



City of McMinnville
Planning Department
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STAFF REPORT

DATE: June 17, 2021
TO: Planning Commission Members
FROM: Jamie Fleckenstein, Associate Planner
SUBJECT: Minor Partition Application MP 6-20
for a partition of 835 SW Hilary Street into three (3) parcels

STRATEGIC PRIORITY & GOAL:



GROWTH & DEVELOPMENT CHARACTER

Guide growth & development strategically, responsibly & responsibly to enhance our unique character.

OBJECTIVE/S: Strategically plan for short and long-term growth and development that will create enduring value for the community

Report in Brief:

This proceeding is a quasi-judicial public hearing of the Planning Commission to consider an application for a Minor Partition (MP 6-20) of 835 SW Hilary Street (Tax Lot 1600, Section 29AB, T. 4 S., R. 4 W., W.M.). The proposed partition would divide an approximately 7.22-acre parcel of land into three (3) parcels, approximately 6.43, 0.31, and 0.48 acres in size to allow for residential development of the two smaller parcels. The decision of the Planning Commission is the final decision unless appealed to City Council. The hearing is conducted in accordance with quasi-judicial hearing procedures, and the application is subject to the 120-day processing timeline.

Background:

Request

The proposal is an application for a Tentative Partition (MP 6-20) to partition an approximately 7.22 acre parcel of land into three (3) parcels approximately 6.43, 0.31, and 0.48 acres in size to allow for future residential development of the parcels. The subject site is located at 835 SW Hilary Street, and is identified as Tax Lot 1600, Section 29AB, T. 4 S., R. 4 W., W.M.

Subject Property

The subject property is located west of SW Baker Street (Highway 99W) and south of SW Fellows Street at the termination of SW Hilary Street. Cozine Creek and its associated flood plain and steep terrain bisect the site, running generally north to southwest. The flood plain and surrounding areas are wooded. The subject property has portions that are zoned R-2 (Single-Family Residential), R-3 (Two-Family

Attachments:
Attachment A - MP 6-20 Decision Document

Residential), and F-P (Flood Plain). Portions of the site zoned R-2 (Single-Family Residential) include the northwest corner of the site, and the eastern portion of the site north of the Hilary Street terminus. The southeast corner of the site south of the Hilary Street terminus is zoned R-3 (Two-Family Residential). The remainder of the site is zoned F-P (Flood Plain). A single-family dwelling is existing on the land zoned R-2 (Single-Family Residential) north of Hilary Street. The portion of the site east of Cozine Creek zoned R-2 and R-3 is accessed from Hilary Street. The portion of the site west of Coine Creek zoned R-2 is accessed via private easement from Fellows Street.

Cozine Creek and its floodplain continue north and southwest of the site. Adjacent properties to the west of the subject site include the Tall Oaks subdivision that is zoned R-2 (Single-Family Residential). Properties to the north and east of the site are also zoned R-2. South of Hilary Street, adjacent property is zoned R-4 (Multiple-Family Residential), developed with multi-family apartment buildings. A 33-foot wide undeveloped right-of-way borders the western property line of the subject site, between the it and the Tall Oaks subdivision. **See Vicinity Map (Figure 1), Zoning Map (Figure 2), and Applicant's Proposed Partition Plan (Figure 3).**

Procedure

The applicant originally submitted the partition application on November 23, 2020. Following the completeness review of the application, it was unclear to staff that the applicant had provided sufficient evidence of access (a requirement for partitions) to proposed Parcel 2 via private easement from Fellows Street through three (3) existing parcels. Current zoning code (MMC Section 17.53.100(C)(1)) limits parcels accessed via private access easement to three (3). The applicant submitted an application for a variance from that code, seeking City approval and documentation to allow a fourth lot to be accessed from the existing easement. The variance and partition applications were scheduled for concurrent review through the public hearing process required for variances, the procedure that provides the most public hearing and notice. During staff review of the applications, evidence and documentation of the legal access through the access easement to proposed Parcel 2 was demonstrated, and the variance was no longer warranted. The variance application was withdrawn, and the minor partition application was unbundled from the concurrent review, reverting back to the Director's Review with Notification procedure typical for partitions. The partition application was noticed to surrounding property owners, and as allowed by code, a person who received notice requested a public hearing for the minor partition application. Minor Partition application MP 6-20 was then required to follow the public hearing procedure described in MMC Section 17.72.120.

Discussion:

Summary of Criteria

A minor partition application is subject to the standards and criteria in Chapter 17.53 – Land Division Standards of the Zoning Ordinance, which are intended to “...provide uniform procedures and standards for the subdivision and partitioning of land, and adjustment of property lines; to assure adequate width and arrangement of streets; to coordinate proposed development with plans for utilities and other public facilities; to avoid undue congestion of population; to assure adequate sanitation and water supply; to provide for the protection, conservation, and proper use of land; to secure safety from fire, flood, slides, pollution, drainage or other dangers; to provide adequate light and air, recreation, education, and adequate transportation; to promote energy conservation; to protect in other ways the public health, safety, and welfare; and to promote the goals and policies of the McMinnville Comprehensive Plan.”

The application achieves the purpose of Chapter 17.53-Land Division Standards, and meets the standards for access, lot size and shape, and provision of utilities and improvements for each of the proposed parcels. Proposed Parcel 1 is accessed via access easement from Hilary Street, and is

larger than the minimum lot size in the underlying R-3 (Two-Family Residential) zone. Utilities can be provided from Hilary Street through the easement to the parcel. Proposed Parcel 2 is accessed via private access easement from Fellows Street and through the adjacent undeveloped public right-of-way. Utilities are provided through the easement and right-of-way, and to a sewer main along Cozine Creek. Parcel 2 is larger than the minimum lot size of the underlying R-2 (Single-Family Residential) zone.

Minor partitions are normally an administrative decision as they are considered a Type II land-use application, meaning that the decision-making for compliance with the criteria is based on clear and objective standards that do not allow limited discretion. However, in McMinnville, during the 14 day notice period to adjacent property owners, anyone may request that the application be considered at a public hearing with the planning commission. That request was made by a neighboring property owner for this land-use application. The criteria for rendering a decision remains the same whether it is an administrative decision or a decision by the planning commission, and the decision needs to be rendered based on a clear and objective review and evaluation. The decision document attached to this staff report provides the criteria that should be used for rendering a decision on this land-use application.

Summary of Comments Received

Public Comments

Notice of this request was mailed to property owners located within 300 feet of the subject site. Notice of the public hearing was provided in the News Register on Friday, June 11, 2021. As of the date of this Staff Report on Thursday, June 10, 2021, the following public testimonies have been received by the Planning Department:

1. Letter received May 5, 2021 from Earl & Sheryl Anderson expressing opposition to Parcel #2 of MP 6-20, citing concerns about loss of trees due to infrastructure and future residential development, and concerns about decreased safety with increased motor vehicle use of private easement.
2. Letter received May 10, 2021 from Carole Hansen expressing opposition to Parcel #2 of MP 6-20 citing concerns about development behind her home, development too close to the floodplain, loss of trees, emergency vehicle access, and decreased property values.
3. Letter received May 14, 2021 from Walt Gowell on behalf of Steve & JacElaine Macy, proposing suggested conditions of approval to require enforcement of a 15-foot wide driveway, continued lawful access to Parcel 3 of Partition Plat 2001-03, clear assignment of easement improvement costs to the Applicant, and incorporation of the existing easement terms into the approved Partition Plat.
4. Letter received May 17, 2021 from Brad & Shirley Robison expressing concern about the loss of trees and diminished lifestyle, and expressing desire for mitigation for adjacent Tall Oaks properties.
5. Letter received May 18, 2021 from Carole Hansen expressing opposition to Parcel #2 of MP 6-20 citing concerns about development behind her home and loss of trees from the undeveloped right-of-way, and expressing desire for mitigation by allowing trees and vegetation within the right-of-way to remain in place.

6. Letter received May 18, 2021 from James & Cheryl Lambright expressing opposition to Parcel #2 of MP 6-20 citing concerns about loss of trees for residential development and decreased property values and livability of adjacent properties.
7. Letter received May 18, 2021 from Linda Jordan expressing opposition to MP 6-20 citing concerns about visual impact, congestion, and noise from residential development behind her home.
8. Letter received May 19, 2021 from Earl & Sheryl Anderson expressing opposition to Parcel #2 of MP 6-20, citing concerns about ambiguous language on the applicant's tentative partition plan and development of the unimproved right-of-way and resulting loss of trees.
9. Letter received May 19, 2021 from Robert Tracey expressing opposition to MP 6-20, citing concerns about decreased safety at Fellows Street with increased motor vehicle use of private easement, and loss of trees resulting in increased negative climate change impacts.
10. Letter received May 19, 2021 from Rigo & Susan Perez expressing opposition to MP 6-20, citing concerns about the loss of community and lifestyle, loss of privacy due to future residential development, rodents during construction period, decreased safety at Fellows Street with increased motor vehicle use of private easement, and decreased property values of adjacent properties.
11. Petition received May 19, 2021 from TONCCA (Tall Oaks Neighborhood Cozine Creek Advocates) expressing opposition to Parcel #2 of MP 6-20, citing concerns about development of undeveloped right-of-way, loss of a perceived protected natural area subject to conditional use approval criteria, diminished Cozine Creek greenway and neighborhood livability, decreased property values specifically related to Great Neighborhood Principle #1 - Natural Feature Preservation, proposed lot size of Parcel #2, loss of trees, encroachment of Parcel #2 on floodplain, safety and economic loss due to development in the floodplain, and the lack of inclusion of wooded areas on tentative partition plan for compliance with MMC 17.53.060(A)(7).
12. Letter received May 19, 2021 from Cheryl Lambright requesting a public hearing for MP 6-20.

Agency Comments

Notice of the proposed application was sent to affected agencies and departments. Agency comments were received from the Building and Engineering Departments, and McMinnville Water & Light. Agency comments have been incorporated into the decision document.

Summary of Issues Raised in Written Public Testimony Received: The following issues have been raised in public testimony received by the Planning Department:

Loss of Mature Trees

Most of the written public testimony received expressed concern about the potential loss of trees in the undeveloped right-of-way remnant and the subject site to accommodate access to Parcel 2 and the future residential development on Parcel 2 located in the northwest corner of the parcel to be partitioned. The right-of-way remnant and Parcel 2 are heavily wooded with many large, mature trees, some of which would likely require removal for the extension of the access easement driveway and to clear land for building construction. Chapter 17.58 (Trees) of the Zoning Ordinance provides regulation of tree removal from public right-of-way, which includes the remnant adjacent to Parcel 2. Below is Section 17.58.020 of the MMC describing the applicability of the code which includes all trees located within any public area or right-of-way, and all trees on developable land subject to partition review.

17.58.020 Applicability. The provisions of this ordinance shall apply to:

- A. Individual significant or historic trees as defined in this ordinance.
- B. All trees with trunks located completely or partially within any public area or right-of-way;
- C. All trees with trunks located completely within any private property which directly affect public infrastructure including but not limited to sewers, water mains, sidewalks, streets, public property, or clear vision distances at street intersections;
- D. All trees on developable land and subject to or undergoing development review such as site plan review, tentative subdivision review, or partition review; (Ord. 5027 §2, 2017; Ord. 4654B §1, 1997).

There are no McMinnville code provisions that would prevent development of Parcel 2 from occurring to preserve all of the mature trees. However, there are code provisions that require a thoughtful and diligent review of planning the development to preserve as many trees as possible. Below is Section 17.58.050 of the MMC describing the review criteria for granting tree removals

17.58.050 Review Criteria. A permit for major pruning or tree removal shall be granted if any of the following criteria apply:

- A. The tree is unsafe, dead, or diseased as determined by a Certified Arborist.
- B. The tree is in conflict with public improvements.
- C. The proposed removal or pruning is part of an approved development project, a public improvement project where no alternative is available, or is part of a street tree improvement program.
- D. Verification of tree health or a tree's impacts on infrastructure shall be required, at the expense of the applicant, by a Certified Arborist acceptable to the City.

As required by 17.58.040, requests for tree removal from public right-of-way or partitioned land would be reviewed by the Landscape Review Committee, an advisory committee to the Planning Director. It should also be noted that the Landscape Review Committee may condition a tree removal request upon replacement of the tree with another tree approved by the City, per Section 17.58.040(D).

Staff is recommending the following condition to help mitigate the concern raised in public testimony and to adhere to the provisions of the municipal code:

“That existing trees with trunks partially or wholly within Parcels 1, 2, and 3 of the partition and the undeveloped public right-of-way west of Parcel 2 are subject to the provisions of Chapter 17.58 – Trees of the McMinnville Municipal Code, and shall not be removed by the applicant without prior review and written approval by the Planning Director, pursuant to Chapter 17.58. Trees greater than nine inches DBH will not be approved for removal unless a certified arborist determines that they are diseased, dying, or dead, or the developer demonstrates that practical development of an approved lot, or required public improvements (i.e. streets, sidewalks, and public utilities), will adversely impact the survival of such tree or trees. In addition, all trees that are not to be removed shall be protected during the construction of all public improvements and residential development in the approved partition. A plan for such tree protection approved by the Planning Director shall be submitted with construction and/or building permit applications prior to release of construction or building permits within the subject site.”

The intent of the condition is to require the review of tree removal requests for the right-of-way remnant and the future development sites to limit the removal of trees to those that are in poor or hazardous condition or that would be severely impacted by access and development of an approved, buildable lot. These limitations are in accordance with the criteria for approving tree removal described in Section 17.58.050-Review Criteria.

Increased Traffic on Existing Private Driveway

Another issue brought to attention through public testimony is a concern about increased traffic on the private driveway leading from Fellows Street to proposed Parcel 2. Section 17.53.100(C)(1) requires

Attachments:

Attachment A - MP 6-20 Decision Document

private access easements to have a minimum width of 15 feet, and a minimum paved surface of 10 feet wide. The existing easement is 22 feet wide and has a 12 to 13 foot wide driveway, both exceeding the required minimums. The private easement agreement between affected property owners governing construction and maintenance of the easement further requires the expansion of the driveway to 15 feet wide prior to development of the Applicant's property.

The layout and specification of the driveway was reviewed and approved by the City, including the Engineering and Fire Department, at the time the easement was required in 2000-2001 knowing that the easement was approved to serve the land west of the cozine on the applicant's property. The Engineering and Fire Departments were provided opportunity to comment again on the access requirements for Parcel 2 in this current application, and all comments have been incorporated into the Decision Document. Further review of new driveway extension layout and specification, if necessary, can occur at the time of building permit submittal.

Emergency Vehicle Access to Parcel 2

Concerns about emergency vehicle access to Parcel 2 has been expressed. The layout and specification of the existing driveway was reviewed and approved by the City, including the Engineering and Fire Department, at the time the easement was required in 2000-2001 knowing that the easement was approved to serve additional future lots. The Engineering and Fire Departments were provided opportunity to comment again on the access requirements for Parcel 2 in this current application, and all comments have been incorporated into the Decision Document. Further review of new driveway extension layout and specification, if necessary, can occur at the time of building permit submittal.

Increased Safety Issues on Fellows Street

A concern about increased safety issues on Fellows Street due to increased traffic from new residential development on Parcel 2 has been raised in public testimony. Fellows Street is classified as a Minor Collector in the McMinnville Transportation System Plan and has been designed to accommodate medium intensity adjacent land-uses. Single family residential development, as allowed in the R-2 zone of Parcel 2, would be considered a low intensity use. Further, the subject property was identified for development at the densities of the R-2 and R-3 zones, the residential zoning designation of the site. With only one existing dwelling on the large site, the property is not developed to the full density of the zone(s). This means the surrounding street network and facilities are designed to accommodate more traffic and use than the site is currently contributing. Staff also notes that the layout and intersection of the existing private access driveway and Fellows Street was reviewed and approved by the City in 2000-2001, at the time it was required, when the private access drive was replacing a planned local street that would have served these properties.

Impact on the Floodplain and Sensitive Lands

Concern about the encroachment and impact of development on the adjacent Cozine Creek floodplain and riparian corridor has been raised. Land within the Special Flood Hazard Areas (100-year flood) as identified by "The Flood Insurance Study for Yamhill County, Oregon and Incorporated Areas" (effective March 2, 2010) and accompanying Flood Rate Insurance Maps (FIRM) are regulated by Chapter 17.48 (FP Flood Area Zone) of the Zoning Ordinance. Development within the Flood Area Zone is not permitted. Portions of Parcel 1 and Parcel 2 are within the Cozine Creek floodplain and are designated Flood Area Zone, and no residential development would be allowed within this zone. Further, the residential zones found in Parcels 1 and 2, R-2 (Single-Family Residential) and R-3 (Two-Family Residential) both incorporate setbacks for development that can further protect the floodplain from the impact of development by limiting the building envelope. The residentially zoned portions of the proposed lots outside of the floodplain exceed the minimum lot size for the zone(s), which is a regulatory criterion for land division.

Staff is recommending conditions for the Applicant to demonstrate compliance with all necessary state and/or federal environmental permitting agency requirements, including the Department of Environmental Quality, Department of State Lands, and Army Corps of Engineers. The City of McMinnville does not maintain regulatory authority over wetlands, state bodies of water, or other significant natural features that may be present on the site at this time and relies on the state and federal agencies to regulate impact on such lands and/or features.

Decreased Property Values

Surrounding property owners have expressed concern that the combined effects of new residential development and the loss of trees will negatively impact their own property values. Consideration of property value is not a regulatory criterion for land-use decisions for property that is designated as Residential on the City’s Comprehensive Plan and intended for development.

Attachments:

- A. MP 6-60 Decision Document

Fiscal Impact:

Not Applicable to Quasi-Judicial Decision.

Recommendation:

Planning Commission Options (for Quasi-Judicial Hearing):

- 1) **APPROVE** the application as proposed by the applicant with the conditions recommended in the attached Decision Document, per the decision document provided which includes the findings of fact.
- 2) **CONTINUE** the public hearing to a specific date and time.
- 3) Close the public hearing, but **KEEP THE RECORD OPEN** for the receipt of additional written testimony until a specific date and time.
- 4) Close the public hearing and **DENY** the application, providing findings of fact for the denial, specifying which criteria are not satisfied, or specifying how the applicant has failed to meet the burden of proof to demonstrate all criteria are satisfied, in the motion to deny.

Staff Recommendation:

Staff has reviewed the proposal for consistency with the applicable criteria. Absent any new evidence to the contrary presented during the hearing, staff finds that, subject to the recommended conditions specified in the attached Decision Document, the application submitted by the applicant and the record contain sufficient evidence to find the applicable criteria are satisfied.

Staff **RECOMMENDS APPROVAL** of the application, subject to the conditions specified in the attached Decision Document.

Suggested Motion:

BASED ON THE FINDINGS OF FACT, THE CONCLUSIONARY FINDINGS FOR APPROVAL, THE MATERIALS SUBMITTED BY THE APPLICANT, AND EVIDENCE IN THE RECORD, I MOVE THAT THE PLANNING COMMISSION APPROVE THE DECISION DOCUMENT AND APPROVE MINOR PARTITION APPLICATION MP 6-20 SUBJECT TO THE CONDITIONS SPECIFIED IN THE DECISION DOCUMENT.