

Attention Property Owner: A land use proposal has been submitted for property near where you live or property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION
PROPERTY LINE ADJUSTMENT/PARTITION CASE NO. 18-018**

APPLICATION: Application of the Alma B Trask Living Trust to adjust the property lines on a 5.29 acre parcel and a 5.29 to create a 4.00 acre parcel and a 6.58 acre parcel in an AR (Acreage Residential) and SA (Special Agriculture) zone, then to divide the resulting 4.00 acre parcel into two parcels of 2.00 acres and 2.00 acres each in the AR zone located, and for a variance to permit more than four dwellings off a private easement at 7143 Darling Street SE, Salem (T8S; R2W; Section 3A; tax lots 400 and 500).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Partition application, subject to certain conditions.

EXPIRATION DATE: This approval is valid only when the final partition plat is recorded by **October 1, 2020**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

WARNING: A decision approving the proposed division is for land use purposes only. Due to septic, well, and drainfield replacement areas, these parcels may not be able to support a dwelling. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met before a building permit can be obtained or the approved use established:

Property Line Adjustment

1. **Property line adjustment deeds shall be recorded with the Marion County Clerk meeting requirements identified in ORS 92.190(4).** The deeds shall contain the names of the parties, the description of the adjusted lines, references to original recorded documents and signatures of all parties with proper acknowledgment. The deeds shall include a perimeter description of each resulting parcel. **This property line adjustment is not complete until the title transfer instruments accomplishing the property adjustments are recorded by the applicants with the Marion County Clerk.**
2. Deed recording reference numbers shall be noted on the required survey.
3. The applicants shall have the parcels surveyed per ORS 92.060 (7). The survey shall be filed with the Marion County Surveyor and shall contain the notation that the survey is the result of Property Line Adjustment/Partition Case 18-018. (Final Plat Instructions enclosed).
4. **Prior to recording the deeds or filing the plat,** the applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
5. The resulting lots shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
6. The AR portion of the property cannot be divided from the SA portion of the property. The dwelling must remain in the AR portion of the property unless the SA zoned portion of the property qualifies for a dwelling consistent with MCC 17.137.

Partition

Prior to recording the final plat:

7. The applicant shall submit a final partition plat to the County Surveyor's Office (5155 Silverton Road NE; (503) 588-5036) and shall contain the notation that the survey is the result of Property Line Adjustment/Partition Case 18-018. Following plat approval, it shall be recorded with the Marion County Clerk (plat instructions enclosed).
8. Prior to submitting the final partition plat, the applicant shall obtain an approved septic site evaluation from the Marion County Building Inspection Division on all undeveloped parcels. **The applicant is strongly encouraged to contact Building Inspection, (503) 588-5147, regarding septic sites before having the property surveyed. Septic site requirements may affect the proposed property line or lot locations.**
9. The applicant is advised that a Partition Plant Service Report from a title company will be required upon submission of the final mylar to the County Surveyor.
10. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following conditions have been satisfied:

Condition A –Prior to plat approval, applicant shall obtain public right-of-way on 74th Avenue SE from the south side of Sandy Lane SE, south to Macleay Road SE at a width acceptable to the Department of Public Works, with said R/W to be centered on the common N-S property line of the respective flanking properties.

Condition B - Prior to plat approval, record a Non-Remonstrance Agreement for a proportional share participation in potential future road improvements to meet minimum public or private road standards, as appropriate, on 74th Avenue SE and/or Darling Street SE, if an improvement project(s) is/are undertaken in the neighborhood.

Prior to issuance of building permits on the resulting parcels:

11. The partition plat shall be recorded.
12. Prior issuance of building permits, the applicant shall submit either evidence that the access easement has been improved to the standards in MCC 17.172. The access easement is also to provide for utilities.
13. Prior to issuance of building permits, the applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division for each resulting parcel. This statement shall be recorded by the applicant with the Marion County Clerk's Office after it has been reviewed and signed by the Planning Director.
14. Prior to issuance of building permits, the applicant shall provide evidence that they will contribute to the maintenance of Darling Street, through the Darling and Acorn Hill Residence Association if possible.

ADDITIONAL CONDITIONS: Once the approved use is established the following conditions must be continually satisfied:

15. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director. All parcels shall be a minimum five acres in size, prior to any right-of-way dedication.
16. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining

other permits or satisfying restrictions or conditions. It is recommended that the agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

17. Prior to recording the plat all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department at 503-588-5215 for verification of payments).
18. The applicant should contact the Marion County Fire District #1 to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards. The Fire District contact person is Paula Smith at (503) 588-6513.

APPEAL PROCEDURE: The Marion Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received, together with the appeal fee, in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **October 1, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 2, 2018** unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The western property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding AR (Acreage Residential) zone is to allow creation of acreage homesites at a density that maintains the character and environmental quality of rural residential areas. The eastern property is designated Special Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding Special Agriculture (SA) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The subject parcel is located on the north side of Darling Street SE in the 7100 block. The western parcel is developed with a dwelling, well and septic system. The eastern parcel is developed with existing shop buildings. According to information provided by the Marion County Assessor, both parcels were described by a deed or contract prior to 1977. Therefore, they were created before Planning required land use approval and are both legally created parcels.
3. Surrounding properties to the west and south are zoned AR and in residential use. Surrounding properties to the east and north are zoned SA and in farm use.
4. The applicant proposes to adjust the property lines on a 5.29 acre parcel and a 5.29 to create a 4.00 acre parcel and a 6.58 acre parcel in an AR (Acreage Residential) and SA (Special Agriculture) zone and then to divide the 4.00 acre parcel in the AR zone into two parcels of 2.00 acres and 2.00 acres each.
5. Public Works Land Development and Engineering Permits requested that Conditions A and B be included in the land use decision. LDEP also commented on requirements that are not part of the land use decision and available for review in the planning file. LDEP will not approve the use until the following conditions has been met:

*“**Condition A** –Prior to plat approval, applicant shall obtain public right-of-way on 74th Avenue SE from the south side of Sandy Lane SE, south to Macleay Road SE at a width acceptable to the Department of Public Works, with said R/W to be centered on the common N-S property line of the respective flanking properties.*

Note that as the private access easement roadway just north of Macleay Avenue was surveyed and found to lie roughly centered on the common north-south property line, public right-of-way must be obtained from both

parties on either side of the currently non-R/W portion of 74th Avenue SE to allow for reciprocal public access on both approximate halves of the physical roadway.

Condition B - *Prior to plat approval, record a Non-Remonstrance Agreement for a proportional share participation in potential future road improvements to meet minimum public or private road standards, as appropriate, on 74th Avenue SE and/or Darling Street SE, if an improvement project(s) is/are undertaken in the neighborhood.*

Nexus for the above Conditions is that existing roadways serving the neighborhood are substandard for the number of homes (currently numbered at 36) in the closed neighborhood. We acknowledge that the above Conditions have elements of Engineering Requirements within them, but are of the opinion that due to the extenuating circumstances regarding legal access to the neighborhood that they are justified.”

Marion County Surveyor commented: “Must be surveyed per ORS 92.060 (7) and the survey submitted for review. Survey checking fee required at the time of review. Property line adjustment deeds shall be recorded with the Marion County Clerk’s Office prior to submitting the property line adjustment survey. Deed recording reference numbers shall be noted on the survey map. Per ORS 92.190 (4): The deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgment. [See Marion County Zoning Code MCC 16.33.140(E) and MCC 17.172.120(E)]”

Marion County On-Site Sewage commented that any existing system will require an Existing System Evaluation. Undeveloped parcels will require Septic Site Evaluations.

Marion County Fire District #1 provided fire code requirements for fire suppression, access to the property and premise identification. Paula Smith, 503-588-6513 is the contact person for MCFD#1.

Marion County Tax Assessor provided information regarding taxes on the subject properties.

6. There are no specific approval criteria for property line adjustments in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres. The property line adjustment would result in one parcel of 4 acres entirely in the AR zone and one parcel with a split zone: 1.3 acres zoned AR and 5.3 acres zoned SA. The amount of land zoned SA in the resulting parcel does not change; 1.3 acres of land zoned AR is added to the SA zoned property. Because the resulting split zoned parcel would contain the existing dwelling and outbuildings, the residential use of the land would not change. The new configuration would reflect the existing development pattern of the land. However, the property line adjustment causes a portion of the resulting parcel to have only 1.3 acres of land zoned AR when the minimum is 2 acres. Therefore, the AR zoned portion of land cannot be a separate lot divided from the SA zoned portion of land. It can be made a condition of approval that the split zoned parcels remain intact.
7. There are no specific approval criteria for partitioning property in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres. The two parcels resulting from the partition would each meet this standard. The proposal meets the criteria for partitioning in the AR zone.
8. Staff recognizes the final partitioning may vary from the proposed plan due to topography or surveying. Minor variations are permitted; however, each resulting parcel shall be a minimum 5 acres prior to any required right-of-way dedication.
9. MCC 17.172.560 provided access standards that apply when a property is partitioned. According to the applicant’s representative, the eastern property that results from the property line adjustment has a driveway onto Darling Street SE and won’t have to use the western most driveway shown on the plan submitted. The western driveway will serve one parcel with frontage and one parcel without frontage on Darling Street SE. Since the western driveway only serves one additional parcel without frontage or access to Darling Street SE, it is not required to name the easement.
10. MCC17.110.800 permits a maximum of four dwellings served by a private driveway. There appear to be six dwellings currently served by Darling Street SE (that do not have frontage on 74th Avenue SE). The existing AR

zoning would permit one additional dwelling in the AR zoned portion of the property, for a total of eight dwellings served by Darling Street. If the partition were approved, one additional parcel would be created in the AR zone and a dwelling would be placed on that parcel. Therefore, the applicant has applied for a variance to serve the additional dwelling associated with parcel that would be approved by the partition portion of this application (a total of nine dwellings would be served by Darling Street SE). The criteria for a variance are in MCC 17.122.020:

- A. There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title; and
- B. There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions; and
- C. The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and
- D. The variance will not have a significant adverse effect on property or improvements in the neighborhood of the subject property; and
- E. The variance will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and
- F. The variance will maintain the intent and purpose of the provision being varied.

- 11. According to information provided by the applicant's representative, Darling Street is the only access to the subject property. Because of property sizes and zones adjacent to Darling Street, there are likely no additional parcels which could be created that would be served solely by Darling Street. The street is in good repair and is maintained by an association which resurfaces the roadway on a regular basis. The roadway is already used by six dwellings and is maintained adequately to be safe to drive on. Land Development and Engineering Permits has provided conditions of approval to better ensure the roadway would be adequate for the proposed use if the variance were approved. Granting the variance would provide an additional homeowner who could contribute to the maintenance of the street. Based on the information provided, the request meets the criteria for granting a variance to the number of dwellings served by a private driveway.
- 12. Based on the above findings, the proposed property line adjustment complies with the criteria in the AR and SA zone and the proposed partitioning complies with the criteria in the AR zone and are, therefore **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: September 14, 2018

If you have any questions please contact Brandon Reich at 503-588-5038.

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.