

NOTICE OF DECISION SUBDIVISION CASE 17-003

APPLICATION: Application of Alexander Bistrika for detail approval to subdivide a 0.44 acre parcel zoned UD (Urban Development) into 4 lots, and automatically rezone the property to the RS (Single Family Residential) zone located at 4162 Auburn Road NE, Salem. (T7S; R2W; Section 30AC; tax lot 3500).

DECISION: On January 23, 2018, the Marion County Planning Commission **GRANTED DETAILED** approval to subdivide the subject property into four lots.

EXPIRATION DATE: This subdivision approval is valid only when exercised **by February 9, 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.**

This decision does not include approval of a building permit.

CONDITIONS OF APPROVAL:

1. The applicant shall submit documentation satisfactory to the Marion County Surveyor accomplishing the final subdivision plat. The applicant is advised that a current or updated title report from a title company must be submitted with the final mylar.
2. All easements (utility, drainage, etc.) required by reviewing agencies shall be shown on the final plat.
3. Prior to submission of the final plat, the applicant shall submit evidence of compliance with the development, water supply, and access standards of Marion County Fire District No. 1.
4. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the final plat for recordation until the following conditions have been satisfied:

Condition A – Show sufficient dedicated right-of-way (R/W) on the plat to provide the public R/W half-width of 30 feet along the subject property Auburn Road frontage for a City of Salem Collector street.

Condition B – Prior to plat approval, permit and construct a PCC shared driveway approach on Auburn Road drop centered on Bistrika Lane private access easement, and in turn, close the existing PCC access centered on the property by installing curbing and replacement sidewalk, as necessary.

Condition C – Prior to plat approval, design and construct stormwater detention facilities.

Condition D – Show any necessary inter-lot drainage and utility easements on the plat.

5. In accordance with Marion County Ordinances and OAR 340-21-060, during the land clearing and road construction phase of this development dust suppression measures, such as water trucks, shall be employed as necessary to prevent off site deposition of dust generated by the construction activities or related vehicular traffic on adjacent properties.
6. All utilities shall be placed underground.
7. All permanent utility service to lots in a subdivision within an established urban growth boundary shall be provided from underground facilities and no overhead utility service to a subdivision shall be permitted. The subdivider shall be responsible for complying with the requirements of this section and shall:
 - A. Obtain a permit from the Director of Public Works for the placement of all underground utilities.

- B. Make all necessary arrangements with utility companies and other persons or corporations affected by the installation of such underground lines and facilities in accordance with the rules and regulations of the public utility commissioner of the State of Oregon.
8. The name approved for the easement extending south from Auburn Road is **Bistrika Lane NE** and it shall be shown on the final subdivision plat.
9. The north property line of proposed lot 1, and the southern property line for proposed lot 4, shall be considered the front property lines for determining setback requirements.
10. At the time the plat is recorded the property shall automatically rezone to RS (Single Family Residential) and the official zone map shall be amended accordingly.

APPEAL PROCEDURE: This decision may be appealed to the Marion County Board of Commissioners by submitting a written appeal explaining wherein the Marion County Planning Commission decision is in error, along with a fee of \$500.00. The appeal must be received in the Marion County Clerk's Office, 555 Court St. NE, Salem, by 5:00 p.m. on **February 9, 2018.**

If an appeal is received it will be reviewed by the Board of Commissioners to determine if it merits further hearing and consideration by the Board. Questions regarding this decision or the appeal procedure should be directed to the Marion County Planning Division, 5155 Silverton Road NE, Salem, (503) 588-5038.

FINDINGS AND CONCLUSIONS: The Planning Commission decision is based on the following findings and conclusions.

1. The subject property is located in the Salem Urban Growth Boundary, designated Single-Family Residential in the Salem Comprehensive Plan, and zoned UD (Urban Development). The UD zone permits subdivisions under the provisions of the RS (Single Family Residential) zone where sewer and water are available and the development complies with the provisions of Chapter 16.33 of the Marion County Code (MCC).
2. The property has frontage on the south side of Auburn Road NE, approximately 300 feet west of its intersection with Tierra Drive NE. The property also has 30 feet of frontage on the northern terminus of Travis Court NE. The property is currently undeveloped. Properties to the north and south are developed residential subdivisions on land zoned RS. Properties to the east and west are zoned UD and consist of under-developed residential lots.
3. The applicant proposes to subdivide the property into four lots that each will be developed with a single family dwelling. The smallest proposed lot is 4,754 square feet while the largest lot will be 4,780 square feet. Proposed lots one and two will be served by a 26 foot wide access easement from Auburn Road while the other two lots will be served from a 26 foot wide access easement from Travis Court NE.

AGENCY COMMENTS:

4. Marion County Surveyor commented that the subdivision name must be approved per ORS 92.090. The subdivision must be surveyed and platted per ORS 92.050 and the final plat, along with appropriate fee, must be submitted to their office for their review and approval. Per ORS 92.065 a remaining monumentation bond may be required if some of the plat monuments have not been set and/or the installation of street and utility improvements has not been completed, or other conditions or circumstances cause the delay (or resetting) of monumentation. The final plat must be submitted to their office with a current or updated title report that is no more than 15 days old at the time of the plat approval.

Marion County Tax Assessor noted that a potential additional tax liability may exist which may need to be paid before a subdivision would be approved. According to ORS 92.095, all delinquent taxes and interest as well as taxes which have become a lien during the tax year must be paid before the plat shall be recorded.

Public Works Land Development and Engineering Permits (LDEP) commented that the subdivision would generate approximately 50 additional average daily trips on county roads. Public Works Engineering Division conditions are given below. Additional engineering requirements are available for review in the file.

“Condition A – Show sufficient dedicated right-of-way (R/W) on the plat to provide the public R/W half-width of 30 feet along the subject property Auburn Road frontage for a City of Salem Collector street.

R/W dedication requirements for subdivisions and partitions are in accordance with Marion County Code (MCC) 16.33.260. The R/W dedication shall be shown on the final plat as a 30-foot half-width dedicated to the public for road purposes. The nexus for this requirement is to accommodate recent frontage improvements and utilities.

Condition B – Prior to plat approval, permit and construct a PCC shared driveway approach on Auburn Road drop centered on Bistrika Lane private access easement, and in turn, close the existing PCC access centered on the property by installing curbing and replacement sidewalk, as necessary.

Requirements to construct necessary public improvements for subdivisions and partitions are in accordance with MCC 16.33.320. Note that all sidewalk replacement panels installed on Auburn Road must be comprised of pervious concrete to meet the design specifications for the recently constructed County Federal Aid urban upgrade project.

Condition C – Prior to plat approval, design and construct stormwater detention facilities.

Completion of the stormwater attenuation requirement is being elevated to Condition status relevant to its timing for completion. Nexus is meeting MCPW Engineering Design Standards for development. Details are provided under Engineering Requirements.

Condition D – Show any necessary inter-lot drainage and utility easements on the plat.”

Marion County Building Inspection commented that building permits are required. If a new dwelling is constructed and the local fire official determines that there is inadequate access or water supply, then one or more of the uniform alternate construction standards in Oregon Administrative Rule 918-480-0125 must be met as determined by the Building Official.

All other contact agencies either failed to comment or stated no objection to the proposal at the time this report was written.

ANALYSIS AND CONCLUSIONS:

5. **Roads, Streets and Easement:** Standards for this section are listed in Chapter 16.33.160 through 16.33.340 of the Marion County Code (MCC). Those that apply to this proposal include:

16.33.160 ENGINEERING STANDARDS AND REQUIREMENTS. Engineering standards and requirements, including but not limited to streets, drainage, access, easements, and thoroughfare improvements, shall be those currently approved by the Marion County department of public works.

As outlined in their comments, Marion County Public Works will require street and roadway improvements to be developed in compliance with engineering standards.

16.33.180 DEEDING OF RIGHT-OF-WAY ROADWAY. No person shall dedicate for public use, or deed to Marion County, a parcel of land which is used or proposed to be used as access without first obtaining the approval of the board or its designee and delivering the deed to the board for its endorsement. No dedication is effective unless the property is accepted by the Board or its designee and recorded with the Marion County clerk’s office.

Required dedication will be accomplished through the platting process which requires acceptance by the Marion County Board of Commissioners.

16.33.190 CONNECTIVITY. Applicants submitting preliminary development plans shall provide for local streets oriented to or connecting with existing or planned streets, existing or planned schools, parks, shopping areas, transit stops, and employment centers located within one-half mile of the development. Applicants shall also provide for extension of local streets to adjoining major undeveloped properties and eventual connection with the existing street system. Connections to existing or planned streets and undeveloped properties along the border of the parcel shall be provided at no greater than 600-foot intervals unless the Planning Director, or designee, determines that one or more of the following conditions exist:

A. Physical or topographic conditions make a street or accessway connection impractical. Such conditions include, but are not limited to, freeways, railroads, steep slopes, wetlands or other bodies of water where a connection could not reasonably be provided; or

B. Buildings or other existing development on adjacent lands physically preclude a connection now or in the future considering the potential for redevelopment.

The proposed development is an in-fill development and will use existing streets for access.

16.33.300 UTILITY EASEMENTS. Utility easements meeting the approval to the standards of the affected utilities shall be provided to all newly created lots.

LDEP will review and require any required Public Utility Easements.

16.33.320 STREET OR ROAD IMPROVEMENTS. All street or road improvements including pavement, curbs, sidewalks, signage, and surface drainage shall be in accordance with the specifications and standards prescribed by the director of public works. Subdivision plats shall not have final approval until such time as the director of public works, or his/her designee, is satisfied that the street improvements will be completed in accordance with the specifications and standards set forth by the Marion County department of public works.

No building permits within a subdivision or partition shall be issued until the director of public works, or his/her designee, approves that the improvements have been completed or sufficient improvement agreements and financial guarantees have been recorded.

LDEP identified necessary street improvements along the property frontage and indicated the subdivision plat will not be approved until the requirements are satisfied.

16.33.340 PRIVATE STREETS. In the event the subdivider or developer elects to provide private streets or thoroughfares, they shall be maintained by the homeowners association and a maintenance agreement shall be submitted to Marion County for review and approval prior to recording the final plat.

LDEP did not specifically identify the need for maintenance agreements, however, they can be made a condition of approval.

6. **Blocks and lots:** These standards are listed in MCC 16.33.360 through 16.33.440 and include:

16.33.360 SUBDIVISION. Block lengths and widths shall be determined after considering the following factors:

- A. The distance and alignment of existing blocks and streets adjacent to or in the general vicinity of a proposed subdivision;
- B. Topography;
- C. Lot size; and
- D. Need for and direction of the flow of through and local traffic. Blocks shall not exceed 600 feet between street or road right-of-way lines unless the adjacent layout or special conditions justify greater length.

Except where topographical or other physical features require otherwise, block widths shall not be less than 120 feet or greater than 400 feet.

This is an infill subdivision and will not have blocks.

16.33.400 LOT SIZE. All lots approved under this chapter shall have sufficient area to be consistent with the intent of the comprehensive plan and to provide adequate area for the intended structures and uses, all setbacks, access and spacing required for water supply and waste water disposal. Lot size and dimensions shall be as prescribed in the corresponding zone. In the RS zone, MCC 16.02.120 states:

A. Lot Area. The minimum lot area for a single-family dwelling in a subdivision approved after the effective date of the ordinance codified in this title, is 4,000 square feet when located within the Salem/Keizer area urban growth boundary. In all other cases lots shall be a minimum of 6,000 square feet. (See Chapter 16.27 MCC for density limitations).

B. Lot Dimensions. Except as provided in MCC 16.26.800 for planned developments, the width of a lot shall be at least 60 feet; provided that within the Salem/Keizer urban growth boundary the width of a lot shall be at least 40 feet, and the depth of a lot shall be at least 70 feet.

As demonstrated on the site plan, proposed lots 2 and 3 meet the minimum lot size and dimension standards. Each of these lots can be developed with a single family dwelling and meet the setback standards.

The use of the private roadways for access makes lots 1 and 4 into corner lots and they both meet the minimum lot size standard. Lot dimensions and yard setbacks are determined by first identifying the front property line. In the case of a corner lot the front property line is the line adjacent to the street or roadway which the architectural front of the building faces, or the lot line designated by the zoning administrator on an approved site plan.

If the architectural front of the building is used to determine the front lot lines: the dwelling on lot 1 faces west, which makes the west property line the front lot line, while on lot 4 the dwelling faces east, making that the front lot line. In this configuration, the width of the lots would be over 60 feet while the depth would be only 52 feet and dwellings could not meet the 12 foot front yard and 14 foot rear yard setbacks. Since they are corner lots the Zoning Administrator can designate the front property lines. If, as a condition of approval, the Zoning Administrator designates the north property line of lot 1 and the south property line of lot 4 as the front property lines, then the parcels will meet the minimum dimension standards and setback requirements except for the required 20 foot setback from Auburn Road which is a collector.

The applicant is requesting an adjustment to reduce the required 20 foot setback from Auburn Road, as a designated collector, to 12 feet. In order to approve an adjustment the criteria in MCC 16.41.030 and include:

- A. The proposed development will not have a significant adverse impact upon adjacent existing or planned uses and development; and*
- B. The adjustment will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and*
- C. The adjustment is the minimum necessary to achieve the purpose of the adjustment and is the minimum necessary to permit development of the property for the proposed use; and*
- D. The intent and purpose of the specific provision to be adjusted is clearly inapplicable under the circumstances; or the proposed development maintains the intent and purpose of the provision to be adjusted.*

The required setback from a public street is 12 feet, however, if that street is a collector a 20 foot setback is required. Auburn Road is a collector and its frontage was recently improved to County standards. Since the proposed lot takes its vehicular access from a private easement to the west instead of directly onto Auburn Road,

the reduction in setback should have no impact on adjacent existing or proposed uses, or on the health and safety of people living or working in the area. Without reducing this setback, the lot will not meet the required rear yard setback, the proposed reduction is the minimum necessary to develop the lot. The purpose of the additional setback along a collector is to provide greater separation from vehicular travel lanes because of increased speed limits on collector streets.

The Planning Commission found that reducing the 20 foot setback to 12 feet did not maintain the intent and purpose of this provision and denies the adjustment request for failure to satisfy the criterion in #D above.

16.33.440 LOT LINE. Side lot lines shall be as close to right angles to the front street line as practicable. Unless otherwise approved, rear lot lines shall be not less than one-half the width of the front lot lines.

The proposal meets this requirement.

7. Sewage, water, and utilities: These standards are listed in MCC 16.33.460 through 16.33.560 and include:

16.33.460 SEWAGE DISPOSAL. All lots or parcels shall be served by an authorized sewage disposal system. Subsurface sewage disposal for individual parcels shall meet the requirements of the Department of Environmental Quality (DEQ) and the Marion County building inspection division. Those subsurface sewage systems that are used by a community, sanitary district, industry, or incorporated area must be authorized by the Department of Environmental Quality (DEQ) via the Marion County building inspection division. Installation and maintenance shall be in accordance with the Department of Environmental Quality's regulations and requirements. The commission, director, or hearings officer may require connection to an existing sewage collection and treatment system regardless of lot suitability for subsurface disposal if the commission, director or hearings officer deems it necessary and provided the connection is available.

The lots in the subdivision will be served by the City of Salem sewage disposal system.

16.33.480 WATER SUPPLY. All lots or parcels shall be served by an authorized public or private water supply system.

Public or Private Systems. Public or private systems shall meet the requirements of the Oregon State Health Division with reference to chemical and bacteriological quality. In addition, such systems must meet the quantity, storage, and distribution system requirements of the State Health Division and the operator of the water system.

The City of Salem will provide water to the lots.

16.33.520 UNDERGROUND UTILITIES. All permanent utility service to lots in a subdivision within an established urban growth boundary shall be provided from underground facilities and no overhead utility service to a subdivision shall be permitted. The subdivider shall be responsible for complying with the requirements of this section and shall:

- A. *Obtain a permit from the director of public works for the placement of all underground utilities.*
- B. *Make all necessary arrangements with utility companies and other persons or corporations affected by the installation of such underground lines and facilities in accordance with the rules and regulations of the public utility commissioner of the State of Oregon.*

A condition of approval will require utilities to meet this standard.

16.33.540 UNDERGROUND UTILITIES EASEMENTS. Underground easements for utilities and overhead utility facilities shall be provided by the subdivider and set forth on the final plat. Each easement shall be a minimum of 10 feet in width except on the perimeter of the subdivision where the minimum width shall be five feet, and when possible, such easement shall be centered on or bordering a lot line. The subdivider shall provide five-foot utility easements on both sides of all road or street rights-of-way of 60 feet or less.

This will be made a condition of any approval.

16.33.560 STREET LIGHTING. Proposed subdivisions located within established street lighting district boundaries shall submit street lighting plans from the appropriate power company to the director of public works for approval. All provisions for wiring for underground installation shall be completed before the final street improvement is made.

The property is not within the boundary of an established lighting district.

16.33.340 PRIVATE STREETS. In the event the subdivider or developer elects to provide private streets or thoroughfares, they shall be maintained by the homeowners association and a maintenance agreement shall be submitted to Marion County for review and approval prior to recording the final plat.

LDEP may require a road maintenance agreement for the private streets.

8. **Access standards:** These standards are listed in MCC 16.33.680 and state:

All lots must have a minimum 20 feet of frontage on a public right-of-way or, when an access easement is proposed to serve one or more lots in any partitioning, the location and improvement of the roadway access shall conform to the following standards which are necessary for adequate access for emergency vehicles. Evidence that the access has been improved to these standards and a driveway permit has been obtained shall be provided prior to the issuance of building permits on the parcels served by the access easement. The easement shall meet the following standards:

- A. Have a minimum easement width of 25 feet;*
- B. Have a maximum grade of 12 percent;*
- C. Be improved with a paved surface with a minimum width of 20 feet;*
- D. Provide adequate sight-distance at intersections with public roadways;*
- E. Be provided with a road name sign at the public roadway as identification for emergency vehicles in accordance with Chapter 11.55 MCC, Naming and Addressing Roads/Property.*

The private roadways being created for this development meet the above standards. The easement access from Travis Court will retain that name while the easement from Auburn Road has been named Bistrika Lane NE, and the street sign has been paid for.

9. **16.33.1020 TIME LIMIT FOR THE FILING AND RECORDING OF A PLAT.** When the subdivider has expressed intent to develop a subdivision in phases or stages, the first phase of the final plat, or, if not to be developed in phases or stages, the completed final plat must be filed with the director by the first day of the 24th month following the date of detailed approval or said detailed approval shall be deemed null and void. The final plat shall be approved by public officials as required by law and recorded within 180 days following the date the plat is submitted to the director. Extensions to either time deadline may be approved by the director upon submittal of written justification prior to the expiration of the time limit.

If the applicant decides to develop the subdivision in phases it must be expressed in writing prior to submitting the plat for the first phase.

DELIBERATION:

10. At a public meeting on October 10, 2017, the Planning Commission discussed the impacts and concerns of reducing the setback from Auburn Road to 12 feet. The primary concern was that a reduction in the setback could be a safety issue due to the higher speed limit and heavier volume of traffic on Auburn Road. There was some discussion of reducing the required 14 foot rear yard setback, however, it would leave only a six foot rear yard. A motion was made to grant conceptual approval for a four lot subdivision and to deny the adjustment request to reduce the required 20 foot setback from a collector street. The motion passed, 5-1. The conceptual approval was

not appealed and became final on November 1, 2017. The conceptual approval required the applicant to submit a subdivision plan that demonstrates that the four proposed lots can meet all lot size and dimension standards and setback requirements.

11. The applicant submitted a revised subdivision plan for the Planning Commission to consider. On January 23, 2018, the Planning Commission conducted a public hearing on the request of the applicant for detailed approval.

At the hearing Planning staff confirmed that the revised plan meets all setback and development standards. The Planning Commission questioned the applicant on the size of the proposed dwelling and then closed the public hearing. A motion was made to grant detailed approval subject to the conditions outlined in the conceptual approval. The motion passed on a unanimous vote of 9-0.

SIGNED AND FINALIZED THIS 24th day of January, 2018

By 

Joe Fennimore
Planning Commission Secretary