

NOTICE OF DECISION ON PARTITION:
PRELIMINARY APPROVAL SUBJECT TO CONDITIONS

CLACKAMAS COUNTY DEPARTMENT OF TRANSPORTATION & DEVELOPMENT
LAND USE & ENVIRONMENTAL PLANNING DIVISION
Sunnybrook Service Center, 9101 SE Sunnybrook Blvd., Clackamas OR 97015
Phone: (503) 353-4500 Fax: (503) 353-4550

TO: Applicant, Citizens Planning Organization, Agencies, and Property Owners within 300 feet of this application.

DATE: October 14, 2009

LAST DATE TO APPEAL: October 26, 2009

FILE NOS.: Z0466-09-M, Z0467-09-HDA, Z0468-09-HMV, Z0469-09-WBV & Z0470-09-R

STAFF CONTACT: Rick McIntire (503) 353-4516 E-MAIL: rickm@co.clackamas.or.us

APPLICANT: Marvin LaPorte & Mark Herring, 1777 Skyland Dr., Lake Oswego, OR 97034

OWNER OF PROPERTY: Marvin LaPorte

LEGAL DESCRIPTION: T2S, R1E, Section 11DC, Tax Lots 200 & 900; W.M.

SITE ADDRESS: 1230 SE River Forest Rd., Milwaukie, OR

TOTAL AREA INVOLVED: Approximately 1.48 ac.

PRESENT ZONING: R-10; Urban Low Density Residential (10,000 sq. ft. district) with Flood Management, Willamette River Greenway, Habitat Conservation Area and Water Quality Resource Area overlays.

CITIZENS PLANNING ORGANIZATION FOR AREA:

Oak Lodge CPO
c/o Terry Dolan, 503-659-3818
14912 SE Fair Oaks Ave.
Oak Grove, OR 97267

PROPOSAL: To partition the subject property into three (3) parcels for single family residential uses, one with an existing single family dwelling and two for a new single family home sites, and one non-residential resource protection tract.

FINDINGS: The Planning Division staff has reviewed your application for preliminary partition approval. This application is subject to Section(s) 301, 703, 705, 706, 709, 1001, 1002, 1003, 1006, 1007, 1008, 1012, 1014, 1022, and 1106 of the Clackamas County Zoning

FILE NOS. Z0466-09-M; Z0467-09-HDA, Z0468-09-HMV, Z0469-08-WBV & Z0470-09-R; LaPorte Partition

and Development Ordinance (ZDO). The Planning Division has reviewed these sections of the ZDO in conjunction with this proposal and makes the following findings:

1. The applicant is requesting approval of a Partition application to divide the subject property into three (3) parcels for single family residential uses, one with an existing single family dwelling and two for a new single family home sites, and one non-residential resource protection tract. The latter tract will be owned and maintained by an incorporated not-for-profit Homeowners Association. The purpose of the tract is to protect and conserve that portion of the subject property subject to Flood Management, Willamette River Greenway, Habitat Conservation Area and Water Quality Resource Area overlay designations.

The subject property is located at the west end of SE Mallard Ct., a public right of way, connecting to SE River Forest Rd. to the east. The subject property has frontage on the Willamette River on the westerly side. The easterly three-fourths of the property is generally level and the westerly portion has a gradual slope downhill to the river. The property is currently developed with one single family residence near the northerly property line at the approximate center of the site. This home will be retained in proposed Parcel 3. Proposed Parcels 1 and 2 will be located to the east of the existing home. The three parcels range in size from 11,270 s.f. to 14,354 s.f. in size. The proposed open space tract will be approximately 24,592 s.f. in size and will encompass the entire area to the west of the three residential parcels to the river. The subject property contains a number of trees and open areas.

2. The applicant is requesting approval of a partition, subject to Section 1106 of the ZDO. Partitions in Urban zoning districts are subject to all of the provisions of Sec. 1106 of the ZDO and shall be reviewed by the County to assure compliance with the relevant provisions of the ZDO. Compliance with the provisions of the ZDO is discussed in the following findings.
3. The subject property is zoned R-10 and is subject to Sec. 301 of the ZDO. Section 301.08B states that the minimum lot size required in the R-10 district is 10,000 s.f. unless a modification or variance is approved pursuant to Sections 1014.04B (flexible lot size developments) or 1205 (lot size variances). In addition, pursuant to subsection 301.08B of the ZDO, the density calculation for the subject property shall be made pursuant to the provisions of Sec. 1012 of the ZDO.

The applicant has not proposed a flexible lot size partition. Each of the three residential parcels proposed is larger than 10,000 s.f. The applicant is not proposing to develop within any of the restricted area of the site; e.g. greenway, flood hazard, habitat conservation and water quality resource areas; therefore no subtractions need be made to arrive at the net site area for density calculation purposes. The proposed new road area, a private extension off the end of SE Mallard Ct., consisting of approximately 4486 s.f., will be more than offset by the 24,592 s.f. non-residential tract. The permitted maximum density is calculated by subtracting the New Road area from the gross site area, 64,530 s.f., resulting in a Net Site Area of 60,044 s.f. and dividing that figure by 10,000 s.f./unit resulting in Maximum Density of six (6) unit (lots). The applicant has chosen not to transfer the density attributable to the open

space tract in favor of larger (11,270 s.f. to 14,354 s.f.) parcels. The proposed partition is consistent with the minimum lot size and density requirements of the R-10 zoning district. *These criteria are satisfied.*

4. Sec. 703, Flood Management District, is applicable to this application. A portion of the site is located within the 1% chance (aka 100-year floodplain) flood hazard area of the Willamette River. The applicant has delineated the boundary of the 1% chance flood hazard area (elevation contour of the Base Flood) on the preliminary partition plan. This area will be entirely located within the proposed non-residential open space tract and will not be developed. *Therefore; the application as proposed can comply with the relevant provisions of Section 703 of the ZDO.*
5. Sec. 705, Willamette River Greenway, is applicable to this application. The applicant has filed a Greenway Permit application concurrently with this Partition application; File No. Z0470-09-R, as required in Sec. 705 of the ZDO.

The preliminary partition plan depicts the Greenway boundary. This boundary is located approximately 35 ft. to the west of the existing home. The area subject to the Greenway overlay will be located entirely within the proposed non-residential open space tract and will not be developed. This tract will be owned in common by an incorporated Homeowners Assoc. for the benefit and enjoyment of the residents of the three proposed parcels. The applicant has cleared invasive and noxious non-native vegetation within this area. This area is also subject to periodic flooding and it is difficult to establish trees in this area. This area does appear to contain at least two significant trees which will be retained.

A condition of approval is warranted requiring the applicant to revegetate the open space tract with grasses at minimum, allowing for maintenance activities to control invasive and non-native weeds and other vegetation; e.g. ivy, blackberries, etc., and to retain all existing trees. No structures, paving, grading, fill, or other development will be permitted in this area. If a future application is made for a private shared dock and gangway, such a proposal would be considered under a separate Greenway Permit by the Planning Division. Nothing in this proposed condition would prohibit such an application as this type of development is permitted within the Greenway overlay designation. *Therefore; the application as proposed can comply with the relevant provisions of Section 705 of the ZDO and the concurrent Greenway application, File No. Z0470-09-R will be approved subject to conditions.*

6. Sec. 706, Habitat Conservation Area District (HCAD), is applicable to this application.

The applicant has filed concurrent applications for a Habitat Conservation Area Development Permit, File No. Z0467-09-HDA and a Habitat Conservation Area Map Verification, File No. Z0468-09-HMV. See Addendum for Findings and Conclusions concerning the relevant criteria of this section of the ZDO hereby adopted as additional Findings for this decision. *The proposed partition can comply with the relevant requirements of Sec. 706 of the ZDO.*

