

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
PARTITION CASE NO. 19-002**

APPLICATION: Application of Jay and Judith Short to divide a 4.12 acre parcel into two parcels containing of 2.12 acres and 2.0 acres each and a variance to allow more than four dwellings to be served by a private road in an AR (Acreage Residential) zone located at 4586 Viewcrest Rd S., Salem (T8S; R3W; Section 08C; tax lots 500, 600, 700 and 800).

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 **March 13, 2021**. 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 drain field 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:

Prior to recording the final plat:

1. 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 Partition Case 19-002. Following plat approval it shall be recorded with the Marion County Clerk (plat instructions enclosed).
2. 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.**
3. 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, under an Access Permit, widen the private easement paved approach to meet MCPW Engineering standards for a shared driveway.

Condition B – Prior to plat approval; widen the private easement all-weather driving surface from the intersection with Viewcrest Road S public right-of-way, to the subject property to a minimum width of 16 feet or to the satisfaction of the local fire department, whichever is the less stringent.
4. Prior to submitting the final partition plat, the applicant shall provide a static water level measurement for the existing well on the enclosed form.
5. 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.

Prior to issuance of building permits on the resulting parcels:

6. The partition plat shall be recorded.
7. Prior to issuance of building permits, the applicant shall provide a static water level measurement for any new wells intended as the water supply for the lot on the enclosed form.
8. Prior to issuance of building permits, the applicant shall sign and submit a Sensitive Groundwater Overlay Zone Declaratory Statement (enclosed) 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.

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

9. 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 two acres in size, prior to any right-of-way dedication.
10. 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:

11. 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).
12. The applicant should contact the Salem Suburban Fire District 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.
13. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #5 below, that may be required.

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 **March 13, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 14, 2019** unless further consideration is requested.

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

1. The 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 property is also in the Sensitive Groundwater Overlay Zone.

2. The subject parcel is located on the north side of Viewcrest Dr S, a private easement located east of the public right-of-way of Viewcrest Dr S, approximately 2,230 feet north of the intersection of Viewcrest Dr S and Kuebler Rd S. Major Partition #MP78-41 approved creation of the subject property as Parcel 2 of three parcels. The survey recorded on Reel 138; Page 614 established the description of the subject parcel that is recognized by Marion County as the configuration that is considered one legally created parcel for land use purposes. The 4.12 acres on the recorded survey is shown as 4.39 acres in size and identified as Parcel 2, composed of tax lots 400, 500, 700, and 800 and contains an existing dwelling, accessory structures, well and septic system, all located on the east half of the property. Tax lot 400, located on the east side of the subject parcel, is inside Salem's Urban Growth Boundary. Tax lot 600 appears to be a portion of the 60 foot wide roadway easement that is shown on the recorded survey that implemented MP78-41 and is not a part of Parcel 2, which is subject of this application.
3. Surrounding properties in all directions are zoned AR and in residential use.
4. The applicant proposes to divide the 4.17 acre parcel into two parcels of 2.17 acres and 2.0 acres each.
5. Public Works Land Development and Engineering Permits (LDEP) requested that the following conditions be included in the land use case:

“Condition A – Prior to plat approval, under an Access Permit, widen the private easement paved approach to meet MCPW Engineering standards for a shared driveway.

Access work is typically an Engineering Requirement, but is being elevated to Condition status to address timing for completion.

Condition B – Prior to plat approval; widen the private easement all-weather driving surface from the intersection with Viewcrest Road S public right-of-way, to the subject property to a minimum width of 16 feet or to the satisfaction of the local fire department, whichever is the less stringent.

Nexus is to address the Variance of allowing an increase in traffic to the easement, including facilitating fire department access. The private road appears as narrow as 9 feet in some spots.”

LDEP also requested that the following requirements be included in the land use case:

- C. In accordance with Marion County Code (MCC) 15.10 an Erosion Prevention and Sediment Control Permit is required for construction activity on the site. The subject property is within the High Risk Area of Marion County's DEQ-designated Stormwater Management Area.
- D. Provide a notarized Road Maintenance Agreement to be recorded concurrently with the plat.
- E. In accordance with MCC 11.10, a driveway “Access Permit” for access to the public right-of-way will be required upon application for a building permit for a new dwelling. Driveways must meet sight distance, design, spacing, and safety standards.
- F. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.”

LDEP also indicated the applicant should also be aware of the following:

- G. Construction of improvements on the property should not block historical or naturally occurring runoff from adjacent properties. Furthermore, site grading should not impact surrounding properties, roads, or drainage ways in a negative manner.
- H. Applicant is advised to contact the local fire department to get a determination of their access requirements.”

Marion County Surveyor commented: “Parcels ten acres and less must be surveyed. Per ORS 92.050, plat must be submitted for review. Checking fee, second mylar fee, and recording fee required. A current or updated title report must be submitted at the time of review. Title reports shall be no less than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports.”

Marion County Building Inspection commented that permits are required for new construction or placement of a manufactured home.

Marion County On-Site Sewage commented that an approved septic evaluation will be required for all undeveloped parcels. For sites with an existing septic system, the applicant shall request a review and complete any steps necessary for system approval.

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

6. Chapter 17.181 of the Marion County Code (MCC) establishes criteria for partitioning property in a Sensitive Groundwater Overlay zone (SGO). In order to meet criteria in Chapter 17.181 MCC, the applicant submitted a "Hydrogeology Report" which indicates there is a sustainable long-term supply of groundwater for the proposed development. Peer review of the Hydrogeology Report was positive. The County requires a Declaratory Statement be recorded with the property deed to notify the applicants and subsequent owners that there may be long term groundwater supply problems and that the County is not responsible for deepening or replacing wells. In addition, the applicant must meet the water level monitoring requirements in MCC 17.181.120. This includes a static water level measurement of all existing wells prior to recording the plat, and at least one static water level measurement prior to the issuance of a building permit in any new or existing wells intended as the water supply for the lot. This requirement is only for lots created by partitions recorded after January 1, 1998. This will be made a condition of approval.
7. There are no specific approval criteria for partitions in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres. The two proposed new parcels will be at least two acres each and are consistent with this standard. In addition, the resulting undeveloped parcels, if they can obtain septic approval, are of sufficient size and shape to meet the development standards 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 2.0 acres prior to any required right-of-way dedication.
9. The easement serving the property also serves three other lots that do not have frontage on a public road. Creation of a new parcel would result in five dwellings being served by the private drive. In order to allow more than four dwellings to be served by the private easement identified as Viewcrest Road S, the proposal must satisfy the variance criteria listed in MCC 17.122.020 which include:

- (a) *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title; and*

The only available access to the subject property is Viewcrest Road S.

- (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*

The subject property was created without any access alternatives other than Viewcrest Road S and of a size that would allow it to be partitioned into additional lots that would all meet the minimum lot size requirements of the AR zone. Marion County Land Development has identified needed improvements in order for the portion of Viewcrest Road S used to serve the subject property. These necessary improvements are included as conditions of approval of the partition.

- (c) *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*

The proposed use is to create one new lot resulting in the construction of one additional dwelling. The new dwelling would require access by Viewcrest Road S and this access is the minimum necessary to allow development of the property. Without this access, the property could not be partitioned or developed further.

(d) *The variance will not have a significant adverse effect on property or improvements in the neighborhood of the subject property; and*

The roadway is improved with an all-weather surface that is only 9 feet wide in some spots. The minimum width of a private access easement located outside the Urban Growth Boundary is 12 feet. A condition of approval requiring the roadway to be improved to the minimum standard will resolve potential adverse effects on property or improvements in the neighborhood.

(e) *The variance will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and*

The proposal can be conditioned to require compliance with Salem Suburban Fire District fire apparatus access standards so the addition of one additional dwelling to be served by Viewcrest Road S would not adversely affect public health or safety.

(f) *The variance will maintain the intent and purpose of the provision being varied.*

It does not appear that allowing one additional dwelling to be served by Viewcrest Road S would create more traffic than could be accommodated by the road, once required improvements are made.

10. Based on the above findings, the proposed partition complies with the applicable criteria and is, therefore **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: February 26, 2019

If you have any questions please contact Lisa Milliman 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.