

**NOTICE OF DECISION  
PARTITION CASE NO. 19-004**

**APPLICATION:** Application of Michael Erwert to divide a 0.40 acre parcel into two parcels containing 6,710 square feet and 10,126 square feet each in an RS (Single Family Residential) zone located at 508 Morgan Avenue, Salem. (T7S; R2W; Section 30BB; tax lot 2800).

**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 partitioning plat is recorded by **April 11, 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) 588-5038) and shall contain the notation that the survey is the result of Partition Case 19-004. Following plat approval it shall be recorded with the Marion County Clerk (plat instructions enclosed).
2. The applicant is advised that a Partition Plat Service Report, from a title company, will be required upon submission of the final Mylar to the County Surveyor.
3. Public Works Land Development Engineering requests that the following conditions are required for approval of this land use case:

***Condition A** - On the plat, depict public right-of-way dedications to achieve 30-foot half-widths along the Morgan Avenue and Auburn Road property frontages, and a 30-foot property corner radius.*

***Condition B** - Prior to plat approval, apply for an Access Permit, and under the Permit, pave the existing Morgan Avenue access approach with Hot Mix Asphalt.*

***Condition C** - Prior to plat approval, design, permit and construct urban frontage improvements along Auburn Road and Morgan Avenue to City of Salem and MCPW standards for a Local road. Such improvements are anticipated to include paving, curb/gutter, sidewalk, transition tapers, drainage work, public and franchise utility relocations and landscaping. **Or:***

***Alternate Condition C** - In lieu of requiring immediate improvements under Condition C, record a Non-Remonstrance Agreement (NRA) for potential future financial responsibility assigned to both lots toward the aforementioned roadway improvements.*

***Condition D** - Prior to plat approval; remove the 4" x 4" wooden post stub fronting the parent parcel Auburn Road side yard, located adjacent to and west of the United States Postal Service Cluster Box Unit.*

**Prior to issuance of building permits on the resulting parcels:**

4. The partition plat shall be recorded.
5. 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.

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

6. After the final partition plat has been recorded, no alteration of property lines shall be permitted without first obtaining approval from by 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 agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. 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).
8. The applicants should contact 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. Contact Paula Smith at MCFD#1 at (503) 588-6513 for more information.
9. 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 County 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 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 120 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 **April 11, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 12, 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 Single Family Residential in the Salem Area Comprehensive Plan. The major purpose of this designation and the corresponding RS (Single Family Residential) zone is to provide areas for residential development on individual lots at urban densities.
2. The property is located on the northeast corner of Morgan Avenue adjacent to its intersection with Auburn Road NE. The property contains an existing dwelling. The subject property is described in deed (Reel 46, Page 703) in 1976 together with adjacent properties, tax lots 2700 and 2600. All three properties contain a dwelling and meet the minimum size, width and depth requirements for tax lots per MCC 16.02.120. Therefore, these properties are considered legally created for land use purposes.
3. Properties to the north and east of the subject parcel are zoned RS and in residential development. Properties to the west and south of the subject parcel are zoned RM and in residential development.

4. The applicant proposes to divide a 0.40 acre parcel into two parcels containing 6,710 square feet and 10,126 square feet each. The existing dwelling will remain on the 10,126 square foot parcel and a new home may be placed on the 6,710 square foot parcel.
5. Public Works Land Development and Engineering Permits (LDEP) requested that the following conditions be included in the land use decision:

**Condition A** - *On the plat, depict public right-of-way dedications to achieve 30-foot half-widths along the Morgan Avenue and Auburn Road property frontages, and a 30-foot property corner radius.*

The above Conditions are in accordance with Marion County Code (MCC) 16.33.220 and 16.33.260 by which adequate right-of-way bordering the subject property shall be dedicated in the event of a partition.

**Condition B** - *Prior to plat approval, apply for an Access Permit, and under the Permit, pave the existing Morgan Avenue access approach with Hot Mix Asphalt.*

Access is typically an Engineering Requirement, but has been elevated to a Condition as a matter of timing since application for building permits on the parent parcel is not foreseen.

**Condition C** - *Prior to plat approval, design, permit and construct urban frontage improvements along Auburn Road and Morgan Avenue to City of Salem and MCPW standards for a Local road. Such improvements are anticipated to include paving, curb/gutter, sidewalk, transition tapers, drainage work, public and franchise utility relocations and landscaping.*

The above Condition is in accordance with MCC 16.33.160 and 16.33.320 by which road improvements as prescribed in accordance with Marion County Engineering Standards must be completed prior to plat approval or as satisfactorily guaranteed.

**Alternate Condition C** - *In lieu of requiring immediate improvements under Condition C, record a Non-Remonstrance Agreement (NRA) for potential future financial responsibility assigned to both lots toward the aforementioned roadway improvements.*

A recordable agreement will be provided by Marion County Public Works. Applicant is responsible for Clerk recording fees.

**Condition D** - *Prior to plat approval; remove the 4" x 4" wooden post stub fronting the parent parcel Auburn Road side yard, located adjacent to and west of the United States Postal Service Cluster Box Unit.*

In accordance with MCC 11.45, the wooden post next to the shared mailbox is considered a fixed object hazard, and shall be removed. No natural or manmade thing shall present a danger to the traveling public within the right-of-way."

LDEP also requested that the following Requirements be included in the decision:

- E. The subject property is within the City of Salem Urban Growth Boundary and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #97-39R and 98-40R, respectively.
- F. Upon application for building permits, the Applicant or their Agent will be required to sign a Construction Erosion & Sediment Control Ordinance Acknowledgement Form, which assigns responsibility and liability for failure thereof to implement Best Management Practices in order to minimize the potential for a sediment release into the public storm drainage and surface water systems.
- G. Both a Marion County Work in Right-of-Way Permit and a Utility Permit are required in order to install utilities within County-controlled public right-of-ways.
- H. In accordance with MCC 11.10, driveway permits will be required for any new access or change in use of the existing access to the public right-of-way. The applicant shall be required to apply for a driveway "Access Permit" and construct any improvements required by the permit. Driveways must meet sight distance, design, spacing, and safety standards. At the time of application for building permits on the developable lot facing Auburn Road, the Owner of that lot will be responsible for paving the Auburn driveway access approach with Hot Mix Asphaltic Concrete.

LDEP requested the following Advisories be included:

- I. Sanitary sewer service for the subject property is provided by the City of Salem.
- J. Potable water service for the subject property is provided by Suburban East Salem Water District.

Marion County Surveyor commented: "Parcels ten acres and less must be surveyed. Per ORS 92.050, plat must be submitted for review. Checking fee and recording fees required. A current or updated title report must be submitted at the time of review. Title reports shall be no more 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 Assessor's Office provided comments related to taxes on the subject property.

City of Salem commented: "If the subject property is annexed in the City of Salem, the East interior side yard setback for the house on Parcel 2 of P19-004 will be nonconforming with respect to the City's minimum interior side yard setback of 5 feet required for a single-family dwelling." Planning staff reviewed the site plan and it appears the proposed dwelling will be able to meet a minimum 5 foot sideyard setback.

Marion County Fire District commented on access and water supply requirements.

- 6. In order to partition land in an RS (Single Family Residential) zone, the standards and criteria in Chapter 16.02.120 of the Marion County Code (MCC) apply:
  - 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.*

The applicant's request is to divide a 0.40 acre parcel into two parcels containing 6,710 square feet and 10,126 square feet each. The proposed lots will exceed the 4,000 square foot minimum lot size requirement within the Salem/Keizer area urban growth boundary. In addition, both parcels will meet the minimum lot width and depth standards. Therefore, the proposal meets the criteria in #6 (A) and (B).

- 7. MCC 16.33.680 ACCESS STANDARDS. 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. The proposed lots will meet the minimum 20-foot frontage requirement. The proposal will not require an access easement. Therefore, the proposal meets the criteria in #7.
- 8. Based on the above findings, the proposed partitioning complies with the criteria for a partitioning in the RS zone and is, therefore **APPROVED**, subject to conditions.

Joe Fennimore  
Director-Planning Division

Date: April 1, 2019

If you have any questions please contact Seth Thompson at (503) 566-4165.

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.