

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application of Donald and Diana        )  
Dahl for a Variance from the Columbia County                )  
Subdivision and Partitioning Ordinance                        )        Final Order No. 77-2006

WHEREAS, on August 17, 2006, the Columbia County Planning Department issued Minor Partition MP 06-24, approving an application by Donald and Diana Dahl to partition their 16 acre parcel into two (2) approximately eight (8) acre parcels; and

WHEREAS, on August 25, 2006, the Columbia County Planning Department issued Corrected Final Order MP 06-24; and

WHEREAS, as a condition of Corrected Final Order MP 06-24, the applicants are required to have 50' of frontage on a public road; and if it is not feasible to dedicate the road as a public road, the applicants are required to obtain a variance from Subdivision and Partitioning Ordinance (S&PO) Section 1005(A); and

WHEREAS, on August 14, 2006, Donald and Diana Dahl submitted an application for a Variance (V 07-02) from S&PO Section 1005(A) to allow a private road to serve two approximately 8 acre parcels; and

WHEREAS, the Board of County Commissioners asserted original jurisdiction over the Variance during its meeting on August 9, 2006; and

WHEREAS, on September 20, 2006, the Board of County Commissioners held a hearing in the matter; and

WHEREAS, during the hearing evidence was received into the record, a list of which is attached hereto as Attachment 1, and is incorporated herein by this reference; and

WHEREAS, after hearing testimony and receiving evidence, the Board closed the hearing deliberated in the matter and voted to tentatively approve the application;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Board of County Commissioners adopts the Findings of Fact and Conclusions of Law in the Staff Report to the Board of County Commissioners, dated September 13, 2006, which is attached hereto as Attachment 2, and is incorporated herein by this reference.

2. The Application for a Variance (V 07-02) to have access to the two proposed lots from a private road is Approved conditioned upon compliance with the conditions of approval set forth in MP 06-24.

Dated this 27th day of September, 2005.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: Joe Corsiglia

Joe Corsiglia, Chair

By: Rita Bernhard

Rita Bernhard, Commissioner

By: Anthony Hyde

Anthony Hyde, Commissioner

Approved as to form

By: Sarah W. Hanson

Assistant County Counsel

ATTACHMENT 1

EXHIBIT 1- COUNTY COUNSEL'S FILE

1. Notice of Public Hearing (publication);
2. Notice of Public Hearing (property owner notice);
3. Affidavit of publication;
4. Affidavit of mailing;
5. Letter to Applicant dated August 14, 2006;
6. List of persons to receive notice;
7. Referral contact list;
8. Site plan;
9. Address map;
10. Assessors record;
11. Address map;
12. Zoning Map;
13. Board communication with the following attachments:
  - a. Variance application;
  - b. Statement signed by Robert Kessi;
  - c. Vicinity Map;
  - d. Plot Plan;
  - e. Site Plan;
  - f. Zoning Map;
  - g. Address Map;
14. Referral contact list;
15. Title Insurance preliminary report;
16. Staff report dated July 20, 1982;
17. Easement description;
18. Title Insurance Preliminary Report;
19. Access Approach Permit Application;
20. Board Communication dated September 14, 2006, with the following attachments:
  - a. Staff Report to the Board of County Commissioners dated September 13, 2006;
  - b. Application V 07-02;
  - c. Letter to the Board of County Commissioners dated August 4, 2006;
  - d. Letter to the Board of County Commissioners dated August 5, 2006;
  - e. Statement signed by Robert Kessi;
  - f. Plot Plan;
  - g. GIS Map;
  - h. Address map;
  - i. Zoning map;
  - j. Vicinity map;
21. Minutes of August 9, 2006 Board Meeting;
22. Corrected Final Order MP 06-24;

23. Appeal Information MP 06-24;
24. Order No. 19-2006

**COLUMBIA COUNTY BOARD OF COMMISSIONERS**

**STAFF REPORT**

September 13, 2006

Variance to Subdivision & Partitioning Ord.

**FILE NUMBER:** V 07-02

**APPLICANT/OWNER:** Donald & Diana Dahl  
PO Box 291  
Scappoose, OR 97056

**PROPERTY LOCATION:** 31850 Valley Hideaway Lane

**TAX ACCOUNT NUMBER:** 3210-000-00100 / 3203-000-00703

**ZONING:** Primary Forest (PF-76) / Forest Agriculture (FA-19)

**SIZE:** 16.0 acres

**REQUEST:** Variance to Section 1005(A) of the Subdivision and Partitioning Ordinance in order to waive road frontage requirements for dividing the subject parcel.

**OTHER LAND USE ACTIONS:** MP 8-82, CL 05-25, MP 06-24, PLA 07-07 & CU 07-03

**REVIEW CRITERIA:**

<u>Columbia County Zoning Ordinance</u>	<u>Page</u>
Section 1600 Administration	2
<u>Columbia County Subdivision and Partition Ordinance</u>	
Article II - Administration & General Provisions	
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Section 1005 Streets	3

**APPLICATION COMPLETE:** 01/12/06

**150 DAY DEADLINE:** 11/13/06

**BACKGROUND:**

The applicants, Donald & Diana Dahl, are requesting a variance to the standards of Section 1005(A) of the Subdivision and Partitioning Ordinance, in order to waive the minimum public road frontage requirements for partitioning. The 16.0 acre subject parcel is comprised of two tax accounts (3210-000-00100 / 3203-000-00703) and split zoned Primary Forest (PF-76) and Forest Agriculture (FA-19). Because the applicants were in ownership of the subject property prior to land use restrictions a measure 37 claim was filed with the County (CL 05-25) and State (Claim # M118617) in order to wave various land use rules that restricted development of their property. Rules that were waived through the County include sections 409.1, 506.1 and 1504, which dealt with the minimum parcel size. Rules that were waived by the State include: "applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33, enacted or adopted after August 20, 1979."

The applicants intended to waive all rules that would pose restrictions to partitioning and developing the subject parcel and proceeded to apply for a minor partition (MP 06-24) to divide the 16.0 parcel into two parcels of 8.0 acres each after approval of the measure 37 claims. Although the Zoning Ordinance does not require minimum frontage requirements for the Primary Forest (PF-76) and Forest Agriculture (FA-19) zones, the Subdivision and Partitioning Ordinance requires that no subdivision or partition shall be approved unless the development has at least 50 feet of frontage on an existing public street. The subject parcel is served by a private easement and does not contain any public road frontage. The minor partition (MP 06-24) was processed and approved with a condition that if public road frontage was not feasible a variance to Section 1005 Streets shall be approved. Since the easement that serves the subject property is on land not in ownership of the applicants public road dedication is not feasible for satisfaction of Section 1005.

Existing improvements on the subject parcel, located on tax account 3210-000-00100, include a house, garage, pole barn, well and septic system. A majority of the parcel is comprised of forested area with a deep ravine running through the middle with a seasonal creek. The subject parcel is accessible via an easement from Valley Hideaway Lane. A property line adjustment (PLA 07-07) will be processed with the final partition plat to achieve the desired parcel configuration for a building site. Although applicable provisions of the State were waived relating to siting a dwelling on the newly created parcel they were not waived through the County Measure 37 claim. Therefore the applicants have additionally applied for a conditional use permit (CU 07-03) for a forest dwelling that will be reviewed at the October 2, 2006 Planning Commission public hearing.

The site does not contain any flood hazard areas as indicated on FEMA flood maps. The National Wetlands Inventory (NWI) Chapman Oregon Map does not indicate the presence of wetlands on the subject property. The Scappoose-Spitzenberg C.P.A.C. Wildlife Game Habitat Map indicates that a portion of the subject property may be located in a Peripheral Big Game Habitat Area, but has no identified sensitive, threatened or endangered species or vegetation, and has no hydric soils. Oregon Department of Forestry Stream Classification maps indicate the presence of a small, non-fish bearing stream located on the property. Additionally, steep slopes are present in excess of 20% grade associated with the ravine. Emergency services are provided by the Scappoose Rural Fire Protection District and the Columbia County Sheriff.

## **REVIEW CRITERIA:**

### **COLUMBIA COUNTY ZONING ORDINANCE (CCZO):**

#### **Section 1600 ADMINISTRATION**

- 1612 **Special Hearings:** The Board of County Commissioners, in its discretion, may order any quasi-judicial land use application or type of quasi-judicial land use application to be heard at a Special Hearing in lieu of a hearing before the Planning Commission or the Board of County Commissioners.

**Finding 1:** The applicants Measure 37 claim (CL 05-25) is the first in the County to waive minimum lot size standards for resource land without public right-of-way frontage. Due to complications and delay of land use process, because of the unique situation, the Board of Commissioners took jurisdiction of this variance request in order to expedite the process.

**COLUMBIA COUNTY SUBDIVISION & PARTITIONING ORDINANCE (CCSPO):**

**ARTICLE X - SUBDIVISION AND PARTITION REQUIREMENTS**

**SECTION 1005. STREETS.**

- A. General Requirements. Except for private streets within Planned Unit Developments approved pursuant to Section 1200 of the Columbia County Zoning Ordinance, no subdivision or partition shall be approved unless the development has at least 50 feet of frontage on an existing public street and otherwise complies with County Road Standards and Specifications in effect at the time of Development or with a more restrictive provision on an applicable Urban Growth Area Management Agreement. [Amended 4-9-97]

**Finding 2:** The Zoning Ordinance, in both Primary Forest (PF-76) and Forest Agriculture (FA-19), does not require a minimum frontage on a public road for partitioning purposes. The Subdivision and Partitioning Ordinance Section 1005(A) requires that all partitions or subdivisions, regardless of zoning classification, require a minimum of 50 feet of frontage on an existing public street, unless otherwise stated in the zoning ordinance. As previously indicated, the subject parcel does not have any public road frontage and is served by an easement from Valley Hideaway Lane. The existing easement is located on tax account 3203-000-00701, owned by Robert Kessi, and extends approximately 450' from Valley Hideaway Lane before reaching the subject parcel. The current easement serves the Dahl's existing residence at 31850 and the parcel adjacent to the east is served by an easement from the subject parcel to serve a dwelling addressed 31982. This existing easement from Valley Hideaway Lane will then need to be extended an additional 525' to serve proposed parcel 1 of the minor partition (MP 06-24). The applicants are requesting to waive the standard that requires a minimum of 50 feet of frontage on a public street for each proposed parcel in order to partition the 16.0 acre parcel.

**Continuing with the Columbia County Subdivision & Partitioning Ordinance (CCSPO):**

**ARTICLE II - ADMINISTRATION AND GENERAL PROVISIONS**

**SECTION 210. VARIANCES.**

- A. General. Where the Commission finds that extraordinary hardships or practical difficulties may result from strict compliance with these regulations and the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve variances to these regulations so that substantial justice may be done and the public interest secured, provided that such variance shall not have the effect of nullifying the intent and purpose of these regulations; and further, provided the Commission shall not approve variances unless it shall make findings based upon the evidence presented to it in each specific case that:
- (1) The granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property.

**Finding 3:** The granting of the variance should not adversely affect any property owners in the vicinity. The maximum number of dwellings that will be accessible through easements from Valley Hideaway Lane is three. Due to zoning restrictions and topography it is not feasible to site another dwelling in the area. A condition of

approval of the minor partition (MP 06-24), as required by the County Road Department, requires that the driveway be constructed to County standards and Valley Hideaway Lane shall be widened to 20' in width with County standard gravel surface from the end of the paved section of Apple Valley Road to the site of the new access. Improvement of the substandard Valley Hideaway Lane will increase the safety of vehicular travel.

- (2) The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.

**Finding 4:** The easement in question is located on property that is not in ownership of the applicants. Because the applicants have no control of improving and dedicating the easement to public road standards in order to comply with the provisions of section 1005(A) of this ordinance, a variance is required. Generally, land that is partitioned within the County is of a rural residential or suburban nature and is accessible via a public right-of-way. Through the States adoption of Measure 37, the possibility of dividing and developing resource lands into residential sized lots has become possible. Resource lands are typically large in nature, as the States minimum parcel size is 80.0 acres in Western Oregon, and carry the possibility of being served by an easement as apposed to a dedicated public right-of-way. By qualifying for waiver of the standards which would typically prevent the applicants from developing, conditions are created which are unique to partitioning the subject property that would not apply to other land designated for resource use.

- (3) Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out.

**Finding 5:** If the easement extended over land that was in ownership of the applicant Land Development Services would require a dedication of public right-of-way in order to partition the parcel. A letter from Robert Kessi, owner of the property the easement is located on, was submitted indicating that he will not dedicate the current easement to become a public right-of-way. This qualifies as an unnecessary hardship resulting from a physical characteristic of the land that prevents the applicants from meeting the public road frontage requirement of CCSPO Section 1005(A).

- (4) The variances will not, in any manner, vary the provisions of the Zoning Ordinance and the County Comprehensive Plan.

**Finding 6:** This variance request is to waiver the applicable requirements of Section 1005 Streets, which relate to the provision that every partition up for review must have a minimum of 50 feet of frontage on a public street. The 16.0 acre subject parcel is split zoned Primary Forest (PF-76) and Forest Agriculture (FA-19). These zoning designations do not require minimum road frontage for partitioning purposes. Therefore, the provisions of the Zoning Ordinance will not vary as a result of this request for a variance to the Subdivision and Partitioning Ordinance. Additionally, staff finds that this variance will not violate provisions and policies in the Comprehensive Plan.

- (5) The variance is necessary for the proper design and function of the subdivision or partition.

**Finding 7:** Due to infeasibility of dedicating public road frontage along the subject parcel the variance is necessary for partitioning. Without a variance approval the applicants will not be able to partition the subject property as approved in MP 06-24 and CL 05-25.



B. Conditions. In approving variances, the Commission may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of these regulations.

**Finding 8:** The commission may impose any conditions deemed necessary based on the variance request.

C. Procedures. A request for any such variance shall be submitted in writing by the applicant at the time when the preliminary plan is filed at least 35 calendar days prior to the Commission meeting for their consideration. The request shall state fully the grounds for the application and all of the facts relied upon by the petitioner. One-half of the required fee for a variance shall accompany the request.

**Finding 9:** The minor partition (MP 06-24) preliminary plat has been reviewed by the Director and was approved with a condition that if public road dedication was not feasible a variance shall be approved to Section 1005 Streets of the Subdivision and Partitioning Ordinance. The applicants submitted a letter addressing the Board of Commissioners relating to the variance request (see attached).

**Continuing with the Columbia County Subdivision & Partitioning Ordinance (CCSPO):**

**SECTION 213. NOTICE REQUIREMENTS.**

A. Notice of Public Hearing Items. The Planning Department shall provide notice of any required public hearings, in writing, to the applicant and owners of record of property on the most recent property tax assessment roll where such property is located:

- (1) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;
- (2) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
- (3) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

The notice shall contain all the information required by ORS 197.763(3), and shall be mailed at least 20 days before the hearing.

**Finding 10:** Notice of the variance request was sent to affected agencies and property owners within 500 feet of the subject property on August 28<sup>th</sup>, 2006.

**COMMENTS:**

Land Development Services has not received any comments from government agencies or nearby property owners as of the date of this staff report (September 13, 2006).

**STAFF CONCLUSIONS & RECOMMENDATION:**

Based upon research about the property and findings of the above staff report (V 07-02), staff recommends **Approval** of this request for a variance to Section 1005(A) of the Subdivision and Partitioning Ordinance to waive the public road frontage requirements for partitioning the 16.0 acre subject parcel zoned Primary Forest (PF-76) and Forest Agriculture (FA-19).