

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

Regarding an Application for a Conditional Use)	Case File No.
Permit to Establish a Duplex on an Urban Low)	Z0574-18-C
Density Residential Zoned Lot.)	(D’Agostine)

A. SUMMARY

1. The applicant and owner is Brian D’Agostine
2. The subject property is located at 14010 Southeast Douglas Fir Court, Oak Grove, OR 97267. The legal description is T2S, R1E, Section 01DD, Tax Lot 1210, W.M. The subject property is approximately .88 acres and is zoned R-10 – Urban Low Density Residential.
3. On January 24, 2019, 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 January 24, 2019. 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 Clay Glasgow discussed the staff report and recommended approval of the application.
3. Brian D’Agostine testified in support of the application.
4. A number of neighbors testified in opposition to the application.
5. After the conclusion of the public hearing, the Hearings Officer closed the record.

C. FACTS

The subject property is an approximately .88-acre parcel zoned R-10. The property is located at 14010 Southeast Douglas Fir Court, Oak Grove, OR 97267. The property is one tax lot, but it contains two lots of record. A single family dwelling currently exists on the southern portion of the property with frontage on Southeast Douglas Fir Court, which is a cul-de-sac. The proposal involves building a two family dwelling (duplex) on the northern portion of the property with frontage on Southeast Willamette Avenue, which is a very low volume local road. While the applicant could not build another single family dwelling on the tax lot without partitioning the property (which he could do), under the applicable provisions a duplex may be built as a conditional use without partitioning the property. The duplex would be built close to Southeast Willamette Avenue. The applicant also proposes to build a garage with a guest home farther away from Southeast Willamette Avenue. The property is in an area of single family dwellings with lots ranging from 10,000 square feet to over 20,000 square feet. The southern portion of the property is developed, while the northern portion has wooded areas and open grassy areas. A minor water course, which is not regulated by the County, runs along the western portion of the property. Southeast Willamette Avenue adjacent to the property is substandard and has damaged asphalt with no turnouts.

D. DISCUSSION

The staff report does a thorough job of explaining how all of the applicable approval criteria are satisfied. The majority of the findings in the staff report are not challenged by opponents. 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 agree with those findings. Therefore, I adopt and incorporate the findings in the staff report in this decision, except as discussed further.

Clackamas County Zoning and Development Ordinance (ZDO) 1203.03 provides the approval criteria for conditional uses.

1. ZDO 1203.03(A)

ZDO requires that the "use is listed as a conditional use in the zoning district in which the subject property is located." A number of opponents argue that a duplex should not be allowed in a single family residential zone. Opponents also argue that they are

opposed to a zone change allowing duplexes and multi-family uses. Initially, the proposal does not involve a zone change. The property is currently zoned R-10, and the property would remain zoned R-10 if the application is approved. Additionally, duplexes are allowed as conditional uses in the R-10 zone. ZDO Table 315-1. ZDO 1203.03(A) is satisfied.

2. ZDO 1203.03(C)

ZDO 1203.03(C) requires that the “proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.” ZDO 1007.07(B) requires that “[a]pproval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner.” The proposed use would only generate 10 additional daily vehicle trips. Although the roads to the north of the property are substandard, the addition of one dwelling would not make the transportation system inadequate to handle the projected level of traffic. ZDO 1203.03(C), however, also requires that the “safety of the transportation system is adequate to serve the proposed use. The County Engineering Division found that the safety of the existing transportation system was not adequate to serve the proposed use.

“SE Willamette Ave. and SE Fernridge Ave. are substandard in width. Fernridge Ave. has damaged asphalt, gravel shoulder turnouts to allow vehicles to pass, and acceptable sight distance to see oncoming vehicles. The portion of Willamette Ave. directly east of the Fernridge Ave./Willamette Ave. intersection to the edge of the west driveway wing of the driveway for 13780 SE Fernridge Ave. (approximately 78 feet in length) has 10-foot wide damaged asphalt and no turnouts. Engineering staff has determined that the existing off-site roadways are not adequate to provide safe access for the additional vehicle trips generated by the development per ZDO subsection 1203.03.C.

“Typically, full frontage improvements (pavement widening, curb, landscape strip with street trees, sidewalk, and ADA ramp transitions) would be required of a Conditional Use Application of this scope. However, the applicant has agreed to repair and widen a portion of Willamette Ave. that is approximately the same cost as the frontage improvements. With these off-site improvements, the roadway will be adequate to serve the proposed development.

“In lieu of building frontage improvements along the property (curb, sidewalk, landscape strip, and temporary ADA ramps). The applicant has agreed to repair and widen the approximate 78 feet section of Willamette

Ave. mentioned above. Based on this, the Engineering staff has determined that the existing transportation facilities have adequate capacity to serve the proposed development.” January 16, 2019 Engineering Memorandum 1.

The Engineering Division determined that although the County would generally be able to require that the applicant make half street improvements along the frontage of the property, the stretch of Southeast Willamette Avenue to the east of the property is in more need or repair and improvement than the stretch along the property. As opponents ably explain, the section of Southeast Willamette Avenue east of the property is in terrible condition. The street is only 10 feet wide at best, there are no turn outs, and what asphalt there is is crumbling and broken. One opponent even explained that this stretch of Southeast Willamette Avenue was originally built as a driveway.

If only frontage improvements to the subject property were proposed, I would likely agree with opponents that the safety of the transportation system is not adequate to serve the proposed use. While the other portions of Southeast Willamette Avenue and Southeast Fernridge Avenue are also substandard, they are in significantly better condition than the stretch of Southeast Willamette Avenue that is proposed for the applicant to improve. Those areas are wider, have areas for cars to pass by each other, and the asphalt is in significantly better condition. Although it is a reasonably close call, I agree with the Engineering Division that with the proposed improvements to Southeast Willamette Avenue that the safety of the transportation system would be adequate to serve the proposed use. While I can certainly sympathize with opponents’ concerns, the proposed use would only add a de minimis number of additional trips and would vastly improve the worst stretch of Southeast Willamette Avenue. Overall, the proposed use would bring about a significant improvement in the safety of the transportation system. ZDO 1203.03(C) is satisfied.

3. ZDO 1203.03(D)

Clackamas County Zoning and Development Ordinance (ZDO) 1203.03(D) requires that the “proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.” The character of the surrounding area is urban low density residential uses. The

primary uses are residential uses. Previous cases have explained that the inquiry under ZDO 1203.03(D) entails whether the proposed use makes the exercise of those primary uses substantially worse. Therefore, in the present case, the question is whether the proposed duplex would make residential uses substantially worse. As discussed, traffic impacts from the proposed use would be very minimal. I do not see that 10 additional vehicle trips would make residential use substantially worse. Opponents also argue that a duplex would be out of place in the neighborhood. Duplexes, however, are residential uses, and unlike multi-story, multi-family apartments buildings are not out of place in a residential neighborhood. In fact, the proposed duplex is one of the nicest looking duplexes I have seen. As the applicant explained, it was specifically designed to look like a single family dwelling rather than two dwellings smashed together. I do not see that the proposed use would make residential neighborhood uses of surrounding properties substantially worse.

ZDO 1203.03(D) is satisfied.

4. ZDO 1203.03(E)

ZDO 1203.03(E) requires that the “proposed use is consistent with the applicable goals and policies of the Comprehensive Plan.” The staff report explains that the proposed use is consistent with numerous goals and policies of the Comprehensive Plan. I am not sure that any of the cited comprehensive plan provisions are actually “applicable” to the proposed use, but opponents do not challenge the staff report findings. Eugene Schoenheit (Schoenheit) appears to challenge compliance with certain comprehensive plan provisions, but actually he is just disputing statements of fact made in the application regarding drainage and street conditions. Drainage and street conditions are addressed elsewhere in this decision. The comprehensive plan citations mentioned are not relied upon in the decision to find compliance with ZDO 1203.03(E). I do not see that those provisions are necessary towards finding compliance with ZDO 1203.03(E). Opponent’s arguments do not provide a basis to deny the application.

ZDO 1203.03(E) is satisfied.

5. ZDO 1203.03(F)

ZDO 1203.03(F) requires that the “The proposed use complies with any applicable requirements of the zoning district and any overlay zoning district(s) in which the subject

property is located, Section 800, Special Use Requirements, and Section 1000, Development Standards.” Opponents argue that the property is an area of surface water problems. According to opponents, the area is extremely wet and surface water pools on the subject property. ZDO Chapter 1006 addresses surface water management and erosion control: ZDO 1006.06 provides:

“The following surface water management and erosion control standards apply:

“A. Positive drainage and adequate conveyance of surface water shall be provided from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point.

“B. The requirements of the surface water management regulatory authority apply. If the County is the surface water management regulatory authority, the surface water management requirements of the Clackamas County Roadway Standards apply.

“C. Approval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.

“1. The surface water management regulatory authority may require a preliminary surface water management plan and report, natural resource assessment, and buffer analysis prior to signing the preliminary statement of feasibility.

“2. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.

“D. Development shall be planned, designed, constructed, and maintained to:

“1. Protect and preserve existing natural drainage channels to the maximum practicable extent;

“2. Protect development from flood hazards;

“3. Provide a system by which water within the development will be controlled without causing damage or harm to the

natural environment, or to property or persons within the drainage basin;

- “4. Ensure that waters drained from the development are substantially free of pollutants, including sedimentary materials, through such construction and drainage techniques as sedimentation ponds, reseeding, and phasing of grading; and 5. Ensure that waters are drained from the development in such a manner that will not cause erosion to any greater extent than would occur in the absence of development.
- “E. Where culverts cannot provide sufficient capacity without significant environmental degradation, the County may require the watercourse to be bridged or spanned.
- “F. If a development, or any part thereof, is traversed by any watercourse, channel, stream, creek, gulch, or other natural drainage channel, adequate easements for surface water management purposes shall be provided to the surface water management regulatory authority.
- “G. Channel obstructions are not allowed, except as approved for the creation of detention, retention, or hydropower facilities approved under this Ordinance. Fences with swing gates may be utilized.
- “H. The natural drainage pattern shall not be substantially altered at the periphery of the subject property. Greatly accelerated release of stored water is prohibited. Flow shall not be diverted to lands that have not previously encountered overland flow from the same upland source unless adjacent downstream owners agree.
- “I. A surface water management and erosion control plan is required for significant residential, commercial, industrial, and institutional development. The plan shall include:
 - “1. The methods to be used to minimize the amount of runoff siltation and pollution created from the development both during and after construction; and
 - “2. Other elements required by the surface water management authority.”

Opponents have provided persuasive evidence that the property is in an area of significant surface water drainage problems. ZDO 1006.06(A) requires positive drainage and adequate conveyance of surface water to an appropriate discharge point. To establish that this can be accomplished, an applicant must obtain a preliminary statement of

feasibility from the surface water management regulatory authority, which in this case is Water Environment Services (WES). WES provided the required preliminary statement of feasibility. WES also recognizes that the property may require greater than average measures be taken to adequately control surface water. WES proposed 30 conditions of approval to ensure all requirements are satisfied, which are included as proposed conditions of approval in the staff report. The conditions of approval, among other things, require the applicant to comply with WES requirements. Those requirements would ensure that ZDO 1008.06 is satisfied. The proposed conditions of approval are extremely extensive, and as long as those conditions are satisfied then ZDO 1006.06 will be satisfied. I have reviewed the conditions of approval, and I believe it is feasible for the applicant to comply with those conditions of approval. With the proposed conditions of approval, ZDO 1006.06 is satisfied.¹

6. Other Issues

Opponents argue that the proposed duplex would lower property values in the area. The applicant provided persuasive evidence that if anything the proposed duplex would increase property values. In any event, any effect on property values is not an applicable approval criterion or consideration. *Morton v. Clackamas County*, 70 Or LUBA 7, 13-14 (2014); *Tylka v. Clackamas County*, 34 Or LUBA 14, 29 (1998). Opponents' arguments do not provide a basis for denying the application.

All of the applicable approval criteria are satisfied.

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** application Z0574-18-C, with the following conditions of approval.

F. CONDITIONS OF APPROVAL

I. General Conditions:

- 1) Approval of this land use permit is based on the submitted written narrative and plan(s). No work shall occur under this permit other than which is specified within

¹ Schoenheit raised the issue of compliance with ZDO 1006.06(F) and the necessity for adequate surface water easements for WES. Proposed condition of approval IV. – 13 requires any such easements be granted. ZDO 1006.06(F) is satisfied.

these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.

- 2) 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 Deans Mulder, Clackamas County at (503) 742-4710 or at deanam@co.clackamas.or.us
- 3) **Prior to the issuance of building permits,** the applicant shall submit a statement of use to Wendi Coryell in the Clackamas County Engineering Division. Wendi Coryell can be contacted at (503) 742-4657 or wendicor@co.clackamas.or.us The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.
- 4) If approved, the conditional use and design review is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
 - a. A building permit for a new primary structure that was part of the conditional use approval; or
 - b. A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.
- 5) These Conditional Use and Design Review approvals are granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.
- 6) 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 Conditions: Clay Glasgow, (503) 742-4520, clayg@clackamas.us

- 1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to subsec. 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.
- 2) Building setbacks cited in Section 315 of the ZDO to be satisfied.
- 3) **Prior to building permit approval**, outdoor lighting [ZDO 1005.05(A) and (B)] shall be located and designed so that it does not shine onto adjacent properties, upwards or right-of-ways. If additional lighting will be installed, the applicant will submit an outdoor lighting system design plan prior to installation of the outdoor lighting system for review and approval by Planning and Zoning Division.
- 4) **Prior to building permit approval**, All signs shall be in compliance with ZDO Section 1010.06 and 1010.13. Get approval of any required permits.
- 4) **Prior to building permit approval**, the applicant shall submit a final landscape plan to the County's Planning and Zoning Arborist, for review and approval prior to planting, illustrating the location of the vegetation and a legend, per ZDO Section 1009, including subsections 1009.02, 1009.03, Table 1009-1, 1009.04, 1009.05 and 1009.11 requirements, to be planted within and around the proposed structure and parking lot.
- 5) **Prior to Occupancy**, the developer shall submit a signed maintenance contract, or provide a financial guarantee, covering the landscape maintenance costs during the guarantee period.
- 6) **Prior to Occupancy**, the proposed landscaping shall be installed and inspected.
- 7) **Prior to final occupancy permit issuance:** the applicant shall contact Clay Glasgow, Planning & Zoning Division, 503-742-4521, clayg@clackamas.us He can provide the necessary information about size of service trucks and appropriate containers. She also must sign off on behalf of the service provider(s). Detailed

information, including ZDO 1021, is available on the county web site www.co.clackamas.or.us under “Garbage & Recycling.” Note: Roofs over trash / recycling enclosures are not allowed.

Prior to Occupancy: the acceptable trash / recycling enclosure shall be installed and inspected.

III. Building Code Division Conditions: Richard Carlson, (503) 742-4769, richardcar@co.clackamas.or.us

- 1) All construction shall comply with current Oregon Structural Specialty Code and any other relevant codes. All required building permits shall be obtained and receive final occupancy approval.
- 2) All applicable development permits (grading and erosion control, etc.) shall be obtained prior to any construction.

IV. WES, Water Environment Services Conditions: Erik Carr, 505-742-4571

1. The proposed development is located within the service area of Water Environment Services and shall be subject to WES Rules and Regulations, and Design Standards (“RR&S/Rules”) for sanitary sewer services and surface water management, including vegetated buffer and erosion control requirements. The applicant shall procure the necessary plans approvals and permits in accordance with WES Regulations and adopted Sanitary Sewer and Stormwater Standards (available on the WES website).
2. Prior to plan approval, all submittals shall be reviewed for compliance with WES Rules, Design Standards, and Conditions of Approval. Sanitary and stormwater management plans and calculations shall be stamped and signed by a civil engineer licensed by the State of Oregon. The construction, specifications, and testing must be completed under the direction of the engineer.
3. Upon the completion of construction and certification by the engineer, WES shall inspect and approve the construction of the sanitary and storm systems. The sanitary and storm systems shall be complete in all respects, in accordance with the approved plans, prior to occupancy approval by WES.
4. Any requests to modify current WES Design Standards shall be made in accordance with Sanitary Standards, Section 1.7 or Stormwater Standards, Section 1.6. The applicant shall provide all necessary information to evaluate the request, as determined by WES.
5. Surface Water, Storm Drainage, and Sanitary Sewer Easements located on or adjacent to the site and granted to WES/CCSD#1 are permanent and not extinguishable. No development shall encumber the use or access to these easements by WES.
6. The proposed development shall be subject to applicable fees and charges, in accordance with WES RR&S. All fees and charges shall be paid before building

permits will be issued, and are subject to change without notice to the applicant. All costs associated with the design, construction and testing of the sanitary sewer or storm system shall be provided by and at the sole expense of the developer.

For Sanitary Sewer, the following conditions shall apply:

7. Prior to occupancy, a separate and independent gravity sanitary sewer service connection shall be provided to each dwelling unit of the development. The service lateral shall terminate with a clean out at the front edge of the sanitary sewer easement or the property line. (Sanitary Standards, Section 3.2)
8. A \$125 tap-in fee is required for each 4-inch tap-in to a public mainline. (*Rules, Section 4.4.2*)
9. Plan review fees for the sanitary sewer system shall apply. A \$400.00 minimum shall be due with the first plan submittal.
10. Sanitary System Development Charges shall apply per WES rules and rates at the time of building permit applications (currently \$7,615.00 per EDU). SDC's shall be paid before building permit approval. Two EDU's shall apply for the duplex and one EDU for the SFR ("accessory building"). (*Rules, Section 4.1*)
11. A Collection Sewer Charge shall not apply.

For Surface Water, the following conditions shall apply:

12. All development that creates or modifies 5,000 square feet or more of impervious surface area shall be subject to WES Stormwater Design Standards. The project engineer shall submit a Surface Water Management Plan and Storm Report (SWM Plan) to WES for review and approval that demonstrates how the development will conform to these Stormwater Standards.
13. The SWM Plan shall provide an adequate drainage system for all onsite water, all water entering the property from off-site, and any road frontage improvements. The Plan shall demonstrate the development has an acceptable point of discharge or can construct improvements to provide an acceptable point of discharge, including necessary easements.
14. WES Stormwater Standards include, but are not limited to the following: (Section 5)
 - a. **Water Quality Standard** - Water quality facilities shall be designed to capture and treat the first 1-inch of stormwater runoff from a 24-hour storm event using either vegetation (Appendix H) or a Basic Treatment proprietary device (Appendix F).
 - b. **Infiltration Standard** - The first ½ inch of runoff in a 24-hour period must be captured and retained onsite through an approved infiltration system.
 - c. **Detention/Flow Control Standard** – On-site detention facilities shall be designed to reduce the 2-year post-developed runoff rate to ½ of the 2-year pre-developed discharge rate.

- d. **Conveyance Standards** - The conveyance system shall be sized for a minimum 25-year design storm.
15. Storm service connection laterals shall be provided to all proposed structures within the development.
16. The grading plans shall clearly identify an overflow pathway system that will prevent damage to downstream properties in the event of any stormwater facility failure or bypass. (Section 1.2)
17. The SWM Plan shall include a Downstream Conveyance Analysis that verifies adequate conveyance capacity to a minimum distance of 1500 feet downstream of the project.
18. The SWM Plan shall include a geotechnical report prepared by a qualified professional. The report shall address maximum seasonal groundwater levels, verify the feasibility of all proposed infiltration systems, and provide infiltration test results that correspond to the location and depth of the infiltration facilities, in accordance with Appendix E.
19. Infiltration facilities shall provide a 3-foot minimum vertical separation from the maximum seasonal groundwater elevation. (Appendix H)
20. **If infiltration is not feasible the design engineer shall submit a modification request in accordance with Stormwater Standards Section 1.6 with an equivalent alternative design which can accomplish the same design intent as provided in these standards.** A geotech report shall be included with the request. Retention options in lieu of the infiltration standard include:
 - a. BMP Tool: WES, in cooperation with other local jurisdictions, has developed a BMP Sizing Tool. The tool sizes facilities so that post-development peak flow durations will match the pre-development peak flow durations ranging from 42% of the 2-year to the 10-year flows, as determined by HSPF continuous rainfall model simulation.
 - b. Engineer's Model: The project engineer can develop and submit a continuous rainfall runoff model simulation, so that post-development peak flow durations will match the pre-development peak flow durations ranging from 42% of the 2-year to the 10-year flows as determined by the continuous model simulation.
 - c. Flow Control and Retention Standard: Meet the Detention/Flow Control Standard and retain the first ½" of runoff in a 24-hour period onsite within an approved SW facility. The storage of the infiltration/retention volume within a vegetative facility shall not exceed 6-inches in height above the vegetation.
21. If pervious pavement is proposed as a stormwater management BMP, the engineer shall provide a complete and detailed design for the facility, as determined by WES.
22. The property owner(s) shall be responsible to inspect and maintain all stormwater management systems. Prior to plan approval, the developer shall submit an Operations and Maintenance Plan for all stormwater facilities to WES for review.

23. Plan review fees for the surface water review shall apply (equal to 4% of the storm system construction costs). A \$400.00 minimum shall be due with the first plan submittal.
24. Surface Water System Development Charges shall apply per WES rules and rates at the time of building permit application. The current rate is \$205 per 1 ESU (2,500 sf of impervious surface area).

For Vegetated Buffers, the following conditions shall apply:

25. All new development shall meet WES Rules to preserve and maintain an undisturbed vegetated buffer to protect all water quality sensitive areas, including wetlands and streams. The applicant shall coordinate any buffer requirements with Clackamas County Planning. (*Section 4*)
26. A Natural Resource Assessment Report shall be submitted to Planning/WES. All springs, wetlands, streams, required buffers, and proposed encroachments/mitigation shall be clearly shown and noted on the plans and identified/delineated by a certified professional.
 - a. Or, the developer shall submit proof of wetland mitigation approval from DSL/COE. If mitigation approval is not granted, all WES rules and regulations shall apply.
27. All encroachments into the water quality buffer require an approved Buffer Variance from WES, in accordance with *Section 4.4*. The Buffer Variance and mitigation/restoration plan shall be submitted to Clackamas County Planning. WES shall require a review of final construction plans prior to any buffer variance approvals to verify that the proposed variance will not conflict with the approved storm and sanitary layout.
28. Approval of the land use application does not include any conclusions by WES regarding acceptability of regulated water quality sensitive areas by DSL or COE. This decision should not be construed or represented to authorize any activity that will conflict with or violate DSL/COE requirements. The applicant shall coordinate with DSL/COE and, if necessary, other responsible agencies to ensure that development activities are designed, constructed, operated and maintained in a manner that complies with DSL/COE approval.

For Erosion Control, the following shall apply:

29. An approved erosion control plan and permit from WES shall be required before the start of any grading or construction activities. An erosion control permit fee shall apply (\$460 + \$80/acre over 1 acre).

Construction Plan Submittal:

30. The applicant's construction plan submittal shall include:

- a. Two (2) sets of full-size, complete civil construction plans for all sanitary and stormwater improvements, including erosion control and vegetated buffers (*see: Sanitary Standards, Section 4.3*)
- b. Two (2) final storm reports, including a geotech report and downstream analysis
- c. Either a natural resource assessment report or DSL wetland mitigation documentation
- d. \$800 plan review fees
- e. \$460 erosion control fee

V. **Engineering Division Conditions:** Kaylin Hangartner, (503) 742-4711, khangartner@clackamas.co

1. The applicant shall improve the section of Willamette Ave. starting directly east of the Fernridge Ave./Willamette Ave. intersection to the edge of the west driveway wing of the driveway for 13780 SE Fernridge Ave. (approximately 78 feet in length), as follows:
 - a. The applicant shall remove all the existing asphalt and any failing sections of aggregate base and replace with new aggregate base and asphalt.
 - b. The applicant shall construct the road to a width of 16 feet. The structural section of these improvements shall be in conformance with Standard Drawing C100 for the local roadway.
2. A Development Permit is required from the Engineering Division for review and approval of frontage improvements, sight distances and the onsite shared private road. The permit shall be obtained prior to commencement of site work. 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.
3. All required improvements shall be designed and constructed by the applicant, inspected and approved by the County, or financially guaranteed.
4. The applicant shall design and construct the driveway in compliance with Roadway Standards Drawing R100.

5. Parking spaces shall meet minimum ZDO section 1015 dimensional requirements. According to ZDO Table 1015-1, the parking space requirement for a two-family dwelling is 3 parking spaces. All parking and maneuvering areas shall be paved.
6. The applicant shall design and construct the driveway approach in compliance with Roadway Standards Drawings D500.
7. The applicant shall provide and maintain adequate intersection sight distance at the proposed driveway approach intersection with Willamette Ave. In addition, no plantings at maturity, retaining walls, embankments, rock outcroppings, fences or any other objects shall be allowed to obstruct minimum sight distance requirements. Minimum intersection sight distance shall be 165 feet, in both directions along Willamette Ave., measured 14.5 feet back from the edge of the travel lane.
8. Written verification must be received from Clackamas County Fire District #1 that adequate emergency services access is provided to the duplex.
9. Positive drainage shall be provided for on-site and off-site improvements to an acceptable surface water management system having the capacity to accommodate the anticipated contribution per chapter four of the Clackamas County Roadway Standards and Water Environment Services.

A Utility Placement Permit shall be required for any utility work required within the County right-of-way

DATED this 19th day of February, 2019.



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).