

RECEIVED

SEP 02 2025

**Marion County
Planning**

To: Marion County Hearings Officer

From: Norman Bickell 

Re: Response to Victor Pagel comments dated August 25, 2025

In the appellants letter he talks about an adjustment and its limitations. This application includes a variance not an adjustment and the limitations listed for an adjustment would not apply. The discussion about how the adjustment language in the ordinance and the conjunctive language concerning "percentage of lot coverage" again do not apply because the applicant is requesting a variance not an adjustment. The number of additional dwelling units to be served by the two easements will be six and since the Planning Director has concluded that dwelling units is a variable standard the applicants request for a variance to allow six dwelling units rather than the 4 allowed under the provisions of Chapter 17.110.800 is appropriate. This interpretation is consistent with past Planning Division application and decisions (see later in this report examples of approve variance cases) No further discussion is needed on meeting the criteria above what was included in the original applicant statement.

Under the provisions of 17.122.110 the first sentence provides the ability of the Planning Director, Planning Commission, Hearings officer or Board shall have the power to grant a variance of any of the standards of this title in any case where such strict application would result in practical difficulties or unnecessary hardships with reference to requirements governing: lot area, lot width, percentage of lot coverage and number of dwelling units or structures , location, yards, signs, parking and loading space, vision clearance and other standards when limits for an adjustment are exceeded. Again it should be noted that the AR zone has a limitation on the amount of land available for development and the allowance of a variance to reach the density allowed in the zone is critical to reduce the pressure for expanding the zone into adjacent resources zones. So, the interpretation of the Planning Director that under the provision of "number of dwelling units" the standard is a variable through the variance process. The AR zone allows dwellings units to be established and the question on the number of units allowed is covered by the variance as requested.

The appellant argues that there are alternatives to granting a variance by the applicant in coordination with all of the users of the easements get together and come up with an alternative solution. As pointed out in the first response to the original appeal, the requirement that the applicant work with other property owners along the easements is not practical. The solution that would allow for the properties in question would require a subdivision application with the dedication of a public street. This would impact all of the property owners who would first agree and second give up and additional 30 feet of their property to accomplish the 60 feet required for a public street. And it should be noted the one of the property owners giving up and additional 30 feet of their property would be the appellant. While the appellant is suggesting this would be

a solution and an alternative, it is not a serious option. This would create an unreasonable hardship for the applicant and would be alleviated by the granting of the Variance.

The appellant also cites the language from the variance criteria that states "Variances to allow uses or new uses not otherwise allowed are prohibited. Variances to criteria and definitions are also prohibited." The term "new uses" as used in this sentence refers to a use not allowed in the zone, such as, a commercial or industrial use in a residential zone. Virtually all of the variances granted are for new uses allowed in the zone that do not meet a numerical standard. Such as a reduction in the setback, a reduction in the lot size or in this case allowing more than four dwellings off a private drive.

In researching the county position on granting a variance to the standards listed in 17.110.800 back to the year 2000, there were three variances granted to the number of dwellings allowed off a private drive. Case numbers V22-004, V06-007 and V06-002 were all variances to allow for more than 4 dwellings off a private drive and all were approved (copies attached). It should be noted that in case V22-004 the staff decision was appealed to the Hearings Officer and was approved after the public hearing.

The applicant has supplied an Assessors map of the surrounding section which shows that the area has been repartitioned into smaller lots throughout the past 20 years. This is the more efficient use of the land within the AR zone and the granting of this variance to 17.110. 800 accomplish this infill of the area and the variance should be granted.

Attention Property Owner: A land use proposal has been submitted for property near where you live or near 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
VARIANCE CASE NO. 22-004**

RECEIVED

SEP 02 2025

APPLICATION: Application of Norman Bickell on behalf of the property owners Jamon Wanker and Marion County Wood for a variance to MCC 17.110.800 to allow a total of seven dwellings to be served off a private easement in the AR (Acreage Residential) and UT-5 (Urban Transition 5-Acre Density) zone located at 241 Schooley Lane NE, Silverton. (T7S, R1W, [Section 2D, Tax Lot 300], [Section 2DA, Tax Lot 5200], and [Section 2DB, Tax Lot 800]).

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

EXPIRATION: This Variance is valid only when exercised by **May 12, 2024**. 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 proposal is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposal 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:

1. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
2. Any dwelling located at Tax Lot 300 will be addressed as 231 Schooley Lane NE while any dwelling located at Tax Lot 800 will be addressed as 251 Schooley Lane NE.

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 6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

APPEAL PROCEDURE: The Marion County Zone Code provides that Variance 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 deny the application. Anyone who disagrees with the Director's decision may appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a fee of \$200.00) 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. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **May 12, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 13, 2022**, unless appealed.

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

1. The subject property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding Acreage Residential (AR) zoning is to accommodate the housing needs of the population desiring the advantages of a rural homesite. Additionally, a small portion on the Northeast of Tax Lot 5200 is zoned UT-5. The purpose of the Urban Transition (UT) is to retain and protect for future urban use properties which are undeveloped or underdeveloped and do not have available urban facilities such as sanitary sewer, water, drainage and streets.
2. The northeastern property is located approximately 200 feet south of the intersection of Schooley Lane NE and S Water Street (State Route 214). One of the three subject parcels has been developed with a dwellings and outbuildings (Tax Lot 5200), while the other parcels remain undeveloped (Tax Lots 300 and 800). The parcels have not been the subject of any known previous land use cases. However, the legality of Tax Lot 300 is confirmed by a Warranty Deed from September 1959 (Volume 592, Page 51), while the legality Tax Lots 5200 and 800 are confirmed by a Warranty Deed from July 1957 (Volume 503, Page 69). For land use purposes, these parcels are legal and land use action can be commenced.
3. The surrounding uses vary widely. To the north of the parcels, the land uses mostly consist of a mix of single-family residential in the city of Silverton and rural homesites zoned Acreage Residential. To the south of the parcels, the land uses consist of small to large farms and rural homesites which are zoned Acreage Residential, Exclusive Farm Use, and Farm Timber. East of the parcels, zoning is made up of Acreage Residential, Urban Transition, and zoning for the city of Silverton and contain rural and urban homesites. Lastly, to the west of the parcels, zoning consists of Acreage Residential and Exclusive Farm Use, while land uses are made up of rural homesites and small to large farms.
4. The applicant is proposing to allow a private easement (Schooley Lane NE) to serve more than four dwellings and serving a total of seven dwellings.
5. Marion County Septic Division commented that proposed dwellings will require site evaluations for on-site wastewater facilities.

Silverton Fire District made the following comments:

Future development of the property will need to comply with Oregon Fire Code regarding access and water supply.

Fire access roads and turnarounds will need to be evaluated and upgraded as needed for compliance with Oregon Fire Code.

An Oregon registered civil or structural engineer will need to inspect the bridge for structural stability and soundness and verify vehicle load limits as per Oregon Fire Code.

Vehicle load limits shall be posted at both sides of the bridge on a minimum 18"x 24" metal white reflective sign with a minimum 3" black letters. Signs shall be installed with a clear space above grade at a level of at least 5' feet and no more than 7' feet. The bridge weight limit as determined by a State of Oregon registered civil or structural engineer, shall appear above the word "TONS". (OFC 503.2.6 & D.102.1)

All other contacted agencies either failed to comment or stated no objection to proposal.

6. To obtain a variance, the proposal must meet the criteria in found in Section 17.122.020 of the Marion County Rural Zone Code (MCC). These criteria are:
 - (a) *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of the ordinance; and*

The applicant's representative has stated that via Schooley Lane NE, which consists of a bridge over Silver Creek, is the only viable way to access each of properties. They have also stated that access to a public street (Victor Point Road NE) from the southwestern and western properties is not possible because the applicants do not own the parcels and, therefore, do not have access by right. Additionally, even if access were possible from the southwestern and western properties, the fact that a geohazard exists on the ridge overlooking the properties could make accessing the parcels a potential safety hazard in the event of a flood, earthquake, or another natural disaster. Access to the properties from the southeast via Silverwood Lane, a private road, would be impractical as well, considering that the applicants do not own the parcel in which this road is located on. Based on this criterion, access to the parcels via Schooley Lane NE is the only practical way because of the existence of Schooley Lane NE and the proximity to the subject parcels. Therefore, this criterion is met.

- (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*

According to the applicant's statement, access to the subject parcels is limited because of the unique geography of the parcels and the geography surrounding them. As stated previously, access to the subject parcels is limited and would be impractical via Victor Point Road NE because of the existing geohazards and the potential safety hazards stemming from floods, earthquakes, and other natural disasters. Additionally, the applicant lacks the ability to access the parcels, other than the route being proposed (Schooley Lane NE), because they do not own any surrounding parcels that would allow them to access their parcels from South Water Street (State Route 214) or Silverwood Lane by right. Therefore, the criterion is met.

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

This variance is the minimum necessary to accommodate building two additional dwellings on Tax Lots 300 and 800. The criterion is met.

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

Allowing access to all three parcels via Schooley Lane NE has the potential to create adverse effects on property or improvements in the vicinity. According to Chapter 17.110.800, a private drive (Schooley Lane NE) cannot serve more than four dwelling units. Currently, Schooley Lane NE serves five dwellings with the applicant applying for a variance for a private drive to serve two additional dwellings which would be a total of seven dwellings. There will be an increase in traffic because of the two additional dwellings being built. As a consequence, this could also result in an increase in noise and vibration and place a strain on the existing infrastructure through increased vehicle usage. However, the applicant is proposing to build only two additional single-family dwellings (as allowed per the Acreage Residential zoning), resulting in a small increase in traffic, but would not create a significant adverse effect on property or improvements in the vicinity. Therefore, the criterion is met.

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

Allowing access to all three parcels has the potential to impact the health and safety of persons working or residing in the vicinity. According to Chapter 17.110.800, a private drive (Schooley Lane NE) cannot serve more than four dwelling units. Currently, Schooley Lane NE serves five dwellings with the applicant applying for a variance for a private drive to serve two additional dwellings which would be a total of seven dwellings. The two additional dwellings will increase traffic in the vicinity. Therefore, this

could create an adverse effect upon the health and safety of the persons working or residing in the vicinity by potentially delaying access to emergency services. However, the applicant is proposing to build only two additional single-family dwellings (as allowed per the Acreage Residential zoning), resulting in some increase in traffic, but would not create a significant amount that delay emergency services or would impact the health and safety of persons working or residing in the vicinity. Therefore, the criterion is met.

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

The variance maintains the intent and purpose of the zone by allowing for rural residential use on parcels with a minimum of two acres. The applicant is not proposing to add more dwellings than what is already allowed in the base zoning district, Acreage Residential. Therefore, the criterion is met.

7. Based on the above findings, the applicant's request meets all applicable criteria and is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: April 27, 2022

If you have any questions regarding this decision contact Jared Bradford at (503) 566-4173

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.

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of) Case No. Variance 22-004
)
JAMON WANKER AND SOPHIA WOOD) **VARIANCE**

ORDER

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Jamon Wanker and Sophia Wood for a variance to MCC 17.110.800 to allow seven dwellings to be served off a private easement in an AR (Acreage Residential) and UT-5 (Urban Transition 5-Acre Density) zone located at 241 Schooley Lane NE, Silverton. (T7S, R1W, [Section 2D, Tax Lot 300], [Section 2DA, Tax Lot 5200], and [Section 2DB, Tax Lot 800]).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Rural Code, Marion County Code (MCC) Chapter 17, particularly MCC 17.128, MCC 17.122.20, and MCC 17.110.800.

III. Public Hearing

A public hearing was held on this matter on June 9, 2022. At the hearing, the Planning Division file was made a part of the record. The following persons appeared at the hearing and provided testimony and/or argument on the application:

- | | | |
|----|------------------|---------------------------------|
| 1. | Jerrold Bradford | Marion County Planning Division |
| 2. | Norman Bickell | Representative for Applicant |
| 3. | Jamon Wanker | Applicant |
| 4. | Sophia Wood | Applicant |
| 5. | Erik Douthit | Proponent |
| 6. | Darrin Howe | Opponent/Appellant |

No objections were made to notice, jurisdiction, or conflict of interest. Two exhibits was presented at the hearing:

- Exhibit 1: Motion to Rescind Appeal dated 6-10-22 from Brandon Rogers
Exhibit 2: Document regarding Schooley Lane Bridge and its capacity

Opponent Darrin Howe objected to Exhibit 1 and argued that the appeal would be withdrawn if all appellants did not proceed. Exhibit 1 was admitted for the purpose of indicating Brandon Roger's withdrawal of his support of the appeal, but without a withdrawal of the appeal. There were no further objections to the exhibits.

IV. Executive Summary

Applicants seek a variance to MCC 17.110.800 to allow seven dwellings to be served off a private easement in an AR (Acreage Residential) and UT-5 (Urban Transition – 5 Acre Density). Pursuant to MCC 17.110.800, a private drive (Schooley Lane NE) cannot serve more than four dwelling units. Schooley Lane NE presently serves five dwellings, and the Applicants seek to develop two tax lots with single family residences. Applicants have met their burden of proving the applicable standards and criteria for approval of a variance application, and the variance application is APPROVED.

V. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. On March 23, 2022, Jamon Wanker and Sophia Wood submitted a variance application to allow more than three dwellings to be served off a private easement. On April 27, 2022, the Planning Director for Marion County approved the Variance application subject to certain conditions.
2. Anyone who disagreed with the Director's decision was entitled to appeal the decision to a Marion County hearings officer prior to 5:00 p.m. on May 12, 2022.
3. On May 9, 2022, a Notice of Appeal submitted by three (3) individuals, Monica Cavazos, James Rogers, and Brandon Rogers was submitted on the basis of significant adverse effect and impact to the health and safety of persons working or residing in the vicinity, and the single lane design of the bridge. A public hearing was scheduled on June 9, 2022 for the application for variance to be heard by the hearings officer.
4. One of the appellants, Brandon Rogers, by and through Applicant Sophia Wood, submitted a Motion to Rescind Appeal. The Motion was accepted with respect to Brandon Roger's support of the Appeal, but did not rescind the Appeal filed by the other two appellants.
5. The subject property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding Acreage Residential (AR) zoning is to accommodate the housing needs of the population desiring the advantages of a rural homesite. Additionally, a small portion on the Northeast of Tax Lot 5200 is zoned UT-5. The purpose of the Urban Transition (UT) is to retain and protect for future urban use properties which are undeveloped or underdeveloped and do not have available urban facilities such as sanitary sewer, water, drainage and streets.
6. The northeastern property is located approximately 200 feet south of the intersection of Schooley Lane NE and S Water Street (State Route 214). One of the three subject parcels has been developed with a dwellings and outbuildings (Tax Lot 5200), while the other parcels remain undeveloped (Tax Lots 300 and 800). The parcels have not been the subject of any

known previous land use cases. However, the legality of Tax Lot 300 is confirmed by a Warranty Deed from September 1959 (Volume 592, Page 51), while the legality Tax Lots 5200 and 800 are confirmed by a Warranty Deed from July 1957 (Volume 503, Page 69). For land use purposes, these parcels are legal and land use action can be commenced.

7. The surrounding uses vary widely. To the north of the parcels, the land uses mostly consist of a mix of single-family residential in the city of Silverton and rural homesites zoned Acreage Residential. To the south of the parcels, the land uses consist of small to large farms and rural homesites which are zoned Acreage Residential, Exclusive Farm Use, and Farm Timber. East of the parcels, zoning is made up of Acreage Residential, Urban Transition, and zoning for the city of Silverton and contain rural and urban homesites. Lastly, to the west of the parcels, zoning consists of Acreage Residential and Exclusive Farm Use, while land uses are made up of rural homesites and small to large farms.
8. The applicant is proposing to allow a private easement (Schooley Lane NE) to serve more than four dwellings and serving a total of seven dwellings.
9. The Planning Division requested comments from various governmental agencies and received the following comments:

Marion County Septic Division commented that proposed dwellings will require site evaluations for on-site wastewater facilities.

Silverton Fire District made the following comments:

Future development of the property will need to comply with Oregon Fire Code regarding access and water supply.

Fire access roads and turnarounds will need to be evaluated and upgraded as needed for compliance with Oregon Fire Code.

An Oregon registered civil or structural engineer will need to inspect the bridge for structural stability and soundness and verify vehicle load limits as per Oregon Fire Code.

Vehicle load limits shall be posted at both sides of the bridge on a minimum 18"x 24" metal white reflective sign with a minimum 3" black letters. Signs shall be installed with a clear space above grade at a level of at least 5' feet and no more than 7' feet. The bridge weight limit as determined by a State of Oregon registered civil or structural engineer, shall appear above the word "TONS". (OFC 503.2.6 & D.102.1)

All other contacted agencies either failed to comment or stated no objection to proposal.

10. Jerrod Bradford, Marion County Planning Division, stated that staff recommends the approval of the application as the criteria to allow a variance of more than four (4) dwellings units to be served by the private drive is met.

11. Applicant Sophia Wood testified that she purchased property that included three (3) separate tax lots. There are currently five (5) dwelling units that are served by the private drive which were grandfathered in prior to the code restriction. Ms. Wood testified that they reside on one of the three (3) tax lots and want to develop the other two tax lots with single family dwellings, including one for their friend, Erick Douthit, who testified in support of the application. Ms. Wood agreed that there would be increased traffic, but that the increased traffic for two single-family residences would not be a safety threat. The private drive is on a bridge, and there is no threat of harm to the bridge as it has the capacity to carry heavy weight, including emergency vehicles. Ms. Wood testified that there is a maintenance agreement for the private drive and that additional residents of the new dwelling units would be required to contribute to the maintenance of the private drive.
12. Darrin Howe testified in opposition to the application. Mr. Howe resides on Schooley Lane. Mr. Howe testified that the application has assertions about safety and health impacts but does not appropriately examine the actual impacts to safety and health. Mr. Howe testified that residents of the private road are mostly elderly and that the dust on the easement would be a problem for them. Mr. Howe testified that the increased dust on the roadway could prohibit residents from enjoying their homes and outdoor areas, including porches. Mr. Howe testified that the code was written for the safety of everyone and should not even allow variances. Mr. Howe does not question the sufficiency of the bridge to support additional vehicles but stated that increased traffic on the bridge could delay emergency vehicles from reaching the dwelling units already served by the drive. Mr. Howe testified that he objects to the application because it would allow for a significant change to the use of the drive, and specifically a 40% increase in use.
13. Sophia Wood testified that safety is not an issue: the bridge is short, and any disabled vehicle could be moved to allow for emergency vehicles. Ms. Wood testified that there is sufficient room on the bridge for a vehicle and a pedestrian. Ms. Wood also stated that she would agree to contribute to mitigation efforts if increased dust on the drive was a concern.

VI. Additional Findings of Fact and Conclusions of Law

1. To obtain a variance, the proposal must meet the criteria in found in Section 17.122.020 of the Marion County Rural Zone Code (MCC). These criteria are:
 - (a) *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of the ordinance; and*

Applicants indicate that Schooley Lane NE, which consists of a bridge over Silver Creek, is the only viable way to access each of properties. Applicants also stated that access to a public street (Victor Point Road NE) from the southwestern and western properties is not possible because the applicants do not own the parcels and, therefore, do not have access by right. Additionally, even if access were possible from the southwestern and western properties, the fact that a geohazard exists on the ridge overlooking the properties could make accessing the parcels a

potential safety hazard in the event of a flood, earthquake, or another natural disaster. Access to the properties from the southeast via Silverwood Lane, a private road, would be impractical as well, considering that the applicants do not own the parcel in which this road is located on. Based on this criterion, access to the parcels via Schooley Lane NE is the only practical way because of the existence of Schooley Lane NE and the proximity to the subject parcels. Therefore, this criterion is met.

- (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*

According to the applicant's statement, access to the subject parcels is limited because of the unique geography of the parcels and the geography surrounding them. As stated previously, access to the subject parcels is limited and would be impractical via Victor Point Road NE because of the existing geohazards and the potential safety hazards stemming from floods, earthquakes, and other natural disasters. Additionally, Applicants lack the ability to access the parcels, other than the route being proposed (Schooley Lane NE), because they do not own any surrounding parcels that would allow them to access their parcels from South Water Street (State Route 214) or Silverwood Lane by right. Therefore, the criterion is met.

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

This variance is the minimum necessary to accommodate building two additional dwellings on Tax Lots 300 and 800. The criterion is met.

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

Allowing access to all three parcels via Schooley Lane NE has the potential to create adverse effects on property or improvements in the vicinity. According to Chapter 17.110.800, a private drive (Schooley Land NE) cannot serve more than four dwelling units. Currently, Schooley Lane NE serves five dwellings with the applicant applying for a variance for a private drive to serve two additional dwellings which would be a total of seven dwellings. There will be an increase in traffic because of the two additional dwellings being built. As a consequence, this could also result in an increase in noise and vibration and place a strain on the existing infrastructure through increased vehicle usage. However, the applicant is proposing to build only two additional single-family dwellings (as allowed per the Acreage Residential zoning), resulting in a small increase in traffic, but would not

create a significant adverse effect on property or improvements in the vicinity. Therefore, the criterion is met.

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

Opponent Mr. Howe, and Appellants posit that allowing access to two additional dwelling units could impact the health and safety of persons residing in the vicinity on the basis of access to emergency services and additional dust from increased usage. It is possible that allowing access to all three parcels has the potential to impact the health and safety of persons working or residing in the vicinity. The two additional dwellings will likely increase traffic on Schooley Road. Therefore, this increased traffic could create an adverse effect upon the health and safety of the persons working or residing in the vicinity by potentially delaying access to emergency services. However, the applicant is proposing to build only two additional single-family dwellings (as allowed per the Acreage Residential zoning), resulting in some increase in traffic. The restriction for usage is with respect to dwelling units – not vehicles. One of the dwelling units already using the private drive could contribute to increased usage with additional vehicles at the dwelling unit. To the extent that dust is increased with additional users, Applicants indicate a willingness to mitigate the dust if impacted by increased use. Although there is the possibility of an impact to health and safety of persons working or residing in the vicinity, it is not significant, and could result from the current usage. Any increase in dust on the roadway can be mitigated. There is not sufficient evidence of a significant adverse impact upon the health or safety of persons working or residing in the vicinity. The criterion is met.

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

The variance maintains the intent and purpose of the zone by allowing for rural residential use on parcels with a minimum of two acres. The applicant is not proposing to add more dwellings than what is already allowed in the base zoning district, Acreage Residential. Therefore, the criterion is met.

VII. Order

It is hereby found that Applicants have met their burden of proving the applicable standards and criteria for approval of a variance application to allow seven dwellings to be served off a private easement in an AR (Acreage Residential) and UT-5 (Urban Transition 5-Acre Density) zone located at 241 Schooley Lane NE, Silverton. Therefore, the variance application is APPROVED, with the following conditions:

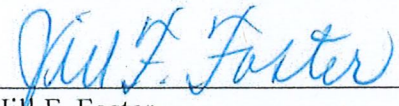
1. The applicant shall obtain all permits required by the Marion County Building Inspection Division.

2. Any dwelling located at Tax Lot 300 will addressed as 231 Schooley Lane NE while any dwelling located at Tax Lot 800 will be addressed as 251 Schooley Lane NE.
3. Any additional dwelling units will be subject to the requirements for maintenance obligations for the private drive.

VIII. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555 Court St. NE, Suite 2130, Salem, OR 97301) by 5:00 p.m. on the 13 day of July. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must stated wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED this 28 day of June, 2022.



Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Norman Bickell
2232 42nd Aussie #771
Salem, Oregon 92317

Sophia Wood
241 Schooley LN.
Silverton, OR 97381

Jamon Wanker
241 Schooley LN
Silverton, OR 97381

Erik Douthit
211 Division St.
Silverton, OR 97381

Darrin Howe
242 Skooley LN
Silverton, OR 97381

Agencies Notified:

Area Advisory Committee 2
(Via email: denk@wvi.com)

Friends of Marion County
(Via email: rkaye2@gmail.com)
1000 Friends of Oregon
(Via email: permits@friends.org)

Assessor
(Via email: Assessor@co.marion.or.us)

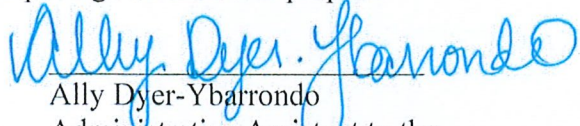
Surveyors' office
(Via email: survey@co.marion.or.us)
Fire district Sublimity
(Via email: ahume@sublimityfire.com)
(Via email: sta51adm@wvi.com)

School district N. Santiam
(Via email: andy.gardner@nsantiam.k12.or.us)
Building Inspection Septic
(Via email: abammes@co.marion.or.us)

Planning Division
(Via email: breich@co.marion.or.us)
(Via email: lking@co.marion.or.us)
Code Enforcement
(Via email: cgoffin@co.marion.or.us)
(Via email: jtaylor@co.marion.or.us)
Building Inspection
(Via email: PWolterman@co.marion.or.us)
(Via email: kaldrich@co.marion.or.us)
PW Engineering
(Via email: jrasmussen@co.marion.or.us)
PW LDEP
(Via email: mcldep@co.marion.or.us)

DLCD
(Via email: hilary.foote@state.or.us)
(Via email: sarah.marvin@state.or.us)
(Via email: angela.carnahan@state.or.us)

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 28 day of June, 2022 and that the postage thereon was prepaid.


Ally Dyer-Ybarrondo
Administrative Assistant to the
Hearings Officer

RECEIVED

SEP 02 2025

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS CHAPTER 2.15
REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

Marion County
Planning

**NOTICE OF DECISION
VARIANCE/PROPERTY LINE ADJUSTMENT/PARTITION/
ADMINISTRATIVE REVIEW CASE NO. 06-7**

APPLICATION: Application of Paul and Linda Lee and Jan and Steve Rosen for a variance to allow more than 4 dwellings off a private drive, to adjust the property lines on 4.6 acre, 3.18 acre, 2.02 acre, and a 2.01 acre parcel to create a 5.78 acre, 2.02 acre, 2.1 acre, and a 1.0 acre parcel and to partition the resulting 5.78 acre parcel into 2 parcels of 3.0 acres and 2.78 acres each and to reduce the special 100 foot dwelling setback from the south and west property lines to 50 feet in an AR (Acreage Residential) zone for property located at 5359 and 5369 Ballyntyne Creek Lane S. Salem (T8S; R3W; Section 17B; Tax lots 1502, 1800, 1900, 2200).

DECISION: Notice is hereby given that the Planning Director for Marion County has **APPROVED A MODIFIED** decision for the above described Variance/Property Line Adjustment/Partitioning/Administrative Review application for a variance to allow more than 4 dwellings off a private drive, to adjust the property lines on 9.8 acre parcel and a 2.01 acre parcel to create a 9.8 acre parcel and a 2.1 acre parcel and to partition the resulting 9.8 acre parcel into three parcels of 5.78 acres, 2.0 acres, and 2.02 acres each and to reduce the special 100 foot dwelling setback from the south and west property lines to 50 feet subject to certain conditions.

EXPIRATION DATE: This approval is valid only when the final partitioning plat is recorded by MAY 1, 2009. After recording the final partitioning plat, the applicant shall provide proof of the recording to the Planning Division. This can be either a copy of the recording fee receipt or a copy of the plat showing the County Clerk's stamp. The effective period of an approved application may be extended for an additional year subject to approval of an extension (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 or use is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposed building. To be sure the subject property can accommodate the proposed use the applicant needs to check with 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:

1. The applicant shall submit a final partitioning plat to the County Surveyor's Office (5155 Silverton Road NE; (503) 588-5036). Following plat approval, it shall be recorded with the Marion County Clerk (final plat instructions and example enclosed).

2. The applicant is advised that a Title Report, from a title company, will be required upon submission of the final Mylar to the County Surveyor.
3. **Prior to submitting the final partitioning plat**, the applicant shall contact the Marion County Building Inspection Division and obtain any permits, including those related to on-site sewage disposal, required by their office. **The applicants are strongly encouraged to contact the County Building Inspection Division, (503) 588-5147, regarding septic sites before having the property surveyed. Septic site requirements may affect the proposed property line or lot locations.**
4. Prior to the issuance of building permits, or prior to submitting the final plat, the applicant shall address the Marion County Public Works provisions outlined in item #5 below. The requirements shall be met to the department's satisfaction.
5. All resulting parcels shall be a minimum 2.0 acres in size prior to any required right-of-way dedication.
6. Prior to issuance of building permits, the applicant shall sign and submit an SGO Declaratory Statement to the Planning Division for each resulting parcel. The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director (Declaratory Statement enclosed).
7. Prior to issuance of building permits, the applicants shall sign and submit a Geologically Hazardous Overlay zone Declaratory Statement to the Planning Division for each resulting parcel. The applicants shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director (Declaratory Statement enclosed).
8. The applicant shall be required to address review criteria listed in Chapter 182 of the MCRZO if future development occurs in the excessive slope area identified in the Geologically Hazardous Areas Overlay zone.
9. Prior to issuance of building permits, the applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division for the newly created parcels. The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director (Declaratory Statement enclosed).
10. A special 50 foot-dwelling setback shall be maintained on the newly created parcels from the SA zoned properties to the south and west.
11. The final Partitioning Plan shall substantially conform to the site plan submitted with this application.
12. Prior to filing the plat, the applicant shall provide evidence satisfactory to the Planning Manager of meeting the "Fire Apparatus Access Roadway Standards, as required by the Salem Suburban Fire District"

13. The applicants shall obtain all permits required by the Marion County Building Inspection Division.

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

14. A buffer of mature trees and vegetation shall be maintained along the southern and western boundary of the proposed Parcels A and C. The buffer shall be of enough height and density to screen the adjacent parcels.
15. After the final Partitioning 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 any 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 any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

16. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. Site grading shall not impact surrounding properties in a negative manner.
17. The subject property is within the unincorporated area of Marion County. Transportation and Parks Systems Development Charges shall be assessed upon development of the newly created parcels, at the time of application for building permits.

PROCEDURE: The Marion County Zoning Ordinance provides that Administrative Review 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 deny the application. Any interested person who disagrees with the Director's decision may appeal the decision to the Marion County Hearings Officer. The applicant may also request a reconsideration (one time only and a fee of \$200.00) 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. Appeals must be in writing (Appeal Form available from the Planning Division) and be received in the Marion County Planning Division, 555 Court Street NE, 2nd floor, Salem by 4:30 p.m. on **APRIL 30, 2007.** Please note an appeal directly to the Land Use Board of Appeals is not allowed under ORS 197.830. If you have any question about this application or the decision please call 588-5038 or visit the County Planning Office at the above address. This decision is effective **MAY 1, 2007** unless appealed.

FINDINGS AND CONCLUSIONS: The findings and conclusions on which the Director based his decision are noted below.

1. The subject properties are designated Rural Residential in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding AR (Acreage Residential) is to allow acreage homesites at a density that maintains the character and environmental quality of the County's rural residential areas. The property is located within the SGO (Sensitive Groundwater Overlay) zone and the Geologically Hazardous Areas Overlay zone.
2. The properties are located on the south side of Ballyntyne Creek Lane approximately 200 feet south of Ballyntyne Road. An existing dwelling, well and septic system is located on tax lots 1900 and 1502. The properties were created as a result of Partition Case 79-146 (P79-146) and Lot Line Adjustment/Partition Case 98-46 (LLA/P98-46).
3. Surrounding properties to the east and north are zone AR and consist of acreage homesites. Land to the west and south is within the SA (Special Agriculture) zone.
4. The applicants originally requested a variance to allow six dwellings off a private easement where four dwellings are allowed access. However, information included in their statement indicated additional plans for a property line adjustment and partitioning as well as reduction in the special 100 foot dwelling setbacks. Staff suggested the applicants revise their application to include all the proposals mentioned in the submitted statement. Subsequently, after the revised application was submitted a re-notice was issued to other agencies.

Additionally, staff research of the subject properties revealed that tax lots 1800, 1900, and 2200 are not separate legal parcels but are combined into a single 9.8 acre parcel under Partitioning Case 79-146 (P79-146). Therefore, at the applicants' submitted a revised site plan and, staff will review a **modified** proposal for a variance to allow five dwellings off a private easement, an property line adjustment to adjust the property line on a 9.8 acre parcel and a 2.1 acre parcel to create a 9.8 acre parcel and a 2.1 acre parcel, a partitioning to divide a 9.8 acre parcel into three lots of 5.78 acres, 2.02 acres, and 2.0 acres each, and an administrative review to reduce the special 100 foot dwelling setback from the south and west property lines to 50 feet.

5. Marion County Public Works commented:

"Approval of the proposal would allow an additional parcel on the subject property and establishment of three additional dwellings, resulting in approximately 30 additional daily trips on Ballyntyne Creek Lane, Ballyntyne Road, and other roads in the area. Approval would also allow more than four homes off a private easement. The Public Works Department has the following comments, requirements, and recommendations for the proposed partition:

Streets

Prior to plat approval, the applicant shall improve Ballyntyne Creek Lane, to standards as

directed by the Public Works Department, from Ballyntyne Road through its first main intersection (next to the mailboxes). This is anticipated to necessitate a 22-foot pavement width, gravel base, 2-foot gravel shoulders, and ditch and drainage work as necessary. Improvements may also be necessary for this intersection to get fire district approval as a vehicle turnaround.

Prior to plat approval, the applicant will be required to improve Ballyntyne Road along their property frontage in accordance with county standards as directed by the public works department. This is anticipated to include 5-foot gravel shoulders, slope work, drainage work, and vegetation clearing.

Prior to plat approval, the applicant shall provide a Declaration of Covenants for Road Maintenance Agreement regarding the non-county maintained roads and easements (form available from Public Works).

In accordance with Marion County Driveway Ordinance #651, the applicant will be required to obtain a driveway permit for the new driveway and change in driveway use, and make changes if necessary to establish safe and compliant access. Driveways must meet sight distance, design, spacing, and safety standards. Contact Kim Caldwell at (503) 584-7714 for details.

Roadways and driveways must meet fire district standards for emergency access.

Storm

At this level of development, storm-water detention will not be a requirement at this time. If the parcels are partitioned or further developed in the future, storm-water detention will be required for the parcels. The system shall be sized so that it will detain the difference between a 5-year frequency storm with pre-development conditions (before this case V06-07) and a 10-year frequency storm with development conditions.

General

The subject property is within the unincorporated area of Marion County. Transportation and Parks Systems Development Charges will be assessed upon any development on the subject property at the time of application for building permits.

Any utility work in the public right-of-way will require a utility permit from Public Works.

A National Pollutant Discharge Elimination System (NPDES) permit is required for all construction activities that disturb one-acre or more. If necessary, the NPDES permit is obtained through the Oregon Department of Environmental Quality."

Marion County Surveyor's Office stated that parcels 10 acres and less must be surveyed. Per ORS 92.050, a Plat must be submitted for review along with required fees and a current title report.

Marion County Tax Office provided information regarding taxes on the property.

Oregon Water Resources Department noted that the parcels are within the South Salem Hills Groundwater Limited Area and provided comments concerning water rights.

Salem-Keizer Public Schools provided information concerning possible impacts resulting from the proposal.

All other contacted agencies either failed to respond, or stated no objection to the proposal, at the time this report was written.

Variance:

6. Section 110.800 states: "Every dwelling shall be situated on a lot having direct access by abutting upon a public street or a pre-existing private driveway of a width not less than 20 feet. A private drive shall not serve more than 4 dwelling units unless the parcels, on which those units are proposed to be placed, were established with the approval of the Marion County Planning Commission or Hearings Officer in accordance with State law and Marion County Ordinances, prior to May 1, 1977, or were approved under Chapter 121, Planned Development."

The applicants propose a variance to increase the number of dwellings to be served off a private drive from four to five. In order to obtain a variance the proposal must meet the criteria in found in Section 122.020 of the Marion County Rural Zoning Ordinance (MCRZO). These criteria are:

- (a) There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of the ordinance; 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 affect on property or improvements in the neighborhood of the subject property; and
 - (e) The variance will not have a significant adverse affect 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.
7. Four existing dwellings, without frontage on Ballyntyne Road, currently access onto Ballyntyne Creek Lane and, the applicants originally proposed two additional dwellings off the private easement. However, new information established that the property was

configured in one 9.8 acre parcel and nullified the previous proposal to property line adjust four existing parcels and partition one of them into an additional lot. The applicants submitted a revised site plan to partition a 9.8 acre parcel into three parcels of 5.78 acres, 2.0 acres, and a 2.02 acres each. The resulting 5.78 acre parcel will contain the existing dwelling and front on Ballyntyne Road and, therefore, can no longer be included in the number of homes using Ballyntyne Creek Lane. The proposed partitioning decreases the number of existing dwellings from four to three. The partitioning will create two new dwelling sites and result in an increase to five dwellings accessing Ballyntyne Creek Lane. Therefore, the variance is for one additional dwelling.

8. Marion County records indicate that the property was configured into three separate parcels prior to approval of Partitioning Case 79-146 and, the applicants purchased it under that assumption. The existing easement is the only access available to the parcels and the applicants intend to realign some of the driveways making easier transition onto the easement. Prohibition of development on the property would constitute an unreasonable hardship, especially when an alternative of allowing additional usage of the easement, exists. It appears that there are no other lands available to create an easement to serve the site. Further, the degree of variance that the applicants are requesting is the minimum necessary to serve an additional dwelling off the easement. The roadway is improved and this minimizes the impact of additional traffic serving the dwellings. Also, the standards required by Public Works would further minimize the impact of additional traffic and help maintain safe driving conditions.
9. Any adverse affects on surrounding properties or improvements have likely already been realized because the easement has continued to function over a long period of time. Most of the development accessing the roadway has already occurred along the easement. There is no evidence that the amount of traffic generated by the additional dwelling will have a significant adverse affect upon the health or safety of persons working or residing in the vicinity.
10. The intent and purpose of limiting the number of dwellings served off a private easement to four dwellings is to reduce congestion on roads that cannot support the traffic, ensure safe and ready access to roadways and parcels, and reduce the conflicts among roadway users over maintenance of the roadway. Public Works conditions require additional paving, widening, and other improvements as well as a Road Maintenance Agreement. Based on the evidence provided by the applicant, and staff's review of the proposal, the additional dwelling will not appreciably increase the amount of traffic using the easement and health and safety will not be significantly affected by the additional dwelling. The proposal meets the above criteria

Property Line Adjustment:

11. The applicants originally proposed to adjust property lines between tax lots 1800, 1900, and 2200 that are under their ownership and tax lot 1502 that is under different ownership. Research revealed that tax lots 1800, 1900, and 2200 were at one time configured as separate lots but were combined as one 9.8 acre parcel under Partition Case 79-146 (P79-146). However, it appears, the previous owner did not record new

deeds reflecting the new legal description and, the current property owner purchased the property under the understanding that the three tax lots were separate legal parcels.

12. Under a revised proposal, the applicants are proposing to reconfigure the subject properties by adjusting the common property lines between the 9.8 acre parcel and the adjacent 2.1 acre property to the east (tax lot 1502). The proposal will move the eastern property line of the 9.8 acre parcel to follow terrain and transfer ownership that is separated from the ownerships by the existing easement and driveways. The proposal does not significantly change the acreage of either parcel.
13. According to Section 128.070 of the Marion County Rural Zoning Ordinance (MCRZO) the minimum lot size for property in an AR zone is 2 acres. The applicants' proposal does not create any new parcels but reconfigures two existing lots all of which will meet the minimum lot size of the zone. Each of the resulting parcels will be of sufficient shape and size to accommodate the existing, or future residential uses.

Partitioning:

14. The applicants are requesting to partition the 9.8 acres into three parcels of 5.78 acres, 2.02 acres, and 2.0 acres each. The proposed 5.78 acres will contain the existing dwelling and extend across the private easement and have frontage on Ballyntyne Road. The applicants stated the intent to divide the 5.78 acre parcel in the future. If the parcel is separated to create a lot north of the easement, the existing dwelling would no longer have frontage on a public road and, a variance may be necessary to allow for an additional dwelling to access onto Ballyntyne Creek Lane.
15. Chapter 181 of the MCRZO establishes provisions for partitioning property in a SGO zone. In the SGO-5 zone, the threshold parcel size is five acres. In this instance the average parcel size is less than five acres, therefore, a water use inventory was conducted for this proposal. The inventory results were adequate to satisfy the requirements outlined in Chapter 181 of the MCRZO. However, the County requires a Declaratory Statement be recorded with the property deed. This notifies the applicant, and subsequent owners, that there may be long term groundwater supply problems and that the County is not responsible for deepening or replacing wells.
16. The subject property is within the designated Geologically Hazardous Area Overlay zone. However, only a portion of the property is designated as low landslide risk or high landslide risk according to susceptibility value ratings listed in Chapter 182 of the MCRZO. The applicants indicated on the submitted site plan that development of the proposed parcels will occur in the southern portion of the property outside of the landslide risk area. A condition of approval shall require additional review if future development is ever proposed in the landslide risk area on the parcels. Additionally, as a condition of approval, the property owner shall sign and record a declaratory statement acknowledging that the property is within a geologic hazards area.

17. Marion County Comprehensive Plan policies for rural residential areas provide that homesites should be a minimum of 2 acres in size. In addition, the AR zone contains a minimum lot size of 2 acres. The proposed parcels are consistent with these requirements, and the proposed parcels are of sufficient size to comply with Marion County Rural Zoning Ordinance development standards.

Administrative Review:

18. The applicants also request to reduce the special 100 foot dwelling setback from land in farm use to 50 feet from the west and south property lines.
19. In order to place a dwelling on a property in an AR zone it must meet the special siting standards found in Section 128.050 of the MCRZO if it is near a resource zone. These standards include:
 - (a) Any new dwelling in an AR zone shall be required to maintain a special setback from any parcel in the EFU, SA, FT, or TC zones when necessary to minimize potential conflicts with farm or forest uses. A 100-foot setback is the standard adjacent to farm use and 200 feet is the standard adjacent to forest uses.
 - (b) The owner of a proposed dwelling to be located within 500 feet of the EFU, SA, FT, TC zones shall be required to concur in the filing of the Declaratory Statement prescribed in the respective resource zone.
 - (c) The owner of a proposed dwelling located on a parcel adjacent to the FT or TC zone shall, as a condition of approval, be required to provide for fire hazard management in accordance with Chapter 3 of "Fire Safety Considerations For Developments in Forested Areas, 1978" and any revisions thereto.
20. The proposed parcels border the SA (Special Agriculture) zone on the south and west property lines and, it appears that land in the area is historically used for grass seed production. Due to slope and other terrain characteristics of the subject property, it appears that the most feasible building sites are situated in the southern portion of the parcels. The most severe landslide risk area is designated in the northern portion and near the center of the property where construction activity could result in slope erosion or landslide problems. The southern area of the property is heavily wooded and a conditional of approval shall be placed to require a vegetative fringe to buffer the site. Staff concludes that the proposed building sites are sufficiently buffered from farming activity by trees and other vegetation as well as the overall physical setting.

However, a declaratory statement shall be recorded in the deed records by the property owner. This serves to notify the applicant and subsequent owners that there are farming operations in the area and will further reduce any potential conflicting impacts a dwelling may have on adjacent resource properties.

21. Based on the above discussion, the applicants' request meets all applicable criteria for granting a variance/property line adjustment/partition/administrative review and is, therefore, **APPROVED.**

James Sears

Date: 4/16/07

Director-Planning Division

If you have any questions please contact David Epling 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 PUBLIC CLERK.

RECEIVED

**NOTICE OF DECISION
VARIANCE CASE NO. 06-2**

SEP 02 2025

**Marion County
Planning**

APPLICATION: Application of Darrin Ledoux for a variance to Section 110.800 to allow more than two dwellings off a private drive on a 4-acre parcel in an AR (Acreage Residential) zone for property located at 2735 Marche Heights Drive SE, Turner. T8S; R3W; Section 36B; Tax lot 300.

DECISION: Notice is hereby given that the Planning Director for Marion County has **APPROVED** the above described Variance application subject to certain conditions.

This Variance is valid only when exercised by July 18, 2008. The effective period of an approved Variance may be extended for an additional year subject to approval of an extension (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 or use is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposed building. To be sure the subject property can accommodate the proposed use the applicant needs to check with 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:

1. The applicants shall obtain all permits required by the Marion County Building Inspection Division.
2. The applicants shall satisfy the requirements of Marion County Public Works described in Finding #5 below to their satisfaction.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect any 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 any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits.

3. The applicants should contact the Turner Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification Guidelines. For personal and property safety, it is recommended the applicants follow these guidelines. Fire District access standards may be more restrictive than County standards.

PROCEDURE: The Marion County Zoning Ordinance provides that Administrative Review 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 deny the application. Any interested person who disagrees with the Director's decision may appeal the decision to the Marion County Hearings Officer. The applicant may also request a reconsideration (one time only and a fee of \$200.00) 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. Appeals must be in writing (Appeal Form available from the Planning Division) and be received in the Marion County Planning Division, 555 Court Street NE, 2nd floor, Salem by 4:30 p.m. on July 18, 2006. Please note an appeal directly to the Land Use Board of Appeals is not allowed under ORS 197.830. If you have any question about this application or the decision please call 588-5038 or visit the County Planning Office at the above address. This decision is effective July 19, 2006 unless appealed.

FINDINGS AND CONCLUSIONS: The findings and conclusions on which the Director based his decision are noted below.

1. The subject property is designated Rural Residential in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding AR (Acreage Residential) is to allow acreage homesites at a density that maintains the character and environmental quality of the County's rural residential areas.
2. The property is located at the east end of Marche Heights Drive SE, Turner, east off Enchanted Way SE. The northern parcel contains a dwelling; the southern parcel is undeveloped. The properties were created as a result of Partition Case #05-11.
3. Surrounding properties in all directions consist of acreage homesites in an AR zone.
4. The applicants are requesting a variance to allow five dwellings off a private easement where four dwellings are allowed.
5. Marion County Public Works commented:

"Approval of the proposal will create an additional home site on the subject property resulting in approximately 10 additional daily trips on Marche Heights Drive and other roads in the area. Approval would also allow more than four homes off a private easement. The Public Works Department has the following comments, requirements, and recommendations for the proposed partition:


1. Prior to plat approval, the applicant shall Improve Marche Heights Drive to County standards as directed by the Public Works Department. This is anticipated to necessitate a 20-foot pavement width, gravel base, 2-foot gravel shoulders, and ditch and drainage work as necessary
2. Prior to plat approval, the applicant shall provide a Declaration of Covenants for Road Maintenance Agreement regarding the non-county maintained access easement (form available from Public Works).
3. In accordance with Marion County Driveway Ordinance #651, the applicant will be required to obtain a driveway permit for the new driveway and change in driveway use, and make changes if necessary to establish safe and compliant access. Driveways must meet sight distance, design, spacing, and safety standards. Contact Kim Caldwell at (503) 584-7714 for details.
4. Since the lots will be 2 acres or more, storm-water detention will not be a requirement at this time. If the parcels are partitioned or further developed in the future, storm-water detention will be required for the parcels. The system shall be sized so that it will detain the difference between a 5-year frequency storm with pre-development conditions (before this case V06-02) and a 10-year frequency storm with development conditions.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (Appeal Form available from the Planning Division) and be received in the Marion County Planning Division, 555 Court Street NE, 2nd floor, Salem by 4:30 p.m. on July 18, 2006. Please note an appeal directly to the Land Use Board of Appeals is not allowed under ORS 197.830. If you have any question about this application or the decision please call 588-5038 or visit the County Planning Office at the above address. This decision is effective July 19, 2006 unless appealed.

FINDINGS AND CONCLUSIONS: The findings and conclusions on which the Director based his decision are noted below.

1. The subject property is designated Rural Residential in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding AR (Acreage Residential) is to allow acreage homesites at a density that maintains the character and environmental quality of the County's rural residential areas.
2. The property is located at the east end of Marche Heights Drive SE, Turner, east off Enchanted Way SE. The northern parcel contains a dwelling; the southern parcel is undeveloped. The properties were created as a result of Partition Case #05-11.
3. Surrounding properties in all directions consist of acreage homesites in an AR zone.
4. The applicants are requesting a variance to allow five dwellings off a private easement where four dwellings are allowed.
5. Marion County Public Works commented:

"Approval of the proposal will create an additional home site on the subject property resulting in approximately 10 additional daily trips on Marche Heights Drive and other roads in the area. Approval would also allow more than four homes off a private easement. The Public Works Department has the following comments, requirements, and recommendations for the proposed partition:

- 
1. Prior to plat approval, the applicant shall Improve Marche Heights Drive to County standards as directed by the Public Works Department. This is anticipated to necessitate a 20-foot pavement width, gravel base, 2-foot gravel shoulders, and ditch and drainage work as necessary
 2. Prior to plat approval, the applicant shall provide a Declaration of Covenants for Road Maintenance Agreement regarding the non-county maintained access easement (form available from Public Works).
 3. In accordance with Marion County Driveway Ordinance #651, the applicant will be required to obtain a driveway permit for the new driveway and change in driveway use, and make changes if necessary to establish safe and compliant access. Driveways must meet sight distance, design, spacing, and safety standards. Contact Kim Caldwell at (503) 584-7714 for details.
 4. Since the lots will be 2 acres or more, storm-water detention will not be a requirement at this time. If the parcels are partitioned or further developed in the future, storm-water detention will be required for the parcels. The system shall be sized so that it will detain the difference between a 5-year frequency storm with pre-development conditions (before this case V06-02) and a 10-year frequency storm with development conditions.

must include her paper ty.

5. The subject property is within the unincorporated area of Marion County. Transportation and Parks Systems Development Charges will be assessed upon any development on the subject property at the time of application for building permits.
6. Any utility work in the public right-of-way will require a utility permit from Public Works.
7. A National Pollutant Discharge Elimination System (NPDES) permit is required for all construction activities that disturb one-acre or more. If necessary, the NPDES permit is obtained through the Oregon Department of Environmental Quality."

The Marion County Assessor provided information regarding taxes on the property.

The Oregon Department of Transportation commented on access to the state highway.

All other contacted agencies either failed to respond, or stated no objection to the proposal, at the time this report was written.

6. The applicant proposes a variance to increase the number of dwellings permitted to be served off a private drive from four to five. In order to obtain a variance the proposal must meet the criteria in found in Section 122.020 of the Marion County Rural Zoning Ordinance (MCRZO). These criteria are:
 - (a) There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of the ordinance; 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 affect on property or improvements in the neighborhood of the subject property; and
 - (e) The variance will not have a significant adverse affect 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.
7. The easement is the only access available to the parcel. Prohibition of development with a home would constitute an unreasonable hardship, especially when an alternative, allowing additional usage of the easement, exists. There are no other lands available where an easement to serve the site could be created. Further, the degree of variance that the applicant is requesting is the minimum necessary to serve one additional dwelling off the easement.

There would be a maximum of five parcels served by the easement, three off David Lane, which comes off Marche Heights, and two off Marche Heights Drive. No more parcels could be created in the area under the current two acre minimum lot size which would require access off Marche Heights Drive or David Lane.

The easement is graveled and partially paved up to David Lane. This minimizes the impact of the additional traffic that serving five dwellings would create. Also, the standards required by Public Works would further minimize the impact of additional traffic and help maintain safe driving conditions in Marche Heights Drive and David Lane.

Any adverse affects on surrounding properties or improvements have likely already been realized as the easement is already in place and most of the development which would occur has already occurred surrounding that easement. Three of the lots which are served by Marche Heights Drive continue down David Lane and traffic is diverted here, where the easement is partially paved and of substantial width, minimizing the impact on Marche Heights Drive further east. There is no evidence that the amount of traffic generated by one additional dwelling will have a significant adverse affect upon the health or safety of persons working or residing in the vicinity.

The intent and purpose of limiting the number of dwellings served off a private easement to four dwellings is to reduce congestion on roads that cannot support the traffic, ensure safe and ready access to roadways and parcels, and reduce the conflicts among roadway users over maintenance of the roadway. Based on the evidence provided by the applicant, and staff's review of the proposal, the one additional dwelling will not appreciably increase the amount of traffic using the easement and health and safety will not be significantly affected by one additional dwelling.

8. Based on the above discussion, the applicants' request meets all applicable criteria for granting a variance. The application to serve five dwellings of a private easement where four are allowed is, therefore, **APPROVED.**

James Sears
Director-Planning Division

Date: July 7, 2006

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