

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Upholding the Planning)
Commission’s Decision to Deny Planning) Board Order 23-137
Docket P-16-22; Tax Lot 4106-00101)
Applicant: Aldace Howard)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on April 13, 2023, Commissioners Lindsay Berschauer, Kit Johnston, and Mary Starrett being present.

IT APPEARING TO THE BOARD as follows:

A. WHEREAS, On December 8, 2022, the applicant, Aldace Howard, requested to partition an approximately 4.2-acre property into tow (2) parcels, with one parcel measuring approximately 1.1 acres and the second parcel measuring approximately 3.1 acres; and

B. WHEREAS, The Yamhill County Planning Director issued a decision letter denying the request on February 23, 2023; and

C. WHEREAS, The Planning Director’s decision was appealed and considered by the Board at a hearing held on March 30, 2023; and

D. WHEREAS, Following deliberation, the Board voted unanimously to uphold the Planning Director’s decision and deny the appeal; and now, therefore,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. Planning Docket P-16-22 is hereby denied.

Section 2. The Board hereby adopts and incorporates the February 12, 2023 staff report, attached hereto as Exhibit A, in support of this Order. The staff report identifies the applicable approval criteria and describes the conclusions for denial.

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DONE this 13th day of April, 2023, at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS



Lindsay Berschauer

KERI HINTON
County Clerk

Chair LINDSAY BERSCHAUER

By: *Carolina Rook*
Deputy Carolina Rook

Kit Johnston

Commissioner KIT JOHNSTON

Mary Starrett

FORM APPROVED BY:

Commissioner MARY STARRETT

Jodi M. Gollehon

Jodi M. Gollehon
Assistant County Counsel

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT
STAFF REPORT

DATE: February 12, 2023

DOCKET NO.: P-16-22

REQUEST: To partition an approximately 4.2-acre property into two (2) parcels. One of the new proposed parcels will measure approximately 1.1-acres and the second parcel will measure approximately 3.1-acres.

APPLICANT: Aldace Howard

OWNER: River Fun, LLC

TAX LOT: 4106-00101

LOCATION: 37108 NE Wilsonville Road, Newberg

ZONE: VLDR-2.5, Very Low Density Residential District

CRITERIA: Section 502 of the *Yamhill County Zoning Ordinance* and the *Yamhill County Land Division Ordinance*.

COMMENTS: *County Sanitarian:* Please see letter received by the Planning Department on January 9, 2023 and email received by the Planning Department on January 10, 2023.
Tualatin Valley Fire & Rescue (TVFR): No response to date.
Public Works: No response to date.
Watermaster: No response to date.
Soil & Water Conservation District (SWCD): Please see letter received by the Planning Department on January 11, 2023.
Department of Land Conservation & Development (DLCD): No response to date.
Clackamas County Planning Department: No response to date.
Friends of Yamhill County: Please see letter in opposition to the request, received by the Planning Department on January 23, 2023.
Daniel Godfrey, 37100 NE Wilsonville Road, Newberg: Please see letter in opposition to the request, received by the Planning Department on January 20, 2023.

FINDINGS:

A. Background Facts

1. *Lot Size:* Approximately 4.2-acres.
2. *Access:* The subject parcel has direct access to NE Wilsonville Road.

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3. *On-site Land Use and Zoning:* The subject parcel is zoned for rural residential use and is located in the Very Low Density Residential District, the VLDR-2.5 zone. There are two dwellings located on the subject parcel and appears to be used almost exclusively residentially. The Willamette River runs along the parcel's southeastern property line, and the parcel is located entirely within the Willamette River Greenway. The property's northern property line is concurrent with the Washington County and Yamhill County jurisdictional boundary line.
4. *Surrounding Land Use and Zoning:* The surrounding parcels are all located in the Very Low Density Residential District, the VLDR-2.5 zone. Land use in the surrounding area is variable with rural residential use being the most common use occurring in the area although there are some agricultural uses evident, particularly on the larger lots north of Wilsonville Road. The most prevalent farm uses in the area include blueberry cultivation, grass seed and hay production, fruit and nut orchards, and limited livestock pasturage. All of the lots located along the Willamette River in this area are at least partially located within the 100-year floodplain of the Willamette River and are also within the Willamette River Greenway.
5. *Water:* The application states that water will be provided by an existing well.
6. *Sewage Disposal:* The proposed lot will served by an on-site septic system.
7. *Fire Protection:* Tualatin Valley Fire & Rescue (TVFR)
8. *Previous Actions:* The subject parcel was created through a land partition approved in 1973, Docket P-237-73. A floodplain development permit and a Willamette River Greenway permit for the construction of a dock accessing the Willamette River was approved in 2014, Docket WRG-04-14/FP-05-14. A replacement dwelling was approved for the secondary dwelling on the parcel in 2016, Docket RDI-16-16. A non-conforming use request and Willamette River Greenway permit was approved in 2016, for the construction of a replacement dwelling, Docket WRG-04-16/NCU-01-16.
9. *Deferral:* The County Assessor's records show that the parcel is not receiving farm or forest deferral.
10. *Overlay Districts:* The subject parcel is located within the identified 100-year floodplain area for the Willamette River, per FIRM panel 41071C0265D. The property is located within the Willamette River Greenway, and the Willamette River is identified as essential salmonid habitat. The property is not within any other identified sensitive wildlife habitat area. The parcel is not located within an airport overlay district. The subject parcel and the surrounding area are not located within an identified limited groundwater area.

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B. Land Division Ordinance Provisions and Analysis

The *Yamhill County Land Division Ordinance* (LDO) Chapter 6 contains general design standards for partitions. Applicable standards will be addressed in the following findings.

1. Subsection 6.000 of the LDO requires subdivisions and partitions to conform with the requirements of the Comprehensive Plan and other ordinances. The subject parcel has a Comprehensive Plan and zoning designation of Very Low Density Residential (VLDR), the VLDR-2.5 zone. In the VLDR-2.5 zone, Section 502.06(B)(2) of the YCZO allows, through parcel size averaging for the creation of a one (1) acre parcel provided the average lot sizes are over 2.5 acres. However an administrative rule was adopted in 2000, by the Oregon Department of Land Conservation and Development (DLCD) which stated that lots below 2-acres in size represent an urban-scale of development. An applicant wishing to pursue an urban-scale development in the unincorporated areas of the state must justify Exceptions to Goal 11—Public Facilities and Services (OAR 660-015-0000(11)) and Goal 14—Urbanization (OAR 660-015-0000(14)). Both of these Goals informed the development of the County’s Comprehensive Plan which are the local aspirational goals codified by the county’s zoning ordinances. Goal 11 provides guidance to jurisdictions regarding the planning for and development of orderly and efficiently arranged public facilities and services as a framework for urban rural development. Goal 14 is the statewide planning goal that informs local ordinances related to the processes and mechanisms for the orderly and efficient transition of rural land to urban land use, and essentially informs local government decisions related to the urbanization of rural lands. The guiding precept behind these two Goals is that an incorporated community is the nexus for intensive development (e.g., commercial, industrial, recreational, residential) and that the density of development and scale of services diminish as one moves further from the city limits to the urban growth boundary of the city, and diminish again as one moves beyond the urban growth boundary and into an urban reserve area, and once again as one moves into rural residential districts until one finally reaches the least densely developed areas of a county—namely, the resource districts. The subject parcel is located within the Willamette River Greenway, so it is subject to Statewide Planning Goal 15—which was established to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River. The Summary of Section I.B. of the *Yamhill County Comprehensive Land Use Plan* states that, “*Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increase in costs of community services, conflicts between farm and urban activities, and the loss of open space and natural beauty around urban centers occurring as a result of such expansion.*”

The Applicant is requesting a partition of the existing 4.2-acre lot into two new lots, one of which will measure approximately 1.1-acres in size and a second lot which measures approximately 3.1-acres in size. As mentioned above, DLCD has determined that a lot less than 2-acres in size represents an urban-scale development. The Applicant did not provide to the county a justification for a land division request wherein the lots are below

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the 2.5-acre minimum for newly created lots in the VLDR-2.5 zone. The Applicant did not provide to the county a justification for taking an Exception to Statewide Planning Goal 11 or Statewide Planning Goal 14 in order to justify the County approving this proposed urban-scale land division. Staff finds that an urban-scale land division, as proposed by the Applicant, would also require justification for taking an Exception to Goal 15, as this urban-scale development would not protect, conserve, enhance, or maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River. Staff finds that the proposed division of this land to an urban scale is also in opposition to Section I. of the *Yamhill County Comprehensive Plan*. Staff finds that the Applicant has not adequately demonstrated that this request is in conformity with Subsection 6.000 of the LDO. Staff finds that the Applicant has not adequately demonstrated that this request is in conformity with Statewide Planning Goals 11, 14, and 15. Staff finds that the Applicant has not adequately demonstrated that the request is in conformity with Section 502.06(B)(2) of the YCZO.

2. Section 502.06(B)(2)(c) of the YCZO allows for a maximum depth-to-width ratio of 3:1 for newly created parcels in the VLDR-2.5 zone. The Applicant did not provide an estimated depth-to-width ratio in the application materials submitted to the county, but staff has used GIS (geographic information system) software to approximate the dimension of the 1.1-acre lot proposed by the Applicant. Based on this estimate, staff has found that the average depth of the proposed 1.1-acre lot is 715-feet and the average width of this proposed lot is 77-feet, so the depth-to-width ratio is approximately 9.25:1, please see Staff Exhibit A and Exhibit B. The Applicant's request does not comply with the maximum depth-to-width ratio of 3:1 for newly created parcel in the VLDR-2.5 zone, per Section 502.06(B)(2)(c) of the YCZO. The Applicant did not submit a variance request to this land division approval requirement.
3. Subsection 6.010(1) of the LDO requires that road improvements be completed, or proper security posted as specified in Section 13.000 of the LDO. The proposed lots will have direct access to NE Wilsonville Road by way of private driveways.
4. Subsection 6.010(2) of the LDO requires that the partition provide for continuation of the principal streets existing in the area. The site plan submitted with the application indicates that both lots will have direct access to NE Wilsonville Road and does not require the expansion or continuation of a principal street in the area.
5. Subsection 6.010(4) of the LDO indicates that the Planning Director may require an arrangement of lots and streets that will permit a later re-division of the properties. The property is currently well outside of an urban growth boundary or urban reserve area. Therefore, a shadow plat is not required.
6. Subsection 6.010(8) of the LDO lists the option of property being served by a private easement or driveway. As noted above, both of the proposed lots would be served by driveways that provide access to NE Wilsonville Road.

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7. Subsection 6.015 of the LDO requires the dedication of additional right-of-way when requested by the Public Works Director. The Planning Department sent a referral request for comments and concerns from the Public Works Department, and the Planning Department did not request an additional right-of-way to serve the proposed new lots.
8. Subsection 6.030 of the LDO requires that all lots should form or approximate conventional shapes, with lot side lines running at right angles to the street as far as practical, except for lots on cul-de-sac streets, where side lot lines shall be radial to the curve. The proposed parcels are shown as roughly rectangular in shape on the preliminary plat, therefore the request is in conformity with the requirements of subsection 6.030.
9. Subsection 6.030(6) of the LDO requires lot drainage to be designed to the specifications adopted by the Board of Commissioners. If the partition request is approved, staff recommends a condition of approval requiring the submission of a drainage plan which shall be prepared by a registered engineer demonstrating that no natural drainage will be disturbed by the proposed partition and future residential development of the lots. The drainage plan shall be submitted to and approved by the Public Works Department prior to approval of the final plat or issuance of building or septic permits.
10. Subsection 6.070 of the LDO deals with lands subject to hazardous conditions related to flooding, inadequate drainage, steep slopes, rock formations, earthquake activity, landmass instability, pollutants, or other general factors or conditions that are likely to be harmful to the health and safety of future residents or the general public. There are no steep slopes or significant rock formations that could impede the safe and orderly development of the proposed parcels. There is no documented history of the dumping of toxic or hazardous pollutants on the subject parcel. Earthquakes are an ever-present risk in Oregon but there is no indication that this particular property is at greater risk of earthquake than any other geographic feature in the county. The property is partially located within the Flood Hazard Overlay zone, solely along the bank of the Willamette River. The subject parcel is also located within the Willamette River Greenway, so it is subject to Statewide Planning Goal 15—which was established to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River. Due to the proposed urban-scale development from the creation of a sub-2-acre lot, staff finds that justification for an Exception to Goal 15, in addition to Goal 11 and Goal 14, would be required in order to approve an urban-scale residential development in the Willamette River Greenway. The Applicant failed to justify an urban-scale development in the Willamette River Greenway.

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11. Subsection 6.090 of the LDO gives the options for water supply to lots within a partition. The ordinance gives the following four options:

1. *A certification by a municipal, public utility or community water supply system, subject to the regulation by the Public Utility Commission of Oregon, that water will be provided to the parcel line of each and every parcel depicted in the final plat; or*
2. *A bond, contract or other assurance by the subdivider or partitioner to the county that a domestic water supply system will be installed on behalf of the subdivider or partitioner to the parcel line of each and every parcel depicted on the final plat. The amount of any such bond, contract or other assurance by the subdivider or partitioner shall be determined by a registered professional engineer, subject to any change in the amount as determined necessary by the county; or*
3. *A water well report filed with the State of Oregon Water Resources Department for each well provided within a subdivision or partition. The location of such wells and an appropriate disclosure shall be placed on the face of the final plat. If the subdivider or partitioner intends that domestic water will be provided to the proposed lot or lots by well(s) and no test wells have been drilled, the Director may require that test wells be drilled prior to final approval. The number and location of such wells shall be determined by the director and watermaster having jurisdiction; or*
4. *In lieu of Subsections (1), (2), and (3) of this Section, when a municipal, public utility, community water supply or private well system is not available, then a statement must be placed on the final plat or map which states:*

"No municipal, public utility, community water supply or private well system will be provided to the purchaser of those lots noted hereon."

The Applicant has indicated that a proposed new well will be used to provide water to the new parcels which, if drilled prior to final plat approval, would satisfy subsection 6.090 of the LDO. If approved, a condition of approval will be imposed that requires the Applicant demonstrate conformance with one of the four standards provided by Section 6.090 of the LDO prior to final plat approval.

12. Subsection 6.100 of the LDO contains options and requirements for sewage disposal. The provision of adequate sewage disposal will be required on any approval. No public or city sewer services are available in the surrounding area, so the proposed 1.1-acre lot will be required to be served by an individual on-site subsurface sewage disposal system prior to issuance of building permits, if approved. The County Sanitarian conducts septic site evaluations to ensure there is adequate area to locate an adequately sized and engineered septic system so that wastewater generated by a future dwelling will not adversely impact groundwater in the area. In addition to the drainfield location, the site

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evaluation also identifies a replacement area for the septic system. Due to the proposed size and shape of the subject parcel, it will be difficult for the siting of a septic system, replacement area, access driveway, and homesite and for all of these developments to meet the underlying setback standards of the VLDR-zone, which are a 30-foot setback from the front property line and 15-foot setbacks from the side and rear property lines. Additionally, there are setback standards for onsite and offsite septic systems and well(s) and for these improvements for structures.

13. Subsection 6.120 of the LDO contains requirements and standards for surveying partitions. Since both of the proposed lots would be less than 10-acres in size if approved, a condition of approval that requires a survey of these two lots be conducted and that this survey shall comply with the survey standards outlined in the Yamhill County LDO.

CONCLUSIONS FOR DENIAL:

1. The request is to partition an approximately 4.2-acre property into two (2) parcels. One of the new proposed parcels will measure approximately 1.1-acres and the second parcel will measure approximately 3.1-acres.
2. The request does not satisfy the applicable review criteria provided in Section 502.06 of the *Yamhill County Zoning Ordinance*.
3. The request does not satisfy the applicable standards and limitations of the *Yamhill County Land Division Ordinance*.
4. The request does not satisfy Statewide Planning Goals 11, 14 or 15.

DECISION

Based upon the above findings and conclusions, the request by Aldace Howard, for a partition of Tax Lot 4106-00101, an approximately 4.2-acre property into two (2) parcels measuring approximately 1.1-acres and approximately 3.1-acres, is hereby denied.

DATED AND SIGNED this _____ day of _____, 2022, at McMinnville, Oregon.

Kenneth P. Friday, Planning Director
Yamhill County Planning and Development

KF:lw