

ORDINANCE NO 645

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF CANBY
(Application of Marvin L. Dack for zone change from R-1 to
R-2 for 15.34 acres in Section 4B & 4C in T4S R1E of the WM)

WHEREAS, an application was filed with the City of Canby Recorder on or about May 15, 1978 by Marvin L. Dack and Mary Lou Dack, husband and wife on the hereinafter described property for the purpose of changing the classification of the zone in which the real property is located from R-1 (single family residential) to R-2 (multifamily residential). The application fee as required by Section 31 of Ordinance No. 583 (the City's zoning ordinance) has been paid. The following is a description of the real property consisting of approximately 15.34 acres for which a zone change was requested, to-wit:

Tax Lots 800, 900, 1000 and 1001 in Section 4C and Tax Lot 1000 in Section 4B in Township 4 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon

WHEREAS, the Planning Commission scheduled and held a public hearing on the zone change application of Marvin L. Dack, et ux on June 27, 1978 and notice of the time, place and purpose of said hearing was duly and regularly given by written notices mailed by the City Recorder to all owners of property within lines parallel to and 200 feet from the exterior boundaries of the property involved as required by Section 32(1)(b) of the City Zoning Ordinance No. 583. Said mailings were made on June 16, 1978. Also, notice of said hearing before the Planning Commission was made by publication in the Canby Herald on June 21 and 28, 1978; and the record

of the property owners to whom notices were mailed and the newspaper's affidavit of publication of the notice is on file in the City Recorder's records and file of this zone change matter in the City's Public Work's department; and

WHEREAS, the Canby City Planning Commission at the time and place of the public hearing on such matter, i.e. June 27, 1978 heard and considered testimony regarding the proposed zone change and upon conclusion of the public hearing by motion duly made, seconded and carried by a vote of 3 to 2, recommended to the Canby City Council that the proposed zone change be allowed so as to zone said parcel (as described above) as R-2 (multifamily); and

WHEREAS, the Canby City Council considered the matter and the recommendations of the Planning Commission at a public hearing which was duly and legally called and held on August 16, 1978 after a proper notice thereof was first given in the manner and for the time required by Section 32(3) of said Zoning Ordinance; and notice of said hearing before the Canby City Council was mailed on August 4, 1978 to adjoining property owners and also published in the Canby Herald on August 9 and August 16, 1978 as required by the City's Zoning Ordinance. Proof of the notice as mailed and published is on file in the office of the Canby City Recorder in the Public Works Department at the Canby City Hall and is a part of the records and file of this matter; and

WHEREAS, Proponents and opponents were given an opportunity to be heard regarding the proposed zone change at said hearing. There was one opponent and after consideration of the matter and

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due deliberation on the report and recommendations of the City's Planning Commission the Canby City Council by motion duly made, seconded and carried laid the matter on the table for a more thorough study of the applicant's submittals and the Planning Commission's report and also for the purpose of reviewing the Planning Commission's recommendation and apparent agreement of the applicant that the zone change be made subject to certain conditions; and

WHEREAS, the Canby City Council at a regular meeting thereof on September 6, 1978 took from the table the Marvin L. Dack zone change application and resumed discussion of the matter since the public hearing had been completed on August 16, 1978. The applicant Marvin L. Dack and his attorney, Jon S. Henricksen, of the law firm of Henricksen & Viuhkola of Gladstone, Oregon were in attendance at the meeting to answer questions and further explain their proposal for voluntary imposition of conditions on the requested zone change; and

WHEREAS, the Canby City Council concluded its discussion on this matter and by motion duly made, seconded and unanimously carried accepted the findings and recommendations of the Planning Commission and also made it's own following

FINDINGS

1. The requested zone change is in keeping with the City's Interim general plan.
2. There is sufficient need for the zone change and this was demonstrated and established by the records, reports and testimony.

3. All of the Land Conservation and Development Commission (LCDC) goals were addressed and established and have been met.
4. There is an economic need and a benefit to the City.
5. The city and state housing goals were addressed and said goals are enhanced by the proposed change.
6. The only negative public response was from one citizen whose only concern was for improvement of a road next to the proposed development project.
7. There is no alternate land available at this time for multifamily development.
8. There is a public need for the type of housing proposed to be constructed on the property if the zone is changed to multifamily residential; and such public need was established by the reports, records and other evidence.
9. The proposed zone change will enhance the public health, welfare and safety of the citizens of Canby.
10. The applicant, Marvin L. Dack voluntarily agreed to the requested zone change on the following conditions and limitations:
 - a. Specifically limiting the density to 167 units in a cluster housing concept.
 - b. Perpetual open space green areas to be perpetually for the use and benefit of the residents of this particular project.
 - c. Limiting ownership to adults only, or not more than one child per family.
 - d. Specifically limiting the applicant to a two or three year reversion to the present zone of R-1 if the applicant (property owners) does not take any steps toward completion of the project as proposed.

The Canby City Council made the aforesaid findings based upon the following facts:

- A. Zoning Ordinance No. 583 contemplates zoning amendments.
- B. The intent of Zoning Ordinance No. 583 is to fully utilize land to its highest and best use.

- C. The City's Interim General Plan and Interim General Plan Map adopted by Ordinance No. 608 and enacted November 1, 1976 designates the above described area as an area for medium density residential development. The Interim Development Plan does not specify the maximum density allowable within the medium density residential area and the applicant's proposed development plan with agreed limitations of density to 167 units to a cluster housing concept would clearly comply with the present plan requirement of the area for medium density residential development. The proposed zone change to R-2 (multifamily) is in conformity with and will effectively implement the development plan and map.
- D. The proposal is compatible with the transportation and utility systems of the City of Canby.
- E. Although the soil is class I the property is within the urban area and is not restricted from development by LCDC.
- F. The property is currently zoned single family (R-1) and nearby land uses are vacant residential and light industry and the proposed zone change will provide a necessary buffer between the commercial land uses to the north and the R-1 residential zones to the south.
- G. There is adequate public road access to the property and roads next to the said property and the proposed development project will be improved by the applicants (property owners); now therefore,

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1: The zone boundaries of the R-2 (multifamily) district shall now include the hereinabove described property and upon the passage of this ordinance said property shall thereupon be classified as R-2 (multifamily) and not as R-1 (single family) zone.

Section 2: The zone change as authorized by Section 1 of this Ordinance is subject to the following conditions which were proposed by the applicants/property owners, Marvin L. Dack and Mary Lou Dack, husband and wife and agreed to by them and are

conditions which shall run with the land, to-wit:

1. The development density for the total area is limited to 167 dwelling units in a cluster housing concept.
2. Open space green areas are to be provided and perpetually maintained for the use and benefit of the residents of the area.
3. Ownership of dwelling units hereafter constructed on the said property is limited to adults only or not more than one child per family.
4. Application to build the proposed project must be filed with all required documents with the Planning Department of the City of Canby within two (2) years from the effective date of this ordinance or the zone classification for the whole of said property shall automatically and immediately revert to an R-1 (single family) zone.

Section 3: The Mayor, attested by the City Recorder is hereby authorized and directed to make the appropriate changes on the City's zoning map in accordance with the dictates of Section 1 of this Ordinance.

Section 4: All of the conditions of the zone change as set forth in Section 2 of this Ordinance are conditions that run with the land; and a certified copy of this Ordinance when enacted shall be filed by the Canby City Recorder in Clackamas County Deed Records.

Section 5: If the zoning of the property described herein reverts to an R-1 zone as provided in Section 2(4) of this Ordinance the Canby City Council shall authorize at that time an appropriate statement of that fact to be filed in Clackamas County Deed Records and a copy of such notice to be mailed or delivered to the owner(s) of said property.

Submitted to the Council and read the first time at a meeting of the Council on the 4th day of October, 1978; ordered posted for a period of two (2) full calendar weeks as provided by the City Charter and to come up for second reading and action of the Council at a regular meeting thereof to be held on the 1st day of November, 1978 at the Council's meeting chambers at the Canby City Hall at the hour of 7:30 o'clock p.m.

Robt. E. Rapp
Robt. E. Rapp - MAYOR

ATTEST:

Nancy S. Boggs
Nancy S. Boggs - CITY RECORDER

Passed on second and final reading of the Canby City Council at a regular meeting thereof on the 1st day of November, 1978 by the following vote: YEAS 6. NAYS 0.

Robt. E. Rapp
Robt. E. Rapp - MAYOR

ATTEST:

Nancy S. Boggs
Nancy S. Boggs - CITY RECORDER

INFO

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JON S. HENRICKSEN
DAVID T. VIUHKOLA
MARTIN R. COHEN

October 23, 1978

Mayor of Canby
Canby City Council
Canby City Hall
Canby, Oregon 97013

Re: Letter of Commitment on Ordinance No. 645 (Zone
Change for Marvin Dack, et ux)


Gentlemen:

We the undersigned hereby commit and agree to all things contained in Ordinance #645, which is an Ordinance amending zoning map of the City of Canby from R-1 to R-2 for 15.34 acres in Section 4B and 4C in T4S, R-1E of the W.M., a copy of which has been approved by us and attached hereto, and made a specific part of this commitment letter herein.

In addition we commit to being bound by the oral, recorded testimony concerning the approval of the above referenced zone change in addition to the agreed upon Ordinance #645.

Committed to this

26th day of October, 1978.



Marvin L. Dack




Marylou Dack

STATE OF OREGON)
County of Clackamas) ss.
I, George D. Poppen, County Clerk, Ex-Officio
Recorder of Conveyances and Ex-Officio Clerk
of the Circuit Court of the State of Oregon, for
the County of Clackamas, do hereby certify that
a within instrument of writing was received for
and recorded in the records of said county at

78 DEC 12 AID: 55





GEORGE D. POPPEN
County Clerk

Recording Certificate

P-R4
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