD#5 and pre-wire for acceptance of these streetlights. **Prior to final plat approval**, the developer shall also submit an application to the CCSD#5 for the installation of the streetlights, annexation into the street lighting district and formation of an assessment area to pay for the operation of the lighting (Contact: Wendi Coryell, 503-742-4657).
- Q. The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

**II. Planning and Zoning Division General Conditions:** Ben Blessing, (503) 742-4521

- A. All development and uses within the plat shall conform to the requirements of Section 315 of the ZDO. Nothing in this approval shall be construed to allow any use or structure that is not otherwise permitted subject to Section 315 of the ZDO.
- B. The minimum lot size shall not be less than 80% of the District Land Area of the R-7 Zoning District.
- C. The official zoning map shall be amended to reflect this zoning map change from R-10 to R-7.

**III. County Survey Dept. Conditions:** County Surveyor, (503) 742-4475, or [cgriffin2@clackamas.us](mailto:cgriffin2@clackamas.us).

- A. All plats shall be prepared pursuant to ORS Chapter 92 and County Code Chapters 11.01 and 11.02.
- B. Easements created to provide for access and utility purposes within plats shall contain language that allows for use of the easement for future divisions of the parcels if, or when, zoning laws may permit future divisions.
- C. Any private easements shall allow for private and public utility services, including, but not limited to, water, power, communications, natural gas, storm drainage, sanitary sewer, emergency services, etc.
- D. Fences, other occupations and encroachments that fall across deed lines may indicate that unwritten title (ownership) issues exist. It is the responsibility of the plat surveyor conducting the boundary survey to notify the declarant and/or property owner if such situations are discovered. Failure to present the issues and resolve them will usually result in a delay of the plat approval and recording. If problems are noted, they shall be brought to the attention of the County Survey Dept. as a soon as possible to avoid unnecessary delay in the review process. Easements, as a general rule, are not acceptable solutions for encroachments.
- E. Any encroachments found during surveying of the plat shall be resolved to the satisfaction of the County Surveyor prior to final plat approval and recording.
- F. Fees, minimum submittal requirements and application for plat review are available on the County Survey website at <http://www.clackamas.us/surveyor>.

**IV. Engineering Division Conditions:** Ken Kent, (503) 742-4673, [kenken@clackamas.us](mailto:kenken@clackamas.us)

- A. **Prior to final plat approval:** a Development Permit is required from the Engineering Division for review and approval of frontage improvements. The Permit shall be obtained prior to commencement of site work and recording of the partition plat. To obtain the permit, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, or plans acceptable to the Engineering Division, provide a performance guarantee equal to 125% of the estimated cost of the construction, and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit application.
- B. **Prior to final plat approval:** all required improvements shall be constructed and inspected or financially guaranteed.
- C. All required street, street frontage and related improvements shall comply with the standards and requirements of the Clackamas County Zoning and

Development Ordinance and the Clackamas County Roadway Standards unless otherwise noted herein.

- D. The applicant shall dedicate approximately 7 feet of right-of-way width along the entire SE Kellogg Avenue site frontage as necessary to provide a minimum one half right-of-way width of 27 feet. The right-of-way centerline and width shall be verified by a professional survey to the satisfaction of DTD Engineering and Survey Departments.
- E. The applicant shall design and construct the following improvements along the entire site frontage of SE Kellogg Avenue:
  - a. Pavement widening with a half-street pavement width of approximately 16 feet, measured from the centerline of the right-of-way to face of curb. The structural section for SE Kellogg Avenue improvements shall be in accordance with Standard Drawing C100 for a local roadway.
  - b. Standard curb, or curb and gutter if curb line slope is less than one percent, with the curb located 16 feet from the centerline of the right-of-way.
  - c. A 5-foot wide landscape strip shall be constructed between the curb and sidewalk, and shall include landscaping and street trees.
  - d. A 5-foot wide unobstructed sidewalk.
  - e. A minimum 20-foot radius curb return and ADA accessible curb ramp shall be constructed at the SE Birch Avenue Intersection. The curb ramp shall be design and constructed per ODOT drawing RD756, as approved by the Engineering Division.
  - f. Remove and replace the existing street sign, as necessary to accommodate frontage improvements, per Standard Drawing T150 and T250.
  - g. If access to Parcel 1 is proposed from SE Kellogg Avenue, a concrete driveway approach shall be constructed, per Standards Drawing D650.
  - h. Drainage facilities in conformance with the Oak Lodge Water Services requirements, ZDO section 1008 and Clackamas County Roadway Standards Chapter four.
  - i. The applicant shall either a) design and construct the following improvements along the entire site frontage of SE Birch Avenue, or

- b) pay a Fee-In-Lieu-of constructed improvements based on a construction estimate for the required improvements. The construction estimate for payment of Fee-In-Lieu-of shall be prepared by an Engineer registered in the State of Oregon, or an estimate deemed acceptable to the Engineering Division. The payment of Fee-In-Lieu-of shall be made prior to final plat approval. These improvements shall consist of:
- j. Pavement widening with a half-street pavement width of approximately 16 feet measured from the centerline of the right-of-way to face of curb. The structural section for SE Birch Avenue improvements shall be in accordance with Standard Drawing C100 for a local roadway.
  - k. Standard curb, or curb and gutter if curb line slope is less than one percent, with the curb located 16 feet from the centerline of the right-of-way.
  - l. A 5-foot wide unobstructed sidewalk behind a 5-foot wide landscape strip including street trees.
  - m. Concrete driveway approach, per Standards Drawing D650.
  - n. Drainage facilities in conformance with the Oak Lodge Water Services requirements, ZDO section 1008 and Clackamas County Roadway Standards Chapter four.
  - o. Written verification must be received from the Fire District that adequate emergency services access is provided to each parcel.
  - p. Positive drainage shall be provided for all parcels to an acceptable surface water management system having the capacity to accommodate the anticipated contribution per Chapter 4 of the Clackamas County Roadway Standards, and Oak Lodge Water Services standards.
  - q. A Utility Placement Permit shall be required for any utility work required within the right-of-way of SE Kellogg Avenue and SE Birch Avenue.
  - r. The applicant's attorney and/or surveyor or engineer shall provide written verification that all proposed lots have legal access and utility easements as required **prior to recording of the plat**.
  - s. The applicant shall furnish sanitary sewer, storm drainage and domestic water easements as deemed necessary by the DTD



Engineering Division and Oak Lodge Water Services as deemed necessary after final plans reviews. All such easements shall be shown and properly referenced upon the final partition plat.

V. **Oak Lodge Sanitary District Conditions:** Markus Mead 503-353-4205

- A. Property owner shall apply for utility connection permit(s) and supply all relevant materials.
- B. Sanitary sewer and/or water SDCs may be assessed. The property will be assessed by the rules, regulations and design and construction standards in effect on the date of complete application to OLWSD; not Land Use application.
- C. Property owner shall apply for site development permit to OLWSD for review and approval prior to construction commencement.
- D. Prior to plat or final approval, the owner of the development must sign an Agreement to Maintain Stormwater Facilities, prepared by OLWSD. The Stormwater Maintenance Agreement must be incorporated into the Covenants, Conditions, and Restrictions of the plat or recorded against the property.
- E. Property owner shall apply for an erosion and sediment control permit from OLWSD or supply information that a DEQ 1200C permit is issued.
- F. Property owner shall demonstrate that stormwater generated from applicable impervious surfaces can enter the public system according to OLWSD design standards.
- G. A stormwater overflow path is required.
- H. Detention is not required. (design and construction standards 2.0010 General Design Requirements) 2.1005.03.05 Onsite Detention Design Method
- I. Downstream analysis is required.

VI. **Zone Change Condition**

- A. The official zoning map shall be amended to reflect this zoning map change from R-10 to R-7.

DATED this 17<sup>th</sup> day of December, 2018.



Fred Wilson  
Clackamas County Hearings Officer

### **ENDANGERED SPECIES ACT NOTICE**

The federal Endangered Species Act (ESA) is not a criterion for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

### **APPEAL RIGHTS**

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).