

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FILED
YAMHILL COUNTY, OREGON

1992 MAY 28 PM 1:18

92-350

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

CHARLES STERN
COUNTY CLERK
DEPUTY

In the Matter of an Ordinance)	
Amending the Zone Map of the)	
Yamhill County Zoning Ordinance,)	
as amended, to Change the Zone)	
Map Designation from AF-10 to)	ORDINANCE 533
VLDR 1 on 6 acres of Tax)	
Lot 3326DC-3500, Applicant Ed)	
Casciato, Docket Z-1-92, and)	
Declaring an Emergency)	

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board), sat for the transaction of county business in special session on May 27, 1992, Commissioners Dennis L. Goecks, Ted Lopuszynski and Debi Owens being present.

WHEREAS, Ed Casciato has applied to the Department of Planning and Development to change the zone map designation on that 6 acre portion of Tax Lot 3326DC-3500 identified on Exhibit "B" from AF-10 to VLDR 1, the property being located Southwest of the City of Dundee on the South side of Eleventh Street; and

WHEREAS, the subject parcel has a comprehensive plan map designation of Very Low Density Residential sufficient to allow a zone map designation of VLDR without a comprehensive plan map amendment; and

WHEREAS, on March 5, 1992 the Yamhill County Planning Commission held a public hearing on the application and voted to approve the zone change as requested; and

WHEREAS, the decision of the Planning Commission to approve the zone change was appealed to the Board by the Department of Land Conservation and Development and Sid Friedman; and

WHEREAS, on May 6, 1992 the Board held a public hearing to consider the appeal; and

WHEREAS, on May 6, 1992, the Board voted unanimously to deny the appeal and give preliminary approval to uphold the Planning Commission's approval of the zone change; and

WHEREAS, the Board finds that final approval of the application should be granted for the reasons contained in the findings attached as Exhibit "A"; NOW, THEREFORE,

ORDINANCE 533

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THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. Based on the findings for approval set forth in Exhibit "A", which is incorporated into this ordinance by reference, the official zoning map of the Yamhill County Zoning Ordinance, No. 310, as amended, is hereby amended to designate the zoning on that 6 acre portion of Tax Lot 3326DC-3500 identified on the attached Exhibit "B" as VLDR 1.

Section 2. This ordinance being necessary for the health, safety and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, shall be effective upon passage.

DONE at McMinnville, Oregon this 27th day of May, 1992.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN
County Clerk



Ted Lopuszynski
Chairman TED LOPUSZYNSKI

By: *Jayne Mitchell*
Deputy JAYNIE MITCHELL

(Not available for signature)
Commissioner DEBI OWENS

FORM APPROVED BY:

John M. Gray, Jr.
JOHN M. GRAY, JR.
Yamhill County Counsel

Dennis Goecks
Commissioner DENNIS GOECKS

Accepted by Yamhill County
Board of Commissioners on
5-27-92 by Board Order
92-349.

EXHIBIT "A"
Ordinance No. 533

Findings for Approval

DATE OF PLANNING COMMISSION APPROVAL: March 5, 1992
DATE OF BOARD OF COMMISSIONERS FINAL HEARING: MAY 6, 1992
DATE OF BOARD OF COMMISSIONERS FINAL APPROVAL: MAY 27, 1992

DOCKET: Z-1-92

APPLICANT: Ed Casciato

REQUEST: Zone change from AF-10 Agriculture/Forestry Small Holding to VLDR-1 Very Low Density Residential on a 6 acre parcel, plan designated LDR Low Density Residential.

TAX LOT: 3326DC-3500

LOCATION: Southwest of the City of Dundee on the south side of Eleventh Street.

REVIEW CRITERIA: Section 1208 and Oregon Administrative Rules (OAR) Chapter 660, Division 4.

FINDINGS

A. Background Facts

1. Property size: The property is 6 acres and was created as part of the Dundee Orchard Home Subdivision Number 1 on October 25, 1892.
2. Access: 11th Street. The portion of 11th Street that provides access to the parcel is a county road. Inside the city limits of Dundee the road belongs to the city. The only other public access is where 13th street ends near the southeast corner of the property.
3. On-site Land Use: Presently there is one dwelling on the property that is located near the northern property line. The majority of the remaining property is used for the production of Christmas trees. There is a small area at the end of 13th Street that is used to cut firewood for sale.
4. Surrounding Land Use: The twenty acre property to the north contains an open field of grass, trees and brush. This area does not appear to have been tended for any type of farm use

during the past growing season. The adjacent lot to the south and east is in orchard use and appears to be in production. Further to the west along 11th Street is a ten acre pasture for sheep and goats and another parcel of approximately five acres that is in Christmas tree production. Also to the west, at the corner of Neiderberger and Warren Road is a rock crushing plant established on five acres of ground. The property to the east is inside the city limits of Dundee and is developed for residential use.

5. Surrounding Zoning: Zoning on the property to the south and west is AF-10 Agriculture/Forestry Small Holding. Zoning on the rock crushing plant to the west of the subject lot is HI Heavy Industrial. Land north and east of the subject property is inside the city limits and Urban Growth Boundary (UGB) of Dundee. Zoning of this area is R1 Residential.
6. Soils: Sheet 21 of the Yamhill County Soil Survey indicates the following soil types:

<u>Soil Name</u>	<u>Percent of Property</u>	<u>Percent of Slope</u>	
		<u>Ag Class</u>	
Amity (Am)	60	0-3 %	II
Woodburn (WuB)	40	0-7 %	II

7. Water: City of Dundee.
8. Sewage Disposal: Individual on-site septic systems would need to be provided.
9. Fire Protection: Dundee RFD.
10. Taxes: Farm Deferral.

B. Applicable Review Criteria

1. Section 1208 of the Yamhill County Zoning Ordinance provides criteria for a quasi-judicial review of requests for zone boundary amendments. These criteria are:

(a) That the proposed change is consistent with the goals, policies and any other applicable provisions of the Comprehensive Plan.

(b) That there is an existing, demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of

other lands so zoned and their suitability for the uses allowed by the zone.

(c) That the proposed change is appropriate considering the surrounding uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.

(d) That other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size or other factors.

(e) That the amendment is consistent with the current Oregon Administrative Rules (OAR) for exceptions, if applicable.

C. Conclusions For Approval

1. The Board finds that the request satisfies the criteria set forth in YCZO Section 1208(a) which requires that the proposed change is consistent with the goals, policies and any other applicable provisions of the Comprehensive Plan.

1.1 The request is for a zone change from AF-10 Agriculture/Forestry Small Holding to VLDR-1 Very Low Density Residential. Regarding the Comprehensive Plan, the map designation for the property is Low Density Residential, which allows VLDR-1 zoning. Regarding rural development Plan goals, Goal I.B.I. of the Yamhill County Comprehensive Plan states:

"To provide an adequate amount of land, development areas and sites to accommodate those uses which are customarily found in rural areas or require or are better suited to rural locations, without compromising the basic goal relating to urban containment and orderly urban development."

Policy statement (a) relating to this goal states Yamhill County will recognize the lands designated on the plan map as Agriculture/Forestry Small Holding (AFSH), Very Low Density Residential (VLDR) and Low Density Residential (LDR) as the appropriate and desired location for rural residential development, while at the same time encouraging opportunities for small scale or intensive agricultural and forestry activities within these plan-designated areas.

1.2 Because the subject property is plan-designated LDR, the property could potentially be zoned as a Low Density Residential

District with as low as a 6,750 square foot minimum lot size. The applicant is not requesting this level of development. The applicant's request would only allow parcels to an average of one acre (or 43,560 square feet) in size. Section I(B) of the Comprehensive Plan Goal Statement 2 relates to Very Low Density Residential development. It states:

"To accommodate the demand for rural residential development at very low densities and in areas which are not amenable to integrated neighborhood designs, provided such areas are suited to the uses intended and exhibited high amenity value, and such developments do not preempt farm or forest lands, or generate inordinate service demands of their own."

The two policy statements related to this goal are as follows:

"a. Yamhill County will continue to recognize that the appropriate location of very low density residential development is in designated large areas where commitments to such uses have already been made through existing subdivision, partitioning, or development and by virtue of close proximity to existing urban centers; or in small, limited areas having unique scenic, locational and other suitable site qualities where the anticipated magnitude or density of development is not such as to require more than a very basic level of services, such as single local-road access, individual domestic wells and sewage-disposal systems, and possible rural fire protection.

b. Yamhill County will continue to recognize that the appropriate location of very low density residential development is in designated small holding areas where reasonable opportunities for agricultural and forestry activities exist and where the anticipated magnitude or density of development is not such as to require more than a very basic level of services, such as single local-road access, individual domestic wells and sewage disposal systems, and possibly rural fire protection."

1.3. The 1979-80 Yamhill County Exceptions Statement included the subject parcel in the Exceptions Code Area 1.17. The following are some of the findings and conclusions made in 1979, regarding this entire exception area:

- Has proximity of potential rural residential sites to the urban areas for access to jobs, goods and services;
- Has fire protection available by location within a rural fire district;

- Has good existing transportation systems;
- Will not generate inordinate service demands in that single local road access, individual domestic wells and individual sewage disposal systems are the main requirements for rural residential development to occur;
- Has high amenity value for rural residential use;
- Is an area where the majority of parcel are 10 acres or less in size (45 out of a total of 58 parcels).

In this process, the property was plan-designated as LDR Low Density Residential. This plan designation was found to be appropriate for the subject property and was acknowledged as such by the Land Conservation and Development Commission (LCDC). The request is consistent with the goals and policies of the Comprehensive Plan.

1.4 The Board finds that the comprehensive plan goals do not contain mandatory approval criteria. First, the relevant plan provisions are general and aspirational, rather than site specific decisional standards, as evidenced by the introduction to the comprehensive plan, which states: "Goals are general directives or achievements toward which the County wishes to go in the future."

Second, both the terms in the urban area development goal (such as "to encourage", "provide for" and "assure") and the rural area development goal (such as "to provide" and "to accommodate" and "customarily found") have been found not to be mandatory in scope. See Wissusik v. Yamhill County, ___ Or LUBA ___ (Case No. 90-050, dated 11/13/90).

In the alternative, even if the comprehensive plan goals did contain mandatory approval criteria, the request addresses and satisfies all of provisions of the plan goals.

1.4.1 Because this area has been judged to be suitable for low density residential development and the owner is requesting a zoning designation with a lower density than the plan designation allows, the request is consistent with the applicable goals and policies of the comprehensive plan.

1.4.2 The Board finds that this request provides for rural uses without compromising the basic goal relating to urban containment and orderly urban development.

1.4.3 The Board finds that this area is suited to the uses allowed in the VLDR-1 zone and exhibits high amenity value, and

that such uses do not preempt farm or forest lands, or generate inordinate service demands of their own.

1.4.4 The Board finds that this is an appropriate location for very low density residential development in that it is in a designated large area where commitments to such uses have already been made through existing subdivision, partitioning, or development and by virtue of close proximity to the existing urban centers of Dundee and Newberg; or in the alternative, in the smaller, limited area southwest of Dundee having unique scenic, locational and other suitable site qualities where the anticipated magnitude or density of development is not such as to require more than a very basic level of services, such as single local-road access, individual domestic wells and sewage-disposal systems, and possible rural fire protection.

1.4.5 The Board finds this is an appropriate location for very low density residential development because it is situated in a small holding area where reasonable opportunities for agricultural and forestry activities exist and where the anticipated magnitude or density of development is not such as to require more than a very basic level of services, such as single local-road access, individual domestic wells and sewage disposal systems, and possibly rural fire protection.

1.5 Opponents object in part because of perceived detrimental effects, including possible impact on wells from septic systems, and the costs and logistics of providing city services. However, this request is for a zone change, not a subdivision or partition. The property is in an acknowledged exception area, and its current plan designation of VLDR is implemented by Section 500 of the YCZO which provides for three "rural residential districts: AF-10 under Section 501; VLDR districts (VLDR-5, 2.5 and 1) under Section 502; and LDR districts (LDR - 12,000, 9,000 and 6,750) under Section 503.

The Board finds that the property has already been set aside for rural residential living on parcels as small as 6,750 feet. Opponents' arguments have been settled in the acknowledgement process, or in the alternative, are considered premature because the current action does not approve division of the land below its current 6 acre size.

1.5.1 Even if opponents' objections were not moot, the Board finds that "shadow platting" is permitted under Yamhill County Land Division Ordinance Section 6.010(4). Shadow platting controls lot line location and dwelling placement so that in the future the parcel can be redivided to a higher density with allowance for new dwellings and street locations. At the time of partition or subdivision, shadow plating is capable of satisfying the concerns raised by the opponents.

2. The Board finds that the request satisfies the criteria set forth in YCZO Section 1208(b) which requires that there is an existing, demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.

2.1 A survey of areas zoned VLDR-1 and adjacent to the City of Dundee indicated that there are over 110 acres of undeveloped property with this zoning designation, the majority of which is north of the city limits. South of Dundee there are fourteen parcels with a VLDR-1 zoning designation. All are developed and only three of them have enough acreage to allow creation of one additional parcel. There are other areas in the county with a VLDR-1 zoning classification; however, no others are in close proximity to the subject parcel.

2.2 The applicant stated that the one acre parcels would provide people with the opportunity to own a piece of property where they could raise a cow or garden, or engage in other rural residential activities which they could not do in the city.

2.3. Due to the short supply of land zoned for rural residential use there is an existing need for the zone change.

2.4 Opponents claim there has been a failure to show need. However, the Board finds that this property is in an acknowledged exception area, and its current plan designation of VLDR is implemented by the three "rural residential districts, (AF-10, VLDR, LDR districts). The Board finds that the property has already been set aside for rural residential living on parcels as small as 6,750 feet (LDR).

2.4.1 Need is defined in the context of importance, demand and availability under YCZO Section 1208.02(B). The Board finds that adding more VLDR-1 zoned land in an acknowledged exception area is important to the people and economy of the county. In this exception area southwest of Dundee the following is evident: the close proximity of potential rural residential sites to the urban areas for access to jobs, goods and services; the availability of fire protection within a rural fire district; the good transportation systems; the lack of inordinate service demands in light of single local road access, individual domestic wells and individual sewage disposal systems for rural residential development; the high amenity value for rural residential use; and the extent of parcelization which has already taken place in the area where the majority of parcels are 10 acres or less in size (45 out of a total of 58 parcels).

2.4.2 The Board finds that there is a strong market demand for parcels of this size and location. Several recent applications for other similar zone changes in exception areas near Dundee have included similar evidence of market demand, based on witnesses and realtors surveys.

2.4.3 The Board considered availability, location and suitability of other lands to meet the need. The Board finds that the need which existed at the time the exception was taken still exists, and finds that the need can only be partially fulfilled even by this zone change, based upon the exception statement.

3. The Board finds that the request satisfies the criteria set forth in YCZO Section 1208(c) that the proposed change is appropriate considering the surrounding uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.

3.1 This property has been plan designated for a higher density of development than the applicant has requested. The reason for this plan designation was that the pattern and density of development of the area was better suited to rural residential development than for agricultural use. Since 1980, when the plan designation was assigned, there has been increased development in and around the city limits of Dundee. Presently the zoning on the property allows one dwelling on each legally created parcel. One dwelling could and has been placed on the property. Approval of this request would potentially allow five additional dwellings. Because of the parcels' proximity to Dundee city limits, services such as rural fire and police protection necessary for additional dwellings are available.

3.2 Water could be provided by the City of Dundee. Currently the city provides water to the dwelling existing on the parcel. A letter from the Dundee city recorder indicated that the city has not discussed whether water would be provided to future development. Soil evaluations for septic systems would need to be approved prior to any land divisions. Other utilities are generally available in the area.

3.3 The City of Dundee has expressed concerns regarding road access to the parcel. The existing access road past the north property line is designated as a county road. This same road becomes a city road inside the city limits. Although access is a concern, the impact of five additional houses should not be significant.

3.4 The only other question, voiced by a surrounding property owner, was drainage of any potential development. While drainage

is an issue it would be dealt with during a subdivision or partitioning process since no conditions could be placed on a zone change approval.

The Board finds the zone change is appropriate considering the density and pattern of development surrounding the subject parcel.

4. The Board finds that the request satisfies the criteria set forth in YCZO Section 1208(d) that other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.

4.1 The Board finds that there is a limited amount of land suitable for residential development in this location, on the south side of the City of Dundee. Although there are other lands in the county as a whole already designated for very low density residential development, there is very little land with this designation in this area. There is 110 acres zoned VLDR-1 around the city limits of Dundee ; however the majority of acres are north of the city. Very little undeveloped land of this type is south of Dundee. There is only enough acreage to potentially develop three more parcels in the existing VLDR-1 zone south of Dundee.

4.2. Applicant also submitted evidence from a prospective purchaser that small parcels of land that are buildable are difficult to find in this area.

4.3 Opponents submitted evidence of other parcels in the entire county which they argue are available. However, the Board finds the relevant area of inquiry is the area south of Dundee. Parcels located in close proximity to McMinnville, Dayton or Sheridan or Newberg or any other part of the county outside the south Dundee area were properly excluded as they are not locationally relevant. Similarly, even if areas beyond the south Dundee area are considered, size is an important factor. Opponents evidence of other similar designated parcels includes parcel sizes which are greater than and less than the one acre parcel size permitted by the VLDR - 1, and therefore are not relevant parcel sizes for purposes of comparison and analysis under this criteria. The Board therefore concludes that given the size and location of other lands with VLDR -1 zoning, that other lands are unavailable or unsuited to meet the proposed use as 1 acre residential homesites.

5. The Board finds that the request satisfies the criteria set forth in YCZO Section 1208(e) that the amendment is consistent with the current Oregon Administrative Rules (OAR) for exceptions, if applicable.

5.1 The requested zone change is consistent with the Oregon Administrative Rules for exceptions (OAR 660-04-018) because the LDR Plan-designation was approved as a committed rural residential development.

5.2 A letter from the Department of Land Conservation and Development (DLCD) questioned whether approval of this request would violate Statewide Planning Goal 14 in that it might allow an 'urban use' outside the city limits or UGB. As indicated in the letter, neither the courts nor LCDC have defined what an 'urban' level of development is. Without a definition of 'urban' there is no way to definitely determine if the request would result in an urban scale of use. As previously indicated, the plan designation of the property is LDR. This plan designation could allow zoning that creates parcels with as small as a 6,750 square foot minimum lot size. The applicant has requested zoning that would allow an average minimum lot size of one acre. The stated purpose of the VLDR zoning district is to provide for medium-to-high density rural residential development. The ordinance indicates:

"VLDR districts are intended to accommodate rural residential development at an anticipated magnitude or density level that does not require more than a very basic level of services, such as single local-road access, individual domestic wells and sewage-disposal systems, and rural fire protection."

5.3 The zone change is consistent with the current Oregon Administrative Rules for exceptions. The exceptions process only applies when an exception area is either being created or being modified. OAR 660-04-018. Neither situation exists here where the application is to change from one acknowledged rural density zone (AF-10) to another (VLDR - 1). These designations were already adopted when the county established the exception area in 1980. The exception document includes VLDR -1 as a zoning designation to be allowed in the exception area. Therefore, the zoning designations have already been adopted, and the rule does not apply to changing from one accepted and approved zone to another.

5.4 In 1980 LCDC acknowledged that the LDR plan designation complied with State-wide Planning Goals 1-14. There is no evidence of a change of circumstances which would indicate that this acknowledgement was in error.

5.5 In 1986 the LCDC periodic review order did not list this plan designation as one which needs to be re-examined nor did LCDC require Yamhill County to re-justify the LDR plan designation.

5.6 The Board finds that no new types of uses are proposed. Under OAR 660-04-018, only when "plan and zoning provisions" are adopted which "would allow changes in existing types of uses" are the additional rule criteria applicable to a quasi-judicial land use decision. In this case, no changes are proposed in the type of uses allowed in the exception area. VLDR - 1 is an accepted and authorized rural residential use and density in the exception area. Residential activity is an allowed use in the exception area, and is the reason for its creation in the first place. Therefore, there is no proposal involved here to change the existing types of uses allowed and the rule criteria do not apply to this application.

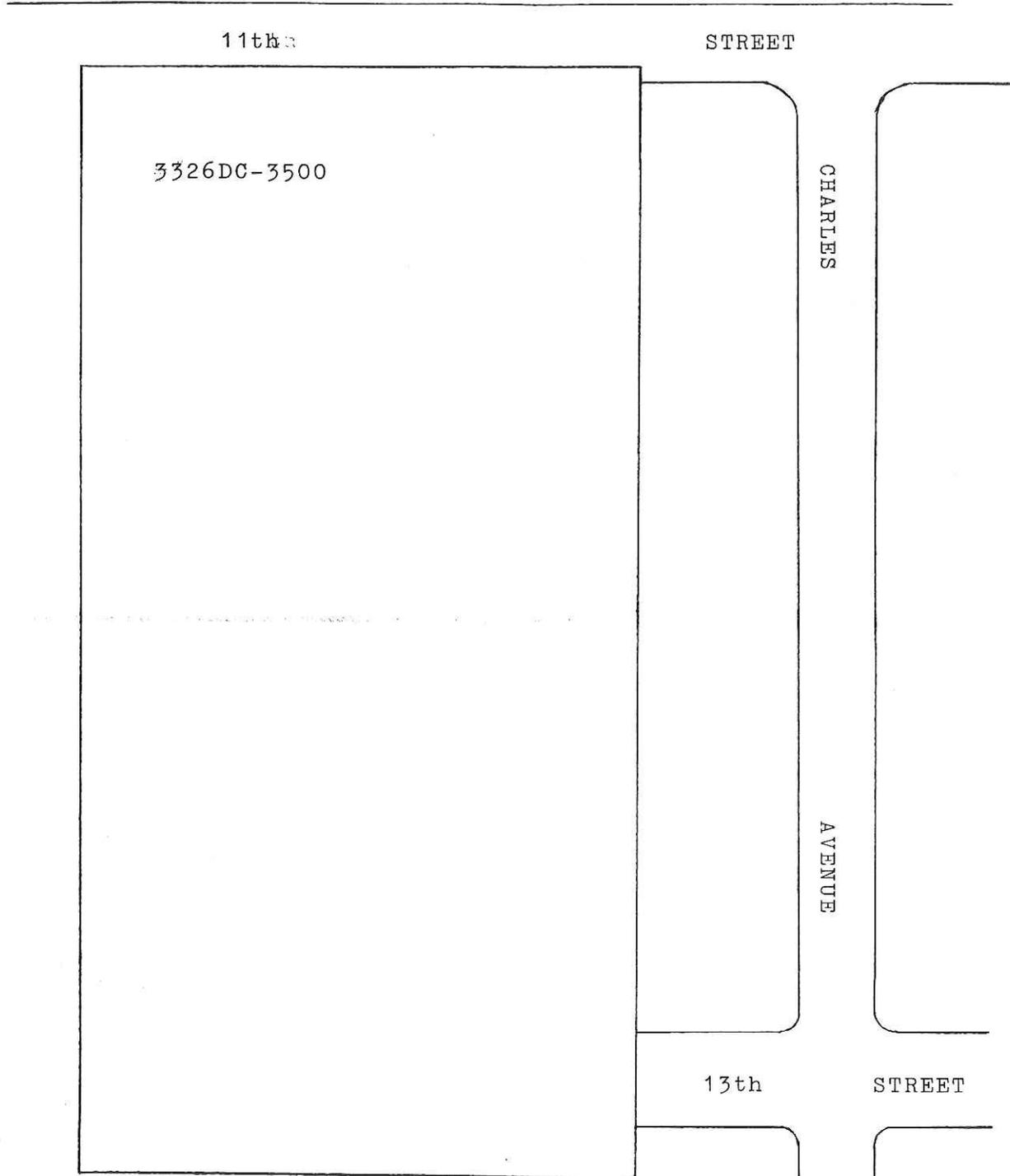
5.7 The Board finds that even if OAR 660-04-018 were applied, the request would meet the criteria in the rule. OAR 660-04-018(2)(a) provides that plan and zone designations shall limit uses to uses which are the "same as the existing types" of uses allowed. For the reasons stated above, the rezone would allow only uses which are the same as the existing types of land use as are allowed throughout the exception area. There already is land zoned VLDR - 1 and used for acreage dwelling inside the exception area, and those areas are already built to that density. This rezone also satisfies OAR 660-04-018 (2)(b). The proposed uses in the VLDR -1 zone (rural residential) is no different than the uses allowed under the AF-10 zone, and all of said uses are "rural" in character. The only significant difference in the two zones is parcel sizing. The VLDR - 1 zone is not an "urban" density because 1 acre is sufficiently large to allow on-site development without the necessity of urban services. In addition the use would not spread to other zones because the parcels are in the exception area and no extension of urban services from the urban growth boundary would be required by implementing the VLDR zone. One acre is large enough to allow construction of a septic system and a well.

5.8 Opponents argue that there may be an adverse impact on water supplies. However, the Board found opponents evidence unpersuasive in that they failed present any documentation for this assertion. The Board finds there is sufficient water available to allow domestic water wells on the subject property without any adverse impact to anyone.

DECISION: The decision of the planning Commission to approve the requested zone change is hereby SUSTAINED.

cc\QLU92142.001

EXHIBIT "B" FOR ORDINANCE NO. 533
ADOPTED BY THE BOARD OF COMMISSIONERS
MAY 27, 1992
TO CHANGE THE OFFICIAL ZONING MAP
FROM AF-10 TO VLDR-1



CHANGE APPLIES TO THE TOTAL PORTION OF TAX LOT NO. 3326DC-3500
MAP PREPARED BY THE YAMHILL COUNTY PLANNING DEPARTMENT